



Neutral Citation Number: [2014] EWHC 29 (QB)

Case No: HQ12D04321(First Action)
Case No: HQ13X04213 (Second Action)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2014

Before :

MR JUSTICE DINGEMANS

Between :

Tamara Ecclestone
- and -

Claimant

Omar Khyami

First Defendant

Elite Performance Cars Limited **Second Defendant**

Ansol Trading Limited (trading as Four Seasons Autos) **Third Defendant**

Paul Lowenstein QC & Jeremy Reed (instructed by **Mishcon de Reya**) for the **Claimant**
The **First Defendant** was not represented at the trial following a compromise with the Claimant
Roger Masefield QC & Richard Blakeley (instructed by **HowardKennedyFsi LLP**) for the
Second Defendant
Nick De Marco (instructed by **Brown Rudnick**) for the **Third Defendant**

Hearing dates: **21, 22, 25, 26, 28 and 29 November 2013**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE DINGEMANS

Mr Justice Dingemans :

Introduction

1. This is a claim for delivery up, and damages for the conversion, of a Lamborghini Aventador motor car (“the car”). There is also a claim for the discharge of an injunction and an inquiry under the cross-undertaking in damages. This case raises an issue about the relationship between illegality and the law of conversion. It might be noted that the car has caused everyone far more trouble than it is worth.

Ms Ecclestone, Mr Khyami and delivery of the car

2. It is necessary to set out a bit of background to understand the issues to be decided at this trial. The Claimant is Tamara Ecclestone (“Ms Ecclestone”), and the First Defendant is Omar Khyami (“Mr Khyami”). They were in a relationship. During the relationship they gave each other expensive gifts, including cars.
3. In April 2012 Mr Khyami took delivery of the car which had been sold by Elite Performance Cars Limited (“Elite”) to Ms Ecclestone. Mr Khyami said that the car was a gift from Ms Ecclestone to him for his birthday, but Ms Ecclestone originally contended that the car was only for use by Mr Khyami during their relationship, and that she remained its owner.
4. In the meantime Elite loaned monies to Mr Khyami, and claimed that those monies were secured on the car and that they had a right to take possession of the car when those monies were not repaid.

Breakdown of the relationship and the first action

5. The relationship between Ms Ecclestone and Mr Khyami broke down on about 19th July 2012. By a claim form dated 17th October 2012 issued in the Queen’s Bench Division, Ms Ecclestone commenced proceedings against Mr Khyami (“the first action”). Injunctions were obtained. Various claims and counterclaims for misuse of confidential information and harassment were made between Ms Ecclestone and Mr Khyami. After the breakdown of the relationship, the car was left with Ms Ecclestone.
6. In March 2013 the proceedings between Ms Ecclestone and Mr Khyami were stayed for a period to enable the parties to consider alternative dispute resolution. A trial window was fixed for October – December 2013.

Purported execution of a warrant and sales of the car

7. In April 2013, about a year after the car had been delivered to Mr Khyami, it was taken on behalf of Ms Ecclestone to HR Owen in Acton for servicing. Elite, which had had a tracking device installed on the car, was alerted to the presence of the car at HR Owen. Elite attended HR Owen’s premises on 4th April 2013 and demanded delivery up of the car, contending that Elite was entitled to the car because Mr Khyami was the owner and Mr Khyami owed monies to Elite which had been secured on the car. The car was not delivered up.

8. On the 5th April 2013 bailiffs from Central London County Court arrived at HR Owen and seized the car. They were purporting to execute a warrant which involved parties and companies who appear to be wholly unrelated to the parties in this action. Evidence given at the trial shows that the circumstances in which the car came to be seized by the bailiffs are the subject of an ongoing investigation and inquiry by the Ministry of Justice.
9. Mr Khyami was informed about the seizure of the car by Elite. On the same day he attended Central London County Court and obtained delivery of the car. Mr Khyami says that having taken possession of the car, he surrendered the car to Elite pursuant to the loan agreement that he had made with Elite. Elite claims that it later sold on the car to Ansol Trading Limited trading as Four Seasons (“Ansol”). Ansol says that it agreed to sell the car to Haydar El Mudares (“Mr El Mudares”) who is based in Turkey, but that the subsequent sale was cancelled.

Injunctions and the second action

10. By an injunction granted to Ms Ecclestone at a without notice hearing in the Chancery Division on 15 April 2013, Mr Khyami and Elite were ordered not to deal with or dispose of the car, and to provide details of any sale of the car. The affidavit in support of the injunction was made by a legal representative on behalf of Ms Ecclestone who stated that at the time of the purchase of the car “*the Claimant was in a relationship with and co-habiting with [Mr Khyami], and she bought the Vehicle for him to use as long as the relationship continued*”. Ms Ecclestone claimed to be the owner of the car, and that the car was not a gift to Mr Khyami. Ms Ecclestone provided a cross undertaking in damages in the usual form to Mr Khyami and Elite. Proceedings were issued on 16 April 2013 (“the second action”).
11. In response to the injunction, Ansol’s involvement with the car was disclosed. On 18 April 2013 at another without notice hearing, Ansol were added to the claim and an order providing for interim delivery up of the car was made. Ms Ecclestone provided a cross undertaking in damages in the usual form to Ansol.
12. On 22 April 2013 the injunctions were continued at a hearing at which all the parties were represented. The car was ordered to be delivered up to Ms Ecclestone, and it is currently stored near Biggin Hill on behalf of Ms Ecclestone. Ms Ecclestone made applications to commit Mr Showai and Mr Almohandi to prison for contempt of Court because of what were said to be delays in the delivery up of the car. The applications were later dismissed by consent. Other applications were made, and by consent on 3 July 2013 Roth J. ordered that the claim should be transferred to the Queen’s Bench Division to be heard with the existing action between Ms Ecclestone and Mr Khyami.

Preparations for trial

13. In the second action Ms Ecclestone made a claim for conversion and delivery up of the car, and damages. The claim was made against Mr Khyami, Elite and Ansol. Mr Khyami defended the proceedings, contending that the car had been a gift from Ms Ecclestone to him, and that he was entitled to deal with it as he had done on 5th April 2013. Elite defended the proceedings and counterclaimed against Ms Ecclestone contending that Mr Khyami owed monies which had been secured on the car, that the car had been lawfully delivered up to Elite by Mr Khyami on 5th April 2013, and that

Elite was entitled to the car. Elite claimed damages for conversion against Ms Ecclestone, including special damages because of the adverse effect on Elite's business because of the significant press coverage obtained on behalf of Ms Ecclestone in relation to the seizure of the car. Ansol defended the proceedings, contending that it had purchased the car, and that Ms Ecclestone, alternatively Elite who had sold the car to Ansol, were liable in damages for Ansol, and that Ansol was entitled to delivery up of the car.

14. Preparations continued for trial. There was a case management conference on 29 July 2013 before Tugendhat J. On 11 September 2013 Bean J. made a *Norwich Pharmacal* order, on the application of Ms Ecclestone which directed the Ministry of Justice to provide information about the circumstances in which the car had been seized on 5 April 2013 pursuant to the loan agreement. A handwritten version of the warrant was disclosed in the response to that order, and the bailiffs involved were identified. On 10 October 2013 I made a further *Norwich Pharmacal* order, again on the application of Ms Ecclestone, against one of the bailiffs. There was a case management conference before me on 14 October 2013. The trial date was fixed for 20 November with a time estimate of 8 days. Beef Registrations, which provided car registration services to Ms Ecclestone, were ordered to provide details of documents relating to various attempts to change registration of the car that had been carried out.
15. The order on 14 October 2013 provided for the parties to give notice, by 4 pm on 12 November 2013, later varied to 15 November 2013, of any allegations of involvement or collusion in fraud or other criminal conduct. This order was made because it had become clear from the submissions that were being made at the Case Management Conference that the parties suspected one another of very serious wrongdoing and were carrying out investigations into the alleged wrongdoing. This wrongdoing was not likely to be part of the claims, and it was necessary to give fair notice of any serious allegations to anyone likely to be accused of serious wrongdoing.
16. At this stage it appeared as if the claims and counterclaims made in the first and second actions would proceed to trial.

Proposed amendments and the compromise between Ms Ecclestone and Mr Khyami

17. On 7 November 2013 Ms Ecclestone's legal representatives wrote to the other parties giving notice of an application to make amendments to the claim against the Defendants, and seeking an adjournment of the trial in any event. On about 8 November 2013 Ms Ecclestone and Mr Khyami compromised their claims and counterclaims in the first and second actions, which meant that the whole of the first action had been compromised. The second action between Ms Ecclestone and Elite and Ansol continued. The proposed amendments were pursued against Elite and Ansol in the second action.
18. The first proposed amendment was to the effect that, even if the car had been a gift from Ms Ecclestone to Mr Khyami, it was conditional on certain understandings, and that there should be rescission of the gift and delivery up of the car. The second proposed amendment was to the effect that Elite had conspired with Court officials to take possession of the car through the wrongful execution of the warrant, and that Elite was liable to Ms Ecclestone for conversion. Ms Ecclestone made the application

on the basis that if the amendment to the Particulars of Claim was made, an adjournment of the trial would be necessary. A hearing date of 13 November 2013 for the hearing of the application to amend was arranged.

19. On 11 November 2013 the parties appeared at very short notice before me to provide for various extensions to the timetable for exchange of Skeleton Arguments in the light of the compromise between Ms Ecclestone and Mr Khyami. Mr Lowenstein QC on behalf Ms Ecclestone also sought permission to make the proposed amendments, but I directed that that application should be heard, as planned, on Wednesday 13 November 2013.
20. At the hearing on 13 November 2013 Ms Ecclestone abandoned her application to amend the Particulars of Claim. Ms Ecclestone also confirmed in correspondence and paragraph 4 of her Skeleton Argument that “*she withdraws her opposition to the contention that the Lamborghini was given to the former First Defendant ... as a gift*”. It also became clear that Ms Ecclestone would not be attending the trial to give evidence that the car was a gift. It was contended on behalf of Ms Ecclestone that the issues at the trial would be: (1) whether Mr Khyami transferred title or conveyed any security interest in the car to Elite; (2) if so, whether Elite’s counterclaim succeeded, and if so, to what extent, and (3) Ansol’s claims.
21. In these circumstances it appeared that Ms Ecclestone would lose the claim for conversion that she had made, and that the injunction would be discharged. Mr Masefield QC on behalf of Elite, and Mr De Marco on behalf of Ansol, were understandably keen to ensure that there would be no further late attempts to amend the Particulars of Claim and there was some discussion about whether judgment should be entered for Elite and Ansol on Ms Ecclestone’s claim for conversion.
22. It seemed to me to be very likely that the parties were discussing ways in which the litigation might be compromised, and I was given broad hints to that effect. I did not want to create difficulties for the parties in that situation by entering judgments on some, but not all of the claims a week before trial. However it was necessary, for the purposes of case management, to establish that Ms Ecclestone would not be making further amendments to her claim, and would not be pursuing her claim for conversion of the car. Having asked about that, it was made clear to me by Mr Lowenstein on behalf of Ms Ecclestone that no positive case for conversion of the car would be made by Ms Ecclestone.
23. In these circumstances I was able to address further issues for the management of the trial. It became common ground that Elite and Ansol were effectively now the Claimants, and Ms Ecclestone the Defendant, and I therefore directed that Elite and Ansol should go first at the trial. There was also some discussion about whether there should be an inquiry under the cross-undertaking in damages.
24. On 15 November 2013, which was less than a week before the commencement of the trial, Ms Ecclestone served voluntary particulars of the Claimant’s Defence to the Counterclaim of the Second Defendant. In these particulars it was contended, on various grounds, that there was no enforceable loan agreement and no enforceable security in the car.

