

Case No: HQ13X04156

Neutral Citation Number: [2013] EWHC 2944 (QB)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/10/2013

**Before :**

**THE HONOURABLE MR JUSTICE MALES**

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**Between :**

<b>SARGESPACE LIMITED</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>NATASHA ANASTASIA EUSTACE</b>	<b><u>Defendant</u></b>

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**Mr Stephen Hackett** (instructed by **Griffin Law Limited**) for the **Claimant**  
**Mr Mark Tempest** (instructed by **Sherwood Wheatley Solicitors**) for the **Defendant**

Hearing date: 16<sup>th</sup> September 2013

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Judgment

## Mr Justice Males :

### Introduction – the hunny bunnies club

1. Paul Baxendale-Walker (who also goes by the name Paul Chaplin) was formerly a barrister and then a solicitor specialising in tax law. Some people might have found that exciting enough, but since 2005, when he acquired and ran a company making pornographic films in which he also starred, he has been active in the sex industry. He describes himself now as a wealthy man living a playboy lifestyle. Those who are interested can apparently find details in the pages of Loaded magazine, which he purchased in May 2012. His lifestyle involves essentially casual relationships with multiple sexual partners, a group or club of women known as his “hunny bunnies” to whom, in return for their sexual favours, he makes lavish gifts, including money, clothes and holidays, as well as providing flats and cars for their use.
2. The defendant, Natasha Eustace, currently aged 25, was one member of this club. According to Mr Baxendale-Walker, they had what was no more than a casual and (on both sides) non-exclusive sexual relationship beginning in the summer of 2010 and lasting until December 2011, at which time their sexual relationship ended, although they remained friends. In August 2012 they agreed to give their relationship another go, but this did not work out and the attempt ended in October 2012, after which they remained merely friends. According to his evidence:

“She was never anything more than a TV stripper and glamour model, who provided sex and occasional companionship in exchange for a comfortable and conditional standard of living which I procured for her. ... She is only one of more than a dozen girls for whom I procure the provision [of] housing, cars and other benefits. The provision is always conditional on my satisfaction with the relationship. As soon as I am no longer satisfied, the use benefits are withdrawn.”

3. Miss Eustace gives a different account. She claims that they had a loving and close relationship, which lasted until the beginning of 2013, and that although there were arguments over Mr Baxendale-Walker’s sexual activities with other women, it was intended to be a long-term and faithful relationship which would eventually lead to marriage, which was discussed on more than one occasion. That might seem an implausible claim to avid readers of Loaded magazine, but e-mails produced in evidence suggest that there was or at least may have been something more to the relationship than the less than gallant evidence quoted above. For example, in an e-mail dated 29 April 2012 Mr Baxendale-Walker assured Miss Eustace (among many other things) that:

“I do care about you.

More than anyone on this fucking planet. More than anyone has, or ever will in your life. ...

There’s 1,000 different ways to make the genuine love that you and me have work.

That bit inside you that makes you want to sabotage relationships, [including friends] has succeeded in fucking up the most amazing relationship in your life. ...”

4. He said that without her (at that time their on-off relationship was going through one of its off periods) he felt "like my right arm's been torn off".
5. Again, in a rambling and emotional e-mail dated 1 June 2012 he stated (again among many other things) that:

“You know I fell in love with you. You know I never stopped and you know I am deeply in love with you still.

There is just something in you that from the start touched me in a place I had never felt even since I was a child.

It is the Natasha colour of my soul. I guess it must always have been there, but it took you coming into my life to awaken it.

Since then, my life has not been the same.

It can never be the same.

The specialness of who you are has opened my heart as I never knew it could be.

That is an amazing, beautiful, thing. ...”

