



IN THE COUNTY COURT AT CENTRAL LONDON

Claim No: C29YP054

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 11 March 2024

Before :

RECORDER GRAEME ROBERTSON

Between :

REID DOUGLAS TORR

Claimant

- and -

BRENDAN CONNOR

Defendant

Stephanie Jarron (instructed by Fisher Jones Greenwood LLP) for the **Claimant**
Simon Jones (instructed by Bird & Lovibond) for the **Defendant**

Hearing dates: 22, 23, 24 January 2024 and 8 February 2024

Approved Judgment

I direct that pursuant to CPR 39.9 no recording shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Recorder Robertson

Recorder Robertson:

Introduction and Background

1. The Claimant, Reid Torr, is a computer network engineer who lives in Brisbane, Australia. In April 2013, he was interested in purchasing a Ferrari. On 17 April 2013, he saw an advert in Auto Trader for a used Ferrari 360 registration number LF03 UYW (the “**Ferrari**”), which was described as a “Spider 2DR Challenge Stradale Bumpers and Wheels”. The advertised price was £44,200.
2. Mr Torr was interested in the Ferrari. It was cheaper to buy it from the UK than from Australia at the time and he was attracted by the colour and the fact that it was a special edition.
3. The Defendant, Brendan Connor is an experienced car dealer. He has traded in cars since around 1990. Before that, he was employed as a motor mechanic, having trained with the British Leyland Motor Corporation from 1972 to 1975. In January 2013, Mr Connor placed the advert in Auto Trader on behalf of Heathfield Motor Company Limited (“**HMC**”), which at the time was a car dealership based in Hertfordshire. Mr Connor was the sole director and employee of HMC, which was established in 2001. HMC entered into voluntary liquidation on 16 July 2015, and is now dissolved.
4. Mr Torr agreed to buy the Ferrari on 23 April 2013. Some work was carried out on it, and it was delivered to Mr Torr in Brisbane on 25 July 2013. When Mr Torr saw the Ferrari after it was unloaded, he was disappointed with it. It was not as clean and shiny as it had looked in the photographs and the boot (which is at the front) was obviously distorted. There were scratches on the bodywork. On further inspection, the Ferrari turned out to have numerous other defects. It did not have original Challenge Stradale bumpers or wheels. It had been involved in a serious accident in 2004 and subsequently poorly repaired. There was some media attention about the accident at the time, as the car had been owned, driven and ultimately crashed by a television presenter and former footballer called Ian Wright.
5. The dispute over the Ferrari has a long history. Mr Torr first brought a claim against HMC in England and Wales in November 2013 for misrepresentation. HMC failed to attend the trial, and judgment was given for Mr Torr against HMC by HHJ Simpkins on 16 July 2015, which was the same date that HMC entered into voluntary liquidation. Mr Torr did not recover anything from HMC.
6. Mr Torr then brought the current proceedings against Mr Connor in his personal capacity. There could be no claim against Mr Connor for the innocent or negligent misrepresentation by HMC due to the corporate veil. The current claim is therefore brought for fraudulent misrepresentation – or deceit; they amount to the same thing for the purposes of this case – against Mr Connor, which requires Mr Torr to show that Mr Connor acted dishonestly, in the legal sense of the word. The proceedings came on for trial before Recorder Wilson KC in March and July 2018. He found for Mr Torr on all substantive points and gave judgment for damages for fraudulent misrepresentation. The story did not end there, however.

7. On appeal, the High Court overturned the learned Recorder's findings on the issue of whether or not Mr Connor made the representations fraudulently (termed the "**Dishonesty Issue**"). The remaining findings that the representations were made, what they meant, that they were false and the damages that Mr Torr would be entitled to recover all stand. Fordham J remitted the matter to the County Court for retrial on the Dishonesty Issue alone. Further orders given by this Court allowed Mr Torr to plead additional material in support of the Dishonesty Issue, and it is that amended case that is before me for determination. The findings of Recorder Wilson KC on the remaining issues are treated as preliminary findings and I am bound by them. I am not, however, bound by any findings, views or comments from Recorder Wilson KC in relation to the Dishonesty Issue. I have made my determinations on the Dishonesty Issue below based on the evidence submitted in this trial (which includes documents, witness statements, expert opinions and transcripts from what I will call the "preliminary trial" before the learned Recorder), the oral evidence I have heard and the submissions from the parties.

The Facts Already Determined by the Court

8. The key facts determined at the preliminary trial are helpfully set out in the parties' respective skeleton arguments and I gratefully adopt their summaries. Where I refer to numbers in square brackets in this judgment, they are to the paragraphs of the judgment in the preliminary trial. I have not repeated every factual finding on the issues that stand from the preliminary trial, but only those necessary for my determination of the Dishonesty Issue.
9. The online advert that Mr Torr saw on 17 April 2013 stated as follows (with original capitals):

“£44,200 Ferrari 360 SPIDER 2DR CHALLENGE STRADALE BUMPERS AND WHEELS 3.6 “FULL SERVICE HISTORY”... “A VERY RARE EXAMPLE WITH CHALLENGE STRADALE BUMPERS AND WHEELS, THIS CAR IS A REAL HEAD TURNER IN TOUR DE FRANCE BLUE, DRIVES SUPERBLY, GREAT CONDITION INSIDE AND OUT. ANY INSPECTION WELCOME ‘AA’ OR ‘RAC’”
10. The advert also contained one large picture and seven thumbnail pictures of the Ferrari from various angles.
11. Mr Torr was interested in buying the Ferrari, and so he telephoned HMC. He spoke to Mr Connor on 19 April 2013, where Mr Connor made the representation that the Ferrari was “*factory-fitted with Challenge Stradale bumpers and wheels which add considerable value to the Ferrari*” [45]. On that telephone call, Mr Connor also said that he had bought the car for himself, and that it was a particularly good example with no damage to panels, the interior or the exterior [47].
12. I should explain a bit about the Challenge Stradale features, which I take from the findings of fact from the preliminary trial. They are optional extras that can be added to a standard model of a Ferrari 360 before purchase. The standard model has alloy wheels with five visible spokes and a standard Ferrari bumper. The “Challenge” is a

different version that is adapted to make it suitable for racing. It has 14-spoke wheels and a bumper with different grilles (which cover the engine) that is set much closer to the ground than a roadworthy car. The “Challenge Stradale” model is different again. Unlike the “Challenge”, it is roadworthy, but it has extra features, including 14-spoke wheels and different bumpers and grilles to make it look more like a racing car. Ferrari, as an original equipment manufacturer, or OEM, maintains a database of its cars that list the factory-fitted features and accessories by reference to the chassis number. You can find out what features a particular car had when it left the factory using that database if you have the chassis number of the car. The reference in the advert to the Ferrari being a “Spider” just means that it was a soft top (convertible) car.