25. It was not only Ms Ecclestone making amendments before trial. Elite had served voluntary particulars of its loss of profit claim after the hearing on 14 October 2013. Just before the trial Elite notified Ms Ecclestone that it was not pursuing a claim for loss of the opportunity to conclude a deal for the export of BMW motor cars to Iraq which was said to be worth about £5,785,000 because a critical witness to that proposed deal was not now available to attend the trial.

The start of the trial and further amendments

26. During the course of openings at trial, Elite suggested that judgment should now be entered against Ms Ecclestone because she was not advancing any positive case for conversion of the car. I gave a short ruling to the effect that I was not going to enter judgments until the case had concluded and I was able to give judgment on all the issues. I recorded that it was effectively common ground that Ms Ecclestone would lose her claim and that issues of: 1) whether an inquiry under the cross undertaking in damages should be ordered; and 2) if so what sums should be ordered to be paid pursuant to that inquiry; would be dealt with at trial together with the other issues raised in the action.
27. During the course of opening Mr Lowenstein, on behalf of the Claimant, made a number of comments to the effect that he was keeping his powder dry and that the Claimant's position would be made clear as the action progressed. Mr Lowenstein then spent considerable time, in excess of time estimates given at the beginning of the trial, and in excess of time estimates updated throughout the trial, cross examining Elite's witnesses on the circumstances in which the money said to be owed by Mr Khyami to Elite had come to be secured on the car. During further discussions it became clear that the reason for this was that Ms Ecclestone, who was now not pursuing her own claim, proposed to submit that Elite had pleaded that: the car had been surrendered pursuant to a 'loan agreement'; the 'loan agreement' had been specifically defined in the pleadings as made in about February 2012 and evidenced in a written agreement in April 2012; and that the evidence showed that this was not an accurate description of how the loan had purported to be secured on the car; and the loan agreement was unenforceable. This, so it was said on behalf of the Claimant, meant that the claim as pleaded would fail and that the Claimant would be entitled to judgment (a form of directed "non-suit"). It was not explained how this would deal with the inquiry under the cross-undertaking in damages given that the injunction would be discharged, or how this would affect Ansol's claim.
28. In the event Mr Masfield and Mr De Marco sought permission to make amendments to their respective Counterclaims to make it plain that both Elite and Ansol claimed that they were, at the material times, in possession of the car, and that in those circumstances they were entitled to maintain a claim for conversion. The fact of possession of the car had been pleaded by both Elite and Ansol in their respective counterclaims. Elite had pleaded that it had title "*and/or an immediate right to possess*" the car, at paragraph 52 of the Counterclaim. Ansol had pleaded that the car "*was delivered to Ansol on 16 April 2013*" in paragraph 4 of its Defence and Counterclaim. In these circumstances I granted permission for them to make it plain that they were relying on the fact of possession of the car in order to bring the claim for conversion.

29. At the time that Elite and Ansol were drafting amendments, Ms Ecclestone also sought permission to resuscitate her claim for conversion and to plead a claim for damages for conspiracy against Elite. I refused permission for this amendment and gave short reasons at the time, and I said that I would give more detailed reasons in this judgment. The main reason for refusing Ms Ecclestone's amendment (formally a re-amendment) was because it was completely inconsistent with the position that Ms Ecclestone had committed herself to on 13 November 2013. I was aware that the action had been brought to trial speedily, but that was at the parties' bidding. I was aware that the compromise between Ms Ecclestone and Mr Khyami had altered matters from Ms Ecclestone's perspective, but that happened before the hearing on 13 November 2013. There was nothing by way of a change of circumstances, which justified Ms Ecclestone abandoning her application to amend on 13 November 2013 and saying to the Court on 13 November 2013, in response to a specific question, that she would not make any positive claim for conversion at the trial, and then seeking to make the amendment on 25 November 2013. As a general proposition parties should not blow hot and cold in litigation, see the discussion in *Banque des Marchands de Moscou v Kindersley* [1951] 1 Ch. 112 at 119-120. More relevantly, parties should not be permitted, without a very good reason, to say that a case is not being pursued, and then seek permission to make amendments to pursue it.
30. I was also concerned that permitting Mr Lowenstein's amendments would cause an adjournment of the trial. Elite maintained that it wanted an adjournment to deal with any such new claim of conversion. Ms Ecclestone had already accepted in communications with Elite's legal representatives, before 13 November 2013, that such an adjournment would have been required if the amendment was to be made. Although I had not formed any final view about whether Elite's request for an adjournment would have been justified if an amendment had been made on 13 November 2013 (this was because Ms Ecclestone had offered such an adjournment to Elite when originally seeking permission to amend in November 2013, and had then withdrawn her application to amend), it would have been very difficult to permit such an amendment and refuse an adjournment to Elite when it had been common ground between the parties that such an adjournment should be permitted. I was not going to permit an amendment which caused an adjournment of the trial. This was because the parties had prepared for trial, and were at trial. Court time had been set aside for the parties. Any adjournment of the trial would have caused serious inconvenience to other Court users whose cases had been delayed so that this action could be heard.
31. Mr Masefield and Mr De Marco did not object to Ms Ecclestone amending her defences to the Counterclaim to plead that Elite had conspired with bailiffs of Central London County Court, and that such illegal acts provided a defence to their claims for conversion. Mr Lowenstein said that it was wrong to permit the amendment to the defence to counterclaim, but not the claim. However Elite was content that the amendment to the defence to counterclaim be made without an adjournment. Elite resisted the amendment to the claim unless an adjournment was given, and as noted above Ms Ecclestone had previously accepted that such an adjournment would be justified if there had been an amendment. There are principled differences between dealing with a new defence to an existing claim for damages, and facing a claim for damages which a party has been expressly told was not being pursued.

32. I was not persuaded that Ms Ecclestone's position mirrored the amendments proposed by Elite and Ansol. This was because Elite and Ansol had not said, as Ms Ecclestone had said, that they would not pursue their claims. It was also because Elite and Ansol had, albeit faintly, pleaded possession of the car in their original pleadings, in the passages already referred to above. The amendments followed through the legal consequences of possession which had been pleaded.
33. Having now heard the full trial there is a further matter, which I did not take into account when refusing the application to amend, which justifies the decision to refuse to permit Ms Ecclestone to amend to plead conversion on the basis of a conspiracy with Court bailiffs. The reason is that such an amendment to plead conversion was bound to fail. This was because I have found, for the reasons given below, that the car was a gift to Mr Khyami and at the material time that the warrant was executed, Mr Khyami was entitled to possession and ownership of the car. Elite would have been entitled to plead and rely on Mr Khyami's right to possession and ownership of the car, pursuant to the provisions of the Torts (Interference with Goods) Act 1977 ("TIGA 1977"), in order to defeat the claim made by Ms Ecclestone.

Issues

34. I can now turn to the issues which, by the end of the trial, remained to be resolved. I am very grateful to Mr Lowenstein, Mr Masefield and Mr De Marco for liaising and agreeing a list of issues, and for their helpful submissions. The agreed issues are:
- i) whether the car was a gift from Ms Ecclestone to Mr Khyami;
 - ii) whether Mr Khyami transferred title in the car to Elite;
 - iii) whether Elite transferred title in the car to Ansol;
 - iv) whether at the time of the alleged wrongful conduct by Ms Ecclestone, Elite and Ansol had possession and/or an immediate right to possession of the car;
 - v) whether Ms Ecclestone has a defence to the claims in conversion of either Elite or Ansol:
 - a) based on the Claimant or Mr Khyami having a better right to the car than Elite or Ansol;
 - b) on the basis that Elite's possession was obtained after Mr Showai is said to have conspired with the bailiffs to seize the car from HR Owen.
 - vi) whether the injunction which Ms Ecclestone obtained was wrongfully granted, and if so, whether an inquiry on the cross-undertaking in damages should be ordered.
 - vii) the amount of any losses (if any) caused to Elite or Ansol as a result of Ms Ecclestone's conversion and/or the obtaining of the injunction.
 - viii) whether Ansol is entitled to delivery-up of the car.

35. I should also record that Mr Lowenstein, in closing submissions, asked me to determine whether his original pleading point would have succeeded against Elite or Ansol without the later amendment.

The car was a gift from Ms Ecclestone to Mr Khyami

36. Mr Khyami was the former boyfriend of Ms Ecclestone, and he gave evidence before me. It was perfectly apparent that Ms Ecclestone and Mr Khyami were, until the late compromise of their action, in opposite camps and had no continuing regard for each other. I formed the distinct impression that, notwithstanding the late compromise between Ms Ecclestone and Mr Khyami, they were intent on continuing their fight on a vicarious basis. Ms Ecclestone's legal team was attacking persons associated with Mr Khyami throughout the proceedings. Ms Ecclestone relied on some historic convictions to attack the credibility of Mr Khyami. I record, out of fairness to Mr Khyami, that those convictions were old, irrelevant and did not affect my assessment of his evidence.
37. However Mr Khyami was very willing to help persons against Ms Ecclestone. Mr Khyami was also a longstanding friend of Mr Showai of Elite, and there had been a close relationship between Mr Showai's wife and Mr Khyami's mother. For all these reasons I have treated the evidence of Mr Khyami with some care in this action.
38. In about October 2011 Mr Khyami received a phone call from Ms Ecclestone who said that she wanted to start organising a present for Mr Khyami's birthday in January. When they met Ms Ecclestone said that she wanted to buy Mr Khyami a Lamborghini Aventador. Ms Ecclestone and Mr Khyami went to "Lamborghini London" trading as HR Owen on Old Brompton Road, but were told that there was a 1 year lead time on ordering the car. Mr Khyami then made contact with Mr Showai of Elite. I accept this evidence.
39. Mr Showai gave evidence, and it is necessary to say a little about his background. Mr Showai was originally from Iraq and he came to London and claimed asylum in 1997. He now holds an Iraqi and a British passport. Mr Showai is illiterate, and he has some understanding of English, but a very limited ability to speak it. Mr Showai has always been very interested in cars, and he has traded them for a very long time, and has had extensive dealings with top of the range cars. The evidence showed that Mr Showai had a real expertise in top of the range cars and was very much a trader, looking to make a profit on deals, financing and hire.
40. It was also plain that Mr Showai had no understanding of, or interest in paperwork. Mr Showai appeared to work on the basis of personal relationships with persons that he liked and trusted, and he described most of his customers as friends. Although intelligent in the ways of dealing with cars, Mr Showai had no ability to understand concepts such as inconsistencies between statements. By way of illustration Mr Lowenstein asked Mr Showai about an inconsistency between his statements of whether bailiffs were present at HR Owen when he arrived there on 5 April 2013. I formed the distinct impression that Mr Showai simply did not understand the point that was being made.
41. It was apparent from Mr Showai's evidence that he had no regard for corporate structures and he considered that as he, and his wife, owned Elite, he was entitled to

treat it as his own. He had been involved in previous litigation in the High Court, which litigation had not been successful. Mr Showai blamed a former director for the problems in that case. Mr Showai also said he had not given evidence before, when it is obvious from the terms of the previous judgment that he had done so. Whether this was a lie, or just very substantial confusion on his part was not clear to me. However the effect is that it is difficult to rely on Mr Showai's evidence unless it is corroborated.

