



Neutral Citation Number: [2022] EWHC 541 (QB)

Case No: QB-2020-002644

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 March 2022

Before:

GERAINT WEBB QC

(sitting as a Deputy High Court Judge)

Between:

HILDEN DEVELOPMENTS LIMITED

Claimant

- and -

(1) PHILLIPS AUCTIONEERS LIMITED

(2) ROBERT TIBBLES

Defendants

Jeremy Brier (instructed by Cripps Pemberton Greenish LLP) for the **Claimant**

Jonathan Chew (instructed by Stewarts Law LLP) for the **Second Defendant**

Hearing dates: 20, 21, 24 January 2022

Draft judgment supplied to parties: 4 March 2022

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.

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 14 March 2022.

GERAINT WEBB QC sitting as a deputy High Court Judge

Introduction and background

1. The Claimant, Hilden Developments Limited (“**HDL**”), seeks a declaration that HDL has title to a painting by Damien Hirst entitled “*beautiful tropical, jungle painting (with pink snot)*” (“**the Painting**”) and claims damages against the Second Defendant.
2. HDL was incorporated in the British Virgin Islands (“**BVI**”) in December 1990 by Mr Nigel Tibbles. HDL is one of several companies which Nigel Tibbles, then a solicitor, incorporated for family-related purposes; another such company relevant to these claims is Jimson International Limited (“**Jimson**”).
3. Mr Robert Tibbles, the Second Defendant, is the fourth son of Nigel Tibbles. He began collecting contemporary art in the mid-1980s and, over time, acquired a significant collection, particularly works by Damien Hirst.
4. On or around 13 February 2020 the First Defendant auction house (“**Phillips**”) sold approximately 40 works of art which had been consigned to it by Robert Tibbles (“**the Auction**”). The sales of Robert Tibbles’s collection raised several million pounds. The Painting sold for a hammer price of £280,000, or £350,000 inclusive of buyer’s premium.
5. HDL intervened to stop the release of the Painting following the Auction and commenced these proceedings on 28 July 2020, seeking (1) a declaration that it has title to the Painting; (2) an order for delivery up of the Painting; and (3) damages or an indemnity covering the cost of collection of the Painting.
6. Robert Tibbles counterclaims for a declaration that he has good title to the Painting and for damages in respect of HDL’s cancellation of the sale. In the event that he is found not to have legal title to the Painting and/or the entire beneficial interest in the Painting, he claims to have a beneficial interest in proportion to his contribution to the price of the Painting.
7. Pursuant to a Consent Order of 18 November 2020 Phillips retains possession of the Painting pending further order and the claim against it was stayed; it has therefore played no part in the trial. The Order also limited this trial to the issues of “*the nature of [HDL and Robert Tibbles’s] respective rights and interests in the Painting, including which of them has the immediate right to possession*”. The damages claims advanced by both HDL and Robert Tibbles are therefore not matters for determination at the present time.
8. HDL’s case is that in about October 1998 Nigel Tibbles decided that HDL would buy the Painting as an investment. It is said that Nigel Tibbles instructed Robert Tibbles to negotiate the purchase of the Painting on behalf of HDL with the vendor, White Cube gallery. Nigel Tibbles claims to have paid a deposit of £10,000 in respect of an agreed purchase price of £68,000 in October 1998 but has not been able to obtain copies of his bank statements for this period. The balance of £58,000 was paid by Jimson in February 1999 and it is said that this payment was made on behalf of HDL as HDL did not have a bank account. In the alternative, it is said that if Robert Tibbles, not HDL, is found to have contracted to buy the Painting in October 1998 then the contract was subsequently novated such that, by February 1999, White Cube and HDL were the contracting parties.

9. Robert Tibbles's position is that he agreed to buy the Painting from White Cube in about October 1998. He says that he agreed with Jay Jopling of White Cube that he would pay a £10,000 deposit and that the balance would be paid in February 1999 when he received his bonus. He states that he does not now, twenty-three years later, recall the details of the various payments. He believes that he paid the deposit personally, but, again, has been unable to obtain copies of his bank statements for this period. He claims that he initially asked White Cube to address the invoice to his long-term partner, Mr Paolo Gabrielli at Mr Gabrielli's address in Switzerland because he had been informed that this would mean that White Cube would not have to charge him VAT on the Painting.
10. Between October 1998 and February 1999 Robert Tibbles's relationship with Paolo Gabrielli came to an end. He says that his father agreed that he could use HDL's name and BVI address on the invoice in lieu of Paolo Gabrielli's name and Swiss address. His position is that he transferred £40,000 to Jimson's account for the Painting in February 1999. It is said that the remaining balance of £18,000 was loaned to him by his father via Jimson and was subsequently repaid at some stage. Mr Chew, counsel for Robert Tibbles, submits that it is likely that the monies were repaid in June 1999.
11. There is no dispute about the following matters. First, at the relevant time Robert Tibbles was a collector of contemporary art and of works by Damien Hirst in particular. Second, the price of the Painting was agreed in about October 1998 between Robert Tibbles and White Cube gallery. Third, Jimson paid the balance of £58,000 in February 1999 to White Cube. Fourth, the final invoice in February 1999 was addressed to HDL at its BVI address. Fifth, the Painting was delivered to Robert Tibbles in December 1998 and was displayed, along with many other works, in his London home until shortly before the Auction in 2020; it was insured by him during this period.
12. This claim is part of a much larger ongoing dispute between members of the Tibbles family. According to HDL's Reply there have been multiple claims issued in various courts (including in France, Monaco and England) between Robert Tibbles on the one hand and other family members and/or companies operated by those family members. Most of those other claims have concerned a property in the south of France ("**the French villa**"). The multiple legal disputes were described as a "family feud" by Mr Brier, HDL's counsel, and as "litigation warfare" by Mr Chew, Robert Tibbles's counsel; both descriptions appear to be accurate.

The issues

13. The issues, as agreed between the parties, are as follows:
 - 13.1. Does the Claimant or the Second Defendant have legal title to the Painting?
 - 13.2. If the Claimant has legal title to the Painting, is the Claimant entitled to an order for delivery up of the Painting?
 - 13.3. If the Claimant has legal title to the Painting, does the Second Defendant have the entirety of the beneficial interest in the Painting?
 - 13.4. Alternatively, does the Second Defendant have a beneficial interest in the Painting of 50/68 or in the further alternative 40/68?
 - 13.5. What is the significance, if any, of the Second Defendant's possession of the Painting?

Remote trial arrangements

14. The trial of this matter was conducted remotely via MS Teams at the request of the parties and in light of the fact that Nigel Tibbles and Sebastian Tibbles both sought to give evidence from abroad (France, and Singapore, respectively).
15. Prior to the commencement of trial I directed that (i) the Claimant's legal representatives obtained confirmation that no permissions were required from the relevant foreign authorities for video evidence to be given at the trial by those witnesses, in accordance with the Practice Note of the Chancellor of the High Court dated 11 May 2021 and Practice Direction 32, Annex 3, paragraph 4; and (ii) the parties provide a draft protocol, agreed if possible, for consideration by the Court in respect of the arrangements for the giving of remote evidence by video link. In respect of the protocol I drew the parties' attention to the guidance provided by Kerr J in *David Huber, Elena Lieskovska v X-Yachts (GB) Limited, X-Yachts A/S* [2020] EWHC 3082 (TCC). The relevant confirmation was obtained from the Claimant's solicitors and I approved the agreed protocol prior to the witnesses giving evidence.

The factual evidence

The factual witness evidence of the Claimant

16. HDL called Nigel Tibbles and Sebastian Tibbles to give evidence.
17. ***Mr Nigel Tibbles:*** Nigel Tibbles gave evidence remotely by video from the French villa and was cross examined by Mr Chew. He was a solicitor for nearly 50 years. For 15 of those years he was the senior partner of a specialist maritime firm. He gave evidence that the use of offshore companies for asset ownership was standard practice at that time in his area of the law. Following retirement from practice, Nigel Tibbles became the founding shareholder and executive chairman of a successful business. He has four sons, Oliver, James, Sebastian and Robert. Sebastian and Robert are twins. He gave evidence as to the purchase and payment of the Painting. His position is that he decided that the Painting should be bought by HDL as an investment and instructed Robert to negotiate its purchase. He claims that Jimson paid the full price of the Painting on behalf of HDL. His statements contain allegations that Robert Tibbles, his son, is relying on forged documents for the purpose of this litigation; I deal with those allegations of forgery at [98] – [116] below.
18. In light of the fact that Nigel Tibbles is 91 years of age, I considered whether any adjustments might be required pursuant to Practice Direction 1A. It was agreed that mid-morning and mid-afternoon breaks would be taken and this was also applied to the other two witness giving evidence in the interests of fairness. He sought and obtained some very limited assistance in relation to aspects of the MS Teams video connection, but it was readily apparent that no further assistance was required and none was sought by him or on his behalf.
19. ***Mr Sebastian Tibbles:*** Sebastian Tibbles gave evidence remotely from Singapore and was cross-examined by Mr Chew. He was not involved in the purchase of the Painting and could give no direct evidence in relation to the purchase. The direct evidence which he was able to give related to his role as director of HDL since May 2014 and of the

events concerning the Auction and following the Auction. His statements also contain substantially the same allegations that Robert Tibbles, his twin brother, has relied on forged documents.

The factual witness evidence of the Second Defendant

20. ***Robert Tibbles:*** Robert Tibbles gave evidence by video link from the UK and was cross-examined by Mr Brier for HDL. He gave evidence about the purchase of the Painting. He was candid about his inability to recollect the details of the purchase of the Painting, not least because he had been collecting art since 1985 and had purchased numerous pieces over that time. His position was that he contracted with White Cube for the purchase of the Painting and did not act for HDL. The references to HDL on the invoice were an administrative matter so that the gallery did not charge VAT on the Painting. His position was that there was no suggestion and no agreement that HDL would acquire title to the Painting and that he remained the contracting party at all times.
21. ***Paolo Gabrielli:*** A short written witness statement was served from Paolo Gabrielli together with a Civil Evidence Act notice. By the date of trial HDL confirmed that it did not require him to be tendered for cross-examination. His evidence was limited in scope and is summarised at [56] and [57] below.

Overview of the factual evidence

22. I set out below a summary of aspects of the evidence on key points; there was much common ground on matters which did not directly relate to the acquisition of the Painting.
23. ***HDL:*** HDL was set up by Nigel Tibbles and incorporated in the BVI on or about 7 December 1990. Mr Oliver Tibbles was appointed as its first Director at the time of its incorporation. According to paragraph 2 of its Reply, HDL was originally incorporated for the purpose of holding land in Kent, extending to about 30 acres, in close proximity to the Tibbles's family home. Nigel Tibbles's evidence was that HDL was set up to hold the land and to minimise any capital gains tax in the event of a future sale of the land. HDL has never had a bank account.
24. The minutes of a meeting of the board of directors of HDL dated 6 February 1991 records that Oliver Tibbles, as sole director, resolved to purchase the land in Kent for a price of £45,000 and to instruct solicitors to act on behalf of HDL to put in place the relevant contract for the purchase.
25. Apart from the land in Kent, the only other asset which HDL claims to have ever owned is the Painting, purchased in 1999 for £68,000. HDL has no internal documents recording any resolution to purchase the Painting, nor recording the fact that the Painting had been purchased by HDL, nor recording that it was an asset of the company. It would also appear that there were no accounts produced by HDL at any material time.
26. Mr Oliver Tibbles was the sole director of HDL from February 1991 until May 2014 when he resigned as director and transferred his share to Sebastian Tibbles. No witness statement was served from him in relation to the alleged purchase of the Painting by HDL in 1998 and 1999. Oliver Tibbles resigned as director of HDL on 30 May 2014 and Sebastian Tibbles took over as sole director.

