



Neutral Citation Number: [2023] EWHC 628 (Ch)

**IN THE HIGH COURT OF JUSTICE  
BUSINESS & PROPERTY COURTS  
PROPERTY, TRUSTS & PROBATE LIST (Ch D)**

**Claim No: PT-2021-000201**

**Mr M H Rosen KC sitting as a Judge of the Chancery Division  
21 March 2023**

**BETWEEN:**

**IQ EQ (NTC) FIDUCIARY SERVICES (JERSEY) LIMITED  
(as trustees for THE ROGER LEARMONTH (No 3) LIFE INTEREST SETTLEMENT)**

**Claimant**

**-and-**

**(1) ANDREW HUNT  
(2) CAROLYNE HUNT**

**(severally and jointly trading variously as inter alia ANDREW HUNT RESIDENTIAL  
LETTINGS, ANDREW HUNT LETTING AGENT, ANDREW HUNT ESTATE AGENTS,  
GATWICK AND CRAWLEY ROOMS LTD)**

**Defendants**

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## **JUDGMENT**

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### **(1) Introduction**

1. The Claimant, formerly called Nautilus Trust Services Limited ('IQEQ'), is a Jersey trustee of trusts including the Roger Learmonth (No 3) Life Interest Settlement. This was established on 12 March 1985, as settled by and for the benefit of Mr Roger

Learmonth, a resident of East Sussex.

2. The Defendants Mr Andrew Hunt and Mrs Carolynne Hunt are now aged 68 and 60 years old respectively. As Mrs Hunt told the Court, they met in about 1998, have a son William now some 25 years old, and have been married since 2016.
3. Mr Hunt has carried on business as an estate agent under his own name from offices at 5 High Street, Crawley RH10 1BH, so he told the Court, since about 1984. During a previous marriage which lasted some 4 years, his first wife was a partner in that business.
4. These proceedings were issued on 4 March 2021 and an interim injunction was ordered against the Defendants by Michael Green J on 17 March 2021. Directions towards trial were made by Deputy Master Doherty on 21 October 2021 as varied by Deputy Master Arkush on 7 March 2022. At the trial, from 21 to 27 February 2023, the Claimant was represented by Peter Petts of Counsel instructed by Winckworth Sherwood and Mr Hunt was represented by Cheryl Jones of counsel, recently instructed by Dean Wilson & Co.
5. Mrs Hunt was adjudicated bankrupt under a lender creditor's petition on 18 January 2023. There was no application to stay the proceedings against her on that ground. Although she had been represented by the same solicitors and counsel as Mr Hunt until 8 September 2022, she appeared at the trial in person (taking *pro bono* advice only as to the privilege against self-incrimination, courtesy of Gareth Tilley of counsel).
6. By a written agreement dated 16 September 2010 between IQEQ and a letting agency called 'Andrew Hunt Residential Lettings' ('the Agency Agreement'), IQEQ appointed that agency as letting agent in respect of the five 3-bedroom flats in a block which it had just purchased, at 22-26 Hollin Court, London Road, Crawley RH10 8TX ('the Block').
7. The first issue between the parties is whether the Agency Agreement was with Mrs Hunt alone, trading as 'Andrew Hunt Residential Lettings' solely on her own account, rather than for her husband as well as herself, such that he too was a party and contractually liable thereon to the Claimant.
8. Subsequent issues (in which Mr Hunt took no overt part) relate to the conduct of that agency, which allegedly ceased to account to the Claimant as required and thereby repudiated the Agency Agreement. Mrs Hunt has alleged that its conduct was justified by further agreements made orally with a manager employed by the Claimant, Ms Jean Ferguson (who worked there for some 20 years until August 2018) by which:

(a) it was to charge from 16 September 2010 an additional £7,800 per annum for

management of the Block rather than just the five flats (the alleged 'Block Management Fee'); and

- (b) one of Mrs Hunt's many companies, Crawley & Gatwick Rooms Limited ('CGRL') was to be granted a three-year tenancy of the Block, as it was on written terms agreed with another of Mrs Hunt's companies Gatwick Block Management Limited, purportedly acting for the Claimant, dated 1 April 2019 ('the Rental Agreement').

- 9. The Claimant not only denies such further agreements, for a number of reasons, but also alleges that the documents put forward by Mrs Hunt to support them, including some of the correspondence and rent statements, and the Rental Agreement, were shams manufactured by her after the event, to conceal her misappropriation of rents from the Block and in an attempted fraud against the Claimant.

