Neutral Citation Number: [2025] EWHC 1095 (Comm)

Case No: CL-2024-000314

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 08/05/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

SAMSUNG ELECTRONICS (UK) LIMITED	**Applicant/ Claimant**
- and -	
LUX GROUP HOLDINGS LIMITED	**Respondent/ Defendant**

- -
- -

Pia Dutton (instructed by **Stevens & Bolton LLP**) for the **Applicant/Claimant**
Sebastian Kokelaar (instructed by **Devonshires Solicitors LLP**) for the **Respondent/Defendant**

Hearing date: 5 February 2025
Draft judgment circulated to parties: 30 April 2025

Approved Judgment

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The Claimant ("***Samsung***") applies for summary judgment on its claim ("***the Claim***") and/or the striking-out of the Defence and Counterclaim filed by the Defendant ("***Lux***").

2. The Claim, Defence, and Counterclaim arise from a series of actual or alleged oral and written agreements constituting the parties' commercial relationship:-

   i) a Framework Agreement (the "***FA***") dated 24 December 2019;

   ii) an alleged oral Joint Venture Agreement (the "***JVA***") made on 6 January 2020;

   iii) a lease agreement (the "***001 Lease***") concerning a display screen to be used at Lux's offices (the "***Office Screen***"), dated 4 August 2021;

   iv) a lease agreement (the "***002 Lease***") concerning display screens to be used at Lux's showroom (the "***Showroom Screens***"), dated 23 August 2021;

   v) an alleged oral agreement concluded at a Consumer Electronics Show on January 2022 (the "***January 2022 Agreement***"); and

vi) a letter stating that title to leased goods would pass to Lux at the end of the relevant agreements and upon payment of a nominal sum, dated 27 April 2022 (the "***April 2022 Letter***").

3. Samsung's Claim is for outstanding sums allegedly owed under the 001 Lease and 002 Lease (together the "***Lease Agreements***"), and for delivery up of the Showroom Screens and Office Screen. It was filed on 31 May 2024.

4. Lux in its Defence admits withholding payments *prima facie* due under the Lease Agreements, but raises defences based on an ongoing insurance claim regarding the Showroom Screens, and says it is entitled to set off the sums claimed in its Counterclaim. The Counterclaim comprises of six heads of claim based on various alleged breaches of the parties' agreements, which Lux values in aggregate in excess of £5,000,000. The Defence and Counterclaim were filed on 26 July 2024.

5. Samsung filed a Reply to the Defence and Counterclaim on 19 August 2024.

6. For the reasons below, I have decided:

i) to grant summary judgment in favour of Samsung on its claim for sums outstanding under the 001 Lease;

ii) to refuse summary judgment or strike-out as regards Samsung's claims for sums outstanding under the 002 Lease; and

iii) to refuse to grant summary judgment in Samsung's favour in respect of five of the six heads of claim in the Counterclaim, but to grant it in relation to the other head.

The three matters above were the focus, or at least the main focus, of the hearing before me. I shall hear further submissions as to the appropriate disposition, in the light of my findings and the evidence, of the remaining elements of Samsung's claim, including its claims for delivery up.

(B) BACKGROUND FACTS/ALLEGATIONS

(1) Commercial background

7. Samsung is a well-known producer and supplier of electronic goods. Lux designs and manufactures luxury kitchens, bathrooms, and homeware. It owns Smallbone, a luxury homeware retailer aimed at high net worth individuals.

8. Samsung and Lux's commercial relationship began in 2019. Lux planned to open a flagship showroom at 197-205 Brompton Road, Knightsbridge, SW3 1LA ("***Brompton Gate***"). Mr Ronnie Shemesh, Chief Executive Officer of Lux, describes the concept of Brompton Gate as showcasing Smallbone's luxury interiors alongside first-of-a-kind appliances from partner brands, including Samsung.

9. On 24 December 2019, the parties agreed the FA. It set out the terms on which the parties would agree finance leasing agreements to be entered from time-to-time. Clause 1.3 lists eight items of equipment anticipated to be leased, though only one, a 292-inch MICRO LED display screen (the "***8K Wall***"), was ever leased under the FA, and was installed at Brompton Gate. The following further provisions of the FA are relevant:-

> "3.5 We warrant that (other than in the exercise of our rights under applicable laws or this agreement, including but not limited to clause 3.5 [sc. 3.4] above) we will not interfere with your quiet possession of the Equipment…
>
> 4.6 You shall not have any right of set-off against deduction from or withholding of any amount payable to us under any relevant Schedule…
>
> 5.1 You are responsible for any loss, theft, destruction of or damage to the Equipment on the date of delivery to you until it is recovered by us or otherwise disposed of. For the avoidance of doubt, you shall not be responsible for any loss, destruction or damage to the Equipment which is caused prior to delivery by us (or our agent or subcontractor) while we are delivering the Equipment and risk in the Equipment shall pass to you upon completion of delivery…
>
> 5.3 You must ensure that at all times the Equipment remains identifiable as being our property and shall not remove any serial numbers or other identifying marks which are included with the Equipment on delivery…
>
> 15.6 This agreement and any Schedules contain all the terms agreed between us and no variations shall be effective unless recorded in writing and signed by our authorised employee and you.
>
> 15.13 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another part, or authorise any party to make or enter into commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
>
> 16.1 This agreement and any relevant Schedule constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter."

10. On 6 January 2020, Mr Shemesh met Mr Francis Chun, then President of Samsung, at a Las Vegas trade show. It is common ground that Mr Shemesh and Mr Chun discussed future potential business opportunities between the parties. Lux contends that these discussions culminated in an oral JVA with the following terms (as pleaded in § 5(5) of its Defence):

> "(a) Lux would purchase a variety high-end electronic goods from Samsung, in particular the largest and most realistic electronic display screen in Europe at that time ("the 8K Wall"), window display screens and other electronic products, displayed

> at the showrooms in order to showcase the "MICRO LED" innovation by Samsung.
>
> (b) Samsung would finance the purchase by Lux of the electronic display screens and white goods and also cover other related costs for the installation of the screens. The display screens would be used in part to promote Samsung products and the Samsung brand.
>
> (c) Samsung would provide marketing support to Lux; including (i) providing marketing material such as video's of products to be shown on the 8K Wall and Window Screens and elsewhere within the gallery, and (ii) make contributions to the marketing costs incurred by Lux in promoting Samsung goods for example in hosting events and incurring promotion costs with third parties.
>
> (d) Lux would buy consumer goods from Samsung, which would be discounted to Lux. Samsung would set the retail price and if the price had to be discounted by Lux to facilitate sales or if Lux could not sell the goods, then Lux would receive a Sales Out Allowance ("SOA") from Samsung, to compensate Lux in respect of the reduced sale price, or the cost of the goods if not sold ("the SOA Agreement").
>
> (e) Lux would be offered all new products developed by Samsung when launched so that Lux would be selling the "'first of a kind'", which is essential for luxury branding.
>
> (f) Samsung and Lux would co-operate to support each other's business and would act in partnership. Lux would use its premises to market Samsung goods and install Samsung goods where appropriate in its finished products. Samsung would sell through Lux and would protect Lux via the SOA, thus enabling Lux to carry significant stock in new products at what may be speculative prices."