13. Mr Connor made four representations to Mr Torr in relation to the Ferrari:
 - a. The Ferrari was “*a very rare example with Challenge Stradale bumpers and wheels*”, which the Recorder found (because of the qualification “*a very rare example*” meant that the Challenge Stradale bumpers and wheels were part of the original equipment, i.e. factory-fitted [29] (“**Representation 1**”).
 - b. The Ferrari was “*in great condition inside and out*” [44] (“**Representation 2**”).
 - c. The Ferrari was “*factory fitted with Challenge Stradale bumpers and wheels which added considerable value to the Ferrari*” [45-46] (“**Representation 3**”).
 - d. The Ferrari was “*in excellent condition with no damage to its body or interior*” [49] (“**Representation 4**”).
14. Representations 1 and 2 were made in the advert. Representations 3 and 4 were made on the telephone call on 19 April 2013.
15. The Representations were false. Shortly after its arrival in Australia it became apparent that the Ferrari did not match up to those descriptions. The Ferrari had not been factory-fitted with Challenge Stradale bumpers or wheels [39] and [45-46] and its condition did not live up to the description. It had been involved in a very serious accident nearly ten years earlier and had not been restored to its pre-accident condition [43].
16. A Court appointed expert in Mr Torr’s claim against HMC, Mr Peter Marks, inspected the Ferrari in Australia and produced two reports, one dated 27 November 2014 and a supplemental report dated 14 March 2015. Those reports were adopted in these proceedings, and the Court accepted their findings. At [24] of the preliminary judgment, a precis of the damage was set out as follows:
 - a. Damage to the underside of the car, which had been repaired using non-standard fittings, including large washers to catch the panels where the fixing holes had been.

- b. Corrosion in various places (which in Mr Marks' experience would not have occurred in the course of transportation, but could have come about while the car was standing on the dock in Brisbane).
 - c. Indications that the bumper had been replaced after an accident (it fitted badly and there were missing brackets).
 - d. Poorly executed repairs to the front inner panel and boot floor, with gaps and ripples in the inner apron panel.
 - e. The fit of the bonnet was so bad that an attempt had been made to improve the fit by installing washers under one of the hinges.
 - f. The fit of the front wings and panels was poor, indicating that the wings had also been removed and replaced. Distortion in the lower edge of the offside wing had been caused by forcing it into place, indicating that the frame was possibly misaligned.
 - g. Variations in the width of the gap between the offside front wing and the door, which indicated that there might be misalignment of the panels due to poorly repaired damage.
 - h. Damage to the blue bodywork underneath the offside front headlight, which occurred before the wings were replaced as a result of the accident in 2004.
17. The repair work to the bottom of the car was carried out in England and not in Australia [25].
18. In reliance on the Representations, Mr Torr agreed on 23 April 2013 to buy the Ferrari for £43,500 [53-54].
19. Mr Torr suffered recoverable damage as a result of having relied on the Representations.

Issues and the Parties' Cases

20. The pleaded particulars of dishonesty in the amended particulars of claim and the agreed list of issues set out the following issues for the Court's determination as to whether or not Mr Connor made the Representations fraudulently:
- a. Did the Defendant fail properly or at all to inspect the Ferrari to confirm that each of the Representations was true?
 - b. Did the Defendant dishonestly procure the production of a report from Laser Garage Services Limited dated 22 March 2013 on the condition of the Ferrari?
 - c. Did the Defendant dishonestly procure an email from Franco Granell dated 8 October 2013 purporting to confirm that the Ferrari was factory-fitted with Challenge Stradale bumpers and wheels when he knew this was false?

- d. Did the Defendant alter the content of an email he had received from Franco Granell to state that the Ferrari was factory-fitted with Challenge Stradale bumpers and wheels?
 - e. Did the Defendant dishonestly remove pages from the Service Record Book of the Ferrari containing the ownership details and details of first service?
 - f. Did the Defendant provide an incomplete MOT history to the Claimant's solicitors to show that the MOT history did not contain any advisories and to conceal the discrepancy in the mileage history?
21. The Claimant's pleaded case also includes a general allegation that "*The Defendant knew at the time when they were made that each of the said Representations was false*" and in the Reply that if the "*Defendant did undertake [a] thorough visual inspection of the Ferrari as alleged, or at all, the result of the same could not reasonably have been as alleged by the Defendant*". There was some criticism of the Claimant's pleadings in that they did not set out how Mr Connor was said to have known that the Representations were false. There is some force in that, but as this is a re-trial, and there is no serious suggestion by the Defence that Mr Connor did not know what case he had to meet, I do not think that there is anything in a pleading point at this stage. I am satisfied that Mr Connor has had the opportunity to address all the allegations made against him.
22. Mr Torr's primary case is that Mr Connor knew that the Representations were false. He alleges that the findings in Mr Marks' report that the Ferrari had defects that would have been obvious to a lay person or to a trained automotive professional mean that Mr Connor must have known that there were defects in the Ferrari and could not have thought the Representations were true. Further, Mr Torr alleges, certain defects (for example the misalignment of the bonnet) can be seen in the photographs Mr Connor took of the Ferrari before it left his premises.
23. Mr Torr also alleges that in any event, Mr Connor made Representations 1 and 3 without having checked with Ferrari whether or not the Challenge Stradale bumpers and wheels were factory-fitted, and therefore he was reckless (not knowing) as to whether the representations were true or false.
24. In support of his case on dishonesty, Mr Torr alleges that Mr Connor has constructed a false case in order to deny the claim. He challenges the authenticity of three documents, claiming that they were dishonestly procured in order to support his case:
- a. A report from Mark Woodward of Laser Garage Services Limited dated 20 March 2013 addressed to a Lawrence Simm (the "**Laser Garage Services Report**"), which on its face states that the Ferrari was in good condition and that the Challenge Stradale bumpers and wheels were original and ordered with the car when new.
 - b. An email from Franco Granell of Maranello Sales, Tower Garage to Mr Connor dated 8 October 2013 (the "**Franco Granell Email**"), which states

that the Ferrari was factory-fitted with Challenge style rear grill, front bumper and wheels.

- c. An email chain with Franco Granell on 8 October purportedly preceding the Franco Granell Email (the “**Granell Chain**”).
25. Mr Torr further alleges that Mr Connor (a) removed two pages from the Ferrari’s service record book in order to conceal the fact that Ian Wright was the car’s first owner, knowing that Ian Wright’s crash had been reported in the media; and (b) instructed his solicitors to send Mr Torr a cropped version of a copy of the Ferrari’s MOT history in order to conceal discrepancies in the Ferrari’s mileage. These, Mr Torr says, are further evidence of Mr Connor’s dishonesty.
26. Mr Connor denies that he was in any way dishonest. He says that when he made the Representations to Mr Torr, he believed they were true and he had a basis for so believing. He points to the fact that the Ferrari was serviced on 10 December 2012 by David Gardner of Auto Revive, London, and that the defects complained of were not brought to his attention then or later when Mr Gardner and others saw the car again. He also says that there was nothing in the documents or information he was provided with when he purchased the car, from a Eugene Williams, that would have made him aware of the defects.
27. Mr Connor also denies procuring the Laser Garage Services Report or the Franco Granell email. He says he did not know that Ian Wright previously owned the Ferrari and denies removing any pages from the service record book. He also denies concealing the Ferrari’s MOT history from Mr Torr.