## **(2) Background**

- 10. The business of 'Andrew Hunt, Estate Agents, Valuers and Property Management', as established by Mr Hunt nearly 40 years ago, has always operated from ground floor premises with a shop front bearing his name, one window advertising properties to buy and the other properties to let. Its website at [www.andrewhunt.co.uk](http://www.andrewhunt.co.uk) (as apparent from the 'Wayback Machine' examples produced variously by the parties) has similarly sought to cater for services as to both types of property transaction, for buyers and sellers and tenants and landlords.
- 11. In early July 2010, as a result of Mr Learmonth's meeting Mr Hunt at a Ferrari car club meeting, and being told that he had the Block available for sale, the Claimant purchased the freehold and five leaseholds for some £800,000 (plus stamp duty and other expenses) also subsequently spending through Mr Learmonth nearly £60,000 on refurbishment costs with a view to letting out the flats.
- 12. The Claimant's case is that Mr Hunt introduced Mr Learmonth to Mrs Hunt on the basis that she was in charge of the lettings side of the Andrew Hunt business. Mr and Mrs Hunt both contended however that the then lettings business, and the Agency Agreement, were independent of Mr Hunt, and respectively owned solely by and binding solely on Mrs Hunt.
- 13. On 29 July 2010 Mr Learmonth sent an email to the Claimant [Trial Bundle page 701] saying:

'I think you should consider appointing Andrew Hunt as agents for Hollin Court.

They are Crawley based and seem to know the area and market well. They are suggesting a £850 a month rental on each flat and appear to have a good track record. Their fees seem in line with the market at 10% for letting, rent collection and general management. The person in charge of the rental side of the business is Calolyne [sic] Hunt. Their terms and conditions are attached.'

#### **(A) The Agency Agreement**

14. On 16 September 2010, the Claimant formally resolved to approve the appointment of 'Andrew Hunt Residential Letting Agent' [718] and sent the executed Agency Agreement under cover of a letter of the same date to "Ms Carolyn Hunt, Andrew Hunt, 5 High Street..." etc [716].
15. The front page of the Agency Agreement [146] was followed by information about the agency, and the applicable terms and conditions. It was entitled 'Andrew Hunt Residential Lettings' ('Andrew Hunt' being in the then fancy font style of Mr Hunt's business) and an asterisked note saying this was 'the Company name'. It included the office address at 5 High Street, its website address [www.andrewhunt.co.uk](http://www.andrewhunt.co.uk), and the email address [carolyne@andrewhunt.co.uk](mailto:carolyne@andrewhunt.co.uk).
16. The information about the agency, probably following the format of the then website (to which the document referred), began

'Why Andrew Hunt Residential Lettings? We are an Independent Company Specialising in Property Management in Crawley. We have been in the Industry for 20 years, managing in excess of 200 properties...Backed by a long period of lettings experience you can be confident that your property may be professionally managed'; and towards the end '...if you are thinking of selling your property we will introduce you to Andrew Hunt Estate Agents for a free valuation...'
17. Under the terms and conditions, the owner appointed the Agent (said to mean its partners) to be managing agent of the Property at the Block's address, for various fees as specified. By clause 10 the Agent was defined as 'Andrew Hunt Letting Agents their successors in title or assignees' and the Property was defined as 'the Property specified or any part thereof together with any common ways or shared facilities if is part only of a building...'
18. The Agency Agreement was executed by two directors of the Claimant and carried the contact address for the Claimant as [jean.ferguson@nautilustrust.co.uk](mailto:jean.ferguson@nautilustrust.co.uk). It ended with special instructions to the effect that while Mr Learmonth could act as the Claimant's agent, he could not enter into any binding documentation or agreements on its behalf. On the same date, 16 September 2010, the Claimant applied to HMRC to receive rental income via its agent 'Andrew Hunt' with no tax deducted [162], which application was later granted [720] as later confirmed by HMRC to the agency directly on 6 August

2012 [1032].

19. Mrs Hunt claimed that at about the same time, Ms Ferguson agreed an additional annual fee £7,800 (excluding VAT) for the management of the whole Block, not referred to in the Agency Agreement or in any other contemporaneous document.
20. Andrew Hunt Lettings Limited, on whose behalf Mrs Hunt claimed she had negotiated the Agency Agreement, was incorporated a week later on 23 September 2010, and so the Defence contends that she (alone) was personally liable under section 51 of the Companies Act 2006. On 31 December 2011 she resigned as a director of that company, on 2 April 2012, it changed its name to Crawley Property Services Limited, and it was compulsorily wound up on 8 October 2012 under a creditor's petition.
21. Mrs Hunt described her formation and use of companies as 'an obsession'. Her use of Mr Hunt's name is unlikely in the extreme to have escaped his attention. Among many other companies, there appear to have been two called 'Andrew Hunt Limited', the first, no 08721771 incorporated on 7 October 2013, initially with Mr Hunt as sole director for a few days and then replaced by Mrs Hunt, and voluntarily struck off on 1 December 2015 [4223]; and the second, no. 104684456 incorporated on 8 November 2016 with Mrs Hunt as sole director, and voluntarily struck off on 7 August 2018 [4248].