27. Sebastian Tibbles confirmed that, on becoming director of HDL, he received various documents relating to HDL, including documents concerning HDL's purchase of the Kent land. The documents he received did not include anything relating to the Painting. He confirmed that he was unaware that HDL owned the Painting until Nigel Tibbles saw the Auction results in February 2020. His father had not previously mentioned HDL's interest in the painting. This was despite the fact that Sebastian Tibbles was the sole director of HDL from 2014 and remained in close communication with his father, speaking to him most days. He also confirmed that Oliver Tibbles had not known that HDL owned the Painting prior to the Auction. He accepted when giving evidence that the company's records ought to have recorded that the Painting was an asset, but that there was no such record amongst the HDL papers.
28. **Jimson:** JIL was set up by Nigel Tibbles and incorporated in the BVI on or about 9 February 1996. Nigel Tibbles was described on Bearer Share Certificates as a "Director/Secretary" of Jimson in March 1996, but he explained that he ceased to have any role as an officer of Jimson fairly soon after its incorporation. The evidence from Nigel Tibbles and Sebastian Tibbles was that the directors and shareholders of Jimson were Sebastian and Oliver Tibbles. Nigel Tibbles was an authorised signatory of the Jimson bank account at UBS in Zurich at all material times.
29. Paragraph 4 of HDL's Reply refers to HDL and Jimson as follows: "*the principal way in which such vehicles were used to assist the Second Defendant and his brothers with their affairs was by making loans. [Jimson] made a number of such loans to the Second Defendant, and to others at his request...*"
30. It was said in the Claimant's skeleton that Nigel Tibbles had continuing authority to act on behalf of both HDL and Jimson and was "*the person who ran the businesses*", albeit that during the material period he was not a director of either company.
31. **Robert Tibbles's acquisition of his art collection:** Robert Tibbles has been interested in art from an early age. He was close to his mother who had worked, in the mid-1950s, at the postcard stand in what is now known as Tate Britain; she encouraged his passion for art. She passed away in 2007. He enjoyed a "*fairly good*" relationship with his father until about 2012; he says that the relationship "*fully broke down*" in 2014.
32. From 1985 he worked in various banks as a bond salesman and at about this time he began to purchase art. He had, by about this time, become friendly with Richard Salmon, an art dealer. Mr Salmon's business partner, Karsten Schubert, knew Prof Michael Craig Martin, Emeritus Professor of Art at Goldsmiths college who, in the mid to late 1980s, was teaching and encouraging many of those who became known as the "Young British Artists", including Damien Hirst. In 1989 Karsten Schubert sold Robert his first Damien Hirst work - a "Medicine Cabinet" piece - from Damien Hirst's degree show.
33. Robert Tibbles continued to build up a significant collection of contemporary art through the 1990s. He dealt with many galleries, but particularly with Jay Jopling of White Cube gallery, who became Damien Hirst's agent.
34. Robert Tibbles's evidence was that from about 1993 onwards his bonus was set at a percentage of his gross commissions earned on sales of bonds. He would typically agree

to buy a particular work of art in the autumn once he knew his likely bonus; he would agree a structure with the gallery whereby he would pay a deposit in the autumn and then pay the balance from his bonus when it was received in the following February or March. He would also borrow funds as necessary from his bank to help finance the deposit and/or the balance. Throughout the 1990s he used his bonus to build his art collection, supplemented by loans as required.

35. His evidence was that by the early 2000s the cost of purchasing items in keeping with the collection was more than he could, or wanted to, spend and so the collection did not continue to expand after that date.
36. ***Nigel Tibbles's interest in art:*** HDL's pleaded case (paragraph 5 of the Reply) is that "*it is admitted that Nigel had no interest in abstract or contemporary art in 1999, but he liked the Painting and understood from the Second Defendant that it would be a good investment. It is for that reason that he decided that the Claimant should buy the Painting...*"
37. Nigel Tibbles stated in his witness statement that he and his wife "*were interested in investing in art to a limited degree*". In cross examination he accepted that he had not invested in art for a financial return prior to October 1998. His evidence was that he had previously purchased two works of art, namely a L S Lowry charcoal drawing and a bronze sculpture ("Girl on the Swing") in 1994 by Sydney Harpley.
38. Robert Tibbles describes his father's taste in art as a liking for traditional works, particularly sailing ships in full sail on a rough sea. His evidence is that his father viewed his contemporary art collection with a mixture of displeasure and astonishment at the cost of the works. His mother, on the other hand, had an interest in art (with a particular liking of Lowry) and an eclectic taste, but neither of his parents were collectors of art, whether for investment or pleasure.
39. ***Loans made by Nigel Tibbles to Robert Tibbles:*** Robert Tibbles's evidence was that when he bought his first London flat in 1981 for £40,000 his father loaned him the purchase price and then Robert took out a mortgage within a few months and paid him back. In 1988 he moved to another flat. He was made an unsolicited offer on that flat in 1993 and decided to sell, but had recently been made redundant which made it difficult to obtain a new mortgage. His father agreed to provide a short-term partial bridging loan, via Jimson, of around £139,000 in April 1993 to enable him to buy a new property. Robert Tibbles was able to obtain a mortgage by June 1993 and to pay the bridging loan back to Jimson. His position, in effect, is that his father had also helped with a short-term partial bridging loan of £18,000 in respect of the Painting and that this was paid back.

The decision to acquire the Painting and the payment of the initial deposit

40. Nigel Tibbles's evidence was that in the autumn of 1998, Robert Tibbles told his parents that he would like to acquire the Painting. It was part of a new series of works by Damien Hirst known as "Spin", so-called because the painter would pour paint onto a hard board or canvas which was then rotated. Nigel Tibbles's evidence was that Robert said that he did not have the necessary funds to make such a purchase, but that it would be a good investment.

41. As set out above, Nigel Tibbles accepted that he was not particularly interested in contemporary art. Nevertheless, his evidence was that he agreed to buy the Painting as an investment with the intention of hanging it at their French Villa. He had not seen the Painting at this time and could not recall, when giving evidence, whether it had been completed by the autumn of 1998. His evidence was that he did not take any independent advice on the acquisition of the Painting for investment purposes because he was relying on his son's expertise.
42. Nigel Tibbles's position is that he instructed Robert to acquire the Painting because Robert knew Jay Jopling, the owner of the White Cube. His evidence was that the Painting was to be purchased in the name of HDL, domiciled in the BVI, in order to minimise any capital gains tax on the profits arising from a future sale, not for the purpose of avoiding VAT. He agreed that there was no reason for Robert Tibbles to have hidden the involvement of HDL from White Cube in respect of the negotiations to purchase the Painting in October 1998.
43. He says that he paid the deposit for the Painting by way of a personal cheque of £10,000 from his Lloyds bank account, but that Lloyds have been unable to provide his bank statements from this period. He relies on the payment of £10,000 made from Jimson's UBS bank statement to his Barclays account (held jointly with his wife) on 22 February 1999, the same day as Jimson paid the balance of £58,000 to the Gallery; he says that this evidences his earlier payment of the deposit. There was some inconsistency in his oral evidence as to whether he had paid White Cube for the deposit personally or whether he had paid via Jimson; I address this inconsistency at [134] - [135] below.
44. Nigel Tibbles's evidence was that his wife decided that the Painting would "*not fit into the décor*" of the French villa and would be too large for their London flat; he says that they therefore agreed to allow Robert to hang it in his flat in London.
45. Robert Tibbles's evidence is that by the autumn of 1998 he had a clear idea as to the likely size of his bonus, payable in February 1999. He first saw the Painting in about late September 1998 and he decided to buy it using his bonus, as he had done with other previous pieces. He had been buying art from Jay Jopling for around 10 years by this stage and knew him well. He was able to agree a deal whereby he paid a £10,000 deposit and the balance on payment of his bonus.
46. He is clear that his father never intended to buy the Painting to hang in their French villa and did not instruct him to negotiate with White Cube. He states: "*The Painting ... is a very large, seven foot in diameter, abstract work and it is really at the other end of the spectrum of what either of my parents or brothers would have chosen for themselves. It would have also been too big for [the French villa] and, at a cost of £68,000, was far more than my parents would have spent on any art. The Painting was chosen by me for me to hang in my home, along with the rest of my collection. My father simply helped with the invoicing. It was never my intention or my father's stated desire that in asking my father to help with the invoicing I would be transferring my ownership of the Painting to my father or his holding companies...*" He also says that his father did not see the painting until after it was delivered to his (Robert's) flat.
47. Robert Tibbles relies on a letter dated 15 October 1998 from White Cube and a proforma invoice as evidencing his agreement to buy the Painting and the staged payment

arrangements he made to enable him to use his bonus to pay the balance. The letter reads:

*“Dear Robert Tibbles,
On behalf of Jay who is currently out of the country, he is delighted that you have decided to acquire Damien’s spin painting beautiful tropical, jungle painting (with pink snot).
Please find enclosed a proforma invoice... Also please note that we will send you a proper invoice in January 1999...”*

*Aileen Hovanessian
Jay Jopling”*

48. The proforma invoice is dated the same day and is addressed to Paolo Gabrielli at an address in Switzerland. It identifies the Painting and the price of £68,000 and states: *“Payment schedule: £10,000 due upon receipt of invoice [sic] £58,000 due February 15, 1999.”* Bank account details of the vendor are set out on the bottom of the invoice with the name of the account identified as *“Modern Collections Ltd”*.
49. HDL does not accept that the proforma invoice is genuine. I address that at [100] below.
50. Robert Tibbles’s witness statement states that he had been told by White Cube that *“as long as I could show an address outside the UK then the gallery was allowed not to charge VAT on the purchase of the art work”*. Paolo Gabrielli was working in Switzerland at the time and Robert Tibbles told White Cube to use Mr Gabrielli’s Swiss address on the invoice. The proforma invoice makes no reference to VAT.
51. He also explained that he had bought other art works, including a Gilbert & George entitled *“City Fairies”*, using Paolo Gabrielli’s name and address on the invoice. That invoice has been disclosed and is dated 30 September 1997, so approximately a year earlier. It is also addressed to Mr Gabrielli at a Swiss address. There is no VAT. The invoice is in the sum of US\$90,000 and provides for a payment schedule of US\$8,000 on 4 December 1997, \$62,000 on 4 March 1998 and \$20,000 on 7 January 1999.
52. In respect of the payment of the deposit, Robert Tibbles also relies on the White Cube Customer Activity Log which appears to show that White Cube had opened an account under the name of Paolo Gabrielli and records a *“payment on account”* of £10,000 with a date of 3 November 1998.
53. In addition, Robert Tibbles relies on a letter he says that he sent to his bank dated Saturday 31 October 1998 which states *“I will be making a cheque out payable to White Cube Gallery for £10,000. I would be grateful if you could transfer that amount to my account from the loan facility when it is necessary. The remaining part of the facility not drawn down to date I believe is £12,000. For your information my gross production is 30% up on the whole of the period for 1997 ... and so the annual bonus subject to current employment conditions and exchange rate should be £48,500 approximately net of tax...”*
54. Again, it is contended on behalf of HDL that this letter is not genuine; I address this at [110] below. It is also said that it is not consistent with a screenshot of White Cube’s database which suggests that the £10,000 cheque was received on 30 October 1998,

rather than 3 November 1998. I address this at [112] and [138] below.