The Evidence

28. The Court was provided with a trial bundle containing the witness statements, expert report and documents from, and a complete transcript of, the preliminary issue trial, as well as more recently served witness statements on the dishonesty issue. I also read an expert report from a forensic computer expert in relation to the documents whose authenticity is disputed. I have considered all the documents in the trial bundle in coming to my conclusions, and the fact that I have not specifically referred to a document does not mean that I have not considered it in reaching my decision.
29. The Court received two witness statements from David Gardner, who is a car mechanic at Auto Revive London, and who serviced the Ferrari in December 2012 on behalf of Mr Connor. I have also seen his witness statement filed in Mr Torr’s proceedings against HMC. Mr Gardner gave oral evidence in person at the trial in support of Mr Torr’s case.
30. Mr Torr gave two witness statements in the preliminary trial and a further witness statement in this trial. He gave oral evidence remotely from Brisbane with the Court’s permission granted at the pre-trial review stage, and with the necessary blessing of the Australian authorities. I very quickly formed the impression that Mr Torr feels very aggrieved about the situation he finds himself in regarding the Ferrari. Mr Torr gave some limited direct evidence about what happened in the run

up to the purchase of the Ferrari, and what happened when it arrived in Australia. He also engaged, to a large degree, in speculation and submission. As that is Mr Torr's own opinion, and not factual evidence, I have disregarded those aspects of Mr Torr's witness statements and oral evidence.

31. Mr Connor gave two witness statements in these proceedings and a witness statement in the proceedings against HMC. He gave oral evidence in person at the trial.
32. Finally, the trial bundle contained two further witness statements. One was from Lawrence Simm, who was said by the Defendant to be a prospective purchaser of the Ferrari before Mr Torr. He is said to have commissioned the Laser Garage Services Report from Mark Woodward. The other statement was from Mr Woodward himself.
33. Neither Mr Simm nor Mr Woodward was called to give oral evidence. For what it is worth, Mr Simm gave evidence at the preliminary issue trial, and I have the benefit of the transcript of that trial. However, the preliminary trial related to all issues of whether there was a misrepresentation, including the dishonesty issue, but the Laser Garage Services Report was not properly in issue in that trial. I cannot properly form a fair impression of Mr Simm's evidence from the preliminary trial, and I have not therefore treated it as the equivalent of oral evidence. I have treated both Mr Simm's and Mr Woodward's statements (including Mr Simm's previous evidence as transcribed) as hearsay evidence, and ascribed the appropriate weight to them.
34. I should mention one further matter. Eugene Williams was the owner of the Ferrari prior to Mr Connor. He approached Mr Connor in October 2012 and asked him to sell the Ferrari for him. Mr Williams was not willing to give evidence voluntarily in the trial, and he was therefore served with a witness summons on behalf of Mr Torr. He responded to that summons, but Mr Torr decided not to call him. I have read the witness summary, which set out the proposed areas on which Mr Torr intended to question Mr Williams, and considered what, if anything, to make of the circumstances surrounding Mr Williams.

The Law

35. The parties are agreed on the applicable law. Put simply, a representation will be fraudulent where the maker of the representation knows or is reckless as to its falsity and does nothing to correct it before the contract is entered into. In the well-known case of *Derry v Peek* (1889) 14 App Cas 337, Lord Herschell explained the meaning of "fraud" in the context of a claim for deceit in these terms (at 374):

"fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers

the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief.”

36. As to the test to be applied in determining the necessary state of mind, Lord Herschell said this (*Derry v Peek* at 380):

“I quite admit that the statements of witnesses as to their belief are by no means to be accepted blindfold. The probabilities must be considered. Whenever it is necessary to arrive at a conclusion as to the state of mind of another person, and to determine whether his belief under given circumstances was such as he alleges, we can only do so by applying the standard of conduct which our own experience of the ways of men has enabled us to form; by asking ourselves whether a reasonable man would be likely in the circumstances so to believe.”

37. In relation to his case on recklessness, the Claimant relies on the pre-*Derry* case of *Reese River Mining Company v Smith* (1869) LR 4 HL 64 at 79-80, where Lord Cairns said:

“...if persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible as if they had asserted that which they know to be untrue.”

38. Carelessness, negligence or incompetence is not fraud. The House of Lords in *Derry v Peek* did use the word “*careless*” when referring to the ingredients of fraud, but that is now understood as meaning what we now call recklessness, i.e. “without caring”, not knowing one way or the other and knowing that one does not know, rather than carelessness in the sense of negligence. As Rix LJ pointed out in *The Kriti Palm* [2006] EWCA Civ 1601 at 256 “*the leading cases are replete with statements of its vital importance and of warnings against watering down this ingredient into something akin to negligence, however gross*”.

39. Taking these authorities together, I must assess each of the Representations made and consider Mr Connor’s state of knowledge at the time they were made. Did he know they were untrue? If not, did he have a reasonable basis for making them based on an objective standard of a reasonable person under the same circumstances, however wrong the statements turned out to be? If not, did he know that he did not have a reasonable basis for making them?

40. As noted in *Greenridge Luton One Limited v Kempton Investments Limited* [2016] EWHC 91 (Ch) at [76], when deciding whether a representor had an honest belief in the truth of a representation, the focus is on whether he believed it to be true in the sense in which he (as opposed to, say, the representee or the Court) understood it. These questions turn on findings of fact.

41. Where a representation of present fact is made in the context of a contractual negotiation, it will generally be treated as a continuing representation until it is acted upon to the representee’s detriment, generally by entering into the contract (*Civil*

Fraud, Practice and Procedure (1st edition, 2018) at 1-067). The cause of action arises at that point (*With v O’Flanagan* [1936] Ch 575 at 584-585 per Lord Wright MR). If the representor makes the representation believing it to be true when it is made, but he later becomes aware that it is false prior to the representee entering into the contract, he has a duty to correct it and failing to do so may leave him open to a claim in deceit, and that duty applies up to the time of the contract. If, after the contract has been entered into (i.e. the representee has relied upon the representation to his detriment), the representor discovers the falsity of the representation, he is not then liable in deceit. It is his knowledge at the time of the contract that matters (*With*, *ibid*; *FoodCo UK LLP v Henry Boot Developments Limited* [2010] EWHC 358 (Ch) at [213]-[214] per Lewison J).