**(B) Subsequent difficulties**

22. The vast majority of the Claimant's dealings with the agency were with Mrs Hunt, although she shared the same office and telephone line as Mr Hunt and, if the Claimant sought to chase Mrs Hunt, he may have received the odd call. In any event, from an early stage there were problems with the agency's rent statements and on 20 January 2012, the Claimant contacted Mr Learmonth who said he would be speaking with Mr Hunt shortly, and if things did not improve, the Claimant should find an alternative agent [886].
23. In the event, on 1 March 2012, the Claimant resolved to vary the Agency Agreement, to enable Mr Learmonth to take a more proactive role by appointing him a consultant [978] and setting out the terms of that variation in a letter to the agency [977]. That letter was countersigned by Mrs Hunt below the words 'Andrew Hunt of Andrew Hunt Letting Agency' [976] and returned under cover of a letter received by the Claimant on 8 March 2012 [987].
24. The Defendants produced in these proceedings (a) another version of that letter carrying manuscript alterations made by her to insert her name under the signature and a date 11/3/2012 and to change the addressee from 'Andrew Hunt, Andrew Hunt Residential Letting Agent, 5 High Street...' to 'Andrew Hunt Lettings Ltd, Back Office, 5 High

Street...’ [972] and (b) a letter purportedly sent by her to Mr Learmonth dated 12 March 2012 [988] saying that the signed amendments to our contract’ and as regards the Claimant’s letter of 1 March 2012 as previously countersigned ‘... I have amended this [the letter being addressed to Andrew] as he is in the sales department. You bought the flats via them so I assume this was just an autosaved address oversight...’.

25. The Claimant challenged these and various other documents under the suspicion that they were produced by Mrs Hunt after the event, when things had gone wrong, in this instance to support the Defence to the effect that she alone was liable on the Agency Agreement and not her husband who was only ‘in the sales department’ and not involved in the lettings business.
26. Mrs Hunt also alleged that in 2012 or 2013, Ms Ferguson asked her to change from monthly rent statements to annual ones but the contemporaneous documents show Ms Ferguson insisting on monthly billing and the agency submitted some monthly rent statements as late as the end of 2016 [1991, 2042, 2062]. Be that as it may, there were continuing difficulties in reconciling the agency’s statements and payments [1374-5, 1523, 1755, 1763-6] and eventually, on 30 September 2016, Ms Ferguson wrote to Mr Learmonth setting out the Claimant’s concerns, as regards at least the cost in its time [1851].
27. The Claimant received from the agency no payments in respect of net rents after 3 January 2017 and no satisfactory response to its repeated requests for statements. On 27 November 2017 Mr Hunt emailed Ms Ferguson to ask her ‘to delete my name from your list [of copies to emails] as Andrew Hunt does not have any dealings with rental properties’ [2290].
28. There were many unsuccessful attempts by the Claimant to persuade Mrs Hunt to provide proper statements and reconcile payments. She questioned the Claimant’s entitlement to receive the rent without the deduction of tax, despite HMRC’s earlier confirmation. The invoices or statements which she produced on 14 February 2020 [2944-6] were not regarded as acceptable and were indeed unparticularised, garbled and unsupported [eg 2101-2, 2363-4]. When her statements did eventually refer to an annual block fee, it was not in a fixed sum of £7,800 but apparently based on doubling the commission on flat rents of 10% (although one earlier ‘interim invoice’ came to a total fee, for previously unbilled services such as renewals and inspection, of £7,800).
29. Eventually the Claimant instructed Winckworth Sherwood who wrote to Mrs Hunt on 31 March 2020 requiring documents previously withheld by her [3083] and upon receiving no reply, terminated the Agency Agreement, by a further letter on the Claimant’s behalf dated 8 June 2020 [4167] which the Claimant characterises as a valid

‘renunciation’ or acceptance of the agency’s repudiatory breaches.

30. The Claimant initially appointed Swan Property Management (‘SPM’) to take over management of the Block, as it informed the tenants by letter dated 12 June 2020 [3154]. On 15 June 2020, Mrs Hunt emailed SPM [3168] saying:

‘... With regard to the above property we remain the landlords as this property is rented through our rents guarantee scheme, the agreement ( I’m not sure if you Under tans (sic) the complexities of such schemes: we rent the property from the owner and become the tenant)...Any approach to our tenants is not allowed as we have not appointed you to manage our tenants...I assume that the head landlord has appointed you to block management unaware of their legal position as it’s been recently taken over...I will forward the appropriate agreement we have in place till 2023’.
31. On 16 October 2020 in an attempt to smooth over the transfer of the Block’s management, Mr Learmonth met Mrs Hunt to discuss matters over lunch [3250]. On 19 October 2020, Mrs Hunt sent an email with some proposals [3254], attaching a copy of the alleged Rental Agreement dated 1 April 2019 [165] and a purported email dated 2 April 2019 to ‘**jean.ferguson@nautilus**trust**.com**’ (emboldened here, to show the extra ‘t’ before ‘trust’ in the address) [168] were attached. This email began ‘Jean...As agreed we will move forward with the rental contract whereby Gatwick and Crawlet (sic) Rooms become the tenant’ and referred to various purported details.
32. Leaving aside the fact that the purported email was incorrectly addressed, the purported Rental Agreement was a bizarre document. In effect, one of Mrs Hunt’s companies was purportedly granted by another a 3 year tenancy of the Block for no rent, the tenant and the Claimant to pay various expenses as specified (and mentioned also in the email). Mrs Hunt made no attempt to suggest that the terms had been agreed by the Claimant. Rather she contended that the Rental Agreement was within the authority granted in the Agency Agreement, even though she accepted that the Agency Agreement was thereby superseded (since the agency would no longer offer flats to rent on behalf of the Claimant). She also claimed that the provisions by which the Claimant should still bear some expenses were mistaken and/or she would not have charged the Claimant for them.
33. As it happens, tenancies of the rooms in the Block were purportedly granted not always by GCRL but by at least one other of Mrs Hunt’s companies (Gatwick Houses and Rooms Limited), perhaps willy-nilly [eg 597613, 677, 685]. The Claimant subsequently received a Notice of Entry dated 15 February 2021 from Crawley Borough Council (‘CBC’) [3378], following which, in early March, it issued these proceedings and an application for an interim injunction to prevent the Defendants’ interfering with the Block and/or its flats’ occupants.