55. It is common ground that the Painting was delivered to Robert Tibbles's London flat on 22 December 1998.

The written witness evidence of Paolo Gabrielli

56. In his witness statement Mr Gabrielli's states that he recalls that Robert Tibbles used his name and address to purchase artworks between 1997 and 1998 he says that: *"This was done so that Robert could save some money, as VAT in Switzerland was less than it was in the UK. There was no other reason for the works to be bought in my name. I recall that in 1997 Robert bought the Gilbert and George painting, "City Fairies" in my name using my Swiss address."*
57. In respect of the Painting he states that *"I have been shown an invoice of 15 October 1998 that is addressed to me at what was my business address... I specifically recall paperwork issued by White Cube with my Swiss address details in relation to the purchase of the Painting."*

The payment of the balance for the painting in February 1999 and HDL's novation case

58. It is common ground that the balance of £58,000 was paid by Jimson to White Cube on 22 February 1999.
59. HDL relies on White Cube's invoice dated 5 February 1999. The invoice is addressed to HDL, with an address in the BVI and states "VAT: Out of EEC". It also states: *"Title does not pass unless payment is made in full. Local delivery & insurance costs to be met by purchaser... Please note that proof of export is required within three months from the date of confirmation that the goods are available or of confirmation of the date of receipt of receipt of payment"*. The vendor's account name is stated to be Jay Jopling Fine Art. Nigel Tibbles says that he liaised directly with White Cube Gallery to ensure that this invoice was in HDL's name.
60. Nigel Tibbles's evidence is that he received and retained the invoice and kept it in the drawer of his desk in the French Villa, in its original envelope which is addressed to him at the French Villa and which has been disclosed. Notwithstanding his evidence that he dealt directly with White Cube in relation to the invoice, it is said that he did not notice the absence of any VAT on the invoice until this was drawn to his attention by Sebastian Tibbles in February 2020. He says that the acquisition of the painting by HDL was intended to minimise any future capital gains tax liabilities, and not to avoid VAT.
61. White Cube's internal accounts documents shows that an adjustment was made to transfer the credit for the £10,000 deposit from an account in Paolo Gabrielli's name to an account in HDL's name on 26 February 1999. It is not clear from that document when an account in the name of HDL was first opened, but the first recorded entry is the invoice of 5 February 1999.
62. Robert Tibbles's evidence is that prior to February 1999 he had split up with Paolo Gabrielli and, whilst they remained on friendly terms, he did not think that he could continue to use Paolo Gabrielli's name and Swiss address on the invoice for VAT purposes. He says that he agreed with his father that HDL's name and BVI address would

be used for invoice purposes. His evidence was that his father was “*obsessed*” about not paying capital gains tax.

63. When HDL first advanced the claim Robert Tibbles’s initial reaction was that he had bought the Painting outright using his own money, but having seen the Jimson accounts he accepts that the balance of £58,000 was paid by Jimson on 22 February 1999. His case is that he had the benefit of a loan from his father, via Jimson, of £18,000.
64. Robert Tibbles has disclosed a letter from him to his bank dated Sunday February 7th 1999 which states: “*I have an amount of approximately £69,000 credited to my account as my net bonus for the year ended 31 December 1998 from my employers... I would be grateful if an amount of £20,000 could be transferred to pay off my loan account facility. I intend to carry on collecting contemporary Art and consequently would be grateful to know on what terms the facility of £20,000 would be available to me for the current calender [sic] year.*” At this stage, therefore, he appears to have depleted his bonus payment by £20,000 and to be looking for a new loan of this amount from his bank.
65. On 22 February 1999, Nigel Tibbles faxed Jimson’s bank, UBS in Switzerland, stating: “*Jimson has agreed to purchase a picture together with Robert. The picture will be purchased in the name of Hilden Developments. I am sending to you the original invoice from the gallery a copy of which I am sending with this Fax. Jimson has already received £40,000 from Robert which has been credited to the account. I should be grateful if you would add £18,000 and transfer to the gallery £58,000 Please make the transfer as soon as practical for immediate value, all charges and total amount of transfer to be debited to Jimson...*”
66. This fax was disclosed by Robert Tibbles who says he was given a copy at the time by his father. It was disclosed approximately 4 months after the date for disclosure; this was also after HDL had filed the first witness statements of Nigel and Sebastian Tibbles.
67. Jimson’s UBS bank records (including bank statements and credit and debit advices) for the relevant account show the following:
 - 67.1. A balance of £1,261.26 on 15 February 1999.
 - 67.2. The receipt of £40,000 from Robert Tibbles on 16 February 1999.
 - 67.3. An internal transfer from another Jimson account to the relevant Jimson account of £27,500 on 22 February 1999.
 - 67.4. A payment out to White Cube of £58,000 on 23 February 1999 referencing the February 1999 invoice number and invoice date.
 - 67.5. A payment out to the joint account of Nigel Tibbles and his wife of £10,000 on 23 February 1999.
68. Nigel Tibbles’s evidence was that Robert Tibbles paid the £40,000 to Jimson by way of repayment of an earlier loan, but he could not recall when or why that previous loan had been paid. He stated that he always wanted money to be repaid by Robert before he would make any new payments out. HDL also relies upon the February 1999 invoice and

payments by Jimson as evidence that even if the original contract in October 1998 was not with HDL, there was a novation of the sale agreement by the date of the invoice.

69. Robert Tibbles's evidence was that he paid the £40,000 in respect of the balancing payment for the Painting. It is said that the £18,000 was paid by way of a loan by his father via Jimson. HDL's case on novation is denied. His position is that the monies were advanced by Jimson by way of a loan only and that the invoice reflected his instruction to White Cube to address the invoice to HDL which, he says, he had agreed with his father.

Payment of £21,500 by Richard Salmon to Jimson in July 1999

70. Robert Tibbles's pleaded case is that he believes that he repaid the £18,000, but cannot recall when and how he paid it. In his oral evidence he made clear that he does not now recall the details of how he structured the financial aspects of the purchase of the Painting, nor when he repaid the £18,000. It was contended on his behalf by Mr Chew that the evidence indicates that the £18,000 was probably repaid by Robert to Jimson in mid July 1999. Reliance is placed on a letter dated 14 July 1999 from Nigel Tibbles to UBS Bank which states:

“Transfer Received by [Jimson] from Robert £21,500 Please transfer if possible today to Roberts account with Midland Bank ... the sum of £3,500 ... After deducting the amount of the transfer and the transfer charges please transfer the balance of £21,500 to the account of Neverita with you. The amount to be credited against loan made to Robert earlier”

71. The reference to Neverita is to another company incorporated by Nigel Tibbles.
72. A credit advice in respect of Jimson's UBS account records the £21,500 as having been paid *“by order of Richard C Salmon Esq”* on 14 July 1999.
73. Jimson's bank records shows the sum of £21,500 being credited to the account on 14 July 1999 and then, on 15 July 1999, the sum of £3,500 being paid out to Robert Tibbles. The bank statement also shows £18,000 being paid out on 15 July 1999; this was presumably a payment out to Neverita in accordance with the above instruction.
74. Robert Tibbles was candid in his evidence that he cannot now recall whether this payment by Richard Salmon, his friend, was a repayment on his behalf of what he says was the £18,000 loan he had received from Jimson. His evidence was that both he and his father had lent money to Richard Salmon at various times.
75. Nigel Tibbles could not recall the details of why this sum was being paid by Richard Salmon, although he was clear that he had made loans at some stage to Mr Salmon. He accepted that, in his fax, he was instructing UBS to treat it as a payment from Robert Tibbles in respect of a previous loan to Robert, even though the payment had been made by Mr Salmon. When asked whether this was repayment of a bridging loan to Robert, Nigel Tibbles replied *“I'm sorry, I really don't know”*.

1999 - 2020

76. Robert Tibbles paid for the delivery of the painting and that the Painting hung in his flat from first delivery in December 1999 until it was consigned to auction in February 2020. Robert Tibbles insured the Painting during that period, together with the other artworks in his possession. HDL's purported interest in the Painting was not noted on the insurance policies disclosed, whereas certain of those policies do note the interests of third parties in respect of specific artworks. Nigel Tibbles's position was that he did not take, and did not consider it necessary to take, any steps to ascertain whether HDL's interest in the Painting was noted for insurance purposes between 1999 and 2020.
77. The relationship between Robert Tibbles on the one hand and Nigel and Sebastian Tibbles on the other was deeply acrimonious from 2014 and became highly litigious. HDL did not request the return of the Painting prior to its sale in the Auction.

Events leading up to, and following, the Auction in 2020

78. The fact of the Auction of Robert Tibbles's collection was well publicised before the Auction took place, including in some detail in the Financial Times in January 2020. The sale catalogue went live on 30 January 2020. Sebastian Tibbles was aware of the pending auction. He emailed Robert Tibbles on 19 December 2019 referring to the auction and stating "*we will of course take all necessary measures to prevent you from dispersing the proceeds of any significant asset sales, before the various claims against you have been paid or settled*".
79. There was also a letter from CMS Cameron McKenna Nabarro Olswang LLP, acting for Jimson, dated 3 February 2020 to Robert Tibbles, threatening to seek an interim injunction to prevent dissipation of proceeds realised from the Auction in connection with the on-going litigation concerning the French villa. In the end, a freezing injunction was not sought, but letters were written on behalf of Jimson to Phillips on 10 February 2020, before the auction, and a statutory demand was served on Robert Tibbles.
80. Nigel Tibbles' evidence as to why delivery up of the Painting had not been sought before the Auction, despite the litigation warfare, was that it did not cross his mind and that it was "*peanuts*" in comparison to the amount that Robert had "*cost us*". It was clear that Sebastian Tibbles did not know that his father considered that the Painting belonged to HDL until after the Auction.
81. Nigel Tibbles's evidence is that on 18 February 2020 he was shown the on-line results of the Auction which had taken place on 13 February 2020 by Sebastian Tibbles who was visiting him at the French villa. Sebastian Tibbles's evidence was that his father saw the online auction results and said of the Painting: "*But that's mine, I paid for it, I have the invoice in my desk.*". Nigel Tibbles retrieved the Invoice from his desk.
82. Sebastian Tibbles then emailed Robert the same evening to inform him of HDL's claim to title. His witness statement stated that he had sent the email from his father's PC in his study at the French villa. In his oral evidence he accepted that he could not recall whether he had emailed from his father's PC or his own iPad. He was asked in cross-examination why he had included a clear statement about emailing from his father's PC if he did not know this to be true; his answer was "*Colour, I suppose*".

83. Robert Tibbles did not respond to this email, or the multiple other emails from his brother which followed. His evidence was that he had been told by his lawyers not to engage directly. He sought copies of the invoice for the Painting from White Cube the next day.

84. There followed further emails from Sebastian Tibbles to Robert Tibbles. By an email dated 3 March 2020 Sebastian Tibbles stated, amongst other things:

“... I have decided to report your selling the picture without the true owners (HDL) authority as Theft and your deliberate misrepresentations to Phillips concerning the provenance of the picture as Fraud to the Metropolitan Police in London. These are very serious criminal offences. NCT [Nigel Tibbles] has already prepared his statement of the Met, should it be needed.