42. I also bear in mind the speech of Lord Nicholls in *In re H (Minors)* [1996] AC 563 at 586 in relation to the standard of proof to be applied. The standard of proof in civil fraud cases is the balance of probabilities. However:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court that concludes that the allegation is established on the balance of probabilities. Fraud is usually less likely than negligence [...] Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

Findings of Fact

The Ferrari arrives with Mr Connor

43. The story starts in October 2012 (Mr Connor does not give the exact date), when Eugene Williams arrived at HMC with his Ferrari 360 Spider, the Ferrari. He had asked HMC whether they could sell the Ferrari for him, and Mr Connor received the car and the paperwork. Mr Connor says that he verified some details about the Ferrari, including that it had a full and up to date service history. Mr Connor recalled carrying out an Experian search on the Ferrari at the time he was asked to sell it, but the evidence showed that no search was carried out in October 2012. There was a search (indeed many searches) in September 2012, and Mr Connor said that he must have carried out the search then, but received the car in October 2012. I accept that evidence.

The Service Record Book

44. The service record book was disclosed in the trial, and its first two pages are missing. Mr Torr and Mr Connor each say the other is responsible for removing them. Mr Connor says he handed over what he had been given to Mr Torr when he sold the car to him. Mr Torr did not notice that the pages were missing when he

received the book. It was not until Mr Torr's counsel was preparing for the preliminary trial that she spotted the missing pages.

45. Much has been made of those missing pages, because Mr Torr alleges they would have revealed that a previous owner of the Ferrari was Ian Wright and that that Mr Connor must have removed them to conceal Ian Wright's ownership. Mr Torr argues that it was well-known that Ian Wright had an accident in a Ferrari 360 in July 2004 because it was covered in the media. Mr Torr points to two newspaper articles, one in the *Evening Standard* on 7 July 2004 (the time of the accident) and one from *The Sun* on 18 October 2013 (where Ian Wright's accident was mentioned in a piece about footballers having car accidents), as well as to an episode of *Top Gear* featuring Ian Wright where he mentioned the accident. Ms Jarron for Mr Torr therefore submitted that Mr Connor knew that the Ferrari had been in an accident and removed the pages to conceal that fact.
46. I am not persuaded by Ms Jarron's submission. I agree with Mr Jones that it is "far-fetched". First, the evidence shows that Ian Wright's accident was covered only by a single article in the *Evening Standard* prior to 23 April 2013 when Mr Torr agreed to buy the Ferrari. It is unrealistic in my judgment to conclude that Mr Connor would necessarily have seen that article. Nor is there any evidence to suggest that he watched *Top Gear*, and that if he did, he saw that particular episode. I therefore find as a fact that Mr Connor did not know about Ian Wright's accident. Second, I am not satisfied on the evidence that the service record book would have shown Ian Wright's name as a previous owner in any event. The remaining pages in the service record book with the space for "owner's name" and "previous owner" have all been left blank, which suggests that they were not routinely filled in. It seems to me more likely than not that Ian Wright's name did not appear in the service record book. Third, even if Mr Connor had been aware that Ian Wright had crashed a Ferrari in 2004, there is no reason that he would know that this was that same Ferrari.
47. The consequence of that finding is that Mr Connor would have had no reason to remove the pages from the service record book, and I find as a fact that he did not do so. It seems more likely to me that the pages were removed by someone else prior to Mr Connor being given the Ferrari. I accept Mr Connor's evidence that he did not remove the pages. I also accept that Mr Torr did not do so either, as it would not have benefited him in any way to do so, and if he had, I cannot believe that he would have left it to his counsel to discover. Mr Connor's recollection that he saw the missing pages when he received the Ferrari must therefore be mistaken or reconstruction. As Mr Torr did not notice the missing pages, and they were only discovered during the trial preparation by Mr Torr's counsel, it is more likely than not that they were overlooked by both Mr Connor and Mr Torr.
48. Mr Connor's evidence that the Ferrari had a "full service history" cannot therefore be correct. I do not, however, consider that that means that he was dishonest when said that in his witness statement or in the advert. Bearing in mind Lord Nicholls' comments in *In re H (Minors)* cited above, there is insufficient evidence to show that Mr Connor knew the pages were missing and it seems to me more likely that he simply did not see that they were not there. I therefore reject the Claimant's submission that the missing pages were removed by Mr Connor as part of a dishonest

attempt to conceal the fact that the Ferrari was previously owned by Ian Wright and had been involved in an accident.

49. Mr Connor agreed a return price with Mr Williams and it was agreed that HMC would attempt to sell the car for him and keep the difference between the sale price agreed and the return price. If the sale price was not higher than the return price, the Ferrari would be returned to Mr Williams.

The Condition of the Ferrari

50. Mr Connor put the advert containing Representation 1 and Representation 2 on Auto Trader in January or early February 2013, and he made Representation 3 and Representation 4 on the telephone to Mr Torr on 19 April 2013. The Court has already found that those representations were false. But what was Mr Connor's state of knowledge from the time of the advert until Mr Torr agreed to buy the Ferrari on 23 April 2012?
51. I will first consider the information Mr Connor had in relation to the Ferrari's condition when he took custody of the car from Mr Williams in October 2012. He had the following:
- a. The paperwork that came with the Ferrari: the service record book. That says nothing about whether Ferrari had Challenge Stradale bumpers and wheels or whether they were factory-fitted, nor does it say anything about the condition of the car inside or out.
 - b. The results of an Experian check, which confirmed the Ferrari's year of manufacture and first registration in the UK, as well as the facts that it had not been written off and had not been the subject of police interest. Again, that said nothing about the bumpers or wheels, or about the condition.
 - c. The MOT history, which again told him nothing about the bumpers, wheels or condition.
52. Mr Connor says that he conducted a "*thorough visual inspection of the Ferrari*". What he saw is a matter to be resolved based on all the evidence, which I will come on to. I do, however, accept that he inspected the Ferrari when he received it from Mr Williams. It is inconceivable to me that an experienced car dealer would not look over a car he had been asked to sell, particularly where he had a financial interest in selling it for a higher price than the return price offered to Mr Williams. The advert shows that Mr Connor took several photographs of the Ferrari from different angles. Mr Connor does not say that Mr Williams told him anything about the condition of the Ferrari; his evidence in relation to Mr Williams related only to the Challenge Stradale features.

The Service by Auto Revive in December 2012 and David Gardner's Evidence

53. The next key event involving the Ferrari was the service by Auto Revive on 10 December 2012, which was carried out by Mr Gardner. As his evidence features

heavily in this series of events, I will set out my assessment of it here.