11. Samsung denies the existence of the JVA. It characterises Mr Chun and Mr Shemesh's discussions as, at most, agreements in principle, lacking any intention, or the necessary precision, to bind the parties. Lux argues that the JVA was intended to bind the parties and marked the commencement of a serious commercial partnership. It cites contemporaneous emails between Mr Shemesh and Mr Bob Moore, Chief Operating Officer of Lux, as evidence of the JVA's existence.

12. Lux also argues that the parties acted in accordance with the JVA. In July 2020, Lux acquired ten 98-inch Samsung televisions via a finance purchase agreement. Between November 2020 and January 2021, Lux acquired 1018 Samsung 'AirDressers' (a home dry-cleaning system) at a cost of £820 per unit via similar finance purchase agreements. Lux also took out the front page of an edition of the 'Sunday Times' Rich List to exhibit the 8K Wall.

13. Lux drew the court's attention to correspondence between the parties which it says illustrate the depth of their commercial relationship:-

    i) On 10 July 2020, Mr Tom Brittain of Samsung's distributor Hii-Life Limited ("***Hii-Life***") emailed Mr Murtaza Bukhari of Samsung, with Mr Moore in copy, to arrange for joint marketing between the parties.

    ii) On 10 October 2020, Mr Moore emailed Mr Bukhari to express concern about Samsung's discounted prices on AirDressers with which Lux could not compete.

    iii) On 14 October 2020, Ms Taleasha Cole of Samsung emailed Mr David Reid of Lux to arrange training sessions for Lux staff on Samsung's product offering.

14. The parties subsequently entered into the 001 Lease and 002 Lease on 4 and 23 August 2021 respectively. Their terms were identical, with the most relevant being as follows:-

> "3.1 You [Lux] shall pay us [Samsung] Rentals at the times shown within the Payment Details section or at such other times as we may notify to you. Rentals are subject to VAT at the rate in force from time to time.
>
> 3.2 Punctual payment by direct debit is a condition of and is essential to this Agreement. You agree to pay unless otherwise agreed by us.
>
> 3.6 You shall not have any right of set-off against, deduction from or withholding of any amount payable to us under this Agreement.
>
> 4.9 You agree that you do not own the Equipment, the Licensed Software nor any diagnostic program contained in the Equipment.
>
> 11.1 If the Equipment is lost, stolen, destroyed or cannot be economically rectified, you must tell us immediately and the hiring of the Equipment will terminate automatically. If there are one or more items of the Equipment and not all the Equipment suffers such total loss, then the hiring will terminate only in relation to the item or items in question.
>
> 11.2 On the expiry of 30 days or as required to enable a claim to be made to the insurers after the occurrence giving rise to such a total loss, you agree to pay to us an amount equal to the sum calculated under the provisions of clause 14 as if we had lawfully terminated the hiring of the Equipment under clause 13 on the date of such total loss, save that in such calculation, deduction of the net proceeds shall be replaced by deduction of the amount of insurance money that has been received by us prior to the expiry of the 30 days or such period of time agreed in writing by us, under the policy or policies maintained in compliance with clause 10. Provided that such sums shall be paid together with

interest on it calculated in accordance with clause 3 from the date of the total loss until the date of payment. On our receipt of the amount set out in this clause 11.2, this Agreement, or such part of this Agreement as relates to the Equipment the subject of the total loss shall terminate. Any Periodic Rentals, remaining to be paid in respect of the remaining Equipment shall be recalculated by us to maintain our net rate of return and notified to you.

11.3 You are solely responsible for and agree to indemnify us in respect of all loss or damage to the Equipment occurring at any time before physical possession of the Equipment is taken by us (insofar as we shall not be reimbursed by the proceeds of insurance), regardless of how such loss or damage is caused.

11.4 You will use your best endeavours to ensure prompt payment of any insurance proceeds to us.

13.1 (a)-(c) Without affecting any other right or remedy available to us, we may terminate this Agreement with immediate effect by giving written notice if: (a) you fail to pay any amount due under the Agreement on the due date for payment and remain in default for not less than 14 days after being notified in writing to make such payment; (b) you commit a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fail to remedy the breach within a period of 14 days after being notified in writing to do so; (c) you repeatedly breach any of the terms of this Agreement in such a manner as to reasonably justify the opinion that your conduct is inconsistent with your having the intention or ability to give effect to the terms of this Agreement.

14.1 If either we exercise our rights to terminate the contract for clause [sic] pursuant to clause 13.1 at any stage, or you exercise your right to terminate this for convenience pursuant to clause 13.3 you shall pay to us:- (a) all arrears of Rentals including apportioned rent for any broken period; (b) for all rentals that had our consent to your possession of the Equipment not being [sic] determined were agreed to be paid by you to us until the end of the Lease Period referred to in the Agreement less a discount for accelerated payment which shall be determined by us; (c) damages for any breach of this Agreement and all expenses and costs incurred by us in retaking possession of and selling or attempting to sell the Equipment and/or enforcing our rights under this Agreement; (d) less the net proceeds of the sale of the Equipment (as detailed in clause 14.2 below).

15.1 (a)-(c): Immediately upon the termination of the hiring of the Equipment (other than upon the occurrence of a total loss), you agree to continue to carry out your obligations under the Agreement until the delivery up of the Equipment at our request and at your cost and expense (including the removal and dismantling costs:- (a) to re-deliver the Equipment maintained

> and in good repair and working order as provided in Clause 4.2 together with all records, manuals and hand books to us as such address as we may designate and [in] a condition that complies in all respects with the terms of this Agreement; (b) to store the Equipment at your premises or at such address in the UK as we may request; (c) to allow us, our agent or representatives access to any premises where the Equipment may be for the purpose of inspecting and removing it and if we are required to carry out any service, maintenance, repair or other work to the Equipment so as to put it in the condition specified in clause 4 or to discharge any of your obligations referred to in that clause to reimburse us the costs together with VAT upon demand.
>
> 16.13 …You also acknowledge that you have no right to acquire title in the Equipment at any time.
>
> 16.14 You agree that you will not withhold any payment relating to this Agreement at any stage, even if the event of Equipment failure. The payment of all rentals is an absolute obligation under this contract."