6. The e-mail goes on in similar vein to speak of the emptiness of Mr Baxendale-Walker’s playboy life, describing his other girlfriends as "the shit girls”, and contrasting them with his genuine love for and commitment to Miss Eustace (“I had fallen in love with you, real love, love such as I have never known. Love that changed my relationship to the fucked up addict-like world I had created with BB [his pornographic film company] ... I was committed to you”). He described also his desire to have a faithful relationship with Miss Eustace or, as he put it, to “go 1 on 1”, and the fulfilment which (while it had lasted) this had brought him:

“Tasha, I did it. I went 1 on 1 with you. Totally. It's what I wanted to do. It was all 1 with deciding to get out of BB. Fantastic!

But then babe, I'm sorry, but you turned round and said you didn't want to do it. You said maybe it's better if we all just have open relationships and see whoever we want. ...

When you did that turn around, I fell to pieces. In Jan 011 I thought I had found a new world: getting out of BB, being solely with you, together.

You touched my deepest love, my soul darling. I had this flood of feelings I had never felt. All good, real, profound. ...”

7. Mr Baxendale-Walker concludes the e-mail by insisting that he still loves Miss Eustace, that without her he is lonely and desperate, that his only desire is to "fill your life with love and kindness and happiness and fun and togetherness", and pleading with her to give their relationship another chance ("I want to spend my whole life with you building love").
8. While these e-mails would not necessarily win any literary prizes, and it appears that there were e-mails at other times which imply a lesser degree of commitment, they do have a genuine ring which at least suggests that Miss Eustace may well have been rather more to Mr Baxendale-Walker than just another stripper who would have sex with him in exchange for temporary material benefits. It is not possible to determine on this application the precise nature of the relationship but, whatever it was, it formed the context in which Mr Baxendale-Walker provided (or procured the provision of) housing and motor vehicles to Miss Eustace.

### **The present application**

9. This action is concerned with a flat in Walton on Thames of which Miss Eustace is the registered legal owner, and a Range Rover vehicle also registered in her name. The claimant, Sargescape Ltd, a company of which Mr Baxendale Walker is a director and shareholder, but in which he says he has no beneficial interest, maintains that it provided the funds for the purchase of the flat on terms that the legal title would be held by Miss Eustace as a bare trustee, and that it is beneficially entitled to the flat and has a right to possession; and that the Range Rover was merely loaned to Miss Eustace, who acquired no legal or beneficial ownership. Miss Eustace, however, claims to be beneficially as well as legally entitled to both the flat and the vehicle.
10. The present application is an application by the claimant for summary judgment on its claims for both the flat and the vehicle.

### **Summary judgment – the test**

11. In order to obtain summary judgment on one or both of its claims the claimant must show that the defendant has no real prospect of successfully defending the claim, and that there is no other compelling reason why the case should go to trial. Although there have been cases in which this test has been analysed in greater detail, it is sufficient for present purposes to say, as was common ground, that a real prospect of a successful defence is one that is better than merely arguable, and is not fanciful or imaginary, but that the prospect of success need not be as high as 50%. While summary judgment offers a valuable opportunity to prevent inappropriate cases from causing trouble, expense and delay to a claimant and unnecessarily taking up the court's resources for a trial, it must not be used to prevent genuine disputes from being properly investigated and determined.

### **Purchase of the Walton flat**

12. The Walton on Thames flat was purchased in March 2012. Before then Miss Eustace had been living since September 2011 in a property in Egham which Mr Baxendale-Walker had provided for her, although there is a dispute as to whether the Egham property had been a gift or was merely provided for Miss Eustace's use. Mr Stephen Hackett, for the claimant, submits that it is unnecessary to resolve that dispute on this

application, because on any view the terms on which the Walton on Thames flat was purchased leave Miss Eustace with no possible defence to the claimant's claim to beneficial ownership of it.