54. I found Mr Gardner to be an unsatisfactory witness in a number of respects. The fact that he gave a second witness statement nearly five years after the events in question, that corrected and expanded on his first statement in these proceedings, led me to treat what he said with a slight degree of caution from the outset. The changes added further detail and colour to Mr Gardner's account, which he stated he had recalled since giving his first statement. I accept, of course, that witnesses may remember additional details, and Mr Gardner's explanation for the changes was that he was "*probed*" further prior to giving his second statement. However, I consider that his amended evidence should be treated as less reliable because it was less contemporaneous with the events, after his memory had faded and with the benefit of hindsight, knowing as he did what Mr Torr's case was in more detail by that point.
55. Also, Mr Gardner volunteered in his oral evidence that Mr Connor's wife had been driving the Ferrari and that Mr Connor sold it because his wife did not like it. He did not mention that fact in any of his three statements nor at the preliminary trial. In my judgment, that evidence was not credible and I reject it. It seems to me that it was reconstruction on his part.
56. I formed the view from Mr Gardner's mention of Mr Connor's wife in his oral evidence on day 1 of the trial that he does not always think before he speaks. That part of his evidence was plainly not true and in my judgment he said it to give support for the narrative he was giving about Mr Connor's intended use of the car for himself. My impression of Mr Gardner was confirmed by a further point. In his statement, Mr Gardner said that he did not give any view to Mr Torr in the telephone call on 19 April 2013 as to whether the Ferrari was a good deal, because he does not sell cars. In fact, Facebook posts from 15 May 2013 showed that Auto Revive had an album called "*Cars for Sale*", to which it added three photographs of a Ferrari with a post also saying "*Cars for Sale*". Auto Revive did sell cars, so what Mr Gardner said was not true.
57. The account Mr Gardner gave to the Court and in his oral evidence that he spotted the defects at the time and drew them to the attention of Mr Connor was at odds with an email exchange he had with Mr Torr on 2 August 2013. Mr Torr asked Mr Gardner why he had not informed him of issues with leaking brake fluid and an engine/gearbox mount when he serviced the car in April 2013 and Mr Gardner's response was "*I can confirm that there was no bodywork damage to the car when it left my premises. The roof was also not leaking at the time it left here as it was raining at the time!*".
58. However, in his witness statement, Mr Gardner said that when he serviced the Ferrari for Mr Torr on 24 April 2013, he formed the view that it was not fit for sale, as it had numerous defects. He recalled his assistant mechanic describing the car as "*a dog*".
59. Those two positions cannot be reconciled, so Mr Gardner was either lying to Mr Torr in his email of 2 August 2013, or he is lying in his evidence. Mr Gardner was unable to give any explanation for what he said in his email in cross-examination, saying only that it was necessary to read it in the context of surrounding emails with Mr

Torr. However, when the contextual emails were disclosed after Mr Gardner's evidence was concluded, they did not explain why he volunteered unprompted the condition of the bodywork. Crucially, Mr Gardner did not suggest that what he said in the email was wrong or untrue, but tried to resile from it by asserting he had been talking about there being no damage to the headlight. There was no mention of headlights in the email from Mr Torr and I do not find it remotely credible that he was talking about that when he used the expression "*bodywork*".

60. I have therefore concluded that I must treat any factual position proffered by Mr Gardner (whether in his evidence or in a document) with a degree of caution unless it is corroborated by other evidence which I do accept or is otherwise uncontroversial. I do, however, bear in mind that he did attend to give oral evidence and submitted to cross-examination with no obvious benefit to himself.
61. The service manual records the checks that Mr Gardner carried out on the Ferrari and Mr Gardner says that he replaced a timing belt, which is recorded as "*belts*" in the book. There is no mention in the service book of any of the defects in the Ferrari's bodywork. Mr Gardner said in his evidence that he did not pay much attention to the paint and bodywork because he was under the impression that Mr Connor wanted the car for his own use, and that Auto Revive is not a body shop.
62. Although I found Mr Gardner's evidence to be unsatisfactory in many ways I do accept that he did not mention any defects in the bodywork of the Ferrari to Mr Connor when he carried out the service. Mr Connor said he did not mention them, and I did not find that surprising because the purpose of the annual service was to examine the mechanics of the car, not its aesthetic qualities.
63. The mileage of the Ferrari was recorded in the service book as 24,812 miles. There is a strange discrepancy in the Ferrari's mileage in its MOT history between its 2007 MOT (22,749 miles) and its 2009 MOT (16,212 miles). However, the most recent recorded mileage on the MOT history (24,646 miles) on 24 April 2012 is consistent with Auto Revive's recording of 24,812 miles just over seven months later in December 2012 and with Peter Marks' photograph of the Ferrari's odometer when he inspected the car on 25 November 2014 showing 24,900. I therefore find that the odometer showed 24,812 miles on 10 December 2012.
64. The mileage in the advert was stated as 24,424 miles. That was not correct. Mr Torr considers that the advert correctly stated the mileage as at January/February 2013 and that therefore Mr Connor must have driven the car for over 400 miles while it was in his possession. In my judgment, there is nothing in this point. Mr Torr has no evidence to challenge Mr Connor's evidence that Mr Williams dropped the car off with HMC in October 2012 and I accept Mr Connor's account on that point. The increase in mileage between the April 2012 MOT and the December 2012 service is explicable by Mr Williams' use of the car between April and October 2012.
65. Mr Gardner said that he "*formed the impression*" that the Ferrari was for Mr Connor's personal use. Mr Connor denies that the Ferrari was for his personal use or that he said anything of the sort to Mr Gardner. The Court has already found that he did say to Mr Torr that he had bought the car for himself, and so I find that Mr Gardner's

impression was correct. The changes in mileage between October 2012 and April 2013 do not evidence that Mr Connor used much the Ferrari while it was in his possession, but I accept that Mr Gardner thought he was servicing Mr Connor's own car, rather than a car that he was intending to sell.

The Ferrari's MOT History

66. Mr Torr raises another point that he says goes to Mr Connor's dishonesty, that being that a "cropped" version of the Ferrari's MOT history was provided to Mr Torr's solicitors on 23 May 2016 in an effort to conceal the fact that there had been an advisory notice on the MOT record on 19 December 2007 and the discrepancies in the Ferrari's mileage I referred to above. The full version showing the MOT history, including the advisory and the mileage discrepancies, was later disclosed to Mr Torr.
67. Mr Connor's solicitors have explained that they provided the cropped version only because it was being disclosed as evidence that there had been no advisories since 2009, so it was not necessary to include earlier MOT results. I accept that explanation. I do not think Mr Connor's solicitors did anything wrong in providing the cropped version, and in any event the complete version was later disclosed.
68. None of the MOT history, the mileage discrepancies or the advisory notice goes to the point of whether Mr Connor believed any of the Representations to be true. Mr Torr has not pleaded a case that Mr Connor made any misrepresentations in respect of those matters (because he was refused permission to plead that case by HHJ Hellman), and the disclosure of the cropped MOT history took place long after the Contract was concluded. It does not therefore assist Mr Torr in establishing dishonesty on the part of Mr Connor.
69. If the cropped MOT history goes to anything, it is the credibility of Mr Connor, but for the reason given in paragraph 67 above, I do not agree that it has any detrimental effect on his credibility and I reject Mr Torr's submission in relation to it.