15. The 001 and 002 Leases provided that payment must be made by monthly instalments of £10,577.91 and £12,161.52 plus VAT respectively. The financing structure for the goods worked in the following way.

    i) Samsung sold the goods to its distributor Hii-Life.

    ii) Hii-Life sold the goods on to Lux.

    iii) Lux sold the goods back to Samsung at a higher price. The difference between the prices paid by Lux to Hii-Life and by Samsung to Lux functioned as a loan by Samsung to cover Lux's costs.

    iv) Samsung then leased the goods back to Lux pursuant to the Lease Agreements, each of which provided for a monthly charge to be paid.

16. Despite the attraction of the 8K Wall and the display screens, Lux apparently experienced difficulty in selling Samsung products. For example, five of the ten 98-inch televisions were intended for US retail sale. Lux pleads that they turned out to require separate transformers to be installed, making them impractical for use as a luxury item. Lux sought SOA (Sales Out Allowance) support to make good its shortfall, but this was refused.

17. The AirDressers also struggled to sell at Samsung's £1,999 retail price. Lux applied a discount and sought SOA assistance from Samsung, receiving £100 per unit. Nevertheless, Lux says, it was left with 417 unsold units, which it re-sold to Hii-Life for £291 per unit, suffering a £178,893 loss.

18. It is against this backdrop that Lux alleges a further oral agreement between the parties at a consumer electronics show in January 2022, i.e. the January 2022 Agreement. Lux claims that Samsung agreed to supply 500 new AirDressers as exhibited at the show, replacing the outdated models held by Lux. Lux also claims that Samsung agreed to

supply 60 newer models of its MICRO LED technology 110-inch screens. Samsung denies the existence of this agreement for much the same reason as its denial of the existence of the JVA.

19. On 27 April 2022, in response to an enquiry by Lux, Samsung sent the following letter, i.e. the April 2022 Letter:

> "Further to your question regarding title of the equipment funded through the 3 lease agreements as attached, we can confirm that title will be passed at the end of the agreement to Lux Group Holdings for a nominal sum to be agreed at the time."

20. Lux alleges that on 21 May 2023 it paid Samsung for the 8K Wall in full and repaid the finance provided including interest, and thus acquired title to the display pursuant to the April 2022 Letter.

21. On 14 October 2023, Brompton Gate's landlord, South Kensington Estates ("***SKE***"), purported to forfeit its lease of the property. Lux says that was unlawful, and is pursuing litigation against SKE. In the context of the purported forfeiture, Lux alleges that Samsung wrongly asserted title over the 8K Wall installed within Brompton Gate; and that that prevented Lux from recovering the 8K Wall until 18 June 2024 when SKE's solicitors informed Lux that Samsung was no longer asserting title to it. In the meantime, Lux alleges that the 8K Wall suffered substantial damage and is now valued at only £40,000.

22. Lux says it does not know what happened to the Showroom Screens installed at Brompton Gate after SKE forfeited its lease. These are the subject of the insurance claim referred to below.

(2) These proceedings

(a) The Claim

23. Samsung filed the Claim on 31 May 2024. It alleges breaches of the Lease Agreements, among other things.

24. As regards the 001 Lease, Samsung claims that Lux failed to make two payments due on 6 April 2024 and 6 May 2024 totalling £25,386.98.

25. Samsung further claims that, following notice of termination given on 10 May 2024:-

    i) Lux failed to pay the arrears referred to above, failed to pay rentals due at the end of the lease period, and failed to contribute to damages, expenses, or costs flowing from its failure to comply with the terms of the 001 Lease, in breach of clause 14.1 of the 001 Lease;

    ii) Lux failed to permit Samsung, its agents or representatives, access to its offices to recover the Office Screen and/or failed to deliver-up the Office Screen, also in breach of clause 14.1 of the 001 Lease; and

    iii) Lux failed to pay any of the administration, interest, or other costs incurred by Samsung due to Lux's failure to comply with the 001 Lease, in breach of clause 3.3(a)-(b) of the 001 Lease.

26. Alternatively, Samsung claims that Lux breached section 1(a) of the Torts (Interference with Goods) Act 1977 and/or committed the common law tort of conversion, by failing to permit Samsung or its agents access to Lux's offices to inspect or recover the Office Screen.

27. As regards, the 002 Lease, Samsung claims that:-

    i) Lux failed to make payments due under the 002 Lease amounting to £116,750.56, in breach of clauses 3.1-3.2 of the 002 Lease; and

    ii) Lux failed to keep the Showroom Screens in good repair, by allowing them to suffer water damage, in breach of clauses 4.1-4.3. Further or alternatively, Lux failed to obtain permission for Samsung to enter Brompton Gate to remove the Showroom Screens and/or failed to obtain Samsung's permission before parting with the Showroom Screens, in breach of clauses 4.4 and/or 4.6 respectively.

28. Samsung also claims that, further to its notice of termination of the 002 Lease dated 10 May 2024:-

    i) Lux failed to pay the arrears referred to above, failed to pay rentals due at the end of the lease period, and failed to contribute towards damages, expenses, or costs flowing from Lux's failure to comply with the 002 Lease, in breach of clause 14.1 of the 002 Lease; and

    ii) Lux failed to permit Samsung, its agents or representatives, access to Brompton Gate to recover the Showroom Screens and/or failed to deliver up the Showroom Screens, in breach of clause 15.1(c).

29. Alternatively, Samsung claims that Lux breached section 1(a) of the Torts (Interference with Goods) Act 1977 and/or committed the common law tort of conversion, by failing to permit Samsung or its agents access to Lux's premises to inspect or recover the Showroom Screens.

30. Samsung consequently claims the following relief:-

    i) damages in the sum of £216,324.44 for breach of the Lease Agreements;

    ii) delivery up of the Office Screen and Showroom Screens, consequential damages flowing from its inability to deal with the Showroom Screens and Office Screen, and further costs or expenses flowing from Lux's failure to comply with the Lease Agreements, under s3(2)(a) of the Torts (Interference with Goods) Act 1977; and

    iii) the difference in value, if any, of the Showroom Screens had they been kept in good repair as against their value in their damaged state.

(b) The Defence

31. Lux filed its Defence and Counterclaim on 26 July 2024.

32. Two elements of the Defence are no longer pursued:-

i) Lux's reliance on Hii-Life's Terms & Conditions as governing the finance purchasing or finance leasing of Samsung products to Lux; and

ii) flowing from that, Lux's assertion of title over the Showroom Screens and Office Screen pursuant to the Hii-Life Terms & Conditions.

33. Lux maintains that it acquired title to the 8K Wall on 21 May 2023 pursuant to the April 2022 Letter, and that Samsung's assertion of title to the 8K Wall prevented Lux recovering the 8K Wall or Showroom Screens.

34. Lux further says that it does not know the location of the Showroom Screens. It claims to have notified Samsung of that on 14 October 2023, terminating the 002 Lease pursuant to clause 11.1, and to have initiated an insurance claim regarding the lost displays.