13. It is common ground that the claimant provided bridging finance for the purchase of the Walton on Thames flat, and that this was necessary because the flat was to be purchased before completion of the sale of the Egham property. It is clear that this finance was provided at the instigation of Mr Baxendale-Walker, a director of the claimant and the holder of legal title to the claimant's shares, although the claimant's pleaded case is that the beneficial owner of the claimant is a company called Bronzeage Ltd, and that Mr Baxendale-Walker has never been an officer or shareholder in that company and has never had any financial interest in it. His evidence is that Bronzeage is owned by unidentified investors with whom he has no connection except to borrow money from them on arms length terms. That is an assertion which appears to cry out for some scrutiny, but if it is so, it seems rather strange that these unnamed investors should have any interest in providing bridging finance for the purchase of a property by one of Mr Baxendale-Walker's former mistresses, even if he agreed (as it appears that he did) to pay interest on the loan. However, it is not suggested by the claimant that use of its funds in this way represented any breach of duty on his part.
14. According to the claimant, the terms on which this bridging finance was provided were set out in a letter to Miss Eustace on the claimant's notepaper which was dated 2 March 2013 and which was personally handed to her by Mr Baxendale-Walker a week later, on 9 March 2013. The letter stated:

“Springmeadow Bridging Finance

We set out below the terms upon which we are prepared to grant you a bridging loan for the purchase of Springmeadow, Homefield Road, Walton on Thames, KT12 5RG (‘the Property’).

We will lend you the sum of £300,000 (‘the Loan Amount’) for the purchase of the Property. We understand that Mr Baxendale-Walker will provide you with the remainder of the purchase price of £1,000 plus conveyancing and stamp duty costs.

Mr Baxendale-Walker has agreed to pay to us what would be the interest at market rate, during the period of time that the Loan Amount is outstanding.

We will accordingly have the whole equitable interest in the property as the sole provider of the purchase price (Mr Baxendale Walker having assigned his right to us) and you will be bare trustee of the freehold title.

The Loan Amount will be repayable on 7 days notice.

By drawing down the amount you will be deemed to agree to these terms.”

### **Were the terms agreed?**

15. The claimant’s case, which is in fact the sole pleaded basis for its claim, is that it is entitled to the equitable interest in the flat, legal title to which is held by Miss Eustace as a bare trustee, because this letter says so and its terms were agreed. That will require some consideration of the true meaning and effect of the letter, although there is a preliminary factual dispute as to whether it was provided to Miss Eustace. She accepts that the funds provided by the claimant for the purchase of the Walton on Thames flat constituted bridging finance, but denies having received this letter or agreed to its terms. If that denial can be substantiated, that would appear to dispose of the claimant’s case in relation to the flat, at any rate as currently pleaded. Although there are contemporary documents which refer to the provision of bridging finance, including some which show a promise by Mr Baxendale-Walker personally to provide such finance before the date of the 2 March 2013 letter (see for example a chain of emails dated 18 January 2013 in which he referred affectionately to her as "property princess", a term of endearment not obviously appropriate to the intended nominee holder of a bare legal title), I was shown no document which proves that Mr Baxendale-Walker did indeed hand the letter to her as he says he did. That being so, this is a factual issue which in my judgment is not suitable for summary determination.
  
16. Mr Hackett submits that Miss Eustace has no realistic prospect of making good her denial of having received the letter as there are “grave concerns” over her credibility for a number of reasons, some of which I would accept appear to have force, while Mr Baxendale-Walker asserts, in somewhat less measured terms, that her case is a “try on” and that

“these proceedings are being ‘driven’ by and only exist at all, because this 25 year old unemployed sex-worker, former model and former temporary member of my girlfriends club, decided to make up a silly story in a desperate attempt to obtain a Property and House that she cannot legally be entitled to, and complains because the legal owners have asserted their rights in litigation.”
  
17. That may in due course prove to be the case, but I am not prepared to conclude on the present state of the evidence that Miss Eustace’s evidence should be rejected and that Mr Baxendale-Walker’s should be accepted on all points on which they are in dispute. On the contrary, it seems to me on the basis of the material provided so far that there is likely to be fertile ground for cross-examination on both sides, and that the case may well look rather different at the end of a trial from the way in which it appears today.