42. I should note that Ms Ecclestone's legal team relied on an unrelated foreign conviction to attack the credibility of Mr Showai. The evidence about this conviction was confused, and it appeared that relevant convictions had been set aside on appeal. I did not place any reliance on that matter.
43. It is not possible to deal with Mr Showai without mentioning Paula Mensikova ("Ms Mensikova"), who is now a director of Elite, but who effectively works attempting to record Mr Showai's dealings, and in accordance with his directions. Ms Mensikova made it clear that sometimes she found it very difficult to get a clear understanding of what Mr Showai thought he had done, or had in fact done. Ms Mensikova disapproved of the way in which Mr Showai mixed his own dealings with Elite, and made attempts to keep them separate in her own paperwork.
44. Ms Mensikova was accepted by all the parties to be an honest witness, doing her best to record what was going on at Elite. She tended to draw up legal documents from a set of precedents available to her, choosing the one that seemed to her best suited to the task. As Ms Mensikova had had no legal training, and no supervision after the departure of another former director of Elite, this meant that sometimes she included parts of legal documents which were plainly inappropriate, for example the reference to security documents on one loan agreement. Ms Mensikova also wrote letters, and changed her description of herself as it suited her. For example she became the enforcement department of Elite, when the reality was that she was the person in Elite writing letters. In the same letter Ms Mensikova wrote stating that enforcement agents had been instructed, when none had been. For these reasons I approach Ms Mensikova's evidence with care.
45. I should record that it became apparent from the evidence that Elite's system for the production of paperwork was unconventional. It generally consisted of Ms Mensikova attempting to reduce into recognisable documents, such as loan agreements or invoices, what she understood from Mr Showai were the effects of the agreements that had been concluded. However there were a number of difficulties. First Mr Showai was difficult to understand, even for Ms Mensikova. As a result mistakes were sometimes made in recording what was the effect of the transactions. Secondly Mr Showai would himself make changes to the arrangements, to reflect developments in the underlying commercial arrangements which he had made. An example of this was the loan with Mr Khyami, which started off as a short term loan, but which turned into a longer term loan. This made it more difficult for Ms Mensikova to ensure that the paperwork was accurate. Thirdly mistakes were sometimes made on the forms, so that there would be different versions of the same document, all purporting to record the same transaction. Examples included an invoice for the car which had omitted a part exchange. None of this is intended as a criticism of the way in which documents were produced, but it is relevant to record

this, because it has made attempting to ascertain the effect of some of the documents more difficult.

46. Mr Showai was content to answer many questions on the basis that the question should be directed to Ms Mensikova, and it is apparent that in his business dealings he was content for Ms Mensikova to try and sort out and record accurately what he had done. Ms Mensikova's records were reliable so far as she was able to make them reliable, but they depended on Mr Showai who did not always provide information to Ms Mensikova.
47. I can now return to the evidence about the car. Mr Showai said he could get the car more quickly than competitors, and that he might be able to get it in February 2012. Ms Ecclestone paid £335,000 for the car, and an extra £50,000 to procure early delivery. A deposit of £50,000 was paid in October 2011. This is all common ground.
48. Mr Khyami gave Ms Ecclestone a white Bentley continental for Christmas 2011, although he was only able to give her a key marked Bentley, because it was not yet ready for delivery.
49. Mr Khyami picked up the car in April 2012, together with a personalised number plate also purchased by Ms Ecclestone for Mr Khyami.
50. Mr Khyami gave evidence that the car was a gift from Ms Ecclestone. Some contemporaneous statements made by Ms Ecclestone were consistent with the car being a gift to Mr Khyami, including on a video clip on YouTube entitled "Supercars of London". There was no reliable evidence before me to contradict Mr Khyami's evidence that the car was a gift, and there was supporting evidence from other persons who heard Ms Ecclestone say that the car belonged to Mr Khyami, or who assumed that the car was a gift. In these circumstances I find that the car was a gift from Ms Ecclestone to Mr Khyami.
51. The effect of this finding is that Mr Khyami had, at least until 5 April 2013, title to the car. He was therefore entitled to raise monies on the security of the car.
52. In fact, after the end of their relationship on 19 July 2012 Ms Ecclestone kept the car. The car had been parked at Ms Ecclestone's mother's house, and Ms Ecclestone had the key to the car. A couple of days after 19 July 2012 Mr Khyami's personal belongings were returned by courier, but neither the keys to the car nor some bank statements kept in a bedside drawer were returned.
53. In these circumstances Ms Ecclestone had possession of the car, but she was not entitled to possession of the car as against Mr Khyami. There was evidence in Mr Khyami's witness statement about wrongful dealings with the registration documents of the car and number plate by persons apparently acting on behalf of Ms Ecclestone. This evidence suggested that the car had become the focus of the continuing dispute between Ms Ecclestone and Mr Khyami. In the event the position remained that although Ms Ecclestone had possession of the car, Mr Khyami remained the owner of the car, and was entitled to seek possession of the car.

Whether Mr Khyami transferred title to Elite

54. Mr Khyami claimed that he had borrowed monies from Elite so that he could complete the purchase of the white Bentley to give to Ms Ecclestone, and that he had used some of the monies for his business. Mr Khyami said that these monies had been secured on the car, and Elite had, as it was entitled, asked for possession of the car when he had not repaid the monies. He had handed over possession of the car to Elite on 5 April 2013. It is therefore necessary to: consider the arrangements under which the loan was secured on the car; consider relevant events leading up to 5 April 2013; and to decide what happened on the 5 April 2013.

The loan and the car

55. It was in relation to the pleading of the loan secured on the car that Mr Lowenstein took his pleading point, and so I have set out parts of Elite's pleading in relation to the loan and the security.
56. In Elite's defence dated 15 May 2013 at paragraph 24 it was pleaded that "*on or around 1 February 2012, Mr Khyami approached Mr Showai of Elite and indicated that he wished to raise financing, that he wished to use his Lamborghini for this purpose and that a portion of the financing was required immediately to enable him to purchase a vehicle by way of gift for Ms Ecclestone*". In paragraph 25 it was pleaded that "*on or around 1 February 2012, Elite and Mr Khyami concluded an oral agreement which was later evidenced in writing on or around 12 April 2012 ("the loan agreement")*". The terms of the loan agreement were then set out. The total loan was for £250,000, with £140,000 advanced forthwith and the balance of £110,000 to be paid on delivery of the Lamborghini. It was said that "*The Lamborghini was to be pledged as security for the Loan, albeit Mr Khyami would be allowed the use of the Lamborghini in the interim.*" The lodging of the service book, spare key and registration document with Elite was pleaded. It also appeared from the evidence that Elite also fitted a tracking device to the car, and had registered the tracking device.
57. The service book, spare key and registration document was pleaded to be "valid security" over the car. It appears that the loan made by Elite to Mr Khyami was itself financed by Elite by two loans from a person identified in paragraph 33 of the Defence. As already noted above, Elite had pleaded that it had title "*and/or an immediate right to possess*" the car, at paragraph 52 of the Counterclaim. It was pleaded that the car had been repossessed pursuant to the loan agreement. Other relevant references appeared at paragraphs 42, 45, 51 and 54 of the pleading.
58. Mr Showai said in his witness statement that he had provided financing to Mr Khyami against the security of the car because he had understood from what he had been told by Ms Ecclestone and Mr Khyami that the car was a gift from Ms Ecclestone to Mr Khyami. Mr Showai said that it was agreed that the car was to be pledged as security for the loan, so on delivery of the car Elite was to keep the spare keys, log book (once received from DVLA), and service book but that "*Elite would allow Mr Khyami to hold one set of keys and drive the car*". Mr Showai said that Mr Khyami would pay back the loan on the sale of some stock, but that if the monies were not repaid "*Elite would be entitled to come and collect the car from Mr Khyami (we would know where it was, as a result of it being fitted with the Cobra tracking device), sell it and apply*

the proceeds to repaying the loan and interest. Any money left over would be returned to Mr Khyami.”

59. Mr Showai said in his witness statement that he told Ms Mensikova to draw up a loan agreement for Mr Khyami to sign when Elite had full information about the car. There were 3 versions of the loan agreement, because Ms Mensikova had made mistakes on the first two versions. Mr Showai said that £140,000 was advanced to Mr Khyami by Elite on 7 February 2012, when Mr Khyami purchased the white Bentley for Ms Ecclestone that Mr Khyami had promised as a Christmas present. It appears from Ms Mensikova’s witness statement that £125,000 was paid to Leodis Court Bentley to purchase the Bentley and that the balance of £15,000 was Elite’s profit on the sale. I accept Ms Mensikova’s evidence on this.
60. Mr Showai said that the balance of £110,000 was paid in a tranche of £110,000 to Mr Khyami from Mr Aboud Khadam, who was part paying commission that he owed to Mr Showai. Mr Showai said that these were personal funds that he advanced to Elite, who would borrow and lend him monies. I find that the funds were paid on behalf of Elite to Mr Khyami, who became indebted to Elite.
61. Mr Showai and Ms Mensikova said that the loan had been financed in part by Mr Sermed Mulla Hummadi. The loans were for £125,000 and £150,000 with interest accruing at the rate of £15,000 and £10,000 per calendar month respectively. Mr Showai said that £140,000 was paid under the loan on 7 March 2012, but the balance remains outstanding. Mr Showai’s evidence about the dealings with Mr Hummadi was very unclear, but there is evidence that Mr Hummadi has demanded repayment of his loan, and I accept that Elite owed monies to Mr Hummadi, and wanted to obtain the car so that it could be sold, to enable Elite to repay the loan to Mr Hummadi.
62. Mr Showai said in evidence that discussions about the loan had started in late 2011. He confirmed that the discussions about the loan had developed and changed over time. The original intention had been to have a short term loan. He understood that he had security over the car, but it was plain that he had no understanding of the way that that might work on a legal basis.
63. Ms Mensikova said in her witness statement that she had been told in January 2012 that Elite would be providing finance to Mr Khyami for him to buy a car for Ms Ecclestone. On 12 April 2012 Ms Mensikova had been asked to draw up a loan agreement. She produced three versions, because she found mistakes on the first version, which had omitted a reference to Elite’s terms of business (a fact about which Mr Showai had been sensitive to after his earlier Court proceedings) and the second version had omitted reference to the loan number. Ms Mensikova registered the loan and Elite’s security with HPI.
64. Mr Khyami gave evidence, in his witness statement dated 27 September 2013 that “*in or around February 2012 I spoke to Mr Showai ... and asked him if he would be prepared to lend me money to pay the balance that was outstanding on the Bentley ... we agreed that this loan would be secured against the Lamborghini car ... I signed an agreement on 12 April 2012. The sum lent was £250,000 of which £140,000 was for the Bentley and £110,000 was paid on behalf of Mr [Showai] to me in Dubai and I was able to give it to my business partner to finance some equity deals that we had*”.