35. Lux further pleads that Samsung's assertion of title over the 8K Wall amounted to a repudiatory breach of the JVA, entitling it (apparently) to cease all further payments to Samsung. Lux also argues that it can reduce or extinguish any liabilities to Samsung by way of set-off against the sums sought in the Counterclaim.

(c) The Counterclaim

36. Lux counterclaims damages exceeding £5,000,000 arising from six categories of alleged breach by Samsung of the FA, JVA, January 2022 Agreement and April 2022 Letter. In summary:-

i) Air Dressers (Counterclaim §§ 19-24): Lux claims £178,893 in unpaid SOA in respect of discounted or unsold AirDressers which it re-sold to Hii-Life at £291 per unit. This counterclaim is based on the alleged SOA Agreement.

ii) 98-Inch TVs (Counterclaim §§ 25-28): Lux claims a total of £337,500 in unpaid SOA support for the nine unsold 98-inch televisions, five of which it says would have required separate transformers to install in the US. This counterclaim is also based on the SOA Agreement.

iii) 8K Wall (Counterclaim §§ 29-31): Lux claims damages for its loss of use of the 8K Wall and for the damage sustained by the 8K Wall between 14 October 2023 and 18 June 2024. A schedule of loss later produced by Lux values this head of claim at £518,400. Lux submits that these matters involved breach by Samsung of clause 3.5 of the FA (by which Samsung warranted that it would not interfere with Lux's quiet possession of the 8K Wall). Further or alternatively, Lux submits that Samsung is liable in conversion for the damage to the 8K Wall.

iv) Showroom Screens (Counterclaim § 32): Lux pleaded that Samsung wrongly claimed title to the Showroom Screens, which passed to Lux on being invoiced, and that as a result the landlord refused to deliver them up to Lux. Lux claimed damages for being deprived of the use and value of the Showroom Screens between 14 October 2023 and 18 June 2024. On the present application, however, Lux no longer asserted that it acquired title to the Showroom Screens, saying only that it remained entitled to acquire ownership of them on the terms

set out in the April 2022 Letter. This head of counterclaim therefore did not require to be considered further.

v) Promotion and use of Sales Gallery (Counterclaim §§ 33-37): Lux claims damages in relation to the marketing of Samsung products at Brompton Gate. Lux says Samsung was requested to pay £200,000 per annum for the use of the showroom from the period 2020 to 2023, and in addition to reimburse Lux for all direct spend on Samsung marketing and promotion. Lux claims the sum of £600,000 for use of the showroom and a further £350,000 for direct costs not reimbursed. Lux seeks to recover these costs as contributions owed under the JVA, alternatively as restitution for unjust enrichment.

vi) Showcasing innovations (Counterclaim §§ 38-44): Lux says that in breach of the JVA, Samsung failed to deliver products that would allow Lux to showcase innovations. Further, Lux alleges that, as part of the January 2022 Agreement, Samsung agreed to deliver to Lux the newer versions of Samsung products as displayed at the show. Samsung agreed to supply Lux with replacement Air Dressers (500 units) as Samsung had rendered the older versions of the Air Dressers obsolete and had improved the design and breadth of clothing the new Air Dresser could clean. Samsung also agreed to supply Lux with the newer version of its MICRO LED technology as a one piece 110-inch unit, as displayed at the show. It was agreed that Samsung would supply 10 units immediately followed by another 50. Lux pleads that, despite many oral and written promises from Samsung, it never received any of the replacement Air Dressers or any of the 110-inch units. It was left with obsolete inventory and stale products, which had been bought for approximately £9.3 million but were impossible to sell, while Samsung began to supply these products via its own channels. Lux also claims for lost profit on the estimated sales it would have made of the new Air Dressers and 110-inch units, in the sum of at least £2 million. It estimates its total claim under this head to be in excess of £5 million.

(d) Reply and Defence to the Counterclaim

37. Samsung filed its Reply and Defence to Counterclaim, along with the present application, on 19 August 2024.

38. Samsung denies the relevance of the FA, saying that it applied only to equipment leased in accordance with clause 1.3, i.e. the 8K Wall, and that any assertion to title to the 8K Wall would not entitle Lux to cease payments under the Lease Agreements.

39. Samsung denies the existence, and in any event the contractual effect, of the alleged JVA. It says that:-

i) Terms (a)-(d) listed at §10 above are no more than agreements to agree. The parties' agreements to lease the 8K Wall, Showroom Screens and Office Screen are not evidence of an overarching obligation to supply consumer goods. In any case, the terms of the JVA are insufficiently precise to bind the parties.

ii) Terms (e)-(f) are "*vague and embarrassing for want of particularity*" and of no contractual effect.

iii) The JVA did not operate as an overarching contractual mechanism for the parties. The present claim relates only to the Lease Agreements, which are self-contained.

40. Samsung denies the alleged effect of the April 2022 Letter, and denies that Lux paid the residual or nominal price for the 8K Wall on 21 May 2023. In any case, Samsung contends that title would not pass to Lux in the absence of an agreement at the term of the Lease.

41. Samsung denies receiving any communication of the loss of the Showroom Screens on 14 October 2023. It notes that clauses 4.2, 4.3, and 4.6 of the 002 Lease place responsibility for maintenance of the Showroom Screens on Lux, obliging Lux to make good the loss or damage of the Showroom Screens.

42. As to the Counterclaim, Samsung states that Lux has failed to properly particularise its allegations, and that the Counterclaim depends largely on the JVA, whose existence Samsung rejects. Accordingly, Samsung among other things:-

i) denies agreeing that the AirDressers were intended for retail sale: instead, Samsung understood Lux to intend them as 'give aways' to accompany other purchases;

ii) denies the existence of any contract for the purchase of 98-inch televisions; and

iii) denies the existence of any obligation to provide materials or contribute to the costs of joint marketing for the parties by Lux, or that any such obligations can arise from the alleged JVA (for want of precision).

(C) APPLICABLE PRINCIPLES

43. CPR r3.4(2) provides that:

> "The court may strike out a statement of case if it appears to the court that:
>
> (a) the statement of case discloses no reasonable grounds for bringing or defending the claim; or
>
> (b) the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

44. CPR r24.3 provides that:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if –
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

45. In *The LCD Appeals* [2018] EWCA Civ 220, the Court of Appeal quoted with approval the following considerations applicable to summary judgment applications, taken from passages in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) and *Swain v Hillman* [2001] 1 All ER 91 at 94:

i) the court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

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

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

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

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

vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;

vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that, although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725; and

viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so, he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

(D) THE 001 LEASE AND THE OFFICE SCREEN

46. As noted earlier, Lux at the hearing no longer advanced a case that it had title to the Office Screen. The only defence it put forward to Samsung's monetary claims in respect of the Office Screen was an alleged right to set off the sums said to be due pursuant to Lux's Counterclaim.