Unless you have withdrawn all your claims to the picture/sale proceeds and have given Phillips the release permission they have requested, to pay the entire sales proceeds to HDL by 5.00pm tomorrow... I will be reporting the entire matter to the relevant units at the Metropolitan Police – including Art & Antiques, without further delay. I’m sure that the Met and probably HMRC will also be showing White Cube, some very unwelcome attention. Your recent behaviour will have ruined your name in the art market.

Based on my understanding, the penalty for theft in the UK is up to 7 years imprisonment and an unlimited fine, for fraud, it is up to 10 year’s imprisonment and unlimited fine...”

85. A statement of Nigel Tibbles signed with a statement of truth and dated 7 March 2020 has also been disclosed. The statement is short and does not go into the details of the purchase. It states that Nigel Tibbles funded the purchase and does not refer to any payment by Jimson. It also makes no reference to the payment of the deposit or to the delay between the agreement to purchase and the payment of the balance in February 1999.

86. Sebastian Tibbles emailed Robert Tibbles again on 8 March 2020 to state:

“Since you have refused to co-operate, I have now reported the picture, to the metropolitan police, as stolen and sold on by you, assisted by Phillips, without the authority of the owner (HDL). If you do not want this matter to escalate further, please confirm ... that you are immediately withdrawing your claim to ownership of the picture and have instructed Phillips to release it to HDL”.

87. A copy of a “report of stolen property” was also sent by Sebastian Tibbles, as was a further email stating “FYI The Met have just emailed me, they seem to agree, that what you and Phillips have done should be investigated as a crime!”.

88. Emails in similar tone and content continued to be sent by Sebastian Tibbles to his twin brother, including references to “*criminal records and prison time*”. Notwithstanding that all parties were legally represented, Sebastian Tibbles continued to send direct emails to Robert Tibbles and to Phillips and to legal representatives until December 2021, including allegations of “Art Fraud”, VAT fraud and assertions as to the “*potential personal liability of those involved in criminal activity*”.

Legal principles

89. Relevant legal principles in respect of a contract of sale of goods can be summarised as follows:
- 89.1. A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price; see s.2(1) Sale of Goods Act 1979 (“SoGA”).
 - 89.2. Where, under a contract of sale, the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled, the contract is called an agreement to sell (s.2(5) SoGA); it becomes a sale when the time elapses or the conditions are fulfilled (s.2(6) SoGA).
 - 89.3. A contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties (s.4 SoGA).
 - 89.4. Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred; for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case (s.17(1) and (2) SoGA).
90. The intention of the parties is to be ascertained objectively: Chitty on Contracts (34th edition, paragraphs 4-002, 4-003, and 15-004).
91. A third party who is not liable to the seller for the price may make payment of the price; such payment does not normally discharge the buyer’s obligation to pay unless the payment is made by the third party for and on account of the buyer and with his prior authority, or subsequent ratification (Benjamin’s Sale of Goods, 11th edition paragraph 9-044). In this case, it is common ground that the balance of the payment of the price was made by Jimson. HDL claims that Jimson paid the balance for and on behalf of HDL and with Nigel Tibbles’ prior approval. Robert Tibbles claims that Jimson paid the balance for and on behalf of himself, by prior agreement with Nigel Tibbles who (it is common ground) was an authorised signatory on Jimson’s bank account.
92. As a general rule, obligations of a party to a contract of sale cannot be assigned, except by a novation with the consent of all parties (Benjamin’s Sale of Goods, 11th edition, Supplement, paragraph 3-042).
93. Mr Chew also relies upon the following passage from Chitty on Contracts, 34th edition at paragraph 22-089 (footnotes removed):

“Novation takes place where:

... there being a contract in existence, some new contract is substituted for it, either between the same parties... or between different parties; the consideration mutually being the discharge of the old contract.

The second kind of novation (“three-party novation”) is the more common, consisting of an agreement or agreements between A, B and C pursuant to which B’s rights and obligations under an existing contract with A are assumed by C under a new contract with A. There is a new contract and it is therefore

essential that the consent of all parties shall be obtained. Consent may be express (whether oral or written) or may be inferred from conduct. The “proper approach” to deciding whether a novation can be inferred from conduct is to decide whether that inference is necessary to give business efficacy to what actually happened ... The inference is necessary for this purpose if the implication is required to provide a lawful explanation or basis for the parties’ conduct.”

94. Various issues of law are raised in respect of Robert Tibbles’s alternative case that if he did not acquire legal title to the Painting then he acquired a beneficial interest in the Painting pursuant to a bare trust. Given that the relevance of these issues of law depend on the findings of fact made, I do not propose to go into the details of the arguments at this stage, but merely note the two following points:
- 94.1. In respect of the alternative case advanced on behalf of Robert Tibbles in relation to a resulting trust, it is said that a resulting trust would arise by operation of law in accordance with the principles set out by Lord Browne-Wilkinson in *Westdeutsche Landesbank v Islington LBC* [1996] AC 669, 708: “*where A pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: ... the property is held on trust for A (if he is the sole provider of the money) or in the case of joint purchase by A and B in shares proportionate to their contributions....*” The same principles are relied upon by HDL.
- 94.2. It is said on behalf of Robert Tibbles that if he is found to be the entire beneficial owner then he would be entitled to terminate the trust and consign the Painting for auction in accordance with the rule in *Saunders v Vautier*.

Discussion

The witnesses

95. ***Nigel Tibbles:*** He gave his evidence with clarity and conviction on many issues which he could clearly remember, and I formed the view that he was attempting to give accurate evidence. However, his evidence concerning the details of the purchase of the Painting was inconsistent and contradictory in some important respects, as set out further below, and I formed the view that he had no real memory of the details relating to the purchase, which is not surprising given that the events took place over 23 years ago. I consider that his evidence as to the purchase was, in large part, based on his attempt to reconstruct what happened from a review of the documents. I agree with Mr Chew’s submission that, in certain respects, he has convinced himself to believe a version of events based on this reconstruction. I also formed the view that his reconstruction of the relevant events had, perhaps inevitably, been coloured by the subsequent “family feud” and his clear loss of trust and confidence in Robert Tibbles.
96. ***Sebastian Tibbles:*** Sebastian Tibbles had no direct knowledge about the purchase of the Painting. The purpose of his second witness statement was said to be to “*highlight numerous untrue statements made by my brother*”. It then proceeds to make what are, in effect, submissions in respect of disclosed documents and the evidence of Robert Tibbles concerning the purchase of the Painting, about which Sebastian Tibbles had no direct

knowledge. His allegations that his twin brother is relying on forged documents are based on his reading of those documents, rather than any direct knowledge of the underlying facts. Mr Chew submitted in closing that he was “*an advocate not a witness*”. I agree that parts of his written statements and of his oral evidence strayed into the realms of submission and attempts to reconstruct events from a selection of documents. I formed the view that his evidence was heavily influenced by the wider “family feud” and his loss of trust and confidence in his brother.

97. **Robert Tibbles:** He was candid about his lack of recollection of the details of the payment arrangements put in place in respect of this particular acquisition, which is hardly surprising considering the large number of works he acquired over a long period. He was also candid in his witness statement and in his oral evidence about his use of Paolo Gabrielli’s name and Swiss address and, on his evidence, HDL’s name and BVI address to avoid VAT being charged on the Painting. His evidence was calm and measured at all stages in the face of some firm cross-examination, including on issues of alleged forgery; I formed the impression that he was giving evidence honestly and was doing his best to assist the court.

HDL’s challenges as to the authenticity of two documents

98. I deal first with HDL’s contention that two documents relied upon by Robert Tibbles were not genuine. The two documents in question are: (i) the proforma invoice purportedly sent by White Cube under cover of the letter of 15 October 1998 addressed to Paolo Gabrielli at an address in Switzerland and (ii) the letter dated Saturday 31 October 1998 from Robert Tibbles to his bank in relation to the £10,000 deposit.
99. Pursuant to CPR 32.19, a party is deemed to admit the authenticity of a document disclosed under CPR 31 unless he serves a notice with the stipulated period that he wishes the document to be proved at trial. The witness statements of Sebastian Tibbles, however, made clear that the authenticity of these two documents was being challenged and that position was maintained at trial. Mr Chew, whilst noting the absence of any notices under CPR 32.19(2), dealt with the challenges on their merits.
100. **The proforma invoice:** The allegation of forgery in respect of the proforma invoice was advanced by both Nigel and Sebastian Tibbles in their witness statements. In respect of this document Sebastian Tibbles states: “*I believe [it] was forged for the purposes of this dispute. The Pro Forma was purportedly from “Modern Collections Ltd”. However, that company was not incorporated in England until 28 March 2012*”; he exhibited records from Companies House in support of his contention.
101. However, Sebastian Tibbles’s witness statements does not engage with White Cube’s explanation that Modern Collections Ltd was a company used by Jay Jopling and which was incorporated abroad. By a letter dated 5 June 2020, Clyde & Co, then acting for HDL, asked White Cube whether it recognised the proforma invoice as genuine and asked about the reference to Modern Collections. White Cube’s response of 18 June 2020 stated that: “*although we are unable to confirm whether the Proforma is genuine, there is nothing about it, or indeed the purported letter from Ms Hovanessian... which would indicate to us that they are not genuine. In 1998, Mr Jopling was the beneficial owner of an entity called “Modern Collections Ltd” that was incorporated abroad. Artworks were invoiced and sold by that entity as well as by Jay Jopling Fine Art*”.

102. The other points taken by Sebastian Tibbles in his statement and/or by HDL in submissions were that the proforma invoice does not have the gallery's letterhead, contains various typographical errors "*which would not be expected from a high end art gallery*", did not provide any invoice number despite stating "*please quote invoice number on payment*" and does not provide the same payee bank account details as the February 1999 invoice.
103. The fact that the proforma invoice refers to a company name that was not incorporated in England at the relevant time is explained by White Cube's unchallenged statement that the relevant company was incorporated abroad.
104. The typographical errors and other minor inaccuracies in the proforma invoice do not, in my judgment, begin to support the allegation of forgery advanced on behalf of HDL. The proforma invoice is to be read with the letter of 15 October 1998 (the authenticity of which was not directly challenged) from an assistant, Aileen Hovanessian, which expressly refers to it being "*a proforma invoice*" and that "*a proper invoice*" would be forthcoming. I also note that the letter starts with: "*On behalf of Jay who is currently out of the country ...*" suggesting that the proforma invoice may not have been seen by Jay Jopling prior to issue.
105. Further, White Cube explained to HDL's solicitors in their letter of 23 November 2020 that they did not consider the typographical errors indicate that the document was not genuine, especially as proforma invoices at the time were "*created manually in Word by the relevant assistant and were not generated automatically by a centralised system*".
106. The fact that the proforma invoice was addressed to Mr Gabrielli was also consistent with the further documents provided by White Cube under cover of their letter of 18 June 2020 which evidenced that an account had been set up under Mr Gabrielli's name and that £10,000 was shown as being allocated to that account and as having been received on either 30 October 1998 or 3 November 1998.
107. Whilst no one from White Cube was called to give evidence by either party, the correspondence and documents produced by White Cube were in the trial bundle and were relied on by both parties.
108. In addition, I note that in his witness statement dated 1 July 2021 Mr Gabrielli states that: "*I specifically recall paperwork issued by White Cube with my Swiss address details in relation to the purchase of the Painting*". This is consistent with Mr Gabrielli having had sight of the proforma invoice addressed to him at his Swiss address. HDL did not require Mr Gabrielli to be called to give evidence.
109. In my view, the available evidence, summarised above, does not support the allegation of forgery advanced by HDL; to the contrary, the available evidence is consistent with the proforma invoice being genuine. I therefore reject the contention that it is a forgery.
110. ***The letter dated Saturday 31 October 1998***: Robert Tibbles disclosed this letter on 28 May 2021, standard disclosure having been provided on 7 May 2021; the covering letter from Robert Tibbles's solicitor states that the document could not originally be viewed as the file was corrupted, but that it had been accessed following disclosure and was being

included in the amended disclosure list. Various other documents were also disclosed after standard disclosure by both parties.