65. Mr Khyami said that he left one of the two keys to the car and the V5C and service book with Elite. Mr Khyami said *“I knew that if I did not repay the money I had borrowed, Elite could take the car and sell it to recover that money”*.
66. In cross examination Mr Khyami confirmed that the arrangements for the loan had been made over the course of a number of months. He had borrowed monies originally intending to pay it off in the course of a couple of months, but he had not done so. The original agreement had not reflected the terms of the 12 April 2012 loan agreement, but had developed so that by 12 April 2012 that was reflection of the terms then agreed. Mr Khyami did confirm that he would not have expected to pay 6 months’ interest if he had managed to pay the loan within a few months, whatever had been recorded in the document. I accept this evidence.
67. Mr Khyami also said in his statement that when it became apparent that Ms Ecclestone would not return the car, he stopped making payments on the loan. The exact date on which he stopped making payments is not clear. In cross examination Mr Khyami accepted that this statement was not exactly accurate, because he had not in fact been making any payments to the loan at that stage.
68. It is apparent from the witness statement of Ms Mensikova that after the breakdown of the relationship between Ms Ecclestone and Mr Khyami, Ms Mensikova made checks to confirm the validity of the registration documents.
69. It appears from the witness statements of Mr Showai and Ms Mensikova that there were discussions between Mr Showai and Ms Ecclestone’s father, Mr Bernie Ecclestone about Mr Ecclestone redeeming the loan, and other discussions with other members of the Ecclestone family. In the event nothing came of these discussions.
70. It appears from Mr Showai’s witness statement that by 11 October 2012 the loan and interest amounted to £340,000. Mr Showai pressed Mr Khyami for security and was given 3 watches, said to be valued at around £190,000 and £10,000 in cash. Mr Khyami said that he had been pressed to provide the extra security by various calls made to him putting pressure on him to make payments. I accept this evidence.
71. In January 2013, after no further payments had been made, Ms Mensikova had written to Mr Khyami demanding repayment of the loan, and threatening to enforce against the car. In late March Ms Mensikova had written another letter demanding repayment, and claimed that Asset Management had been instructed to recover the car. Ms Mensikova accepted that no such instructions had been given, but she hoped that this would be an effective threat to ensure that Mr Khyami repaid the loan. It is common ground that the letters were written.
72. Mr Khyami said that he estimated that the car was then worth about £250,000 when it was surrendered to Elite, and that the loan and accrued interest was £430,000. This meant that Elite was still owed some £180,000, although Elite did have the watches and £10,000 as security.
73. It is not possible to make exact findings about the exact sums owed by Mr Khyami to Elite. This was because some payments which had been made by Mr Khyami were attributed to hire, and others to loans, and some cash payments were treated as repayment of the loan and some as security. Ms Mensikova also booked any

payments due from Mr Khyami to Mr Showai's personal account, because Mr Showai offered terms to Mr Khyami which she could not follow. However the evidence as a whole showed, and I find, that monies were borrowed by Mr Khyami from Elite, that Mr Khyami and Elite intended that the monies should be secured on the car (whether or not that had been legally effective) and signed a loan agreement dated 12 April 2012 to that effect, and that, as at 5 April 2013, monies were still owed by Mr Khyami. This was the consistent evidence of Mr Khyami, Mr Showai and Ms Mensikova. It was supported by documents, in particular the loan agreements dated 12 April 2012, and the correspondence in January 2013, all of which pre-dated the seizure of the car in April 2013.

The movement of the car

74. Mr Showai and Ms Mensikova said in their witness statements that on 3 April 2013 Elite received a telephone call from Cobra Vehicle Security to say that the car had been moved without the key being in the ignition. After various telephone calls Cobra confirmed that the car was at HR Owen's workshop. Mr Showai telephoned HR Owen, who confirmed the presence of the car.
75. Mr Showai said that he immediately started making plans for the sale of the car and contacted Mr Almohandi. Mr Almohandi said that he first heard about the car in April when Mr Showai had offered it for sale. Mr Almohandi had various clients who were interested in purchasing such a car, which was in high demand and difficult to acquire.
76. Sarah Christou ("Ms Christou") is a Senior Operations Manager employed by Her Majesty's Courts and Tribunals Service ("HMCTS"). Ms Christou made a statement pursuant to the *Norwich Pharmacal* order made by Bean J dated 11 September 2011 in which she confirmed that she had arranged to have carried out searches of documents. Those searches showed that the warrant of execution under which the car was seized related to an unrelated judgment debtor called Flower Power Limited, against whom a default judgment had been entered, and an unrelated judgment creditor.
77. Ms Christou was in Court for part of the proceedings, and made a second witness statement during the course of the trial. In that second witness statement Ms Christou noted that Mr Showai had in evidence denied meeting Arif Korogll ("Mr Korogll"), the lead bailiff involved in the execution of the warrant, apart from at HR Owen and at Central London County Court on 5 April 2013. Ms Christou was shown telephone records for Mr Showai for March and April 2013. She was able to say that Mr Showai had made calls to one of the telephone numbers which Mr Korogll had used during this relevant period. It appeared from the evidence of Maria Brown ("Ms Brown"), the other bailiff involved in the seizure of the car, that this number had been taken from her mobile telephone as one of her contact numbers for Mr Korogll. Ms Christou said that a comparison of the call logs showed that Mr Showai had spoken and texted Mr Korogll on 27 March 2013 (on 10 occasions), had spoken to him on 3 April, and on 2 occasions on 4 April 2013. On 5 April 2013 there had been 4 telephone conversations and 2 text messages. On 8 April 2013 there had been either a very short call (6 seconds) which may have been a message on an answerphone, and on 9 April 2013 there had been 3 further conversations.

78. The analysis of the mobile phone records carried out by Ms Ecclestone's legal team also showed that Mr Showai was making regular contact with Khaled Almohandi, ("Mr Almohandi"), who was the director and owner of Ansol between 27 March and 2 April 2013. Mr Almohandi is a friend of Mr Showai, and it appears from logs of telephone calls that Mr Almohandi and Mr Showai spend a very considerable part of each day talking to each other. It was apparent that Mr Almohandi had a real admiration for Mr Showai's business ability, and he noted that in one relevant transaction he had made a profit from Mr Showai, recording that no-one made a profit from Mr Showai. Mr Showai was also making regular contact with Mr El Mudares.
79. As already noted, the mobile phone records reveal that Mr Showai was in contact with Mr Korogll. Mr Korogll refused to co-operate with any of the parties or provide any evidence apart from providing a short, and false, explanation to the Claimant's legal representatives recorded in an email dated 12 April 2013 in which it was wrongly suggested that Mr Khyami had owed monies to an unrelated creditor which justified the execution of the warrant.
80. Mr Showai denied knowing Mr Korogll, or having any contact with him before 5 April 2013. The evidence tying in the telephone number identifying Mr Korogll only became available from HMCTS after Mr Showai had given evidence. However Ms Ecclestone's legal team invited Elite to recall Mr Showai to give further evidence, but Mr Showai did not give further evidence, and there was nothing to prevent Mr Showai from giving further evidence. Mr Masefield submitted that the evidence about the mobile phones had come so late that no sensible reliance could be placed on it.
81. I accept that the evidence identifying Mr Korogll with the relevant telephone number had come late in the trial, but it came from a third party. It is sometimes the case that the truth is discovered in the course of a trial, and in my judgment this is what has occurred here. I bear in mind that the allegation against Mr Showai of Elite is that he was involved in very serious wrongdoing, and that although the balance of probabilities is the only standard of proof in civil proceedings, cogent evidence is necessary to justify a finding of serious wrongdoing, see *B (Children)* [2008] UKHL 35; [2009] 1 AC 11. The evidence showing telephone and text contact between Mr Showai and Mr Korogll proves that Mr Showai's original denial of any knowledge of Mr Korogll was false. Although Mr Showai was at times an engaging witness, I regret to say that it seems to me impossible to consider Mr Showai's false denial of earlier knowledge of Mr Korogll anything other than a deliberate lie.
82. I also accept that persons lie for all sorts of reasons, and that the telling of a lie does not necessarily mean that the liar has carried out the wrongful act alleged against him. However in the circumstances where Mr Korogll was the lead bailiff who used a warrant which was unrelated to the parties to seize the car, and where Mr Showai has lied to me about his knowledge of Mr Korogll, I find that the contact between Mr Showai and Mr Korogll must have been about Mr Showai's plans to seize the car if Mr Showai was unable to get possession of it on any other basis. It would have been obvious to Mr Showai that the car, which he had finished and delivered, was coming up to its first year's service and that it was likely to be moved for that purpose. The evidence discloses no other reason for the contact between Mr Showai and Mr Korogll.

83. As a matter of fairness to Mr Showai, I should also record my finding that he believed that, as he was owed monies secured on the car, he was entitled to take the car. This cannot, of course, justify the abuse of the coercive powers of a warrant to seize the car.
84. Mr Showai did say that there was no point in him acting with Mr Korogll to seize the car, because he had a right to bring proceedings to take the car, but he was well aware that the car was with Ms Ecclestone, and if he could not persuade HR Owen to give up the car, seizing the car was the way he could get the car back without further delay. Reliance was also placed on the fact that Mr Showai had attempted to interfere with Mr Korogll's attempts to take the car under the warrant at HR Owen, as showing that he was not involved with Mr Korogll. I accept that Mr Showai had attempted to interfere in the process. However in my judgment that was an example of Mr Showai becoming impatient and wanting the process to conclude, so that he could get the car.
85. A post it note was recovered from the bailiff's van which referred to "a lady says F/power car ... at HR Owen Acton". Mr Masefield submitted that this demonstrated that Mr Showai was not involved in the process of procuring the warrant to be executed, because he was not a lady. I cannot place any proper reliance on that post it note. I do not know who wrote it, or when it was produced. It seems to me to be as consistent with someone producing documents to hide their involvement with the wrongful execution of the warrant, as it is with it being a genuine call. It does not begin to explain the contact between Mr Korogll and Mr Showai.
86. Ms Mensikova gave evidence that she discovered that other dealers had, before 3 April 2013, also carried out HPI checks on the car. This is likely to have been as a result of plans made by the other party claiming the car, namely Ms Ecclestone, beginning to make inquiries about selling the car.
87. Mr Khyami stated that in 2013 he was phoned by Mr Showai who told him that the tracker on the car had been activated, showing that the car was being moved and was now at Lamborghini London. This appears to be a trading name of HR Owen. Mr Khyami said that Mr Showai had told him that Elite ran a check to determine insurance arrangements for the car through HPI, and arranged insurance because Elite had been informed that there was no insurance. Mr Showai told Mr Khyami that contact had been made with HR Owen who were going to release the car to Mr Showai of Elite. I accept this evidence from Mr Khyami. It was not suggested that Mr Khyami was party to Mr Showai's plan to seize the car with Mr Korogll.