47. Lux submits that it retains a legal or equitable right of set-off notwithstanding clauses 3.6 and 16.14 of the 001 Lease. It draws attention to *FG Wilson (Engineering) Limited v John Holt & Co (Liverpool) Limited* [2012] EWHC 2477 (Comm) at [83]-[85]. Popplewell J there stated that 'no set-off' clauses require clear and unambiguous language: a clear intention that "*payment is to be made without reference to the claim which would otherwise be set-off*" must be discernible from an objective reading of the contract as a whole.

48. Lux argues that the 001 Lease is insufficiently clear and unambiguous to exclude its legal or equitable right to set-off in respect of the Counterclaim.

49. Clause 3.6 states:

> "You shall not have any right of set-off against, deduction from or withholding of any amount payable to us under this Agreement."

Lux submits that this clause does not exclude legal or equitable set-off in respect of a counter-claim. The final words "*under this Agreement*" should be read as qualifying "*any right of set-off against, deduction from or withholding of",* rather than the words *"any amount payable to us*". The purpose of the clause is to make it clear that Lux does not have any contractual rights of set-off, unlike Samsung, which does have such rights (set out in clauses 16.9 and 17.1).

50. Clause 16.14 states:

> "You agree that you will not withhold any payment relating to this Agreement at any stage, even if the event of Equipment failure. The payment of all rentals is an absolute obligation under this contract"

(The word 'if' in the second line appears to be a mis-type for 'in'.) Lux submits that this clause is insufficiently clear to assist Samsung. It does not mention set-off, counter-claims or cross-claims. Its purpose is to make it clear that Lux's payment obligation under the agreements is not conditional in any way, e.g. on Samsung complying with its obligations or the equipment functioning properly. It cannot be said to express an intention (or express it sufficiently clearly) that Lux should not be entitled to set off

claims against Samsung for sums due under a different agreement or claims for damages.

51. I cannot accept those submissions. The natural meaning of clause 3.6 is that it excludes all rights of set-off, in relation to any sums payable to Samsung under the 001 Lease Agreement. Lux's construction of the clause is strained and counter-intuitive. In effect, it seeks to read the clause as if the wording were differently ordered, as follows:

> "You shall not have under this Agreement any right of set-off against, deduction from or withholding of any amount payable to us ~~under this Agreement~~."

However, the clause is not written in that way. Moreover, it would be surprising for parties to take the trouble to insert an (unusual) provision expressly excluding contractual rights of set-off, whilst leaving intact any other type of set-off. Particularly in the context of a leasing agreement, it is much more to be expected that the lessor would require an exclusion of any kind of set-off against rent. More broadly, the wording of clause 3.6, taken with the emphasis placed on timely and unconditional payment throughout the 001 Lease, shows an objective intention to exclude Lux's right to set-off altogether. Clause 3.6 lists set-off in a sequence of excluded mechanisms that would otherwise dilute or delay Lux's payments under the 001 Lease, indicating that the clause was intended to have broad effect. Clauses 3.1, 3.2, and 16.14 stress that Lux's payment obligation is absolute.

52. In my view the meaning of clause 3.6, both as a matter of is natural linguistic meaning and in the context of the contract as a whole, is that Lux is not entitled to set off any amounts against payments due to Samsung under the lease.

53. It follows that Samsung is entitled to summary judgment in respect of its claim for sums due under the 001 Lease.

(E) THE 002 LEASE AND THE SHOWROOM SCREENS

54. As noted earlier, Lux says it notified Samsung of the loss of the Showroom Screens on 14 October 2023, and that the 002 Lease thereupon terminated automatically pursuant to clause 11.1:-

> "11.1 If the Equipment is lost, stolen, destroyed or cannot be economically rectified, you must tell us immediately and the hiring of the Equipment will terminate automatically. …"

55. Lux says that, on termination of the lease, it ceased to be liable for future rental payments, and that the termination payment due to Samsung is governed – as to both its amount and its timing – by the provisions of clause 11.2 relating to the making of an insurance claim. For ease of reference, I repeat here clauses 11.2 and 11.4 of the 002 Lease, underlining the passages on which the parties particularly rely:-

> "11.2 On the expiry of 30 days or as required to enable a claim to be made to the insurers after the occurrence giving rise to such a total loss, you agree to pay to us an amount equal to the sum calculated under the provisions of clause 14 as if we had lawfully terminated the hiring of the Equipment under clause 13 on the

> date of such total loss, save that in such calculation, deduction of the net proceeds shall be replaced by deduction of the amount of insurance money that has been received by us prior to the expiry of the 30 days or such period of time agreed in writing by us, under the policy or policies maintained in compliance with clause 10. Provided that such sums shall be paid together with interest on it calculated in accordance with clause 3 from the date of the total loss until the date of payment. On our receipt of the amount set out in this clause 11.2, this Agreement, or such part of this Agreement as relates to the Equipment the subject of the total loss shall terminate. Any Periodic Rentals, remaining to be paid in respect of the remaining Equipment shall be recalculated by us to maintain our net rate of return and notified to you.
>
> …
>
> 11.4 You will use your best endeavours to ensure prompt payment of any insurance proceeds to us."

56. Lux submits that is not obliged to pay sums due under the 002 Lease until its insurance claim in respect of the Showroom Screens is complete. It relies on the words "*On expiry of 30 days or as required to enable a claim to be made to the insurers…*" for the proposition that it is not obliged to make payment to Samsung until it receives the proceeds of the insurance claim.

57. Samsung objected that this point had not been properly pleaded. Defence § 5(22) states only that, upon notification of the loss on 14 October 2023, "*the hiring of the equipment under the relevant agreement ended on 14 October 2023*". The reference to the "*hiring*" there is consistent with the fact that clause 11.1 refers to the 'hiring' terminating on notification of loss, whereas clause 11.2 contemplates the Lease, i.e. the agreement itself, terminating only following the final payment. However, that in turn potentially gives rise to the question – not fully canvassed on this application and in my view not suitable for summary judgment – as to whether the termination of the hiring carries with it the cessation of future rental obligations, save to the extent that they are taken into account as part of the termination payment. In any event, this is a point on which any deficiency in the Defence could be cured by amendment, on the basis that Lux's argument has a real prospect of success (cf. *Alton v Powszechny Zaklad Ubezniecczen* [2024] EWCA Civ 1435).

58. Samsung does not accept that it did receive notification of loss on 14 October 2023. That would obviously be an issue for trial.