### **The effect of the 2 March 2013 letter**

18. On the assumption, however, that the terms of the 2 March 2013 letter were indeed agreed by Miss Eustace so as to constitute a binding contract, it remains to consider whether they provide the claimant with an unanswerable case. In my judgment they

do not. Although the Egham property is not referred to in the letter, it seems to me to be plain that the purpose of the loan was to bridge the period until that property could be sold. That is what bridging finance means. In the same way, it seems to me to be at least arguable, considering the letter in its context, that the purpose of the declaration of trust in favour of the claimant was to protect the claimant's position until such time as the loan could be repaid from the Egham proceeds of sale, and that on the true construction of the letter the claimant's equitable title was only intended to subsist until repayment of the loan out of those proceeds of sale had taken place. That, in my judgment, is at least a possible meaning of the letter. Whether it is in fact the correct construction must depend upon a proper understanding of the contractual background, since contracts are not to be construed in a vacuum, but that background includes disputed factual matters, including as to the true beneficial ownership of the Egham property.

### **Repayment of the bridging loan**

19. With the benefit of the bridging finance provided by the claimant, topped up by the other funds provided by Mr Baxendale-Walker personally, the purchase of the Walton on Thames flat was completed. The flat was registered in Miss Eustace's sole name without qualification. Although the registration documents include a box in which the existence of any trusts on which the legal title is held can be noted, which might have been expected to be completed if it was intended that the flat should be held on trust for the claimant for any length of time (as distinct from in the short term pending the sale of the Egham property), it appears that no such entry was included.
20. Completion of the sale of the Egham property, which was held in Miss Eustace's name, took place on 12 July 2013. The net proceeds of sale of £264,457.50 (being £270,000 less agents' fees) were duly paid to the claimant. Accordingly, at least the greater part of the bridging loan has been repaid.
21. What of the balance, comprising £30,000 (the difference between the Walton on Thames purchase price and the Egham sale price) plus the agents' fees of £5,542.50? The claimant says that on any view this balance remains outstanding, while Miss Eustace maintains that Mr Baxendale-Walker agreed to make up the shortfall himself. Here too there is a hotly disputed issue of fact, but it is not possible in my judgment to conclude that there is no substance in Miss Eustace's account. The documents show that from the outset it was known that there would be a shortfall of £30,000, but that Mr Baxendale-Walker nevertheless encouraged Miss Eustace to make an offer for the Walton on Thames flat at the full asking price of £300,000, knowing that the Egham property would only fetch about £270,000. He told her conveyancing solicitor on 18 January 2013 that:

“Plan is to sell Egham place [around £270k], and buy Walton House.

I'll bridge the cash meantime, and we'll see about the £30k difference later.”
22. This was in January 2013, at a time when the documents suggest that Mr Baxendale-Walker was hoping to resume the parties' sexual relationship. I note too, for what it is

worth, that he said that he would bridge the cash, and not that he would arrange for a company in which he had no beneficial interest to do so.

23. In those circumstances, although it is fair to say that Miss Eustace's current evidence on the point is somewhat thin, I consider that she has at any rate a real prospect of being able to establish the agreement for which she contends. Mr Baxendale-Walker's own evidence suggests that a gift of £30,000 or £35,000 would not have caused him any problems, and if Miss Eustace was indeed the love of his life (as the e-mails quoted above insist that she was), he might well have thought this a price well worth paying in order to revive his relationship with her. Conversely, if he was not going to take care of the difference in price, he was urging Miss Eustace to commit herself to a purchase at a price which she would be unable to pay.
24. In my judgment, therefore, there is at any rate a reasonable argument with a real prospect of success that the bridging loan has been (or must be treated as having been) repaid in its entirety, with the consequence that the claimant's equitable title in the Walton on Thames flat has ceased to exist.