111. Again, the allegation of forgery in respect of the letter of 31 October 1998 was made by Sebastian Tibbles. He states in his second witness statement dated 20 November 2021 that: *“This letter is dated a day after the gallery has confirmed it received the £10,000 payment on 30 October 1998. Further the gallery could not confirm that any payments were received from Robert. It is therefore clear to me that the letter is a forgery.”*
112. The letter of 31 October 1998 may well be inconsistent with White Cube’s initial statement that the £10,000 deposit cheque was received on 30 October 1998; but it is entirely consistent with White Cube’s provision of copies of the ledger in Mr Gabrielli’s name showing payment being made by cheque on 3 November 1998. White Cube explained that the payment date of 30 October 1998 was taken from a screenshot of a database created in 2003 based on information imported from their previous accounting system, whereas the copy of the ledger showing the payment on 3 November was said to be captured from the previous accounting system.
113. In addition, Mr Chew submits that the letter is consistent with the approach that Robert Tibbles adopted on other occasions and he points, in particular, to a letter dated 4 May 1998 from Robert Tibbles to his bank giving his bank advance notice that he would be writing a cheque and giving directions as to how it should be dealt with. I agree that the earlier letter appears to be similar in tone and style to the later letter, as well as evidencing that Robert Tibbles had previously provided similar written directions to his bank in respect of cheques which he was intending to write.
114. Finally, I also note that Robert Tibbles had been informed by White Cube by email of 3 March 2020 that they had a record showing the cheque for the deposit as having been received on 30 October 1998. Had he wished to disclose, in 2021, a forged document to support his contention that he paid the deposit via cheque then one would have expected that forged document to be dated prior to 30 October 1998 so as to avoid any dispute over the timings. It would be counterintuitive to forge a document which, on its face, was inconsistent with at least part of the information provided by White Cube.
115. In my judgment, the available evidence, summarised above, is consistent with the letter of 31 October 1998 being genuine and does not begin to support HDL’s allegation of forgery. I reject the allegation.
116. In my view these allegations of forgery, advanced primarily via the witness statements of Nigel and Sebastian Tibbles, provide an illustration of a wider approach of attempting to reconstruct events from selected documents and then seeking to discredit evidence which is inconsistent with that reconstruction. The allegations also illustrate the extent to which HDL’s claim has been influenced by their complete loss of trust and confidence in Robert Tibbles.

The agreement to purchase the Painting in October 1998

117. The primary issues in respect of the original agreement to purchase the Painting in October 1998 are (i) whether Nigel Tibbles is correct to contend that he had decided that HDL should purchase the Painting in October 1998 as an investment and that he

instructed Robert Tibbles to negotiate the purchase with White Cube on HDL's behalf or, (ii) whether Robert Tibbles is correct that he entered into an agreement with White Cube to buy the Painting on his own behalf, instructing White Cube to address the proforma invoice to Paolo Gabrielli.

118. There are ancillary issues as to whether Nigel Tibbles or Robert Tibbles paid the £10,000 deposit and whether that deposit was paid on 30 October 1998 or 3 November 1998.
119. As to the original agreement to purchase the Painting in October 1998, I am satisfied, on the balance of probabilities, that Robert Tibbles's position is the correct one, namely that Robert Tibbles entered into an agreement with White Cube to buy the Painting and asked White Cube to address the proforma invoice to Paolo Gabrielli at his address in Switzerland. I have come to this conclusion based on the totality of the evidence, including the following five factors.
120. First, I find it inherently improbable that Nigel Tibbles decided to buy the Painting on behalf of HDL as a financial investment. Having incorporated HDL in 1990 to hold the Kent land, Nigel Tibbles has not made any other investment on behalf of HDL during its 31 years of existence. Any investment decision by Nigel Tibbles on behalf of HDL would, therefore, have been a unique decision. The Painting, at £68,000, was more valuable than the land held by HDL (valued at £45,000 in 1991) and so an investment decision of this nature was of some significance for HDL. Nigel Tibbles had no particular interest in contemporary art, no particular knowledge of the contemporary art market, and no particular reason to invest in contemporary art on behalf of HDL. He had only previously purchased two works of art and those were not bought as financial investments. Having heard Nigel Tibbles give evidence, I have formed the impression that he is unlikely to have made a decision to invest in an unfamiliar market spontaneously or lightly. Yet Nigel Tibbles's evidence is that he took this investment decision merely because Robert said it would be a good investment. In all the circumstances, I do not consider it likely that Nigel Tibbles would have taken a decision to buy the Painting as a financial investment on behalf of HDL.
121. Second, I reject the contention, insofar as it was part of HDL's case, that Nigel Tibbles decided to buy the Painting on behalf of HDL not merely because it would be a good investment, but also because "*he liked the Painting*" (paragraph 5 of the Reply) and/or that he "*agreed to buy the painting for the purpose of hanging it in [the French villa]*" (paragraph 11 of his witness statement of 1 July 2021). His oral evidence was that he was unsure whether the Painting had been finished as at October 1998 when he says that he instructed Robert Tibbles to negotiate its purchase; his evidence was that he had not seen the Painting at this time. Thus, on his own evidence he could not have "liked" it prior to purchase (if that is what was intended by paragraph 5 of the Reply).
122. I find it improbable that Nigel Tibbles, who accepts that he had no great interest in contemporary art, would have decided to purchase a contemporary artwork by Damien Hirst of this nature to hang in his house without having first seen it. I accept Robert Tibbles's evidence that he saw the Painting in September 1998 and that it was finished at this time. Robert Tibbles described this seven-foot diameter abstract work of modern art as being "*at the other end of the spectrum*" from the two works of art that Nigel Tibbles had previously bought, as well as being far more expensive than either of those two pieces. I think that that is a fair description of the position and I consider that it is

unlikely that he would have decided to buy an expensive contemporary abstract artwork “unseen” to hang in his house.

123. Third, had Nigel Tibbles decided to make such an investment on behalf of HDL then I consider that it is probable that he would have either involved Oliver Tibbles, the then sole director of HDL, of that decision or, at the very least, have informed Oliver Tibbles of that decision. The evidence was that neither Oliver nor Sebastian Tibbles, the only two directors of HDL, were informed that HDL had any interest in the Painting until after the Auction, over twenty years later. On the only previous occasion on which HDL had decided to make an investment, that decision (to acquire the land in Kent for £45,000) was formally recorded as a resolution of the company by Oliver Tibbles as director.
124. In response to Robert Tibbles’ alternative case that he at least has a beneficial interest in the Painting, Nigel Tibbles’s evidence was that, as an experienced solicitor, “*had I wished to set up a trust with Robert as a beneficiary, I would have done so with all appropriate formalities in place and there would have been no doubt that I had done so.*” I consider that it is not probable that Nigel Tibbles, an experienced former solicitor, who was not a director of HDL, would have considered it appropriate to enter into a contract to purchase the Painting at a price of £68,000 without even informing the sole director of HDL of that decision and without any record of either the decision to purchase, or the fact of the purchase, being recorded in HDL’s company records. At the very least he would have informed the sole director so that the Painting could be recorded as an asset (one of only two assets) owned by the company.
125. Fourth, when giving evidence, Nigel Tibbles was unable to advance any convincing reason as to why he would have wished to structure the sale agreement by way of the payment of a deposit in October 1998 and then payment of the balance in February 1999. He suggested during cross-examination that the delay between the deposit and the payment of the balance of purchase price might have been because the Painting may not have been finished in October. As stated at [122] above, Robert Tibbles was clear that he saw the finished Painting in about September 1998, prior to negotiating with White Cube about its purchase, and I accept that evidence as probable.
126. Conversely, the evidence of Robert Tibbles as to the manner in which he arranged to purchase the Painting is consistent with the available evidence as to his general *modus operandi* when collecting art and, in particular, is strikingly similar to the available documentary evidence relating to his purchase of a painting in the previous year.
127. In 1997 Robert Tibbles purchased the Gilbert & George painting “*City Fairies*”. The invoice for that painting supports his evidence that he paid an initial deposit in the autumn of 1997, paid most of the balance with his bonus in February/March 1998, obtained a short-term loan from his bank of £20,000 for the remainder, and avoided VAT on the purchase by using Paolo Gabrielli’s name and Swiss address on the invoice. Robert Tibbles’s evidence indicates that he used an almost identical method for acquiring the Painting the following year, again, initially using Paolo Gabrielli’s name and address on the proforma invoice.
128. In addition, Robert Tibbles provided evidence of other artworks being purchased in a similar way after 1998. He relies on the invoice dated 2 January 2002 for a work entitled “*Pieta*” by Sam Taylor-Wood; the invoice was addressed to Lucia Resources with a BVI

address. On 13 December 2001 Nigel Tibbles had sent a fax to White Cube, copied to Robert Tibbles, providing White Cube with “*the details you require*” in respect of the name and BVI address of Lucia Resources Limited. Nigel Tibbles therefore appears to have been involved in assisting his son with the invoicing arrangements for this purchase.

129. Robert Tibbles also relies on an invoice dated 16 September 2003 for a Damien Hirst piece entitled “*AIDS*”; the invoice is addressed to an individual in Zurich and shows that 10% was due on invoice and the balance due on 1st February 2004. Again, there is a similar pattern of an overseas addressee and staged payments with a deposit in the autumn and the balance the following February.
130. Fifth, if Nigel Tibbles’s evidence that he instructed Robert Tibbles to negotiate the purchase of the painting on behalf of HDL were correct then one would have expected the October 1998 proforma invoice to be addressed to HDL, White Cube to have opened an account in the name of HDL at this stage, and the payment of the deposit to be credited to HDL’s account. There would have been no reason for Robert Tibbles to hide the fact that HDL was the purchaser from White Cube. In fact, the Proforma invoice of 15 October 1998 was addressed to Paolo Gabrielli and White Cube’s sales ledger credited to the payment of £10,000 deposit to an account in the name of Mr Gabrielli. This is consistent with Robert Tibbles’s evidence that he agreed to purchase the Painting in October 1998 and requested White Cube to use Paolo Gabrielli’s name and address on the invoice.
131. As Nigel Tibbles gave oral evidence it became increasingly clear, in my judgment, that he had no real recollection of the fact of the October 1998 purchase of the Painting and that his evidence was based on his attempt to reconstruct what might have happened from a partial selection of the documents. That reconstruction has, in my view, been influenced heavily by the “family feud” that has subsequently arisen and the breakdown in trust and confidence between Nigel and Robert Tibbles.