59. Further, Samsung submits that clause 11.2 does not entitle a lessee to withhold sums due under the 002 Lease until an insurance claim is completed. It highlights the words "*… replaced by deduction of the amount of insurance money that has been received by us prior to the expiry of the 30 days or such period of time agreed in writing by us…*" (underlining added). These words require the lessee to obtain Samsung's written agreement to extend the payment deadline beyond 30 days from the occurrence of the event causing the loss. As a result, Samsung says, it retains the right to demand payment after 30 days from the loss, allowing a lessee to retain the proceeds of an insurance claim instead.

60. I see the force in Samsung's point, which is consistent with the emphasis on timely and unconditional payment throughout the rest of the Lease Agreements e.g. in clause 16.14. It would arguably be surprising if the lessee could withhold payments due under the 002 Lease almost indefinitely until an insurance claim concluded.

61. However, clause 11.2 needs to be read with clause 11.4, which places an obligation on the lessee to use its best endeavours to ensure prompt payment of any insurance proceeds "*to us*" i.e. to Samsung. It is arguable that that indicates that Samsung may indeed be required to wait for payment, provided that the lessee uses its best endeavours to ensure prompt payment. In those circumstances, it is further arguable that Samsung is impliedly obliged to agree to an extension of time for payment beyond 30 days from the date of loss. Otherwise, the lessee would have to make payment in full to Samsung within 30 days of the loss, and the best endeavours obligation in clause 11.4 would make little sense. Samsung suggested that the best endeavours obligation could refer to prompt payment <u>within</u> the 30-day period. Though that is a possible construction, it is not compelling in circumstances where everyday experience suggests that an insurance claim for a valuable asset such as the Showroom Screens may well not be concluded within 30 days.

62. I do not think it necessary to reach a concluded view on this point, but consider Lux's approach to be clearly arguable. It would be better decided at trial in the light of the evidence as a whole. I shall therefore decline summary judgment on this point.

(F) THE COUNTERCLAIM

63. The five heads of the Counterclaim which it is necessary to consider can conveniently be categorised as having the following legal bases:

    i) Counterclaims (i) (AirDressers) and (ii) (98-inch TVs) are primarily based on the SOA Agreement forming part of the alleged JVA, i.e. an oral agreement, and thus dependent on its existence and contractual efficacy.

    ii) Counterclaim (v) (promotion costs/fees) is also primarily based on the alleged JVA.

    iii) Counterclaim (vi) (showcasing innovations) is based on the alleged JVA and the alleged January 2022 Agreement, another oral agreement.

    iv) Counterclaim (iii) (8K Wall) primarily depends on whether Lux acquired title to the equipment pursuant to the April 2022 Letter.

    v) Lux submits that it has alterative claims at common law in respect of counterclaim (iii) (8K Wall), namely a conversion claim, and counterclaims (i), (ii) and (v) (promotion costs/fees), namely restitution claims.

64. I will take each group of claims in turn.

(1) Claims based on alleged oral agreements (JVA and January 2022 Agreement)

65. Samsung submits that it is unlikely that the CEO and President of established commercial enterprises would orally agree to contractual relations at a trade show. Particularly in the light of (a) clause 15.13 of the FA, which made clear that the FA did not establish any form of joint venture and (b) clause 16.1 of the FA, an 'entire

agreement' clause extinguishing the effect of any prior agreements or understandings, Samsung says it would be very surprising if the parties less than a month later adopted the opposite approach by orally committing to a binding commercial partnership. Similarly, the Lease Agreements, which also contain 'entire agreement' clauses, are said to demonstrate that Mr Shemesh and Mr Chun's discussions were, at best, agreements in principle to be crystallised in written form at later dates. An objective assessment of the alleged JVA, in the context of these previous and subsequent written agreements, makes it doubtful that it ever existed, and indicates that if it did exist then it was not intended to bind the parties.

66. Samsung makes similar submissions in relation to the alleged January 2022 Agreement.

67. In addition, Samsung submits that the alleged SOA is inconsistent with the 'entire agreement' provisions in clauses 18.1 of the 001 and 002 Leases.

68. Samsung further submits that the JVA and January 2022 Agreement, even if purportedly concluded, were insufficiently precise to bind the parties. Rather, they were simply agreements to agree. Samsung cites several alleged terms of the JVA (quoted in § 10 above) as examples, saying:

    i) term (a), obliging Lux to purchase Samsung products, does not specify the particular products, their price, or the duration of Lux's obligation;

    ii) term (c), obliging Samsung to provide Lux with marketing materials and contribute to Lux's marketing costs, does not specify the type of materials or volume of contributions to be provided; and

    iii) term (d), the alleged SOA Agreement, is insufficiently precise by failing to define what "*consumer goods*" are to be supplied and what precise level of SOA support is to be given.

    Samsung says Lux's defence of the wording of the terms amounts to no more than retrospectively imputing certainty to words that could not have carried that certainty independently at the time. All the above matters, Samsung submits, show that the JVA was merely a loose working relationship rather than a contractually binding one.

69. Samsung and Lux are indeed established commercial entities, and the FA and Lease Agreements are examples of their use of written arguments in the course of business. Indeed, both documents are standard form Samsung documents. Despite that, it is not fanciful that Mr Shemesh and Mr Chun, in physical proximity at trade shows in 2020 and 2022, might have made further binding contracts orally. Mr Shemesh in his witness statement states that the JVA reflected Mr Chun's wish for Samsung to increase its access to the London-based luxury goods market. There is no responsive witness statement from Mr Chun. Subsequent conduct by the parties, including the supply of AirDressers and 98-inch Televisions, and the holding of marketing events for Samsung's benefit, are consistent with terms (b) and (c) of the JVA, and might be probative of its existence as an agreement intended to bind the parties (cf *Maggs (t/a BM Builders) v Marsh* [2006] EWCA Civ 1058 at [24]). The allegations about the January 2022 Agreement also cannot in my view be dismissed at this stage as having no real prospect of success. The position in relation to both alleged agreements can properly be determined only with the benefit of the disclosure and witness evidence likely to be available at trial.

70. As to certainty of terms, the applicable principles are familiar. The alleged contract must be objectively construed to determine whether the parties agreed all the terms essential to forming contractually binding relations. The absence of certain finalised economic or other terms is not fatal provided the parties did not consider them to be pre-conditions to their contractual relations (see, e.g., *RTS Flexible Systems Limited v Molkerei Alois Muller Gmbh & Company KG (UK Production)* [2010] UKSC 14 at [45], and *Durham Tees Valley Airport Ltd v Bmibaby Ltd* [2010] EWCA Civ 485 at [89]-[91]). Where the parties are commercial players who understand the trade to which the contract relates and have undertaken some arguable performance of its terms, the court will be more willing to imply any terms necessary to preserve their agreement (*Mamidoil-Jetoil Greek Petroleum Company SA v Okta Crude Oil Refinery AD* [2001] EWCA Civ 406 at [69 (i)-(x)]), albeit the impulse to do so is no more than a "*starting point*" (*Salem v Salem* [2024] EWHC 3311 (Ch) at [54]).