34. The Claimant appointed QDime as manager and on 8 April 2021, its Jeremy Ogborne inspected the Block, and Q1 Professional Services Limited carried out a Health, Safety and Fire Risk Assessment. The following day, CBC also inspected. Their various reports show that the five 3-bedroom flats had all had their living rooms converted to a fourth bedroom and were in a very poor state of repair [3489, 3548-63, 3580]. CBC and QDime managed to rehouse the occupants and the Block fell empty, awaiting refurbishment with a cost estimate in the region of £500,000.

### **(3) Evidence and submissions**

35. The electronic trial bundle contained, in addition to the pleadings, witness statements and other procedural documents, some 4,000 pages of party and inter-party documents, to which more was added during the trial. Of these approximately 200 pages were referred to during the trial (which I directed should be made into a rolling core bundle of hard documents, completed only after the trial). This was, to put it mildly, a grossly inefficient exercise, to which I may return when considering costs.
36. The Claimant called as witnesses, cross-examined by counsel for Mr Hunt and Mrs Hunt in person, first by video link from Jersey as ordered (a) Stuart Truscott who has worked for IQEQ for some 30 years and is now a director (b) Carla de Freitas who commenced her employment there in late 2015 and (c) Ms Ferguson.
37. All three of these witnesses were and are professional trust administrators and I have no reason to doubt their honesty. Mr Truscott and Ms de Freitas were barely challenged. Ms Ferguson gave her evidence clearly and consistently with the unchallenged documents, in particular that having taken instructions from the Claimant, she had roundly refused Mrs Hunt's idea or proposal as to any 'rent guarantee scheme' leading to the Rental Agreement, and her denials that she had encouraged or allowed the same or was authorised on behalf of the Claimant to do so, were entirely convincing.
38. Secondly, (d) Mr Ogborne of QDime and (e) Mr Learmonth gave their evidence and were cross-examined in person. Mr Ogborne was a straightforward witness. Mr Learmonth was nervous and at times defensive. His recollection of detail was not good perhaps unsurprisingly, but he usually avoided partisanship or dogmatism - so that for example he had no recollection of Mrs Hunt's purported letter, but on key matters he was firm and credible, in particular that he was never told that Mrs Hunt was the sole owner of the agency.
39. Of the Defendants, Mrs Hunt gave evidence first, and was cross-examined by counsel for the Claimant and for Mr Hunt. Mrs Hunt (for reasons which will also be apparent when discussing the factual issues later) was a wholly unsatisfactory witness. She had



no proper explanation for the overwhelming anomalies in her documents, save to say repeatedly that they must have been mistakes and/or that other documents, not produced, might bear her out (but were unavailable as for example they might be in a box delivered to Mr Learmonth in the summer of 2018 or stored on computers which the police had seized in connection with another managed property).

40. When cornered, Mrs Hunt was, in my judgment, vague when it suited her and even evasive (for example, diverting the evidence to her views about the Block and its expenses and/or her companies). The impression of incompetence which I believe she sought to give was not reasonable as an excuse for her egregious mismanagement (which I find as below) and I am unable to accept anything controversial that she said. Much of her argumentation was facile and hollow: for example that 'Andrew Hunt, 5 High Street...' etc was no more than the office's postal address, and did not in fact identify the person conducting the business at 5 High Street.
41. Given the Claimant's suspicions as put to her, I was particularly concerned by Mrs Hunt's insouciance about her probable impropriety (as discussed below) in, for example:
  - (a) backdating documents, she said to corroborate what she claimed had happened;
  - (b) saying that the information in the Letting Agreement as to how well established 'Andrew Hunt Residential Lettings' was - impliedly a statement that this business was Mr Hunt's, which had let many properties for many years - was just a way to get business: to most eyes, surely, a simple deception of the public;
  - (c) her inability to recognise that the purported Rental Agreement was manifestly unauthorised by the Claimant, in terms disadvantageous to it, and a conflict of interest on her part and her nominated companies' granting and taking the tenancy; and
  - (d) her failure to accept that her rent statements were inconsistent and unsupported miscalculations of the rent and expenses involved.
42. Mr Hunt also gave evidence and was cross-examined by the Claimant. Whilst the evidence of Mr and Mrs Hunt was not consistent as between themselves, for example as to how in fact she had started in the agency before taking any training course (as she claimed, for a week in 2009) and with the benefit of Mr Hunt's introductions and letting customers, it was obvious that their overriding objective was, in common, to prevent liability for the Agency Agreement falling on Mr Hunt. I was left in extreme doubt as to whether I could safely rely on anything either said, at least on this issue, without