The payment of the £10,000 deposit

132. I deal with the issue as to who paid the deposit separately from my conclusion, above, that Robert Tibbles, not HDL, entered into an agreement in October 1998 to buy the Painting. The totality of the evidence leads me to the conclusion that it is more likely than not that Robert Tibbles paid the initial £10,000 to White Cube. I set out the reasons below.
133. HDL’s position was that Nigel Tibbles paid the deposit by personal cheque from his Lloyds bank account. This allegation was introduced by amendment to the Reply. The Particulars of Claim had been silent on the deposit. By his Defence, Robert Tibbles claimed that he paid the deposit by cheque. The Reply originally made no admission as to the identity of the drawer of the cheque but asserted that the £10,000 was “*subsequently reimbursed*” by Nigel Tibbles, the implication being that he had not paid the deposit initially. This was then amended to allege that the deposit was paid by Nigel Tibbles (albeit that the non-admission as to the identity of the drawer was not amended).
134. In cross-examination, Nigel Tibbles stated that “*I didn’t pay anything to White Cube as far as I remember*”, contradicting the evidence in his witness statement that he had written a personal cheque to White Cube for the deposit. He then tried to suggest that he

may have paid a cheque for the deposit to Jimson and that Jimson may then have paid White Cube electronically. There was no evidence adduced of any relevant credit to, or debit from, Jimson's account at this time; further, the White Cube records indicated that the deposit was received in the form of a cheque.

135. In closing Mr Chew relied on this contradictory evidence as an admission against interest or, at least, as indicating that Nigel Tibbles's evidence on the deposit was unreliable. I agree that his evidence as to the deposit was unreliable. It was apparent, in my judgment, that Nigel Tibbles has no recollection of paying £10,000 for the deposit whether to Jimson or to White Cube. Rather, he has sought to reconstruct events, relying on the fact of the £10,000 payment from Jimson to him in February 1999, and believes that his reconstruction must be correct.
136. HDL's strongest point on the deposit was that on 23 February 1999 a sum of £10,000 was paid from the Jimson account to the joint account of Nigel Tibbles and his wife; this was the same date as the transfer of £58,000 to White Cube. It is said that this was a repayment to Nigel Tibbles, reflecting his prior payment of the deposit. Jimson's UBS bank statements show that prior to Robert Tibbles' transfer of £40,000 the account had a modest credit of some £1,261 and that by 26 March 1999 it had returned to a low balance of some £7 credit. A further sum of £27,500 was transferred to the account on 22 February 1999 from another Jimson account. It is not clear from the evidence before me whether the monies in the other Jimson account had been deposited by Nigel Tibbles or had come from another source. Whilst I accept that the transfer of £10,000 might, by itself, suggest that Nigel Tibbles paid the original deposit, this is certainly not the only possibility. It could also reflect some other adjustment being made between the Jimson accounts and Nigel Tibbles.
137. Robert Tibbles was candid that he has no clear recollection of the payments after so many years; nevertheless he believes that he personally paid the £10,000 deposit by cheque to White Cube. In this regard he points to his letter of 31 October 1998 to his bank notifying his bank that he would be writing the cheque for the deposit. He believes that he did then write the cheque; his bank has not been able to provide statements going back that far.
138. White Cube's records indicate that the cheque was received on either 30 October 1998 or 3 November 1998 and credited to the account set up in the name of Mr Gabrielli. As set out at [112] above, White Cube's explanation of their systems is that the former date is taken from database created in 2003 based on information imported from the previous account system, whereas the later date is said to have been captured from the previous accounting system. The later date, therefore, appears to me to be the more reliable source.
139. Having taken the trouble to write to his bank to inform it that he would be writing a cheque, it seems likely, absent evidence to the contrary, that Robert Tibbles did then write the cheque and deliver it to White Cube by 3 November.
140. The deposit was credited by White Cube to the account it had set up in Paolo Gabrielli's name. This is consistent with Robert Tibbles's evidence that he entered into the agreement, directed the gallery to address the invoice to Mr Gabrielli, and paid the deposit himself. It is not consistent with HDL's case that the deposit was paid on behalf of HDL. Had the deposit been paid on behalf of HDL then one would have expected White Cube to allocate the payment to HDL in its account ledger. There would have

been no reason for this to have been hidden.

141. Furthermore, it is not clear why, on HDL's case, Nigel Tibbles would have paid the deposit personally, as opposing to making any payment via Jimson. This seems to have caused Nigel Tibbles some confusion too, as evidenced by his assertion in oral evidence that he paid no monies personally to White Cube.
142. The best evidence, in my view, is Robert Tibbles's contemporaneous letter of 31 October 1998 to his bank explaining that the cheque would be written and making arrangements to enable it to be honoured. I am satisfied that it is more likely than not that he did then write that cheque and that it was received by White Cube on 3 November 1998.

The completion of the purchase of the Painting in February 1999

143. HDL's alternative case is that even if it was not a party to the original agreement to purchase the Painting in October 1998, nevertheless the contract was novated by substituting HDL as the purchaser such that by the time title passed, there was a contract of sale between the gallery as vendor and HDL as purchaser.
144. HDL relies, in particular, on the fact that White Cube's invoice dated 5 February 1999 was addressed to HDL, that a copy of the invoice was sent to Nigel Tibbles at the French villa and that the invoice contained the printed term: "*Title does not pass unless payment is made in full...*". Reliance is also placed on the fact that Jimson paid the balance of £58,000 and that White Cube's ledger shows that, by February 1999, an account had been created in the name of HDL and that the £10,000 paid by way of deposit had been transferred as a credit from the account in the name of Paolo Gabrielli to HDL's account.
145. It is also said by HDL that the £40,000 paid by Robert Tibbles to Jimson on 16 February 1999 was not paid in respect of the Painting, but was a repayment of some previous loan.
146. Robert Tibbles's position is that having split up with Paolo Gabrielli he wanted a replacement addressee for the invoice with an address outside of the EU so that the gallery could continue not to charge VAT on the Painting. He says that his father "*stepped in and offered that I used the Claimant's name and address. My father's involvement was only to help with the invoicing of the Painting after Paolo and I split up*".
147. He does not have a clear recollection of how payments were made for the Painting and had forgotten that Jimson had paid the balance to White Cube. On seeing the Jimson statements for the first time his reaction, in an email to Phillips dated 14 July 2020, was that the fact of this payment was "*news to me*". He now accepts that the balance of £58,000 due in respect of the Painting was paid by Jimson on 23 February 1999. His position is that he was paid his bonus of c£69,000 on 7 February 1999 and he then paid £40,000 to Jimson the following week, on 16 February 1999 in respect of the Painting. He denies that that payment was in respect of a repayment of any previous loan.
148. Robert Tibbles relies on his letter to his bank dated Sunday 7 February 1999 in which he directed that £20,000 from his bonus of £69,000 be used to pay off his existing loan facility, leaving £49,000 and he asked about the terms on which he could borrow a further £20,000 for the coming year to assist with his art collecting. In the event, it is said, he

paid £40,000 from his bonus to Jimson in respect of the Painting and obtained a loan of £18,000 from his father, via Jimson. There was therefore no immediate need to secure a further loan from his bank for £20,000.

149. Ultimately, therefore, the issues for determination in respect of the completion of the purchase of the Painting in February 1999 are:
 - 149.1. Did Nigel Tibbles decide that HDL should buy the Painting via Jimson and, if so, did Robert Tibbles, HDL and White Cube all expressly consent to the novation of the contract or can such consent be inferred? *Or*
 - 149.2. Did Nigel Tibbles agree to allow Robert Tibbles to use the name and address of HDL on the invoice, in lieu of Paolo Gabrielli's name and address, with Robert remaining as the party contracting with White Cube to purchase the Painting?
 - 149.3. Did Robert Tibbles pay Jimson £40,000 in respect of the Painting or was that sum paid by way of repayment of some other loan?
 - 149.4. Did Nigel Tibbles loan Robert Tibbles £18,000 to assist with the payment of the balance of the £58,000 to White Cube?

Did Nigel Tibbles decide that HDL should buy the Painting via Jimson and, if so, did Robert Tibbles, HDL and White Cube all expressly consent to the novation of the contract or can such consent be inferred?

150. ***Did Nigel Tibbles decide to buy the Painting in February 1999 on behalf of HDL?*** Both parties seek to rely, in part, on the fax of 22 February 1999 from Nigel Tibbles to Jimson's bank, UBS set out at [65] above. That fax starts by saying: "*Jimson has agreed to purchase a picture together with Robert.*" The parties seek to explain this statement in different ways.
151. The letter is not entirely consistent with HDL's case as HDL claims that it, not Jimson, had agreed to purchase the Painting and, moreover, HDL's case is that it was buying the Painting outright and not "*together with Robert*". HDL says that the words "*together with Robert*" refer to Robert having negotiated the purchase.
152. Similarly, the letter is not entirely consistent with Robert Tibbles's case because his (primary) case is that he was buying the Painting outright, facilitated by a loan of £18,000 from his father, via Jimson. His position, in effect, is that those words were intended to indicate to the bank that Jimson was helping him to fund the purchase by providing a loan of £18,000.
153. The parties also have different explanations as to the meaning of the next sentence - "*The picture will be purchased in the name of Hilden Developments*". On behalf of HDL it is said that this means that legal title was being acquired by HDL. On behalf of Robert Tibbles it is said that it reflects the agreement that Robert Tibbles reached with his father whereby he was being allowed to use HDL's name on the invoice for "administrative purposes", namely for VAT reasons.

154. At [120] to [130] above I have set out the reasons why I do not accept Nigel Tibbles's evidence that he unilaterally decided that HDL would purchase the Painting, unseen, as an investment in October 1998. The events of February 1999, including the February invoice, the letter of 22 February 1999 and the payments of the balance by Jimson do not, in my judgment, change the reality that Nigel Tibbles never decided to buy the Painting on behalf of HDL. The reasons why it is improbable that Nigel Tibbles would have decided to invest in the Damien Hirst painting on behalf of HDL in October 1998 are equally applicable when it comes to determining whether he decided to buy the Painting on behalf of HDL as an investment in February 1999.
155. I do not propose to repeat each of the reasons given above but I merely highlight that, as set out at [123] - [124] above, had such an investment decision been taken on behalf of HDL in February 1999 then it is probable that Nigel Tibbles would have involved Oliver Tibbles, the sole director of HDL, in this decision or, at the very least, have informed him of the decision and/or of the fact of the acquisition. Some record of the relevant resolution and /or of the fact of the acquisition would have been made in HDL's company records, as had previously happened in respect of the Kent land acquisition.
156. In my judgment, the totality of the evidence strongly favours Robert Tibbles's evidence that the substitution of HDL and its BVI address on the invoice in lieu of the name of Paolo Gabrielli and his Swiss address was agreed between him and his father for the purpose of assisting him to keep to his original plan of acquiring the Painting without the gallery needing to charge VAT. The February invoice makes clear that no VAT is being charged: "VAT: Out of EEC". This was an agreement between father and son whereby Nigel Tibbles agreed to assist Robert Tibbles by allowing him to use the HDL name and address on the invoice for VAT purposes. That explanation is far more probable and compelling, having regard to all the evidence, than the assertion that a decision had been made on the part of HDL to acquire the Painting as an investment.
157. Mr Brier on behalf of HDL made the point that if Robert Tibbles wished to buy the Painting then he could have simply written a cheque to White Cube for the full sum and Jimson would not have been involved.
158. It seems to me that, regardless of whether Robert Tibbles could have raised the full £58,000 to complete the purchase, his father had "stepped in" by agreeing to help in terms of the BVI address on the invoice for VAT purposes. As set out at [182] to [185] below, I am also satisfied that Nigel Tibbles agreed to provide a loan of £18,000.
159. It is, of course, correct that Jimson could have loaned monies to Robert Tibbles directly. For whatever reason, that is not the arrangement put in place. Once Nigel Tibbles had agreed to HDL's name being used on the invoice for VAT purposes then it may have been considered preferable that the entire balance should be paid by Jimson, whether for purely administrative purposes, or to assist with the appearance that VAT was not chargeable, or otherwise. I formed the view that, twenty-three years later, neither Nigel or Robert Tibbles had any clear recollection as to why the payments were structured in this manner.
160. It is also said on behalf of HDL that even if HDL's name was only inserted on the invoice to avoid VAT then HDL must still have acquired legal title, otherwise there would have been no effective tax avoidance. It is not clear from the evidence whether Robert Tibbles

had any intention of trying to use the fact of HDL's name and address on the invoice for capital gains tax purposes. Nor did HDL attempt to argue that no VAT would have been chargeable had legal title truly been transferred to HDL. But in any event, the purpose of this trial is not to determine whether VAT should have been charged on the sale of the Painting or whether any attempted ruse to avoid VAT or CGT was effective. Those are separate issues. Robert Tibbles was candid in the disclosed documents, and in evidence, that if VAT should have been charged on the sale then he would "*take that on the chin*".