71. Term (c) of the alleged JVA has a realistic prospect of being held to be binding. It is true that the type of marketing materials to be provided to Lux is left unspecified. On balance, however, marketing is sufficiently recognisable a concept to allow a court to determine whether such materials were supplied (particularly in circumstances where some joint marketing projects in fact occurred). The fact that the volume of contributions to be paid by Samsung to Lux is left unspecified is arguably also not an insurmountable difficulty. As indicated in *RTS Flexible Systems v Molkerei Alois Muller*, the absence of certain finalised economic terms is not fatal to a contract provided the parties did not consider them a precondition. In this case, Samsung contributed £20,000 toward Lux's Sunday Times Rich List marketing campaign, and Lux requested that Samsung contribute £200,000 per annum toward its marketing costs. Although the latter was never paid, the fact of the request alongside Samsung's £20,000 payment indicates a realistic possibility that the parties were willing to determine the precise amount of contributions after the fact. (In any event, as I note later, Lux has an alternative claim based on unjust enrichment in respect of the head of counterclaim that particularly concerns term (c), namely counterclaim (v) (promotion and use of sales gallery).)

72. Term (d) of the alleged JVA, the SOA Agreement, is in my view also arguably sufficiently precise to bind the parties. Samsung objects that the use of the undefined phrase "*consumer goods*" in the clause renders it unworkable; and Mr Shemesh admits that Samsung manufactures a wide range of consumer goods, many of which may fall outside the luxury bracket occupied by Lux/Smallbone. However, there would arguably be no difficulty in applying term (d) to such goods as were in fact supplied by Samsung to Lux, and it is doubtful that the court would have any difficulty (particularly with the benefit of the inevitably fuller disclosure available at trial) deciding which of them were "*consumer goods*". Samsung submits that specific instances of negotiated SOA assistance, e.g. £100 per unit of AirDresser, indicate that the SOA Agreement was simply an agreement in principle to be crystallised at later dates. However, the fact that specific volumes of SOA were subsequently agreed could also be seen as performance of the SOA Agreement. In any case, read as a whole, term (d) is at least arguably clear as to what is meant to happen. It provides for Samsung to reimburse Lux for the shortfall where Samsung products are sold at a discount, or for the cost of Samsung products that cannot be sold at all.

73. Term (e) of the alleged JVA in my view also has a realistic prospect of being held to be binding. Although the phrase "*all new products*" is broad, it is arguable that the court

could find it to have meaningful content in the context of the relationship between the parties and the nature of the goods which Samsung habitually supplied to Lux.

74. The terms of the January 2022 Agreement are also arguably sufficiently certain, given that they specify particular quantities of particular products to be supplied. It is true that neither their price nor timeframe for delivery is specified. However, there is a realistic prospect of these being identifiable from Samsung's general practice with its distributors and/or its course of conduct with Lux itself.

75. Finally, it is arguable that the subject-matter of the SOA Agreement is different from that of the 001 and 002 Leases, such that it is was not extinguished by the 'entire agreement' provisions in clauses 18.1 the Leases. At least on one view, the 'subject-matter' of the Leases was the hiring of the particular equipment on particular terms in return for specified payments. A collateral agreement regarding the ultimate economic effect of the transactions of which the leases formed part arguably fell outside the 'subject matter' to which the 'entire agreement' clauses referred.

76. It follows that I decline to grant summary judgment in Samsung's favour in respect of Lux's counterclaims (i), (ii), (v) and (vi).

(2) Claims based on title

77. Lux argues that it paid the value of the finance lease for the 8K Wall on 21 May 2023 pursuant to the April 2022 Letter, acquiring title to the display. Lux claims (counterclaim (iii)) that Samsung's subsequent assertion of title breached clause 3.5 of the FA, obliging Samsung not to disturb Lux's quiet enjoyment of leased goods.

78. Samsung's response is that the April 2022 Letter is too uncertain to bind the parties or modify the FA, particularly FA clause 5.6, which requires Lux to ensure that leased goods remain identifiable as Samsung's property. Samsung also submits that in the phrase "*for a nominal sum to be agreed at the time*" in the April 2022 Letter, the word 'nominal' is either devoid of content, or points to a valuation by reference to the residual value of the 8K Wall (which could not have been known until the end of the agreement).

79. I am not persuaded by those points. Clause 15.6 allowed for subsequent variations, made in writing and signed on behalf of the parties, which could, if necessary, include variation of the provision in clause 16.13 that the lessee had no right to acquire title in the Equipment at any time. (I say 'if necessary' because clause 16.13 might be construed as meaning merely that no right to acquire title was conferred by the FA, as distinct from some later transaction.) The question is whether there is a realistic prospect of demonstrating that the April 2022 Letter did modify the FA to allow passage of title to Lux, and whether Lux acquired title to the 8K Wall pursuant to it. Samsung accepts that provisions of the kind set out in the April 2022 Letter are common in finance purchase agreements; and the provisions of the letter are not insurmountably unclear. It is well arguable that 'nominal' simply means an immaterial amount, such as £1, rather than the residual value of the asset. That is the, or at least a, natural meaning of the word, and arguably makes commercial sense. If so, then the requirement in the letter for the amount to be agreed is unlikely to prevent the agreement from being binding. Moreover, it is Lux's case that it in fact paid Samsung in full for the 8K Wall on 21 May 2023 (Defence § 5(19)), in which case a requirement to pay the residual value of the Wall as well would be difficult to understand. The question of whether Lux did in fact make any necessary payment for the 8K Wall will be a question

for trial. However, it is notable that Samsung's solicitors did, ultimately, accept on 18 June 2024 in a letter to Lux that Samsung no longer asserted title to the 8K Wall.

80. I therefore decline to grant summary judgment or to strike out counterclaim (iii).

(3) Claims based on conversion or restitution

(a) Conversion

81. Lux advances an alternative basis for its claim in respect of the 8K Wall, alleging that Samsung by its continued assertion of title *"wrongfully interfered with Lux's rights of ownership in breach of the Torts (Interference with Goods) Act 1977 and/or converted Lux's goods in breach of Samsung's common law tortious duty"* (Defence § 9, cross-referenced in Counterclaim § 29).

82. Lux referred to the three characteristics of the tort of conversion enumerated in *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 & 5)* [2002] 2 AC 883 at [39] (applied recently in *Brake v The Chedington Court Estate* [2022] EWHC 366 (Ch) at §230):-

> "First, the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession). Second, the conduct was deliberate, not accidental. Third, the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods. The contrast is with lesser acts of interference. If these cause damage they may give rise to claims for trespass or in negligence, but they do not constitute conversion."