independent corroboration.

43. Some of the most palpable aspects of this included their joint claims that Mr Hunt had no letting business before Mrs Hunt worked at his office (see the Defence at [17]) and had only done some 'limited block management'; and that Mrs Hunt had paid a monthly sum to Mr Hunt for using his facilities. Both were clearly false.
44. The latter claim was affected by another suspicious document [736], a purported invoice dated 31 December 2010 bearing an unknown VAT no 425103986 from Andrew Hunt Estate Agents & Valuers to 'Mrs C Hunt, Andrew Hunt Lettings, Back Office, 5 High Street...' for £9,600 (ie £800 per month) the 2011 year's 'serviced desks' within the 5 High Street office, which Mrs Hunt said she had produced (at some time) using old stationery.
45. This claim then transformed into oral evidence that Mrs Hunt had not directly paid any fee for serviced desks but had instead contributed to Mr Hunt's Ferrari car costs of £980 per month for 3 years (for which there was no independent evidence) and then their joint household expenses. Whilst Mrs Hunt was keen to vaunt her independence in business from Mr Hunt and to characterise any other view (including Mr Learmonth's) as 'Victorian', the relevance of their marriage in sharing profits and costs of the 'Andrew Hunt' business is obvious.
46. As for Mr Hunt, I did not find him prepared to tell bald lies (and he occasionally contradicted his wife, for example as to her allegation that her name appeared as to the owner of 'Andrew Hunt Residential Lettings' on the wall of the office). He appeared to make concessions when necessary, for example that the documents appeared to show that the letting agency was his business and that Mrs Hunt was held out as being in charge only of that side of his business, rather than owning it. But he then claimed that every letting client of the agency would be told orally that it belonged solely to Mrs Hunt. That would have been an intrinsically unreliable process and was an incredible and even absurd contention, not least since if Mrs Hunt was sole owner rather than in charge of the letting 'side', there was no reason not to have that documented rather than left to variable discussions by staff with customers.
47. Counsel for the Claimant and for the Mr Hunt, and Mrs Hunt in person, made opening and closing submissions (the Claimant going first in closing, with the assistance of a note produced in advance). What the court was looking for, as it indicated, were the particular facts, supported by evidence, pointing for and against each side's contentions as regards the main issues referred to in the introduction above. For example:
  - (a) whether and when Mrs Hunt gained a separate VAT registration, given that there

were instances in the first years when the letting agency used the VAT number 932545327 registered to 'Andrew Hunt Estate Agents' eg at the end of 2010 [732, 734] and no documents showing that she had a separate number before 2018; and

- (b) whether there was any material, including evidence from Mrs Hunt, as to when the alleged Rental Agreement and contemporaneous correspondence and statements (which the Claimant doubted because they were not on their files and were produced by the Defendants when they opposed the interim injunction) were actually produced by her, on which she herself gave no clear testimony, beyond saying that it was some time after the event.
48. Whilst the Claimant listed the most relevant points to have emerged at the trial in his closing submissions and note, Mr Hunt's counsel focussed more on alleged shortcomings in the Claimant's pleadings and emphasised most the fact that until proceedings issued, there were no complaints, including by Winckworth Sherwood's letters, directly to Mr Hunt, rather than Mrs Hunt. Mrs Hunt for her part, repeated some of the excuses made in her evidence, and did not face up to the evidence, as summarised in submissions, against her.
49. The Claimant sought by way of relief against Mr and Mrs Hunt jointly and severally an account from 2015 under, and/or an inquiry as to damages for breaches of, the Agency Agreement, and payment of sums subsequently found due and/or awarded, together with the perpetuation of the interim injunction. It did not pursue the contention that the Block was operated unlawfully by Mr and Mrs Hunt without an HMO (Multiple Houses in Occupation) main licence. The Claimant repeated prayers for an account and/or damages separately against Mrs Hunt.
50. Whilst it made the allegation of dishonesty against her alone (and Mr Hunt did not seek to rely on the Block Management Free or Rental Agreement, if he was wrong as to his contractual liability) it was not clear to me what that adds to the reliefs sought on contractual grounds against Mr and Mrs Hunt jointly and severally and the finding sought that she knowingly rendered false statements of account.
51. Before turning to a discussion and my findings as to the facts, I should briefly refer to the applicable law on at least the first issue. Whilst counsel each put in (and added to) a bundle of authorities, they were barely addressed in submissions and there was little or no controversy as to the relevant principles. Thus in summary:
- (a) whether or not Mr Hunt was a party to the Agency Agreement is a matter of construction, the meaning of that document to be decided in the admissible

context, and what was said and done by the parties at the time, objectively; and

- (b) later words and conduct may have some evidential value in casting a light back on earlier events (ie make them more or less likely) but are not in themselves part of the factual nexus at the relevant time, nor are the parties' or alleged parties' subjective intent.