Mr Connor's Knowledge of the Defects in the Ferrari

70. The Court has already found that the Ferrari did have defects when it left Mr Connor, and that he was wrong when he said that it did not. However, his case on that is that he did not see the defects, and nor did Mr Gardner, Mr Simm or Mr Woodward, all of whom also are said to have looked at the car.
71. There is no suggestion that the Ferrari's condition changed between January/February 2013 when Representation 1 and Representation 2 were made, and 19 April 2013 when Representation 3 and Representation 4 were made. Therefore, for the next stage of the narrative, I will assess the evidence of what Mr Connor knew about the condition of the Ferrari at the point it left his premises in England on 29 May 2013.

The Torr/Gardner Telephone Call on 19 April 2013

72. On 19 April 2013, Mr Torr spoke to Mr Connor about buying the Ferrari and Mr Torr

then spoke to Mr Gardner. Mr Gardner agreed to carry out further work on the Ferrari for Mr Torr if he decided to purchase it. Mr Gardner's account of the rest of that conversation differs from Mr Torr's. Mr Gardner says that when Mr Torr asked him whether the car was a good deal, he refused to comment because he did not sell cars. That was not true, as I have held above.

73. I therefore reject Mr Gardner's account of his telephone call with Mr Torr on 19 April 2013 and I prefer Mr Torr's. On that call, Mr Gardner agreed to service the Ferrari for Mr Torr. Mr Torr asked Mr Gardner whether £44,200 was a good deal for the Ferrari, and Mr Gardner said that it had a good interior and that he had seen other Ferrari 360 cars going for more money. Mr Gardner did not mention any defects other than that the Ferrari needed a new ball joint and the brake pads needed fixed.
74. Whether Mr Gardner was aware of more defects to the Ferrari than he mentioned to Mr Torr is a separate question and one which I will now come on to examine.

The Ferrari in Brisbane

75. I was shown a photograph of the Ferrari from the front when it arrived at Brisbane dock on 25 July 2013. The misalignment of the bonnet can clearly be seen: there is a gap on the passenger side between the bonnet and the body; the lower passenger side corner of the bonnet dips slightly; and the lower driver side corner is raised.
76. Mr Connor suggested in his oral evidence that the damage to the Ferrari may have been caused in transit, either during its transport on the open transporter, or when it was unloaded. The Ferrari was indeed damaged on unloading, and Mr Torr made an insurance claim in respect of it. However, most of the insurance claim was rejected on the basis that the damage was not (in the insurer's view) caused in transit and was pre-existing. Mr Marks also expressed a view on that point, saying that "*this vehicle has been involved in a frontal accident and poorly repaired. The vehicle has not been registered in Australia so it is unlikely that the damage occurred after it arrived in Australia.*"
77. On 27 August 2013, Mr Torr received a report from Exclusive Auto Centre, a garage in Australia, who examined the car for him. Their view, having conducted what they described as "*basic visual checks*" before any dismantling of the vehicle, was that the Ferrari had sustained a frontal impact that had been poorly repaired, and they stated that this was evidenced by the very poor alignment of the bonnet to front nose panel. Washers had been used to space the bonnet striker down as a form of adjustment. The front nose panel was stated to have been replaced and then adjusted to correct the gaps and alignment to the damaged bonnet.
78. Although this evidence is hearsay, it is consistent with Mr Marks' report and with the picture of the Ferrari at Brisbane dock in respect of the defect to the bonnet. In my view, it is further evidence of the condition of the Ferrari at the time it arrived in Brisbane because the inspection was carried out only one month after Mr Torr received the car.

79. Mr Marks identified the defects to the Ferrari as “*patent*” when he was asked “*would you described the defects... as patent or latent?*” Mr Jones submitted on behalf of Mr Connor that “*patent*” is not the same as saying that the defects could not be missed. That seems to me to be hair-splitting. “Patent” means “easily recognisable” or “obvious”, and the context of Mr Marks’ responses to the Claimant’s other questions demonstrates that Mr Marks understood the word in that sense: he stated that certain defects (such as misalignment of panels) would require a general knowledge of vehicle construction, others (missing bumper bar nuts, incorrect screws and washers holding under car panels) would require the car to be raised on a hoist; but that some (corrosion, tearing of the fabric roof and scratches) would be readily evident to a layman. He said that all the defects would be readily apparent to a trained automotive professional. Mr Connor, however, denies that he saw any of them when the Ferrari was in his possession.

The Photographs in England

80. I was referred to a number of photographs that were taken by Mr Connor before the Ferrari left him to go to Australia. It is fair to say that the photographs in the Auto Trader advert do not reveal any defects.
81. There is no photograph from the front angle akin to the one taken at Brisbane dock. Mr Connor’s photographs are all taken from the side or at 45-degree angle to the car. Some time at trial was spent examining those photographs, and I had the benefit of an electronic version that it was possible to enlarge (albeit the resolution was poor when zoomed in).
82. I have considered those photographs very carefully. It was said for Mr Torr that it was possible to see the misalignment of the bonnet and the damage to the roof in Mr Connor’s photographs. I am unable to agree. I found it quite impossible to discern whether or not those defects are visible in the photographs: the resolution is not good enough, they are taken from different angles from the Brisbane dock photograph, there are light reflections on the car body, and any apparent deviations in the lines are not sufficiently clear for a finding on the balance of probabilities that they were there and sufficiently obvious such that Mr Connor would have seen them.
83. So much for the photographs. Mr Marks’ evidence details how he found the Ferrari when he examined it in Australia in November 2014, and I have already listed the defects he saw. There is no evidence that Mr Connor’s inspection of the Ferrari involved raising it on a hoist, so I accept Mr Connor’s evidence that when he carried out his inspection, he would not have been able to see the missing bumper bar nuts, incorrect screws and washers holding undercar panels and the missing fixings identified by Mr Marks.
84. Mr Marks states that the following defects would have been apparent to a trained automotive professional without using a hoist:
- a. The front bonnet lid misalignment.
 - b. The cracked headlight.

- c. Front apron/bonnet damage.
 - d. Windscreen wiper damage.
 - e. Right-hand side misalignment.
 - f. Convertible roof damage.
 - g. Left and right-hand guard misalignment.
 - h. Seal detachment; corrosion.
 - i. Left hand guard distorted.
85. The damage to the underside of the Ferrari could, in Mr Marks' view, have occurred during transit or before, and he could not say either way whether the corrosion occurred prior to the car's arrival in Australia. In relation to the misalignment defects, Mr Marks' view is that they were caused by poor repairs following a prior frontal impact.
86. Mr Marks' opinion, which the Court has already accepted in the preliminary trial, contradicts Mr Connor's theory that the defects all occurred due to transit damage. That theory cannot be correct and I reject it. Mr Marks' opinion is consistent with Exclusive Auto's report in August 2013, shortly after the car arrived in Australia. There is no suggestion that any repairs were carried out in Australia, and it must therefore have arrived in that condition.
87. In my judgment, the findings of poor repair work following a frontal impact are consistent with the fact that the Ferrari did have a major frontal impact in 2004 when Ian Wright crashed it. I have seen the photographs of the Ferrari after that collision, and its front is severely damaged. Although Mr Marks could not say when the repairs were carried out, the Court has already found that they were carried out after the crash, and before the car arrived with Mr Connor. Mr Connor does not say that any repair work (other than the service in December 2012) was carried out on the Ferrari when it was in his possession, and others (including Mr Williams) possessed and drove the Ferrari before it came to Mr Connor.
88. Mr Gardner said in his witness statement that he noticed defects in the Ferrari when he was servicing it for Mr Torr in April 2013, in particular that there was poor paintwork at the front and a misalignment of the bonnet, bumper and body panels. While I have treated Mr Gardner's evidence with caution for the reasons given above, in my judgment he was telling the truth about having seen those defects and was not telling the truth to Mr Torr in the email on 2 August 2013. The damage he describes is entirely consistent with that found by Mr Marks. He cannot have seen Mr Marks' report when he first described the defects in his witness statement in Mr Torr's case against HMC because that statement pre-dated Mr Marks' inspection by several months.