### **The claimant's arguments**

25. Mr Hackett submits that this conclusion is not open to me for a number of reasons. I take them in turn.

### **Fanciful that Mr Baxendale-Walker would make such a gift**

26. The first argument is that it is fanciful to think that Mr Baxendale-Walker would make a gift of a flat worth £300,000 to Miss Eustace, given the nature of their relationship whereby she was no more than one of the many bunnies in his club (or as Mr Baxendale-Walker himself might succinctly put it, one of the "shit girls"). To this, however, there are at least two potential answers. The first, quite simply, is that as already indicated there is at least some apparently compelling evidence that Miss Eustace was much more to him than this.
27. The second and more complex answer is that as to £264,457.50 of the purchase price Miss Eustace does not say (as I understand it) that the Walton on Thames flat was a gift. Her case is that it was the Egham property which was a gift, that she was beneficially entitled to the net proceeds of the Egham property, and that these were used to repay the bridging loan provided by the claimant. Accordingly, and contrary to Mr Hackett's submission, it is necessary to consider the position regarding ownership of the Egham property.
28. This is disputed. The property was purchased in the claimant's name in September 2011 and was subject to a mortgage, but Miss Eustace was allowed to live there rent free. However, in or about May 2012 title was transferred (or was agreed to be transferred) into Miss Eustace's name. Documents from that period certainly suggest that this was intended to be a full transfer of the legal and beneficial interest, carried out with the full knowledge and authority of the claimant's board. Indeed the claimant's current solicitor, Mr Andrew Gillett of Griffin Law, wrote to Miss Eustace's solicitor on 10 May 2012 that:



“We are instructed by Sargespace Limited to write to you in connection with their transfer of title in the [Egham] property ... to your client, Natasha Anastasia.

We have been asked to confirm that this is a bona fide transaction that has been entered into with the full authority of the 2 directors of the company, which remains solvent following this gift.”

29. While there are later documents which muddy the waters, this formal assurance by solicitors seems to me to be clear. I cannot see how it could be taken to mean that there was to be no more than a transfer of a bare legal title, with the claimant retaining beneficial ownership. If that were all it was, no question of a gift potentially affecting the claimant's solvency could possibly arise. Moreover, although it seems that in fact the outstanding mortgage on the property was not paid off until the property was sold, the contemporary documents suggest that it was intended to be paid off, so that Miss Eustace's interest in the property would be unencumbered.
30. Mr Baxendale-Walker, however, maintains that the transfer to Miss Eustace was merely a transfer of a bare legal title to the Egham property, and that this was done solely for the purpose of avoiding capital gains tax when the property was sold (because Miss Eustace could utilise the exemption from tax on a disposal of her main residence). I need not address the question, debated in the evidence but in the end not the subject of argument before me, whether this would amount to lawful tax avoidance or unlawful tax evasion. For present purposes it is sufficient to say that if this was indeed the purpose of the transfer, I would have expected a clear record of that position to have been created in order to avoid precisely the dispute which has now arisen. I was shown no such record.
31. I conclude, therefore, that there is at least an arguable case with a real prospect of success that the Egham property was beneficially as well as legally owned by Miss Eustace and that, fanciful or not when measured by the standards of those who live less colourful lives, there is a real prospect of showing that Mr Baxendale-Walker did indeed make such a gift. I put it no higher than this, because it is unnecessary for the purpose of this application to go further than identifying a genuine dispute, and because I recognise that a full analysis of the parties' dealings may possibly put the matter in a different light. But that will have to be a matter for trial.
32. That conclusion also disposes, at least for present purposes, of any argument that the proceeds of sale of the Egham property were intended to be paid to the claimant as the beneficial owner of that property, or to repay a loan outstanding to the claimant and secured on that property, as distinct from repaying *pro tanto* the funds advanced for the purchase of the Walton flat. Such an argument seems hard, in any event, to reconcile with the concept that these funds constituted bridging finance.