Lux submitted that there can be a conversion of goods even though the defendant has never been in physical possession of them, if his act amounts to an absolute denial and repudiation of the claimant's right: see *Oakley v Lister* [1931] 1 KB 148 and *Bryanston Leasing Ltd v Principality Finance Ltd* [1977] RTR 45. Lux says Samsung's wrongful assertion of ownership of the 8K Wall amounted to an absolute denial and repudiation of Lux's right, which directly resulted in Lux being deprived of possession of it.

83. Regarding the first element of the *Kuwait* characteristics, if Samsung asserted title to the 8K Wall vis a vis the landlord, that would be inconsistent with Lux's ownership rights.

84. As to the second element, it cannot be determined without disclosure and witness evidence whether or not Samsung's assertion of title was deliberate. It might be that Samsung staff mistakenly asserted title without being aware of Lux's payment. Alternatively, the fact that over seven months passed between SKE's purported forfeiture of the lease and Samsung's confirmation that it was no longer asserting title might give rise to an inference that Samsung had been purposefully attempting to retain control of the 8K Wall by asserting ownership. There is a realistic prospect, at this stage, of Lux succeeding on this point.

85. The third element too can be addressed only at trial. A full record of correspondence between the parties and SKE is not before the Court. It is unclear whether Lux retained any right of access to Brompton Gate after SKE's forfeiture of its lease. However, the tenor of SKE's letters to Lux suggests that it controlled access to, and had possession

of the equipment in, Brompton Gate. Whether Lux's apparent inability to recover the 8K Wall was a result of assertions of title by Samsung will depend on the evidence as a whole.

86. Overall, on the basis of the evidence and submissions before me, I consider this head of counterclaim, being an alternative basis for counterclaim (iii), to have a realistic prospect of success.

(b) Restitution

87. Lux alternatively bases counterclaims (i) (AirDressers), (ii) (98-Inch TVs) and (v) (promotion and use of sales gallery) on unjust enrichment. As presently advised I have difficulty seeing how counterclaims (i) and (ii) can be framed as claims for unjust enrichment. However, I have already decided that those counterclaims have a realistic prospects of success on their primary basis, the SOA Agreement, making it unnecessary to consider the unjust enrichment basis further here. I therefore focus on counterclaim (v) (albeit that counterclaim too is primarily based on another cause of action viz breach of the JVA).

88. Lux argues it undertook marketing activities for Samsung's benefit. The Counterclaim sets out these examples:-

> "(1) Samsung invited hundreds of guests to showcase Korean artists. Samsung marketed the event worldwide and hired a Korean boy band on 13 November 2021.
>
> (2) Samsung invited hundreds of guests for a digital art event and presentation of artist Chris Fallows on 14 October 2021.
>
> (3) The 8K Wall was featured in the Aston Martin launch of the DBX-SUV at the London Showroom on 26 May 2022 and presented to world-wide viewers estimate at over 600,000 people.
>
> (4) On 22 July 2021 Samsung brought its entire executive team, including the UK, EU and Global CEOs, to the London Showroom for a private high-end event. Lux funded this event and had its concession partner Remy Martin bring its sommelier team to present exotic cognacs to Samsung's worldwide team. Ron Shemesh of Lux presented to this team "New Innovations" for future collaboration and received an invite to Samsung Headquarters.
>
> (5) Lux CEO was asked to participate in a Samsung Town Hall Event to showcase the London Showroom and report on the joint venture program. Lux CEO directed and prepared a video presentation which was shown in a Samsung Town Hall all over the world on 11 February 2022."

89. Lux argues that even if term (c) of the JVA does not bind the parties, it is entitled to recover the value of such activities by way of restitution.

90. The Supreme Court reaffirmed the requirements for a claim for restitution in *Revenue & Customs v The Investment Trust Companies* [2017] UKSC 29 at [24]:

> "In answering the question, both parties followed the approach adopted by Lord Steyn in *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221, 227, and asked:
>
> (a) Has the defendant been benefited, in the sense of being enriched?
>
> (b) Was the enrichment at the claimant's expense?
>
> (c) Was the enrichment unjust?
>
> (d) Are there any defences?"

91. Lux also drew the Court's attention to *Harbour Fund III LP v Kazakhstan Kagazy plc & ors* [2021] EWHC 1128 (Comm), where the court approved §17-05 of *Goff & Jones on Restitution*:

> "[A defendant] will be held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant who rendered the services expected to be paid for them, and yet did not take a reasonable opportunity open to him to reject the proffered services. Moreover, in such a case, he cannot deny that he has been unjustly enriched."

92. §17-12 of *Goff & Jones* states:

> "The defendant must know, or ought to have known, that the claimant expected to be paid (or remunerated in some other way) for his services. It is for the claimant to make this expectation clear to the defendant. Thus, there is no liability where a defendant freely accepts services which he was led to believe were being conferred gratuitously....".

93. The unjust enrichment claim is asserted in the Counterclaim but not fully set out in terms of the requirements indicated above. I consider, though, whether by way of an amendment Lux could set out a viable case with a real chance of success.

94. It is clear that at least some marketing was carried out by Lux for Samsung's benefit. To take one example, the front page of the Sunday Times Rich List was used by Lux to promote Samsung's 8K Wall, for which Samsung contributed £20,000. Emails recording discussions for joint marketing plans between the parties are also in evidence. The extent of the benefit (if any) to Samsung would have to be determined at trial, but on current evidence there is a realistic prospect of showing a real benefit.

95. It is arguable that Samsung would not have interpreted Lux's actions as gratuitous. As Samsung stressed, both parties are established commercial entities. Some payments seemed to have been advanced toward the Sunday Times Rich List campaign. The costs attendant to the marketing events alleged by Lux are likely to have been substantial, whether or not they reached the levels sought in the Counterclaim. It is possible that the costs were viewed by the parties as expenditure made by Lux in its

own interests and which no-one expected Samsung to contribute to. However, the contrary is also arguable. A reasonable party in Samsung's position might well have expected that it would have to contribute to the costs Lux was incurring on these marketing events and other promotions. I was not directed to any evidence that Samsung was led to believe that Lux would be providing these services free of charge.

96. In these circumstances, I consider that Lux has a realistic prospect of succeeding in counterclaim (v) on this basis too.

(4) Conclusion in relation to the Counterclaims

97. For these reasons, I shall refuse Samsung's applications for summary judgment or strike-out in relation to Counterclaims (i), (ii), (iii), (v) and (vi).

(G) CONCLUSIONS

98. I shall grant summary judgment in favour of Samsung in relation to its claims for sums due under the 001 Lease. I shall dismiss Samsung's applications in relation to sums claimed under the 002 Lease, and in relation to Counterclaims (i), (ii), (iii), (v) and (vi). I shall hear counsel as to what, if any, further or other relief may follow from my findings or the evidence.