52. As for Mr Hunt's counsel's criticisms of the Claimant's pleadings, the Particulars of Claim and the Reply sufficiently set out the case against him, that he was party to the Agency Agreement. Specific facts are relied upon to support that and rebut the Defence that he was not party. Of course if he and Mrs Hunt were indeed carrying on business together under the name 'Andrew Hunt Residential Lettings' and he held her out as acting for him as well in the contractual dealings with the Claimant, it may well have been with a view to sharing the profits, and thus a partnership. But the pleading of that legal consequence was not essential in order to assert contractual liability to the Claimant, and if Mr and Mrs Hunt were in any real doubt as to the case against them they could have requested further information.

#### **(4) Discussion and findings**

53. The **first** issue is, with whom did the Claimant contract in respect of the Agency Agreement on 16 September 2010? By way of important context, the Claimant bought the Block, through Mr Hunt, to let out the flats as an investment. In his second witness statement, Mr Hunt said [118] that as

'...the sale of...Hollin Court...was nearing completion, I introduced RL to my wife as I understood he intended to let the flats to tenants. I explained in my earlier statement that my wife was in the course of establishing a business to manage residential lettings at that time...'

54. Mr and Mrs Hunt's position, that Mrs Hunt was trading on her own account as letting agent and Mr Hunt had nothing to do with her business, was contrary to the meaning of the Agency Agreement, the other documents referred to above (where genuine) and common sense. Among other things:-

- (a) The idea of a company called Andrew Hunt Lettings or Residential Lettings Limited [24] was suggestive of some collective business, not Mrs Hunt alone, but one involving 'Andrew Hunt' whose business included residential lettings and was referred to in the first paragraph of the information pages and whose facilities bearing his name (and no other) were used by Mrs Hunt.
- (b) Mr Learmonth stated in his evidence and I accept that:

(in his second witness statement at [100]) '... In or around this time I spoke to Andrew Hunt about letting out Hollin Court and he introduced

me, again, to Carolynne Hunt. My understanding from discussions with Andrew, and subsequently Carolynne, was that she ran the lettings side of the business. I am certain that I was never told that it was a separate business'; (in cross-examination) '...My feeling was if I had to get involved, I did not want to manage and let 5 flats. Not only would [the Hunts] sell me the properties, but they would help me to find a lawyer and have facilities within their organisation to help me with lettings...' and (as to whether would have made a difference if Mr Hunt had recommended another letting agent) 'Yes it would. I would not have accepted it so easily. I would have wanted to know more information about it and if I like them. But I thought the whole thing with the Hunts was handled in house.'

- (c) At the very least, Mr Hunt knew and encouraged or at least allowed Mrs Hunt to use his name for the lettings business in 2010. He said in his second witness statement that:

'I can only assume that the name Andrew Hunt was used in many of the businesses set up by the Second Defendant to benefit from the goodwill attached to the name and in view of my reputation in the local area for sales'.

He accepted in cross-examination that he did not say to Mr Learmonth, anything along the lines of 'My wife is establishing a lettings business, she has no experience, and her business is nothing to do with me' and that unless expressly told otherwise, it would be a 'fair assumption' that anyone walking into his office to enquire about lettings, would think that the member of staff with whom they were dealing was acting on his behalf.

55. Thus it seems to me clear that Mr Hunt continued to be involved in residential lettings as at 2010, albeit at some point delegating the running of the letting side of his business to Mrs Hunt; he recommended to Mr Learmonth that Mrs Hunt let the flats for the Claimant on the basis that Mrs Hunt ran the lettings side of his business; and Mr Learmonth recommended to the Claimant that it buy the Block as an investment on the strength of Mr Hunt's providing both a sales and letting service as a package. Although the letting business may have broken away from Mr Hunt by about 2017, due to the reputational damage it was doing to him, he as well as Mrs Hunt contracted with the Claimant in 2010.
56. I found the arguments on behalf of Mr Hunt and by Mrs Hunt to the contrary entirely unpersuasive. Among other things, the fact that the Claimant's complaints (including its solicitors) were directed solely at Mrs Hunt from 2017 is understandable, even if (as I find) Mr Hunt was also party to the Agency Agreement) and even if it would have been better to include Mr Hunt in them prior to the issue of these proceedings, in which he continued to maintain to the last that he was not and never had been involved.
57. As for the Claimant's submission that Mrs Hunt amended the Variation Letter of 1

March 2012 and created the letter, to Mr Learmonth dated 12 March 2012, for the purpose of misleading the court, whilst I understand the Claimant's suspicions and I find that she did so well after that date, as presently advised, I do not consider that there is any need to find whether this was deliberately to mislead the court rather than a misguided attempt to document what she may have mistakenly believed.