### **Breach of duties as a director**

33. Mr Hackett's second argument is that the property did not belong to Mr Baxendale-Walker but to the claimant, and that Mr Baxendale-Walker was therefore unable to effect such a gift, because to do so would either be *ultra vires* or would entail a major breach of his fiduciary and common law duties as a director, which would be

unthinkable when the claimant was in independent ownership. This argument was advanced, as I understand it, by reference to the Walton on Thames flat, although it seems to me that it really arises in relation to the Egham property, as that is the property which Miss Eustace says was given to her.

34. Be that as it may, and leaving on one side also the question whether the claimant is in fact in independent ownership, section 40 of the Companies Act 2006 provides that:

“(1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company’s constitution.

(2) For this purpose –

(a) a person ‘deals with’ a company if he is a party to any transaction or other act to which the company is a party’

(b) a person dealing with a company –

(i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,

(ii) is presumed to have acted in good faith unless the contrary is proved, and

(iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company’s constitution.”

35. Miss Eustace was clearly a person dealing with the claimant, so that if there were any limitation on the powers of the directors to bind the claimant, that limitation would not affect her unless it could be proved, the burden being on the claimant, that she was not acting in good faith. Such an issue is entirely unsuitable for summary determination, though I would add that in the light of the claimant’s solicitor’s express assurance as to the *bona fide* nature of the transaction, it seems unlikely that this is a burden which the claimant would be able to discharge.

36. Mr Hackett suggested that Miss Eustace cannot rely on section 40 as the transfer of title would be voidable at the instance of the claimant pursuant to section 41 of the Companies Act 2006. In summary, this provides for transactions whose validity depends on section 40 to be voidable if the parties to the transaction include “a person connected with” a director of the company. However, while the definition of connected persons includes spouses, civil partners and those with whom the director is living as a partner, it does not include Miss Eustace as it is common ground that she and Mr Baxendale-Walker never lived together. However ironic it may be that a director’s transactions with his wife can be set aside but his transactions with his

mistress or even his fiancée cannot if they do not live together, that is the line which Parliament has drawn. Section 41 cannot therefore avail the claimant.

37. If there is anything at all in this argument, it seems to me that the proper analysis is likely to be concerned with breach of the directors' duties rather than the powers of the company. Thus if Mr Baxendale-Walker and his fellow director were acting in breach of their duties to the claimant in transferring title to Miss Eustace, that would leave the claimant with a remedy against Mr Baxendale-Walker and his fellow director but would not affect Miss Eustace's position, unless she was complicit in the wrongdoing - which again, is not a matter suitable for summary determination. I would not necessarily accept, however, that there was any breach of duty. That will depend on such matters as the identity of the beneficial owners of the claimant, whoever they may be, and what they knew about the transaction or the way in which Mr Baxendale-Walker used the claimant as a vehicle for providing benefits to the members of his bunnies club. There is no evidence about these matters, save for the fact that it obviously did not occur to the claimant's solicitor that the transaction was in breach of duty or otherwise not *bona fide*. Indeed, elsewhere in Mr Baxendale-Walker's evidence, he appears to suggest that he would have been able to procure the claimant to make a gift of a flat to Miss Eustace if he had wished to do so:

“I have practised as an advisor on taxation, property and trusts law for 25 years. I know perfectly well how to write a true deed of gift over real property. Had that been my intent, then I would have procured Sargespace to do that.”

### **Section 53 of the Law of Property Act 1925**

38. Finally in relation to the Walton on Thames flat, Mr Hackett submits that the formalities required by section 53 of the Law of Property Act 1925 for the disposition of an equitable interest were not complied with -- that is to say, that the letter dated 2 March 2013 provided for the claimant to have "the whole equitable interest in the property" and that as there was no subsequent disposition of that equitable interest in writing to Miss Eustace, that interest remains with the claimant
39. Section 53 provides:

“(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol –

- a. no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
- b. a declaration of trust respecting any land or any interest therein must be manifested and approved by some writing signed by some person who is able to declare such trust or by his will;

- c. a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.”