89. Lawrence Simm, who is an auto-electrician and has previously dealt with Mr Connor (although he does not say when or how that came about), says that he was interested in purchasing the Ferrari in March 2013. His witness statement says that he viewed the car at Mr Connor's premises and checked it carefully, as well as joining Mr Connor in a test drive. He was cross-examined in the preliminary trial, where he said that he had known Mr Connor for a long time, and stated that he would not have been interested in buying the Ferrari had it been in the condition it was in the photographs taken in Australia. He was not, however, cross-examined at the preliminary trial as to his knowledge of the Laser Garage Service Report and how it was obtained. The Recorder made no finding in relation to whether or not Mr Simm commissioned the Laser Garages Services Report as he said. Mr Torr was given permission to amend his case to plead that Mr Connor dishonestly procured the Laser Garage Services Report, and it was therefore in issue in this trial. Had Mr Simm given oral evidence, Mr Torr would have to have put to him either that he did not commission the Laser Garage Services Report, or that he did so in conjunction or on the instruction of Mr Connor. As Mr Simm was not available for cross-examination, Mr Torr was not able to put those points to him. On that basis, it seems to me that I am entitled to form a view of Mr Simm's evidence as it was at this trial on the commissioning of the Laser Garages Services Report.
90. I reject Mr Simm's statement that when he says he saw the Ferrari, it was not in the same condition it was in in Australia. I prefer the oral evidence of Mr Gardner on this point, who was cross-examined and whose evidence is consistent with Mr Marks'. That leads me to give even less weight to Mr Simm's witness statement. It is hearsay evidence that has inconsistencies with evidence that I have accepted, and as such, I cannot accept it on points that are highly contentious. I therefore reject Mr Simm's evidence.
91. Mark Woodward gave a witness statement in the case of *Torr v HMC* but did not give oral evidence. His statement says that he inspected the Ferrari on 20 March 2013 on behalf of Mr Simm and it was in "*a roadworthy condition with no visible evidence of any previous damage*". He set out his findings in the Laser Garage Services Report, to which I now turn.

The Laser Garage Services Report

92. The Laser Garage Services Report purports to be an independent report commissioned by Mr Simm setting out Mr Woodward's findings following his inspection of the Ferrari. Mr Connor submits that that is exactly what it is, and that it evidences the condition of the Ferrari in March 2013. Mr Torr says it is not a genuine document and has been falsely procured to support Mr Connor's case.
93. The information and findings in the Laser Garage Services Report are wrong in numerous respects. It states that the Challenge Stradale bumpers, grills and wheels were "*100% original as they were ordered with the car when new*", which the Court has determined was not the case. As to condition, it states that the bodywork is in good condition for a vehicle of the age of the Ferrari, and while it highlights some chipping to the car, it does not mention any misalignment or any of the other defects

identified by Mr Marks. It also states that there are no mileage discrepancies on the national mileage register: as I have already held, there were.

94. Mr Torr makes two points about “Laser Garage Services” itself. First, there is no such company registered at Companies House, but there is a company called “Laser Van Rentals Limited”, of which Mr Woodward is the sole director. Second, it has an invalid VAT number (i.e. the number does not exist), and the purported VAT number (541 3656 64) is one digit different from the VAT number of Laser Van Rentals Limited (541 3656 54). These points, he says, are evidence that the report is false and must have been procured by Mr Connor.
95. I agree with Mr Torr that the Laser Garage Services Report is not an authentic document. The information it contains about the condition of the Ferrari, the Challenge Stradale features, the MOT history and the mileage discrepancies is wrong on its face, but not only that, the report is not what it purports to be. On the evidence before the Court, “Laser Garage Services” is not an existing company and the purported VAT number is wrong by one digit. While it is possible that a typographical error could explain the discrepancy, in my judgment, the similarity of the name and the VAT number with those of Laser Van Rentals taken together with the incorrect information contained in the report cannot be mere coincidence. It seems to me, and I so find, that the report was dressed up in this way by Mr Woodward to give it credibility, which a report from a van rental company would not have had.

Mr Woodward’s Evidence

96. Returning then, to Mr Woodward’s evidence, I reject it in its entirety. It is hearsay, and I ascribe little weight to it on that basis alone. But Mr Woodward’s use of false company details in Laser Garage Services Report demonstrates that in any event he is an unreliable witness and his witness statement is inconsistent with Mr Marks’ report. He has not come to Court on any occasion to swear to the truth of his statement or to the authenticity of the Laser Garages Services Report. I do not therefore accept that Mr Woodward’s statement explains the provenance of the Laser Garage Services Report.

Conclusion on the Laser Garage Services Report

97. So where did the Laser Garage Services Report come from? I have rejected Mr Simm’s and Mr Woodward’s evidence as to how it was created. That leaves Mr Connor’s evidence. He says that he did not know Mr Woodward, and was aware only that he had prepared a report for Mr Simm when he asked for it and received it in September 2013.
98. Mr Torr said in his evidence that he telephoned Mr Woodward when the Laser Garage Services Report was sent to him by Mr Connor’s solicitors on 3 October 2013. He said that in that conversation, Mr Woodward said something like “*Mr Connor would not do something like this*”, “this” being sell a Ferrari with known defects. There is no evidence to contradict Mr Torr on this, and I accept his evidence that Mr Woodward said that. It follows from that, and I so find, that he did know Mr Connor,

because he referred to Mr Connor by name, and his use of the word “would” suggests he is familiar with him.

99. Taking that evidence together: the facts that a false document has been proffered by Mr Connor as evidence; that witness statements from acquaintances of Mr Connor (one of whom he denied knowing) in support of his case have been submitted that I have rejected; and the fact that those documents support Mr Connor’s case on an incorrect basis in direct response to the complaints raised by Mr Torr leads me to one conclusion. Mr Connor did have a hand in the preparation of the Laser Garage Services Report to support his case on a false basis. The circumstances are, in my judgment, beyond coincidence and I am satisfied that it is appropriate to draw that inference based on the findings I have made.
100. That finding does not go directly to Mr Connor’s knowledge of the truth of the Representations. It is simply a factor to be considered in the round when assessing his overall credibility.