161. **Novation:** HDL's position on its alternative case on novation would require the consent of all the parties – express or implied by conduct. It is said that there is clear evidence from which novation can properly be inferred as a matter of business efficacy. The evidence relied upon is the naming of HDL on the invoice, the payment by Jimson on behalf of HDL, Robert Tibbles's acceptance that his father was "stepping in" to help after his break-up with Paolo Gabrielli and the transfer on White Cube's ledger of the deposit from the account in Paolo Gabrielli's name to the account in HDL's name.
162. Reliance was also placed on Robert Tibbles's evidence in cross-examination in relation to the February 1999 invoice:

Mr Brier: "*Are you suggesting that you thought you might have been avoiding VAT payments by naming the buyer as an entity outside the EU*"

Robert Tibbles: "*Yes*"
163. However, the effect of Robert Tibbles's evidence was consistent on the key point that the reason why he asked White Cube to use first Paolo Gabrielli's name and address and then HDL's name and address on the invoices was so that the gallery did not have to charge VAT. His position is that he wanted this invoicing arrangement because it assisted him to avoid paying VAT because he was the actual purchaser. Robert did not accept that he agreed to HDL being the actual purchaser of the Painting; to the contrary, he was clear that neither his father nor HDL was buying the Painting.
164. It is submitted by Mr Chew that there was no express consent by Robert Tibbles to HDL replacing him as the contracting party and/or acquiring legal title to the Painting. Further, it is said that the test of business efficacy is not met. It is submitted that, on a proper understanding of the facts, this was a loan by a father to a son coupled with an agreement to allow HDL's name and BVI address to be used on the invoice; there was no change in respect of the parties to the contract of sale.
165. Given my finding that Nigel Tibbles did not agree to purchase the Painting on behalf of HDL, whether in October 1998 or February 1999, the issue of novation fails at the first step as there was never an agreement by Nigel Tibbles on behalf of HDL that HDL should purchase the Painting. In my judgment, Mr Chew is correct that, on the evidence properly construed, Nigel Tibbles merely agreed to allow his son to use HDL's name and address on the invoice in lieu of the name of Paolo Gabrielli.
166. In any event, I am satisfied that Robert Tibbles did not give consent to a novation of the agreement of sale such as to substitute HDL as to the purchaser of the Painting. I very much doubt that Robert Tibbles ever contemplated the possibility that his father might claim that the Painting belonged to HDL. I have no doubt that he would have refused had he been asked. But he was not asked, not least because Nigel Tibbles had no intention, in my view, of buying the Painting on behalf of HDL or acquiring legal title to it.

167. As to the position of the vendor, Mr Chew draws attention to White Cube's letter of 3 June 2020 which states, amongst other things, that Mr Jay Jopling remembered negotiating the sale of the Painting to Robert Tibbles, but that he did not get involved in the invoicing and that "*the administrative arrangements for the invoicing of the Payment would have been dealt with by his assistant (who has long since left the gallery and whose emails cannot be recovered) and the finance team...*". Mr Chew submits that invoicing issues were treated as "administrative arrangements" by both White Cube and Robert Tibbles, as opposed to matters which went to a renegotiation of the agreement.
168. I accept that, without more, it is not appropriate to treat the invoicing change as evidencing consent on the part of the gallery to a novation of the contract and nor is it necessary to infer such consent to give business efficacy to what happened. The gallery's consent to changing the name and address on the invoice at the direction of the contracting party, Robert Tibbles, is not the same as consenting to a novation of the contract to HDL. Whilst it seems unlikely that White Cube would have objected novation, that does not amount to evidence that there was actual consent or that consent should be inferred. The same point can be made in respect of the change of internal account names used by White Cube.
169. In light of the limited information that White Cube stated that it could provide as to the identity of the contracting party, it would be understandable if HDL's legal team took the view that calling a witness from White Cube was unlikely to take matters further, but the point remains that the burden rests on HDL to make out its case on novation.
170. In his oral evidence Nigel Tibbles claimed that he had liaised directly with White Cube gallery in February 1999 about the invoice. However, that is not the impression given in his witness statement. In the context of the original October agreement he states that he had asked Robert Tibbles to tell White Cube to send the invoice to HDL "care of me" at the French villa. There is no suggestion that he directly contacted White Cube at any stage in respect of the change of invoice details to HDL. I am not persuaded that Nigel Tibbles has any actual recollection of contacting White Cube in person. In any event, there is no evidence that White Cube accepted instructions directly from Nigel Tibbles or otherwise recognised him, or HDL, as the contracting party, as opposed to accepting instructions from Robert Tibbles as the contracting party.
171. On the unusual facts of this case it is not, in my view, necessary or appropriate to infer consent to a novation to give business efficacy to what actually happened. Robert Tibbles's pleaded primary case is that "*the invoicing arrangements on which the Claimant rely neither reflected nor affect the true contract of sale, which was between the Vendor and the Second Defendant*". In my judgment, this is an accurate summary of the position in fact and in law.

Did Nigel Tibbles agree to allow Robert Tibbles to use the name and address of HDL on the invoice, in lieu of Paolo Gabrielli's name and address, with Robert remaining as the party contracting with White Cube to purchase the Painting?

172. As set out above, I am satisfied that Robert Tibbles's position is correct on the balance of probabilities. Nigel Tibbles agreed to allow Robert Tibbles to use the name and address of HDL on the invoice after he and Paolo Gabrielli separated. Robert Tibbles

says that he wanted this arrangement because he had been informed that the gallery would not have to charge VAT if the invoice was address to a buyer outside the EU. That certainly seems to have been the effect achieved, at least contemporaneously.

173. As set out above, Robert Tibbles, in my judgment, remained the party which was contracting with White Cube; he merely directed White Cube to make a change in respect of the entity and address on the invoice. The payment was then made by Jimson with Robert Tibbles's agreement and as arranged with his father. It was accepted by White Cube as discharging Robert Tibbles's liability to pay the balance.

Did Robert Tibbles pay Jimson £40,000 in respect of the Painting or was that sum paid by way of repayment of some other loan?

174. It is common ground that Robert Tibbles transferred £40,000 to Jimson's account on 16 February 1999.
175. Nigel Tibbles claims that the £40,000 payment was an unrelated part payment in respect of a previous loan made to either Robert or one of his friends and that it was being paid now because Nigel Tibbles operated on the basis that outstanding loans should be paid before further monies were expended. However, he has been unable to provide any details as to when, to whom, or for what reason any such loan had previously been made. No documentary evidence, whether in the form of Jimson bank statements or otherwise, has been disclosed to support the allegation that any such prior loan had been made. His evidence was: "*at the time of purchase I am confident in saying that Robert and/or his friends owed me and/or Jimson money but given the passage of time I do not recall or have specific records of the amounts*".
176. Robert Tibbles is clear in his evidence that, as at early February 1999, he did not owe Jimson or his father £40,000 or any sum and that the payment to Jimson, a week after receiving his bonus, was in respect of the Painting. That is also consistent with his previous course of dealings of reaching an agreement with a gallery to delay the payment of the major part of the price of a new acquisition until he received his bonus and, if necessary, topping up his bonus with a loan to make the balancing payment.
177. He also points to the statement in Nigel Tibbles's fax to UBS of 22 February 1999 that "*Jimson has already received £40,000 from Robert which has been credited to the account. I should be grateful if you would add £18,000 and transfer to the gallery £58,000*" as evidencing the fact that the £40,000 which he had transferred was in respect of the major part of the balance due on the Painting.
178. On behalf of Robert Tibbles, Mr Chew points out that Nigel Tibbles was careful to inform the bank when a payment by Robert was in respect of a prior loan and should be allocated against that prior loan: by way of example, Nigel Tibbles's fax of 14 July 1999 to UBS, directed the bank to credit a payment from Richard Salmon to "*the loan made to Robert earlier*". No such direction was given to UBS to credit the £40,000 against any previous loan in the fax of 22 February 1999. The natural reading of the fax, in my view, is that Nigel Tibbles is informing UBS that Robert has paid £40,000 to Jimson in respect of the Painting and that a further £18,000 should be added to these monies to pay the balance to the gallery.

179. I reject Nigel Tibbles's contention that the £40,000 payment from Robert Tibbles on 16 February 1999 was in relation to some other, unconnected, loan advanced to an unknown person on an unknown date for an unknown reason. There is a complete lack of any particulars about this purported prior loan or any evidence to support the allegation that any such loan had ever been made, or that any repayment was due from Robert Tibbles.
180. Moreover, the wording of the fax of 22 February 1999 is clear in my view – Nigel Tibbles is informing the bank that Jimson has “*already received £40,000 from Robert which has been credited to the account*” in the context of the payment for the Painting.
181. Further, the stage payment agreed with White Cube fits precisely with Robert Tibbles's evidence that he had to wait until the payment of his bonus in February to be able to pay the balance. He then paid £40,000 to Jimson in respect of the Painting the week after receiving his bonus. I am satisfied, on the balance of probabilities, that the £40,000 paid to Jimson by Robert Tibbles on 16 February 1999 was paid in respect of the Painting.

Did Nigel Tibbles loan Robert Tibbles £18,000 to assist with the payment of the balance of the £58,000 to White Cube?

182. It is HDL's own pleaded case, at paragraph 4 of HDL's Reply, that “*the principal way in which such vehicles [referring to Jimson and the other family offshore companies] were used to assist the Second Defendant and his brothers with their affairs was by making loans*”.
183. That was, in my view, precisely how Jimson was being used on this occasion – namely to advance a loan to Robert Tibbles on the instructions of Nigel Tibbles to enable Robert Tibbles to buy the Painting. Robert Tibbles therefore did not need to pursue the request he had made by letter of 7 February 1999 for a £20,000 loan from his bank.
184. It is, of course, correct that Jimson could have loaned the £18,000 to Robert Tibbles directly and that that would have been a simpler way to facilitate the loan. For whatever reason, that is not the arrangement put in place. As set out at [159] above, once Nigel Tibbles had agreed to HDL's name being used on the invoice for VAT purposes then it may have been considered preferable that the entire balance should be paid by Jimson.
185. For the reasons set out above, I am satisfied, on the balance of probabilities, that the weight of the evidence supports the conclusion that Nigel Tibbles agreed to allow HDL's name and BVI address to be used on the invoice for VAT purposes in lieu of the name and address of Paolo Gabrielli and agreed to lend his son £18,000 to complete the purchase of the Painting, such monies being advanced via Jimson.