40. In my judgment Mr Hackett’s argument based on this section fails to take account of the impact of repayment of the bridging loan. If (as I have concluded) there are at any rate reasonable arguments that the effect of the 2 March 2013 letter was that the claimant’s equitable interest was only intended to subsist until repayment of the loan out of the Egham proceeds of sale, after which Miss Eustace was intended to have both the legal and the beneficial interest in the Walton flat, and that the bridging loan has been repaid in its entirety, effect must be given to the parties’ contractual agreement to that effect. Put another way, and on the assumption that Miss Eustace is able to make good her case as to the ownership of the Egham flat, it simply cannot be right that the claimant is entitled not only to keep the repayment of the bridging loan which it has received but also to a continuing beneficial interest in the Walton flat. Even if it is correct that a formal written disposal of the claimant’s equitable title complying with section 53 would be necessary in order to give effect to the parties’ contract, and even if for want of the necessary formality the equitable title currently remains with the claimant, it seems to me to be obvious (and at any rate to be arguable) that the claimant would be under an obligation to do what was necessary to perfect Miss Eustace’s title in order to give effect to the clear intention of the contract contained in or evidenced by the 2 March 2013 letter. Even if that obligation is merely contractual (as distinct from of itself creating any proprietary interest), it would in my judgment constitute a sufficient reason to render summary judgment inappropriate.

### **The fallback money claim**

41. At the hearing Mr Hackett advanced a fallback claim, on the basis that even if the bridging loan had been repaid to the extent of £264,457.50 from the Egham proceeds of sale, the claimant nevertheless has an unanswerable claim, and should have summary judgment, for the balance of the loan, or at any rate for the agents’ fees of £5,542.50. No such claim had been pleaded or previously foreshadowed, but in any event my finding above that there is a real prospect of Miss Eustace establishing an agreement by Mr Baxendale-Walker to take care of the shortfall in the proceeds of sale provides an answer to this claim for the purpose of summary judgment. I am not impressed by any argument that such an agreement by Mr Baxendale-Walker would not affect the position of the claimant as an independent company. The claimant was clearly not acting as a company independent of its director, who was able to direct its activities regarding the provision of finance to Miss Eustace.

### **The Range Rover**

42. I turn now to the claimant’s claim regarding the Range Rover which Miss Eustace says was a gift to her from Mr Baxendale-Walker. This claim can be dealt with more shortly, as by the conclusion of the argument the claim for summary judgment was put only on a narrow basis. Mr Hackett accepts that there is a factual dispute whether

Mr Baxendale-Walker intended to make a gift of the Range Rover, but nevertheless takes two points.

43. The first is that, as evidenced by a previous occasion in February 2011 when Mr Baxendale-Walker did make a gift of a different car (a BMW) to Miss Eustace, his practice was to purchase the vehicle from its corporate owner for the market price and then to execute a deed of gift in favour of Miss Eustace. But that course was not followed in the case of the Range Rover. The second is that the Range Rover was never Mr Baxendale-Walker's to dispose of, as it belonged to a legal entity called Baxendale-Walker LLP ("the LLP"). According to Mr Baxendale-Walker, the LLP was (until 22 July 2013 when he sold his interest to a Californian company called Hawk Consulting LLC) a limited partnership between himself and Bronzeage Ltd (and possibly also the claimant), but he no longer has any interest in it.
44. As to the supposed practice, I accept that the February 2011 gift of a BMW was carried out with the formalities as described. However, I do not accept that a single previous occasion constitutes sufficient evidence of a practice leading necessarily to the conclusion that no gift would be intended unless this practice was followed. Whether even in the absence of such formalities Mr Baxendale-Walker purported to make a gift of the Range Rover is in my judgment a question of fact which is not suitable for summary determination in this case. I observe that the admitted previous gift of the BMW appears to prevent any argument, in the case of the Range Rover, that it would be "fanciful" to suggest that Mr Baxendale-Walker would make a gift of a valuable car to Miss Eustace.
45. The real argument, therefore, at any rate for the purpose of this application, is that even if Mr Baxendale-Walker purported to make such a gift, and however explicitly he may have done so, that gift would be of no effect because the vehicle did not belong to him but to the LLP which bears his name. Or as Mr Baxendale-Walker puts it in his evidence:

"With respect her small High Street solicitors seem to have had some difficulty in understanding the difference in fact and law between me owning things, and the Claimant and BW LLP owning things."

46. Needless to say this is not an attractive argument, but the question is whether it provides the claimant with a knockout blow for the purposes of summary judgment. In my judgment it is very far from doing so. Mr Baxendale-Walker's evidence (and the claimant's case) is as follows. The LLP bought the Range Rover in question on 15 October 2012. It was one of a large fleet of vehicles provided for the use of members of the bunny club (and perhaps others), and on this basis was provided to Miss Eustace. She registered it in her name, but she was not entitled to do this and the error was not noticed by the LLP's office staff. The LLP taxed and insured the vehicle. On 22 July 2013 the LLP assigned the vehicle to an entity called St George's Bank Holdings Ltd by a written assignment which Mr Baxendale-Walker signed on behalf of both assignor and assignee. The vehicle was then assigned again on 14 August 2013, by St George's Bank Holdings Ltd to the claimant. Once again Mr Baxendale-Walker signed the assignment document on behalf of both parties.

47. This may all be true, but it is an odd story. The reason for these assignments, let alone the role of the intermediate party St George's Bank Holdings Ltd, has not been explained. On the face of the documents, it is simply a case of Mr Baxendale-Walker moving an asset around between entities which either bear his name or which he is able to control. In such circumstances I would not readily accept, at any rate for the purpose of a summary judgment application and without knowing a lot more about these entities, that a gift purportedly made by Mr Baxendale-Walker of an asset legally owned by the LLP was not made with the full knowledge and authority of the LLP.
48. Moreover, although pieces of paper have now been produced which purport to evidence the assignments described above, it is remarkable that at an earlier hearing in this case a different document was produced which was said to evidence the assignment dated 22 July 2013 from the LLP to St George's Bank Holdings Ltd, but this was in fact an assignment of that date from Mr Baxendale-Walker personally with no mention of the LLP. When this discrepancy was pointed out, Mr Baxendale-Walker's explanation in his latest witness statement was that:
- “I see that the ‘document disclosed’ is the wrong one. The actual Deed of Assignment is exhibited hereto at Exhibit PBW1. It clearly and manifestly correctly, states BW LLP as the owner. The document that [Miss Eustace] is referring to contained an error and the error was corrected, and confirmed as correct by Griffin law.”
49. As an explanation this is woefully inadequate and raises more questions than it answers. Notably, there is no evidence from the claimant's solicitor as to what he confirmed or when he confirmed it. That leaves at least the possibility that the assignment from the LLP which is now relied upon is a post dated document and is not what it purports to be. I make no positive finding to that effect, but this episode provides a further reason for concluding that summary judgment is not appropriate.

### **Conclusion**

50. For the reasons given above, the application for summary judgment is dismissed with respect to both claims.

### **Postscript**

51. After preparing this judgment but before providing it in draft to the parties I received a letter from the claimant's solicitors enclosing a directors' resolution passed after the hearing, together with a copy of a declaration of trust dated 30 May 2012 relating to an on demand facility in the sum of £200,000 to be made available to Mr Baxendale-Walker as trustee. These documents, to the late admission of which the defendant's solicitors rightly objected, do not affect my conclusion.