The visit to HR Owen on 3 or 4 April 2013

88. Mr Showai said in his witness statement that on 4 April 2013 he went to HR Owen to collect the car, taking the log book, service book and spare keys with him. Mr Showai said that Mr King, the salesman at HR Owen would not release the car without approval from his manager. Mr King told Mr Showai to return the following day. There are no witnesses from HR Owen, who it appears decided not to co-operate with any of the parties to this litigation, but there are some emails which support the fact that Mr Showai did visit HR Owen on 4 April 2013. In the circumstances I find that Mr Showai did visit HR Owen in an attempt to get the car.

89. The telephone logs show that there was continuing contact between Mr Showai and Mr Almohandi, Mr Showai and Mr El Mudares, and Mr Showai and Mr Korogll. It is plain that Mr Showai was discussing the possible sale of the car to Mr Almohandi, and that Mr Almohandi carried out an HPI check on the car to check that it was free from financing. It is also likely, and I find, that Mr Showai was discussing with Mr El Mudares the possible sale of the car. This seems to me to be the most likely explanation for the contact between Mr Showai and Mr El Mudares at this time, which was shortly before the car was sold to Ansol, and from Ansol to Mr El Mudares. I also find that the discussions between Mr Showai and Mr Korogll must have related to the proposed seizure of the car.
90. The Claimant invites me to find that Mr Almohandi must have been party to the plan to seize the car, on the basis that Mr Almohandi knew that a Lamborghini car was coming. However Mr Almohandi had been told by Mr Showai that the car was coming, and there was nothing to suggest that Mr Almohandi would have known whether it was coming as a result of a lawful repossession (Mr Showai believing that the loan secured on the car gave him the right to take the car) or Mr Showai's wrongful plan with Mr Korogll. In fact there was a good reason for Mr Showai to involve Mr Almohandi in the onward sale of the car to Mr El Mudares. The reason was that Mr Almohandi had, on sale or return, a Brabus Mercedes motor car which Mr Showai wanted.
91. The Claimant was unable to point to any evidence establishing knowledge on the part of Mr Almohandi of Mr Showai's plan with Mr Korogll beyond Ms Brown's late evidence to the effect that Mr Almohandi was in a BMW motor car with Mr Showai and led the bailiffs to the car, and I address that evidence below.

Events on 5 April 2013

92. On 5 April 2013 the car was seized by Mr Korogll and Ms Brown, as bailiffs. The evidence showed that Mr Korogll and Ms Brown were, at the time of the trial, suspended pending an investigation being carried out by HMCTS into the circumstances in which the car had been seized pursuant to the warrant. Ms Brown had been working on 5th April 2013 with Mr Korogll, who was acting as Deputy Manager for that day.
93. It appeared that Ms Brown was carrying out evictions in the morning and received a call from Mr Korogll, asking what time she was finishing that day because he would need assistance with a job. When Ms Brown had finished with her evictions she had called Mr Korogll who said that he needed assistance in respect of a vehicle recovery as a matter of urgency. Ms Brown was asked to pick up the warrant by Mr Korogll and did so about 12.30 – 12.45 pm. She then drove to Warren Street, but spoke to Mr Korogll on the way, who asked to be picked up from George Street. Ms Brown picked up Mr Korogll from George Street, outside the Elite premises. Mr Korogll then drove the van. I accept this evidence.
94. In her affidavit Ms Brown said that Mr Korogll drove Ms Brown "a few streets later" and pulled up "alongside the passenger side of a BMW and started to converse in which I believe is his mother tongue, with two large males of Middle Eastern appearance". Ms Brown said that she had not met the men before and did not know their names. On 8 November 2013 Ms Brown made a witness statement in which she

confirmed that one of the men that she had seen on 5 April 2013 was in a photograph exhibited at MB1-1, and was the person with whom Mr Korogll had been talking when they had pulled up alongside the BMW motor car. It is common ground that MB1-1 is a photograph of Mr Showai.

95. Ms Brown made further witness statements in the course of the trial. In the first of these witness statements made during the trial and dated 25 November 2013, which was a Monday (after the trial had started on Thursday 21 November 2013) Ms Brown said that she had seen Mr Khyami giving evidence about an email that he had sent on 5 April 2013 to his solicitors, and his evidence that he had been told by Mr Showai that a team of persons from the Ecclestons were at HR Owen on 5 April 2013. Ms Brown said it was not true that anyone from the Ecclestons were at HR Owen, and that none of them had made any attempt to hijack the car. In this statement Ms Brown also stated that after Mr Showai had failed to recognise Mr Korogll from a description provided to him and from a photograph shown to him in Court, she had seen Mr Showai outside Court with a solicitor being shown a photograph which she thought was Mr Korogll and that Mr Showai purported to recognise Mr Korogll. I was given no details of this photograph, or how much of the photograph was seen by Ms Brown, and Ms Ecclestone's legal team did not make much of this point. I record this passage from the witness statement because it shows that Ms Brown had come to identify herself very closely with Ms Ecclestone's legal team. In circumstances where Ms Brown had been suspended pending an investigation into her role, and where it was apparent that giving evidence to Ms Ecclestone's legal team enabled Ms Brown to get out her evidence, such closeness was understandable.
96. Ms Brown also said that it seemed to her on 5 April 2013 that Mr Korogll and Mr Showai seemed to know each other. Ms Brown said that following discussions they drove off and Mr Korogll explained that the men were going to show them where the car was. Ms Brown continued stating that "after 1 hour we arrived at Harvey Owen Garage just off the A40 in Park Royal. We had followed the two men by car and all arrived together".
97. Ms Brown's evidence about the times that she arrived at HR Owen, and who was at HR Owen, was not clear. This was in part because she, when shown an email by Mr Masefield in cross examination about timings which referred to "collection officers", agreed that it must have been Mr Korogll and her, and modified her evidence. Mr Lowenstein submitted that this probably refers to the arrival of the specialist transporter truck which was in the event used to transport the car from HR Owen to Central London County Court. I do not think that it particularly helps Mr Lowenstein in his attempts to persuade me that Ms Brown was a reliable witness. I am perfectly clear that Ms Brown is an honest witness, and in my judgment she was doing her best to help me, but she was immensely susceptible to suggestions. This point about timings is simply an illustration of that.
98. This is important, because in a further late witness statement, produced in the course of the trial, Ms Brown gave evidence that she recognised Mr Almohandi, when he came to give evidence, as the other person who had been in the BMW motor car with Mr Showai. Ms Brown said that she had seen Mr Almohandi in the driver's position in the BMW motor car. She was sitting in the passenger seat next to Mr Korogll and leaned over Mr Korogll to see Mr Almohandi. She could be sure that Mr Almohandi was the driver because there was a steering wheel in front of him. It was a clear day.

Mr Almohandi denied that he was with Mr Showai when the car was picked up from HR Owen.

99. Mr Showai denied meeting Mr Korogll or Ms Brown and leading them to HR Owen. Mr Showai said in his witness statement that he returned to HR Owen on the following day, and that when he was there Court bailiffs arrived to impound the car. Mr Showai said that the Court bailiffs had nothing to do with him or Asset Management.
100. When giving evidence Mr Showai was able to adduce details from the vehicle tracker on his BMW motor car. This was a blue BMW motor car, which later evidence established had very bright internal colours and was a left hand drive car. The evidence shows that Mr Showai left his home on Abbey Road at 1259 hours. He also called Mr Korogll, and he then called Mr Almohandi. The tracker shows that he drove south to the A40, crossed the road and then rejoined the A40 turning westbound (the evidence established that it was not possible to turn right, and west, on to the A40 when driving south on the road taken by Mr Showai). The tracker shows that Mr Showai arrived at HR Owen at 1344 hours. The reliability of the tracker evidence was common ground before me.
101. The telephone records show that Mr Showai and Mr Almohandi were in extensive telephone contact throughout the day, including just after Mr Showai had left his home at Abbey Road. That means that Mr Almohandi could not have been with Mr Showai at that time, because Mr Showai would not have telephoned someone sitting beside him. Mr Lowenstein invites me to find that Mr Showai must have picked up Mr Almohandi after he had crossed the A40 going south, and before he had joined it going west. Mr Lowenstein relies on Ms Brown's identification of Mr Almohandi in the BMW motor car for that proposition. If there was such a stop it must have been for a very short period of time because the tracker on Mr Showai's BMW motor car did not show any apparent delay on the journey to HR Owen. It was common ground that there was a lot of traffic on the A40 on that day.
102. After arriving at HR Owen Ms Brown said that Mr Korogll had told the two men to wait, and Mr Korogll and Ms Brown had found a manager, Mr Paul King. Mr Korogll had spoken to Mr King while Ms Brown filled in details of the car on the warrant. Ms Brown said that "*shortly after, the two men who had showed us the garage entered the premises of Harvey Owen ... Mr King stated that they had been there the day before. He said that they were from a finance company ... the men were asked to wait outside*". Mr Korogll and Ms Brown had located the car in the service department. Mr Korogll had spoken to a Bailiff Manager at Central London County Court. Ms Brown said that the two men had come back in. Mr Korogll had told her to wait by the car, and he had taken the two men away for about 20 minutes. Mr Korogll had returned and spoken again with the bailiff manager. The two men had returned again and Ms Brown had been asked to take them from the premises. I accept that Mr Showai did attempt to speed up the process of seizing the car.
103. Ms Brown continued stating that there had been some discussion about removing the car, and the need to put fuel in the car. The two men returned with a third man, who put cans of fuel into the car. Ms Brown said that Mr Korogll reported that the man putting the fuel in the car was acting in Ms Ecclestone's interest. At some stage a

specialist carrier had turned up, and transported the car from HR Owen to the car park at the rear of the Court at 26 Park Crescent. I accept this evidence.

104. The tracker also showed that Mr Showai's BMW motor car left HR Owen, driving around a block, arriving back at HR Owen at 1444 hours. There is evidence that Mr Showai bought some food from a local shop, and a written receipt was produced. This was similar to a written receipt which had been provided, after a request had been made for a receipt, by the shop to one of the Claimant's legal representatives. I find that Mr Showai did buy some food from the local shop.
105. In the event the car was removed by a specialist carrier from HR Owen and taken to Central London County Court.