58. Turning to the second series of issues, I am entirely unsatisfied by Mrs Hunt's case that Ms Ferguson agreed to a change from monthly to (a) annual accounting or (b) an additional charge of £7,800 pa as a Block Management Fee or (c) the grant of the 2019 Rental Agreement. First, Ms Ferguson had no authority to bind the Claimant as Mrs Hunt must have known: decisions of that nature had to be taken by its directors [504], [718], [978].
59. **Secondly**, as regards (a) annual accounting, Mrs Hunt said in her witness statement [259]

‘...I was informed thereafter by Ms Ferguson that I should instead provide the statements annually, rather than quarterly, and I would enclose with the annual statement a cheque representing any excess balance due to the Claimant.’

60. The Claimant drew attention to the contemporaneous correspondence: [1524, 1526, 1766, 1769, 1773, 1778, 1780, 1835, 1969] in describing this as ‘nonsense on stilts’. It is difficult to disagree. The annual rent invoices in issue are for 2016 [1540]; 2017 [2064], and 2018 [2340]. These documents were put before the court by the Defendants at the interim injunction hearing and were not in the Claimant's disclosure. As regards 2016, the purported annual statement is said to be for ‘Jan-Dec 16’ and shows a balance owing to the agency of £1,678.
61. The monthly rent statements which the Claimant did receive, at [1547, 1557, 1598, 1639, 1673, 1703, 1731 1733, 1748, 1991, 2042, 2062] show, according to the Claimant's analysis of the monthly statements, which was not challenged by or for Mr and/or Mrs Hunt: (i) a monthly rental income of £875.00, as opposed to the annual statement monthly income of £775.00; (ii) on the monthly expenditure figures, an annual balance of £18,329.80 owing to the Claimant; (iii) on the correct calculation of the alleged monthly expenditure figures, an annual balance of £25,673.91 owing to the Claimant; and (iv) without considering what amounts were actually due under the Agency Agreement, the difference between the amount owing to the Claimant under the annual bill and the cumulative monthly bills is £33,351.91.
62. There is no alternative explanation but that her purported annual statements at [1540, 2064, 2340] were false and, as regards Mrs Hunt, knowingly so. Again, subject to further explanation, I do not consider that I need to find that they were created by her

deliberately to mislead the court.

63. As for (b) the alleged agreement to an additional Block Management Fee of £7,800 pa, in context (including the expenditure of £58,486.76 worth of refurbishments by the Claimant [523]), I find that again a fabrication by Mrs Hunt. There is no record of such an agreement (in contrast with genuine agreements and variations at [146, 500, 504, 718, 959, 978]). On the contrary, there were assertions by Mrs Hunt in emails that the agency was not a block manager [893-4] and the alleged annual fee was not invoiced except [2102, 2364] retrospectively on 14 February 2020 [2944], after 6 months of persistent chasing by the Claimant for statements and supporting invoices.
64. Finally, in respect of (c) the alleged Rental Agreement of 1 April 2019, the idea behind this was seemingly first broached by Mrs Hunt on 12 September 2016 [1763] to which there was no reply, Ms Ferguson instead continuing to pursue Mrs Hunt for information and funds [1766, 1769, 1773, 1778, 1780].
65. Mrs Hunt alleged that, in 2018, she suggested in conversation with Ms Ferguson (who left the Claimant's employ on 1 August 2018) that one of Mrs Hunt's businesses should be granted a tenancy of the Block at a peppercorn rent and part of the rent she would receive from the flats would pay for maintenance works, so that at the end of the tenancy, the Block would be returned in good condition.
66. Mrs Hunt's case was that Ms Ferguson said that she thought that sounded sensible and if the Claimant had any problems with it, Ms Ferguson would come back to Mrs Hunt, and otherwise she should get on with it; and having not heard anything from Ms Ferguson, Mrs Hunt put this 'Rents Guarantee Scheme' into effect, on 1 April 2019 [165] and emailed Ms Ferguson to that effect, on 2 April 2019 [168].
67. Ms Ferguson's evidence was that some such scheme was broached at some stage, but her response for the Claimant was a categorical 'No', and indeed at that time the Claimant was looking to replace the Hunt agency, once it had managed to reconcile the accounts and get what it was owed – which it never did [110, 1965]. In any event, she said, she would never have entered into such an agreement without the approval of someone more senior [111].
68. I believed Ms Ferguson in this regard and find that Mrs Hunt's case to this is wholly implausible and false. Neither Ms Ferguson nor anyone else employed or authorised by the Claimant, agreed to Mrs Hunt's 'Rents Guarantee Scheme' still less to the Rental Agreement.
69. In any event, the purported Rental Agreement was manifestly disadvantageous to the

Claimant and a conflict of interest on Mrs Hunt's part. Gatwick Block Management Limited purported to be the Claimant's agent, which it never was. Even if Mrs Hunt was truthful in saying that the Special Conditions should not have been included [260], it was still not even a 'nil rent deal' for the Claimant, as it was purportedly obliged to pay for all the white goods and their repair (clause 4.1), ensuring the premises met all legal requirements to let (clause 6.1, 34), redecorating the premises every 12 months (clause 6.2), and insuring the premises (clause 7.1) and the fixtures and fittings (clause 32).