Conclusion in respect of the purchase of the Painting

186. In light of the above findings, in my judgment Robert Tibbles succeeds on his primary case:
- 186.1. White Cube entered into an agreement to sell the Painting to Robert Tibbles in October 1998. Robert Tibbles directed White Cube to address the proforma

- invoice to Paolo Gabrielli using his Swiss address and no VAT was shown as payable on that invoice.
- 186.2. After the long-term relationship between Robert Tibbles and Paolo Gabrielli came to an end at the end of 1998, Robert Tibbles agreed with his father that HDL's name and BVI address could be used on the invoice. Robert Tibbles directed White Cube to amend the addressee details on the final invoice to HDL in lieu of Paolo Gabrielli.
 - 186.3. Nigel Tibbles also agreed to help his son with a short-term loan of £18,000, via Jimson, to help with the payment of the balance due in February 1999. Robert Tibbles therefore did not need to pursue his request of 7 February 1999 for a £20,000 loan from his bank.
 - 186.4. The £58,000 balance was then paid by Jimson to White Cube on behalf of Robert Tibbles. Robert Tibbles had contributed £40,000 of that sum by prior payment to Jimson and Jimson topped up the remaining £18,000 by way of loan.
 - 186.5. At no stage did Nigel Tibbles decide that HDL should buy the Painting as an investment. Robert Tibbles did not consent, expressly or by conduct, to a novation of the original agreement of October 1998. The parties to the agreement to sell remained Robert Tibbles and White Cube at all material times. The name and address on the invoice was changed as agreed between Nigel and Robert Tibbles and pursuant to Robert Tibbles's instructions to White Cube.
 - 186.6. Legal title was therefore transferred to Robert Tibbles on payment of the balance of £58,000 by Jimson on his behalf.
187. For the reasons set out above, I reject, on the facts, HDL's primary case that Nigel Tibbles instructed Robert Tibbles to negotiate the purchase of the Painting for HDL as an investment in October 1998. I also reject HDL's alternative case that in February 1999 Nigel Tibbles decided to buy the Painting on behalf of HDL and that the contract was novated.
188. I agree that it was a term of the agreement to sell the Painting that title would not pass until payment had been received in full, but that says nothing about *to whom* title passed on payment. For the reasons given, I am satisfied that Robert Tibbles remained the contracting party at all time and that title passed to him on payment of the balance by Jimson on his behalf.

Robert Tibbles's alternative case as to beneficial interest

189. Both parties have raised a number of issues of law for determination in the event of a finding that HDL acquired legal title to the Painting, but that Robert Tibbles had paid monies in respect of the cost of the Painting. In light of my finding that legal title passed to Robert Tibbles, such issues do not arise. It is not helpful to venture into the realms of what legal consequences may have flowed in terms of express trusts, resulting trusts or a fractional beneficial interest had different findings of fact been made.
190. However, if I were wrong in law to conclude that Robert Tibbles acquired legal title on the basis of the factual findings that I have made then it would be necessary to determine the further factual issue as to whether the £18,000 loan by Jimson was paid back by Robert Tibbles. This is because if Robert Tibbles did not acquire legal title then such a finding might have an impact on any determination as to whether he acquired the entire beneficial interest in the Painting or has a fractional interest in accordance with the ratio

of the sums he paid. I shall deal with this briefly as it only arises if I am wrong on my findings as to legal title.

191. As noted at [70] above, it was contended on his behalf by Mr Chew that the £18,000 was probably repaid in mid July 1999. Reliance is placed on a letter dated 14 July 1999 from Nigel Tibbles to UBS Bank (emphasis added) which states:

*“Transfer Received by Jimson **from Robert** £21,500 Please transfer if possible today to Roberts account with Midland Bank ... the sum of £3,500 ... After deducting the amount of the transfer and the transfer charges please transfer the balance of £21,500 to the account of Neverita with you.
The amount to be credited against loan made to Robert earlier”*

192. The £21,500 was paid to Jimson by Richard Salmon on 14 July 1999. Nigel Tibbles could not recall the details of why this sum was being paid by Mr Salmon, although he was clear that he had made loans at some stage to Mr Salmon. He accepted that, in his fax, he was instructing UBS to treat it as a payment from Robert Tibbles in respect of a previous loan to Robert, even though the payment had been made by Mr Salmon. He did not accept that this payment could have been repayment of an £18,000 loan in respect of Robert Tibbles’s contribution to the Painting. However, when asked whether this was repayment of a bridging loan to Robert, Nigel Tibbles replied *“I’m sorry, I really don’t know”*.
193. Robert Tibbles could not now recall why Mr Salmon was making a payment to Jimson at this time. He accepted that there were loans made by his father to Richard Salmon. But Robert Tibbles also said that he, Robert, had also personally made loans to Mr Salmon.
194. Mr Chew’s submission was that it is simply too much of a coincidence that a net sum of precisely £18,000 was being paid to Jimson’s account and treated by Nigel Tibbles as a payment *“from Robert”* with directions to the bank to credit it against the *“loan made to Robert earlier”*. There is no evidence of any other loan for £18,000 having been made to Robert Tibbles by Jimson.
195. In my judgment, Mr Chew is correct in his submission that it is more likely than not that this payment by Richard Salmon was treated by Nigel Tibbles, on behalf of Jimson and HDL, as discharging the loan of £18,000 that had been made to Robert Tibbles in respect of the Painting. This is, to my mind, the most natural reading of Nigel Tibbles’s contemporaneous fax in the absence of evidence of any other loan having been made to Robert Tibbles at this time. The fact that precisely £18,000 was being credited against the prior loan to Robert Tibbles (after £3,500 was deducted from the £21,500 and paid to him directly) also ties up precisely with the value of the loan for the Painting. There is also no evidence of any attempts being made by Nigel Tibbles to ask Robert Tibbles to repay the £18,000 at any other stage.
196. Furthermore, this pattern of loans being advanced and repaid without formality is also consistent with the previous arrangements made between Robert Tibbles and his father whereby bridging loans were made available by Nigel Tibbles to enable his son to purchase properties on two occasions with those loans being repaid within a few months once Robert Tibbles had sorted out alternative financing.

197. Accordingly, I find that it is likely that Robert Tibbles did repay the £18,000 in or about July 1999.
198. Given that, in my judgment, Nigel Tibbles did not decide to purchase the Painting on behalf of HDL and neither he nor Robert Tibbles intended to confer legal title on HDL, it seems to me that this is not a case in which any conscious decision was taken to create a trust to deal with the possibility that legal title might have been acquired by HDL.
199. HDL's pleaded case (paragraph 18(4) of the Reply) includes the following averment in the context of its case that Jimson paid 100% of the purchase price: "*to the extent that there is any equity in the Painting it vests 100% in Jimson, the provider of 100% of the funding to the Claimant (which holds legal title to Jimson's order).*" On the basis of the findings of fact I have made, the equity in the Painting never vested 100% in Jimson as Jimson did not pay 100% of the purchase price. The logic of HDL's pleaded case would appear to be that the beneficial interest may have vested in Jimson and Robert Tibbles initially. Once Robert Tibbles repaid the loan then, if HDL held legal title, it held it to Robert Tibbles's order.
200. However, Mr Brier submitted in closing that a resulting trust cannot arise because Jimson and HDL have separate legal personalities and Robert Tibbles transferred monies to the mixed funds of Jimson prior to the purchase. The reality, however, is that Jimson was the vehicle by which, and the agent through which, Nigel Tibbles directed both (i) loans to be made to his sons (being the principal way in which the companies were used to assist the four sons, as per paragraph 4 of HDL's Reply) and (ii) payments to be made on behalf of HDL because HDL had no bank account.
201. Had I been required to decide this issue then I would have agreed with Mr Chew that, in the unusual circumstances of this case, the fact that Nigel Tibbles instructed Jimson to make and receive payments on behalf of HDL (because HDL lacked a bank account) cannot sensibly prevent a resulting trust from arising in accordance with the principles set out in *Westdeutsche Landesbank v Islington LBC* [1996] AC 669, 708.
202. Thus, if the matter had fallen for determination on the basis that legal title to the Painting vested in HDL, I would have held that the entire beneficial interest came to vest in Robert Tibbles and that he was entitled to terminate the trust and consign the Painting for auction.

Conclusion

203. For the reasons set out above, I answer the agreed list of issues as set out below.
- 203.1. Does the Claimant or the Second Defendant have legal title to the Painting?
- The Second Defendant has legal title to the Painting.
- 203.2. If the Claimant has legal title to the Painting, is the Claimant entitled to an order for delivery up of the Painting?
- Not applicable as the Claimant does not have legal title to the Painting. The Claimant is not entitled to an order for delivery up.

- 203.3. If the Claimant has legal title to the Painting, does the Second Defendant have the entirety of the beneficial interest in the Painting?

Not applicable as the Second Defendant, not the Claimant, has legal title to the Painting.

If I were wrong in relation to the effect, in law, of my findings of fact then I would have concluded that the Second Defendant did acquire the entirety of the beneficial interest in the Painting.

- 203.4. Alternatively, does the Second Defendant have a beneficial interest in the Painting of 50/68 or in the further alternative 40/68?

Not applicable as the Second Defendant, not the Claimant, has legal title to the Painting.

- 203.5. What is the significance, if any, of the Second Defendant's possession of the Painting?

Not applicable as the Second Defendant, not the Claimant, has legal title to the Painting and, accordingly, is entitled to possession of the Painting.

204. I am very grateful to both Counsel for their helpful and detailed written and oral submissions in relation to this matter. I shall deal with all matters consequential upon this judgment following the handing down of the judgment, insofar as they cannot be agreed between the parties. Directions will also need to be provided in respect of Robert Tibbles's counterclaim for damages.

205. **Note in relation to VAT:** This is a case in which each party claims to have acquired title to the Painting in circumstances in which the invoice was marked "*VAT: Out of EEC*" and no VAT was paid. It is clear that the Painting was not taken out of the country.

206. Nigel Tibbles claims not to have appreciated the VAT position set out on the invoice despite the fact that he says he liaised directly with the gallery about the February 1999 invoice and the fact that the invoice was sent to him and kept by him. It has not been necessary to determine in this trial what he knew, or should have known, about the VAT arrangements relating to the use of HDL's name and address on the invoice.

207. In his witness statement Paolo Gabrielli was clear that he understood that his name and address had been used by Robert Tibbles on invoices for VAT purposes. Robert Tibbles was consistent in his witness statement and his oral evidence that the invoicing arrangements he put in place were designed to avoid VAT being charged on the Painting. He claims that he was told by White Cube that "*as long as I could show an address outside the UK then the gallery was allowed not to charge VAT on the purchase*". Mr Chew made clear on his behalf that no admissions of any wrongdoing in respect of VAT were being made by Robert Tibbles. It has not been necessary to make findings in relation to what Robert Tibbles may or may not have been told by an unidentified person at White Cube, nor as to what he knew or should have known.

208. In circumstances in which no allegations of VAT fraud were raised on the pleadings and no case was advanced in respect of tainting by illegality or similar, VAT matters were only touched on in a peripheral manner at trial. I do, however, note that in various of his emails (see [84] to [88]) Sebastian Tibbles claims to have reported allegations of fraud to the Metropolitan Police. I am also conscious that the events took place some 23 years ago. In all the circumstances I do not consider that it is appropriate to comment further on issues concerning VAT in this judgment, but there may be certain points which I will wish to raise with Counsel when addressing consequential orders and directions following the handing down of judgment.