Events at Central London County Court

106. Mr Showai said that he could not believe what was happening and followed the truck removing the car to Central London County Court. Mr Showai said that he called Mr Khyami to find out who was playing games, whether Mr Khyami or the Ecclestons. Mr Khyami said it was nothing to do with him.
107. Mr Showai said that at the Court Mr Khyami proved ownership, and that Mr Khyami drove the car to Elite's premises where he signed a letter confirming its surrender to Elite for non-payment of the loan. Ms Mensikova said in her witness statement that she had typed up this letter.
108. Ms Brown said in her affidavit that she parked the bailiffs' van in the secure parking area. At about 4 pm Mr Korogll and Ms Brown had returned to complete the necessary details relating to the execution of the warrant. About 30-40 minutes later a person who was said to be Mr Khyami came in asking about the car which had been seized. There was said to be some discussion between Mr Khyami, the Court manager Ms Bowen Mc'Clean, and Mr Korogll and Mr Korogll explained the situation and the fact that Mr Khyami needed to pay some monies. Mr Khyami produced documents, which were copied, paid £150 and then obtained the release of the car. This was at about 4 pm. I accept this evidence.
109. Ms Brown said in her affidavit that when she went outside she saw Mr Khyami talking to the two men that had attended HR Owen earlier that day. They were outside Court in a Black Range Rover "*but as soon as Mr Khyami saw me I believe he walked away from the two men. When [Mr Korogll] came out I told him what I had seen. [Mr Korogll] told me to forget what I had seen. I accepted this as it was his matter and I was assisting.*" This evidence demonstrates a surprising lack of curiosity on the part of Ms Brown. I accept that Mr Khyami did speak with Mr Showai at Central London County Court, but I do not accept that Mr Khyami walked away when Ms Brown went outside, because Ms Brown gave later evidence suggesting that the conversation had continued and that she had had a better chance of seeing the two men.
110. Ms Brown said in her affidavit that the person who had filled up the car with petrol at the HR Owen servicing department drove away the car. Mr Khyami got into a white Range Rover and drove off.

111. Mr Showai said that Mr Khyami proved ownership, and that Mr Khyami drove it to Elite's premises where he signed a letter confirming its surrender to Elite for non-payment of the loan. Ms Mensikova said in her witness statement that she had typed up this letter. I accept this evidence.
112. Mr Khyami stated that he attended Central London County Court, and was shown Court documents which had nothing to do with him. He was not sure what car he had driven to the Court. After some discussion the car was released to him, and he returned the car to Elite. Mr Khyami had, before the car had been released to him, emailed his legal representatives to inform them that the car was going to be returned to him, and that he was going to surrender it to Elite. The email suggests that Ms Ecclestone's representatives knew about the car being taken, which was challenged on behalf of Ms Ecclestone, although no direct evidence was adduced about Ms Ecclestone's knowledge. In any event I did not doubt that this was Mr Khyami's state of mind on this point, and I note from other evidence that Mr Khyami himself had been followed by persons acting on behalf of Ms Ecclestone. In these circumstances he may have attributed more knowledge to Ms Ecclestone than she actually had. I also consider it very likely, and find, that HR Owen would have reported the removal of the car to the Ecclestons very shortly after it had been seized, and this is supported by some of the emails in the trial bundle.
113. Mr Khyami was asked to, and did pay, the sum of £150, but he did not know what that sum was for. In cross examination he suggested that the fee was for towing the car. In the light of other evidence I am satisfied that the £150 was paid to for the costs of transporting the car, by specialist transporter, from HR Owen to Central London County Court.

Elite involved in wrongfully seizing and transporting the car to Central London County Court but neither Mr Khyami nor Ansol was involved

114. Mr Khyami said that he surrendered the car to Elite because he still owed monies secured on the car. Mr Lowenstein pointed out that in pleadings prepared on Mr Khyami's behalf, it had been pleaded that Mr Khyami was the owner of the car until about 16 April 2013. Mr Khyami suggested it was simply a misprint of dates. Whatever the reason for this inaccurate statement, I find that Mr Khyami did surrender the car to Elite on 5 April 2013, and I find that the effect of this was to pass title to the car to Elite. This was the evidence given by Mr Khyami, Mr Showai and Ms Mensikova. There is no form of words required to pass title to the car, and it was both Mr Khyami's intention, and Elite's intention, that Elite should have title to the car after Mr Khyami had handed it over to Elite, and that Mr Khyami's debt to Elite should be reduced by the value of the car. Such a finding is consistent with the email which Mr Khyami had sent to his legal representatives stating that he was intending to surrender the car, and it was consistent with the letter which had been typed up by Ms Mensikova recording that fact.
115. Surrendering the car to Elite was also in Mr Khyami's interests because it enabled him to repay a significant part of the loan that was due from Mr Khyami to Elite. In circumstances where Mr Khyami voluntarily surrendered the car to Elite it is not necessary to determine whether Elite had an enforceable right to take the car under the loan agreement, or whether the loan agreement, purported to be secured on the car, was too uncertain to be enforced or infringed provisions of the Bills of Sale Act or the

Consumer Credit Act. This is because, whether the loan agreement dated 12 April 2012 and Elite's retention of a spare key and registration documents was effective or not, Mr Khyami, having obtained possession of the car at Central London County Court, surrendered the car to pay off the loan. There was a loan, and it was repayable. Whether Mr Khyami had a legal obligation to surrender the car is in many respects nothing to the point, although I accept and find that Mr Khyami believed that he did have such a legal obligation.

116. In these circumstances, subject to Mr Lowenstein's points about illegality which I address below, Mr Khyami passed the immediate right to possession of the car, and ownership of the car to Elite on 5 April 2013. Ms Ecclestone had no better right to the car than Elite after Mr Khyami had passed title to the car.
117. I should also deal with Mr Lowenstein's pleading point in the light of this finding about the surrender of the car. In my judgment the essential and material facts were that: Mr Khyami was the owner of the car; Mr Khyami borrowed monies from Elite; those monies were purported to be secured on the car under a loan agreement; and that Mr Khyami gave up the car to Elite in part satisfaction of the loan. This was sufficiently pleaded in the Defence and Counterclaim, and I would have rejected Mr Lowenstein's application for a directed non-suit, even without the amendment which was made by Elite. The existing pleadings permitted Ms Ecclestone to know the case against her. I should record, out of fairness to Mr Lowenstein, that the evidence showed that the loan agreement was not agreed in February 2012 and then evidenced in writing in April 2012. The position was more fluid than that. There had been discussions about a loan from late 2011, monies had been advanced on a short term basis in February 2012, and in April 2012 it had been necessary to put matters on a more formal basis when the short term loan had not been repaid.
118. I should record that no one suggested that Mr Khyami had been involved in the plans made by Mr Showai and Mr Korogll to seize, wrongfully, the car, and there is no evidence to suggest any involvement on the part of Mr Khyami in any such plan.
119. As noted above, the Claimant, relying on Ms Brown's late evidence about Mr Almohandi, claims that Mr Almohandi and Ansol were involved in the wrongful seizure of the car pursuant to the warrant.
120. The evidence establishes that Mr Almohandi was a friend of Mr Showai, and was in regular contact with Mr Showai. The evidence also shows that Ansol made a small profit on the sales of the Mercedes Brabus and the car. These facts alone would not be sufficient to justify a finding that Mr Almohandi was involved in the wrongdoing by Mr Showai and Mr Korogll. The critical question is whether Ms Brown's identification of Mr Almohandi in the BMW motor car was reliable.
121. In my judgment Ms Brown's identification evidence in relation to Mr Almohandi was not reliable. Ms Brown was the classic example of an honest, but mistaken witness. I make this finding for the following reasons. First Ms Brown's original description of the two men as being of equivalent large build was not a fair description of Mr Almohandi. He was of a much slighter build than Mr Showai, and shorter than him. He could not sensibly be described as large build. Ms Brown was unable to give any satisfactory explanation for the inconsistency between her first description, and the appearance of Mr Almohandi. Secondly Ms Brown stated that she saw Mr

Almohandi in the driving position, with a steering wheel in front of him, on the right hand side of the BMW motor car. In fact the BMW motor car was a left hand drive motor car, as appears from the photograph produced during the trial. This means that Ms Brown's evidence about seeing Mr Almohandi with the steering wheel in front of him was simply a construct of her mind, even though she plainly believed it to be true as she was giving the evidence.

122. Thirdly Ms Brown purported to recognise Mr Almohandi in Court, and then to understand the significance of her recognition when Mr Almohandi went to give evidence. Although Mr Almohandi was not in any dock, and this was not a dock identification, many of the weaknesses of a dock identification were involved in the purported identification by Ms Brown. Mr Almohandi was sitting near to Mr Showai, who Ms Brown considered to have acted wrongly and who she recognised. Evidence about the events of 5 April 2013 had been adduced at length, creating an environment in which persons might honestly but mistakenly purport to recognise persons when they were in truth unknown. Fourthly Ms Brown was, for the reasons already given above, a very suggestible witness who had closely identified with the Claimant's legal team. I find that, having listened to all the evidence and submissions, and in the dynamics of the Court room, Ms Brown saw Mr Almohandi and in her own mind considered him, wrongly, to be present on the day and driving the BMW motor car. Fifthly, but still importantly, I saw no reason to doubt the evidence of Mr Almohandi. Mr Lowenstein invited me to step back and consider all of the evidence showing friendship and contact between Mr Showai and Mr Almohandi, and Mr Almohandi's involvement in the sale. I have done so, but it has not caused me to alter my view. Mr Khyami was a close friend and in regular contact with Mr Showai, but Mr Lowenstein did not suggest Mr Khyami's involvement with Mr Showai's wrongdoing. It was perfectly reasonable for Mr Almohandi to be a friend of Mr Showai, without being involved in Mr Showai's wrongdoing, in the same way that Mr Khyami was a friend of Mr Showai, and was not involved in wrongdoing. There was a very good explanation for Mr Almohandi's involvement in the transactions, namely that he had a Mercedes Brabus car, on sale or return, that Mr Showai wanted.
123. It is not necessary for me to make findings about whether Mr Showai, and another, drove in convoy with Mr Korogll and Ms Brown to HR Owen in the light of my earlier findings about contact between Mr Showai and Mr Korogll. However I find that Ms Brown witnessed a conversation between Mr Korogll and Mr Showai when they were respectively in the van and the BMW motor car on 5 April 2013. This is because Ms Brown has been consistent about this. Whether this was before or after the car had been seized is more difficult to determine, in the light of the conflicting evidence about timings. I also accept that at some time that day Ms Brown did drive along the A40 in convoy with the BMW motor car, and again it is not necessary to find whether this was before or after the visit to HR Owen.
124. I should note that Ms Brown was wrong about the colour of the BMW motor car, but this did not seem to me to be a point which weighed much against her evidence in circumstances where it is common ground that Mr Showai had driven a BMW motor car on the day. Ms Brown also did not recollect the rather lurid colour of the upholstery, but it is notorious that different matters are recollected by different witnesses, and I would not have discounted her evidence on that ground alone.