70. The purported email to Ms Ferguson of 2 April 2019, if ever sent (to a non-existent email address, 8 months after she had left the Claimant's employ) purported to require the Claimant to pay for repairs over £250 [168]. The point of such a document remains a mystery. So too the fact that tenancies were granted other than by CGRL (see above). Mrs Hunt's chaotic conduct of the agency's business is not inconsistent with her creation of false documents vis-à-vis the Claimant.
71. During the months of correspondence from the Claimant chasing Mrs Hunt for information and money after 1 April 2017, no mention was made of this tenancy: see at least 30 communications between [2649-3038]. The first the Claimant heard of this alleged tenancy was from Mrs Hunt's email to SPM on 15 June 2020 [3168], in which she claimed that the tenancy was until 2023, as opposed to the 3 years to 31 March 2022, and said that she would forward a copy of the agreement. No such copy was forwarded to SPM. A purported copy was sent on 19 October 2020, after Mrs Hunt had met with Mr Learmonth [3254].
72. There is no alternative but to conclude first that there was no agreed or valid Rental Agreement as far as the Claimant was concerned, In the course of the Claimant's pursuit of rent statements and rent on 14/02/2020, Mrs Hunt emailed the four documents which she claimed to be a suitable and accurate explanation of the money due to D from [2944, 2101-2, 2363-4]. The sums deducted were unparticularised, unsupported by invoices, and often irrecoverable under the Agency Agreement. Despite chasing, no further explanation was forthcoming, and Mrs Hunt relied on those documents to show nothing was owing to Claimant [27].
73. Mrs Hunt admitted creating the document at [2865] for the purpose of these proceedings, to show what was due if it were not accepted that she had a tenancy of the Block, although that was not made clear when the documents were produced at the interim injunction hearing. She stated she had disclosed all the invoices in respect of the Block for 2020. In one of these documents [2865], it was stated that the repairs for 2020 came to £57,746. The sum of the invoices disclosed 2020, according to the Claimant's unchallenged schedule of calculations in closing, was £17,932.64.



74. There is no alternative but to conclude that the Rental Agreement was not a genuine document and was never agreed or authorised by the Claimant, nor valid as binding on it. That document and the statements from Mrs Hunt at [2101-2, 2363-4, 2865] were knowingly false. I doubt yet again that the question as to whom they were intended to deceive, including the court, need be decided.
75. Mr and Mrs Hunt are liable to provide a complete and accurate account under the Agency Agreement, on a monthly basis and without credit for the alleged Block Management Fee or regard to the Rental Agreement, and if relevant on the basis of wilful default by Mrs Hunt. They are also liable, if it produces a different net calculation (which I tend to doubt), for damages for breaches of the Letting Agency as regards their accounting, to be the subject of a further inquiry, and in principle at least for interest and costs.
76. As for the **remaining** issues, as I understand them at this stage, it is beyond any argument that as contended by the Claimant, Mrs Hunt and through her Mr Hunt breached the most important obligations in and under the Agency Agreement and evinced an intention not to perform the same, by at latest the email of 14 February 2020 and the accompanying false statements claiming that the Claimant owed money to the agency [2944, 2101-2, 2363-4].
77. In fact, the Defendants had been breaching the conditions under the Agency Agreement by Mrs Hunt's misconduct for some years previously. Moreover, Mrs Hunt's case in cross-examination was she was no longer obliged to perform the Agency Agreement, by reason of the alleged tenancy granted to GCRL which was again in my judgment a fundamental breach.
78. In any event, I find that the Claimant elected, on the basis of what it then knew, to accept the termination of the Agency Agreement and communicated that by Winckworth Sherwood's letter of 8 June 2020 [3083] or alternatively by the commencement and service of these proceedings.

## **(5) Conclusion**

79. There will accordingly, for the above reasons, be judgment for the Claimant against Mr and Mrs Hunt. If in the light of this judgment the Claimant still wishes to contend for further findings of 'fraud' against Mrs Hunt, they should explain why in writing and there will be a further hearing.
80. Subject to that, the parties should draw up a Minute of Order for my consideration on paper, together with any necessary submissions in writing as regards costs and any other

consequential matters, within 14 days. It may be that Mr and Mrs Hunt would prefer to give undertakings to the Court rather than be subject to the perpetual injunction. If any party require a further hearing, rather than determinations on paper, they should inform the Chancery Listing Office, again within 14 days.