Elite had the immediate right to possession of the car after delivery on 5 April 2013 and illegality is no defence to Elite's claim

125. It is therefore necessary to address the question of illegality. On my findings Elite managed to get the car transported to Central London County Court by getting Mr Korogll, a bailiff, to seize the car pursuant to a warrant which had nothing to do with the parties. This was unlawful behaviour, which involved serious wrongdoing. As noted above there is an ongoing separate inquiry into that matter, and it is not necessary for me to say anything more about it. However, as appears from my findings above, the true owner of the car was Mr Khyami, and he was the person who attended at Central London County Court, lawfully got the car from the Court, and surrendered the car to Elite, and purported to pass possession and title to Elite.
126. Mr Lowenstein relied in part on the judgment of Lord Hoffmann in *Gray v Thames Trains* [2009] UKHL 33. Lord Hoffmann had noted a narrow and wider form of illegality defence. In the narrower form, damages cannot be recovered for losses which flowed directly as a result of punishment imposed on a person for their illegal act. This prevented a recovery for loss of earnings while a person was imprisoned for manslaughter, even though it was common ground that the Claimant would not have committed manslaughter if he had not had suffered psychiatric injury in the Ladbroke Grove railway accident. The wider form of the defence was that “*you cannot recover compensation for loss which you have suffered in consequence of your own criminal act*”. This was because it is offensive to public notions of the fair distribution of resources that a claimant should be compensated for the consequences of their own criminal conduct. Lord Hoffmann noted that the defence was not so much a principle as a policy, noting that there might be differences between different areas of law. As the Law Commission pointed out in “*The Illegality Defence*” at paragraph 3.18 in relation to *Gray v Thames Trains*, illegality issues might give rise to difficult issues of causation.
127. Mr Masfield referred to the different tests for illegality in different areas of law, and pointed out that at paragraph 3.42 of the Law Commission report it was noted that where a legal interest in property is transferred under a contract that involves some element of illegality, ownership of the interest passes, and “*the legal rights created by the contract will be recognised and enforced by the Courts*”. This has been termed the “reliance principle” and was applied by the House of Lords in *Tinsley v Milligan* [1994] 1 AC 340. Conversion is an area of law where the reliance principle is engaged, as appears from the case of *Bowmakers Limited v Barnet Instruments Limited* [1945] KB 65, where a claim for conversion was upheld even though the tools had been supplied under arrangements in breach of statutory pricing regulations.
128. In my judgment, illegality does not prevent Elite from bringing its claim for conversion. This is because Elite derived title from a lawful transaction with Mr Khyami, under which Mr Khyami reduced his indebtedness to Elite, and Elite got possession and title to the car. In these circumstances Elite did not have to, and did not, rely on the circumstances in which Elite had got the car away from Ms Ecclestone, who was herself not the owner of the car. The illegality which had occurred was in the very near past, but it was not the immediate cause of Elite's possession and title to the car. Elite will not be compensated for their own wrongful act, but for Ms Ecclestone's wrongful conversion of the car. The immediate cause of Elite's possession and title was Mr Khyami's surrender of the car. Elite's wrongful

actions were not more relevant to Elite's title and possession, than the historic apparently wrongful dealings with registration documents and number plates.

129. It is no part of the Court's business to promote or reward wrongdoing, but it is the principled function of the Courts to attempt to resolve disputes fairly and to vindicate the legal rights which are engaged. If the Courts did not enforce legal rights in property because of historic wrongdoing, there would be created an area of society which was not subject to the rule of law. That would have meant in this case that might or power would be right, because the civil Courts would not intervene. This cannot be right, and it is not the law, as appears from *Costello v Chief Constable of Derbyshire* [2001] EWCA Civ 381; [2001] 1 WLR 1437 at paragraphs 14 and 31.

Dealings with the car after it is transferred to Elite

130. Mr Showai said in his witness statement that Mr Almohandi came round at about 6.30 pm on 5 April 2013 to inspect the car and to take photographs for his client. Mr Almohandi said in his witness statement that he had gone round, because he lived and worked close to Elite's showroom, and had said that he wanted the car, and that a deal would be worked out on Monday, which would be the 8th April 2013. There had been a quick discussion about the price, of £250,000. Mr Almohandi had also wanted to run HPI checks, and to speak to clients to determine whether they still wanted the car. This evidence seems to me to be consistent with other evidence, and I accept it.
131. The following evening Ms Ecclestone had arrived with some others to demand the return of the car. Mr Showai refused, and said that he was determined to sell the car quickly because he did not want to remain involved in the feud between Ms Ecclestone and Mr Khyami.
132. Mr Showai said that on Monday 8 April 2013 he agreed with Mr Almohandi to use advance part payments of £92,000 and £26,000, a total of £118,000, originally made in respect of Land Rovers, in respect of Mr Almohandi's purchase of the car.
133. Mr Almohandi also provided a Mercedes Benz CL B63 Brabus by way of part exchange. This was inspected by Mercedes Benz on 8 April who confirmed its condition on 10 April. Its value was agreed at £132,000.
134. On 11 April 2013 an invoice was drawn up and a letter was produced confirming that the car was free of financing. The invoice was later amended to reflect the fact that the Mercedes had been taken by way of part exchange.
135. On 15 April 2013 Ms Ecclestone obtained the without notice order against Mr Khyami and Elite.
136. In the meantime the car was released on 16 April 2013 when Mr Almohandi attended with a valid insurance certificate. Mr Almohandi said that he had no knowledge of the dispute between Ms Ecclestone, Mr Khyami and Elite concerning the car until shortly after he had taken delivery of the car, and had been contacted by Ms Ecclestone's legal representatives. I accept that evidence.
137. Mr Almohandi gave evidence that he, acting on behalf of Ansol, agreed a sale of the car to a buyer from Turkey on 17 April 2013 for a sum of £265,000. A deposit of

£65,000 (£64,985 after bank charges) was paid. An invoice was issued showing the payment of the deposit.

138. The Claimant has raised issues about whether there was in truth a sale from Elite to Ansol. The call logs show that there were earlier calls to Mr El Mudares by Mr Showai. Mr Lowenstein suggested that Mr Almohandi had been put into the picture as a middleman to complicate matters. In my judgment the position was that Mr Almohandi had a Mercedes Brabus car that Mr Showai wanted. As Mr Almohandi noted, he had made a £3,000 profit. It is true that the Mercedes Brabus was on sale or return, and the purchase was completed on 10 April 2013, but such an arrangement was not unusual with high value cars, and Elite possessed a Ferrari on such terms. The documents were consistent with such a sale, and I find that there was a sale of the car from Elite to Ansol.
139. On 17 April 2013 the injunction was served on Elite by Ms Ecclestone's legal representatives, a copy of the order having been emailed on 16 April 2013.
140. On 18 April 2013 Ansol was added at a further without notice hearing. This order was served on Ansol on 19 April 2013. On 22 April 2013 the car was returned to Ms Ecclestone.
141. After the injunction preventing the sale and requiring delivery up had been granted to Ms Ecclestone, Mr Almohandi had contacted Mr El Mudares. Mr El Mudares had requested return of the deposit and the deposit had been returned, and the contract rescinded. Mr El Mudares had claimed to have lost £36,000 because of a wasted trip to London to collect the car. Elite also provided a credit note to Ansol in the sum of £250,000, although Ansol only relied on that as security if necessary. In the event, at the trial, it was clarified that Ansol would rely on the purchase from Elite, and claimed delivery up of the car. Elite retained the benefit of the proceeds of sale of the car.
142. Mr Showai recorded in his witness statement that he had been aware of many articles in the press, which he attributed to Ms Ecclestone or persons working for her, to the effect that the car had been stolen. Some of the articles named Elite and Mr Showai. The articles referred to the car being "repossessed", "missing, and "stolen". Reference was made to a custody battle with ex-boyfriends and debts being secured on the car.
143. The injunctive proceedings were reported in the press, together with unsuccessful applications to commit Elite and Mr Showai for contempt of Court.

Conversion of the car and wrongful grant of interim injunctions

144. For the detailed reasons given above, by the end of the day on 5 April 2013 Elite had obtained title to the car and possession of the car from Mr Khyami. Ms Ecclestone did not have a better right to the car than Elite after the handover from Mr Khyami. Mr Khyami had no better right to the car, because he had surrendered his rights in exchange for a reduction in his debt. Elite sold the car to Ansol on 11 April 2013, but was entitled to, and did, retain possession until the car was transferred to Ansol on 16 April 2013. Ms Ecclestone converted the car by obtaining an injunction obtained as a result of the false statement that the car was not a gift to Mr Khyami. The injunction,

granted on 15 April 2013, interfered with Elite's right to possession of the car by requiring delivery up of the car, and interfered with the sale made by Elite by requiring Ansol to deliver up the car. No point was taken on behalf of Ms Ecclestone to the effect that there was no interference with the right to possession because the injunction did not appear to have been served until late on 16 April 2013. In my judgment the grant of the injunction itself was an act of conversion, and the injunction also affected Elite's ability to deal with the car. Ms Ecclestone is therefore liable to Elite for conversion. I will address the issue of damages later.

145. Ansol was, after purchasing the car on 11 April 2013, the owner of the car, and obtained possession of the car on 16 April 2013. Although Ansol purported to sell the car on 17 April 2013, Ansol retained possession, and the sale was subsequently rescinded. Ms Ecclestone obtained an injunction against Ansol requiring delivery up of the car, and obtained delivery up of the car. This was a conversion of the car.

Should the cross undertaking in damages be enforced

146. It is apparent that the interim injunctions granted to Ms Ecclestone should not have been granted, because they were obtained on the basis of evidence which turned out to be false. To the extent that the interim injunctions have not already lapsed (they were limited in time), I set them aside.
147. The issues are therefore whether I should order an inquiry as to damages suffered by Elite and Ansol pursuant to the cross undertakings, and if so, what amount should be ordered. The issue is effectively academic because, for the reasons given above, Ms Ecclestone is liable to both Elite and Ansol for conversion, and it has not been suggested that in the circumstances of this case, an award for damages under the cross undertaking in damages would be any different from an award of damages for conversion.
148. It is established that as a matter of general principle and practice that where a Claimant has obtained an interim injunction, and the Court decides not to make the injunction permanent, the Defendant can normally expect, virtually as of right, to have an inquiry as to the damages to which he is entitled pursuant to the cross-undertaking. The Court may refuse to order such an inquiry if it would be inequitable to do so. Special circumstances are therefore required to be shown if an inquiry is to be refused. There is a helpful discussion of the relevant principles in *Lunn Poly Limited v Liverpool & Lancashire Properties Limited* [2006] EWCA Civ 430 at paragraphs 42-43.
149. I will deal with Ansol first. There is no reason not to order an inquiry under the cross undertaking in damages in the light of my findings that Ansol was not involved with Elite in wrongful dealings with Mr Korogll, and I order such an inquiry.
150. I then turn to deal with Elite's position, which is more difficult. Elite's wrongful actions with Mr Korogll were part of the basis on which the injunction was obtained. The actions involved the abuse of the coercive powers of a warrant for private purposes, and involved wrongful actions by a public official, namely the bailiff, for the private purposes of Elite. On the other hand Ms Ecclestone obtained the injunction through false statements denying that the car was a gift to Mr Khyami. There was interference with a proper sale made by Elite. In such circumstances Elite

is entitled to an inquiry almost as of right. Mr Masfield submitted that if there was wrongdoing on the part of Elite, the proper forum for punishing Elite was in the criminal Courts, rather than denying them legal redress.

151. I accept that the decision whether to order an inquiry under the cross undertaking is fact specific. In the particular circumstances of this case I refuse to order an inquiry into damages for Elite. This is for a number of reasons. First Elite's wrongful actions with Mr Korogll were the background against which the injunction was granted, and although there was the critical involvement of Mr Khyami, who owned the car, in passing possession and title after the wrongful seizure to Elite, Elite part brought the injunctive proceedings on itself. Secondly the wrongdoing on Elite's part was very serious, and partly destructive of the integrity of the civil enforcement process. Thirdly, as a result of the sale on to Ansol, and the agreement between Ansol and Elite that the sale should stand, there is no question that Elite will have lost either the car or the value of the car, so refusing an inquiry into the cross undertaking in damages will not involve any disproportionate punishment of Elite. Fourthly, Elite will be entitled to damages for conversion in any event, and it is not necessary for the Court to become involved in exercising its equitable jurisdiction to assist Elite.

The losses suffered by Elite

152. Mr Showai said that the allegations in Ms Ecclestone's claim, to the effect that Elite was prepared to sell cars that it did not own, were untrue and that many of his clients were sensitive to publicity and both clients and suppliers were unwilling to be associated with a company connected with a theft of the car. Many of the articles are in the trial bundles and they do make reference to Elite and questions about the car, and the circumstances in which the car came to be in Elite's possession. The articles are summarised at paragraph 152 of Elite's opening Skeleton Argument, and there is reference to the disappearance of the car, a mystery, a custody battle over the car, and the car being stolen.
153. Mr Showai said that persons dealing with Elite had withdrawn from concluded, or nearly concluded, transactions because of the adverse publicity created by Ms Ecclestone. This included a Ferrari F430 owned by Mr Kamal Abouligait on which Elite hoped to make profit or commission on sale of £15,000. Ms Mensikova said that this sum was inclusive of VAT on a UK sale. After learning about the allegations the Ferrari had been withdrawn from Elite. Mr Showai also referred in his witness statement to the loss of a "huge order" through Mr Philippe Karkafi of 1,000 BMW X5 and 1,200 BMW X6 motor cars. This claim was not pursued at trial.
154. Ms Mensikova said in her witness statement that Ms Ecclestone's public allegations that Elite did not have title to the car had caused significant and unjustified damage to Elite's reputation and business. There were stories in the press about the car being stolen. Ms Mensikova said that she suspected that Ms Ecclestone or someone connected to her had given the information to the press. Ms Mensikova said that these stories had caused some clients to withdraw business, or to change the terms of business. Ms Mensikova said that Elite's usual sales and rental business had also been severely affected and gave details of the reduction in business.
155. In her second witness statement Ms Mensikova recorded that Elite's business was based on recommendations and word of mouth. She recorded that many contacts

would not deal with Elite whilst Ms Ecclestone persisted in her allegations. Ms Mensikova said that an expected profit of £394,718.66 had translated into an actual loss of £40,833.34. The bases for these calculations were set out and included historic sales, opening stock, closing stock, and sales since 16 April 2013. I was provided with helpful tables setting out an analysis of Elite's claim prepared by Ms Ecclestone's legal team.

156. I accept that both Mr Showai and Ms Mensikova considered that they had lost business as a result of the public nature of the conversion of the car by Ms Ecclestone. I also accept that damages can be awarded to a motor trader who suffers loss in such circumstances. This appears from *Owen & Smith v Reo Motors* (1934) LT 274; 1934 All ER 734. In that case a car was wrongfully taken and publicly dismantled in a street so that parts could be removed. This had caused the collapse of the business, which had ceased by the time of the trial. In the event the award of damages appears to have been an award of general damages for loss of reputation, together with an element of what were described as punitive damages, which later cases have explained as being exemplary damages.
157. I also accept that calculating a loss of business will not be capable of exact calculation, and that a broad and general approach is permissible, compare *Parabola Investments v Browallia Cal* [2010] EWCA Civ 486; [2011] QB 477. However I do not find that Elite has been able to prove a loss of profit in accordance with its suggested claim. Elite is a small business. There were very few other employees apart from Mr Showai and Ms Mensikova, being Mr Mohammed Ridha, a general assistant and driver, Mr Laith Osi, a driver and Mr Talayabek Aitmambetov who worked on vehicles and supervised Elite's garage at Montagu Mews South. The success of the business of Elite depended on Mr Showai, who developed friendships with many of his customers. The business was at the highest end of the car business, with customised models of very expensive cars. The analysis of previous years' business showed that levels of business were erratic. There was no discernible pattern which enabled me to see that there was any measurable fall off of business in the period from 16 April 2013 until 21 November 2013. There had been substantial periods in the past where cars had not been sold, and in fact there were car sales shown in this case. There had been some past sales on which not much profit had been generated, and some of these sales had generated limited profit. Ms Mensikova defended the profit margins on which the claim was based by noting that there had been a very good year, but the reality was that the claim was based on the fact that every year had been a very good year for Elite. I did not consider that criticisms of the overhead arrangements or stock figures made by Mr Lowenstein were justified, but he was right to identify that it was not possible to show a general loss of profits attributable to Ms Ecclestone's conversion of the car.
158. The evidence also showed that many customers maintained dealings with Elite, no doubt because of the strong personal relationships which Mr Showai fostered. Indeed it was apparent that Mr Showai had spent some time working on a deal, which had originally formed part of the claim but was not pursued at trial, which if it had come off, would have generated very substantial returns for Elite.
159. On the other hand I am satisfied from the evidence that the Ferrari F430 owned by Mr Kamal Abouligeit on which Elite hoped to make profit or commission on sale of £15,000 was withdrawn as a result of Ms Ecclestone's wrongful claims against Elite,

and is entitled to compensation for that loss. It was not guaranteed that the Ferrari would sell, and it had been held for a period before the adverse publicity had occurred. In the circumstances it seems to me that an award of £7,500, representing the loss of opportunity to earn commission is about right.

160. Ms Mensikova gave evidence that, because of the fall off in business and the need to generate some income, on 11 May 2013 Elite had sold a Range Rover Autobiography for £45,000, having purchased it in November 2012 for £65,000, which had a claimed stock value of £53,000. This car had been hired in the interim. A Rolls Royce Ghost had been sold for £120,833.33 on 14 May 2013 having been bought in December 2012 for £146,666.67. There was some unexplained minor increase in mileage on the car. I accept that the cars were sold more speedily than had been planned (reference was made to a “fire sale” in submissions) but I am not satisfied that the need for this sale was because of Ms Ecclestone’s conversion of the car. It is apparent that by this time Elite was engaged in expensive litigation, and reference was made to the need to raise funds. Elite is not entitled to damages because it had cash flow difficulties in circumstances where I do not find that those cash flow difficulties were caused by Ms Ecclestone’s conversion of the car. If I had been persuaded that this loss was attributable to the conversion I would have awarded the sum of £8,000 for the Range Rover, and £20,000 for the Rolls Royce Ghost.

The losses suffered by Ansol

161. Ansol is the owner of the car, and entitled to an order for delivery up of the car.
162. A claim for depreciation of the car was discussed at the trial, but there was no evidence. In the event Ansol claimed interest on the cost of the car, £250,000, from the time at which they should have had the car, until delivery up of the car. I accept that interest should be ordered. The rate of interest was not the subject of detailed submissions by the parties, there was some reference to interest at the Judgment Act rate, and I will need assistance from Ansol and Ms Ecclestone about the rate and amount of interest to be awarded, if the matter cannot be resolved by agreement.
163. Ansol claimed the sum of £15,000 as loss of the profit that would have been made on the sale to Mr El Mudares. The documentary evidence supports the facts of the sale at £265,000, and the cancellation of the sale. In the circumstances I find that Ansol lost the sum of £15,000 as profit on the sale of the car, and award that sum to Ansol. Ansol is entitled to interest on that sum, and I will require submissions from the parties on rate and amount. Ansol is entitled to the interest and damages both for the conversion of the car, and pursuant to the inquiry under the cross-undertaking in damages.
164. Mr Almohandi also gave evidence about paying someone £250 to inspect the car at Biggin Hill where it is currently being stored by Miss Ecclestone’s father but that appears to be part of the costs of the litigation.

Conclusion

165. For the detailed reasons given above I find that:
- (i) the car was a gift from Ms Ecclestone to Mr Khyami;

(ii) Mr Khyami transferred possession and title to the car to Elite at the end of the day on 5 April 2013 by surrendering the car to Elite in return for a reduction of the sums he had been loaned by Elite;

(iii) Elite transferred title in the car to Ansol by selling the car to Ansol;

(iv) Ms Ecclestone's conduct was wrongful and interfered with title and possession by Elite and Ansol by interfering with sales made by Elite and Ansol, and by removing the car, and by preventing dealings with the proceeds of the sale of the car;

(v) Ms Ecclestone has no defence to the claim for conversion on the basis of better title by Ms Ecclestone or Mr Khyami. This is because Ms Ecclestone did not own the car, and after possession had been taken from her, Mr Khyami, who owned the car, gave it to Elite in part satisfaction of his debt. Ms Ecclestone has no defence to the claim for conversion on the basis that Elite obtained possession after Mr Showai conspired with Mr Korogll to get possession of the car. This is because this wrongful conduct by Elite was not the basis on which Elite got possession and title to the car. Elite got possession and title to the car from Mr Khyami, who was, until he surrendered the car to Elite, its rightful owner;

(vi) the injunctions obtained by Ms Ecclestone were wrongfully granted, because they were obtained on the basis of false evidence to the effect that the car had not been a gift to Mr Khyami. An inquiry on the cross-undertaking in damages should be ordered for Ansol. An inquiry on the cross-undertaking in damages should not be ordered for Elite;

(vii) Elite's losses as a result of Ms Ecclestone's conversion of the car are £7,500. Ansol's losses are £15,000, and Ansol is entitled to interest on the value of the car and on its losses both for conversion and pursuant to the inquiry under the cross-undertaking in damages;

(viii) Ansol is entitled to delivery up of the car.

166. In these circumstances Ms Ecclestone's claim against Elite and Ansol for conversion of the car is dismissed. Elite is entitled to judgment for damages for conversion in the sum of £7,500. Ansol is entitled to judgment, both for conversion and under the inquiry into the cross undertaking in damages, for: (a) delivery up of the car; (b) interest on £250,000 until delivery up of the car, at a rate to be determined; and (c) damages in the sum of £15,000 and interest to be determined.