The Used Car Purchase Invoice and the Used Car Sales Invoice

101. The final piece of evidence Mr Connor relies upon in relation to the Ferrari’s condition is the purchase invoice dated 25 April 2013 when he bought the car from Mr Williams to sell on to Mr Torr. Mr Connor pointed to the fact that it states in the space for the seller’s signature box “*I/We certify that the above vehicle has not been the subject of a total loss of claim or suffered serious damage, or the subject of any outstanding HP, loan or encumbrance unless mentioned above*”. The signature below that was actually Mr Connor’s, rather than the seller Mr Williams, but I do not think that matters (Mr Williams signed in the buyer’s box). I accept that Mr Williams was giving the certification to Mr Connor that the car had not been the subject of a total loss claim or suffered serious damage.
102. Mr Connor was, of course, entitled to rely on that information in principle. But the invoice is dated 25 April 2013, one day after the contract was entered into. The invoice therefore tells me nothing about what Mr Connor knew when he made the Representations. Mr Connor did not give evidence that the invoice reflected what he had been told by Mr Williams when he received the Ferrari or at any time before the contract was concluded with Mr Torr.
103. There is a sales invoice dated 23 April 2013 which was signed by the shipper’s driver as accepting the Ferrari in good condition. The Court has already found in the preliminary trial that this meant little [14], and even if I were not bound by that finding, I would agree with it. The invoice endorsement by the driver is inconsistent with Mr Marks’ findings and is the view of someone who has not given evidence and about whom I know nothing.

Conclusion on Mr Connor's Knowledge of the Condition of the Ferrari

104. I have accepted Mr Connor’s evidence that he carried out a thorough inspection of the car. Mr Connor is a trained automotive professional who worked as a mechanic in the 1970s to 1990/1991, when he started working as a car dealer. He has been

working as a car dealer since then. I am therefore satisfied that he would know what to look for when inspecting a car that he was going to offer for sale.

105. It is, in my judgment, inconceivable that Mr Connor would not have seen at least some of the defects identified by Mr Marks when he inspected the Ferrari in October 2012. The misalignment of the bonnet was obviously apparent from the front-end photograph on Brisbane dock. Mr Marks concluded that the misalignment was caused by poor repairs following a previous accident, and there were no repairs carried out on the car in Australia. He also said that the damage would be obvious to a trained automotive professional, which Mr Connor is. The misalignment of the bonnet and panels alone would have been obvious to Mr Connor, and in my judgment it was. I am also satisfied that he saw the damage to the headlight: he carried out a thorough inspection and that damage was present when he inspected the car, because it was damage to the bodywork underneath the headlight, as per Mr Marks' opinion. He must also have seen the scratches. Mr Gardner had seen the misalignment and scratches when he serviced the car in April 2013. He is also a trained automotive professional. He did not tell Mr Connor about them, but Mr Connor was able and well-qualified enough to see them for himself.
106. Whether seeing those defects should have prompted a further, more detailed inspection of the car (though in my view it should have) is rather beside the point. Mr Connor knew, by reason of his inspection in October 2012, that the Ferrari was not in "*great condition inside and out*" and that it was not "*in excellent condition with no damage to its body or interior*". As Recorder Wilson KC found, the Ferrari had not been restored substantially to its condition prior to the accident [43], so even though Mr Connor was not aware of the accident, he knew that the Ferrari's condition was not "*great*", "*excellent*" and that it did not have "*no damage to its body*".
107. Mr Jones for Mr Connor reminded me that negligence is not fraud and submitted that this case is properly a negligence case dressed up as a fraud. I do not agree with him on that. There is a difference between a wholly incompetent inspection which fails to investigate areas of the car that a reasonably competent trained professional would have investigated on the one hand, and seeing an obvious patent defect and failing to recognise it for what it is on the other. At least some of the defects would have been apparent to a layman. I find it wholly incredible that Mr Connor was such an incompetent mechanic and car salesman that he would fail to recognise defects that a layman would. That, in my judgment, goes well beyond gross negligence. Mr Connor came across in the witness box as an articulate, intelligent person. He has had a long career in the automotive industry repairing and selling cars. I do not accept for one moment that he was such a poor mechanic and car salesman that defects that were apparent to Mr Marks, Mr Gardner or Exclusive Autos were not apparent to him. I have therefore reached the unhappy conclusion that Mr Connor was not telling me the truth when he said he did not see the defects and I reject his evidence on that point.
108. Mr Jones referred me to the assessment of the facts in Lord Herschell's speech in *Derry v Peek* at pages 378-379 of the law report and submitted that implausibility does not imply dishonesty. That is true, so far as it goes. But that aspect of Lord Herschell's speech was dealing with the facts of that case, and other than reminding

me of the principles that I have already outlined above, I did not find it of assistance in forming a conclusion here. In my judgment, the above evidence is sufficient alone for an inference that Mr Connor knew that the Ferrari had defects when he made Representations 2 and 4. For the reasons I have given above, Mr Connor was well beyond mistaken or negligent.

109. Representation 2 and Representation 4 were therefore made fraudulently and Mr Torr has proved his case on those points. It is not necessary for me to consider Mr Torr's alternative case that Mr Connor was reckless, which was premised on no inspection having been carried out.

Mr Connor's Knowledge about the Challenge Stradale Bumper and Wheels

110. The Court has already found at the preliminary trial that the Challenge Stradale bumpers and wheels were not factory fitted [35]. It found that an extract of information from the Ferrari database that was sent to Mr Torr (at his request) by Charles Hurst, a Ferrari dealer based in Belfast, was what was termed a "screen dump" from Ferrari's dealer website. The Court accepted that this information was an accurate copy of what was in Ferrari's database. The information showed that the Ferrari was not fitted with Challenge Stradale bumpers or wheels and on that basis the Court held that Representations 1 and 3 were false.
111. So what did Mr Connor know of this? I did not have the benefit of any evidence from Mr Williams on what he told Mr Connor when he delivered the Ferrari to his premises. Mr Jones for Mr Connor invites me to infer from the facts that (a) Mr Williams was summonsed to Court, but (b) the Claimant's side chose not to call him, that Mr Williams would have given evidence in support of Mr Connor's position. I do not accept that submission. I will not speculate on the reasons why the Claimant's side decided not to call Mr Williams, but it does not follow that their failure to do so means that he would have agreed with Mr Connor.
112. Mr Connor did not say in either of his two witness statements what, if anything, Mr Williams told him about the Challenge Stradale bumpers or wheels. He was asked in chief about what caused him to have the belief that the bumpers were factory-fitted, and he said "*The Ferrari specialist who serviced it for me at my place pointed out the specialist bits of the car*", referring to Mr Gardner. In cross-examination, Ms Jarron put to him that he had made no enquiries in April 2013 as to whether the Ferrari had Challenge Stradale features, and his response was that "*Mr Williams confirmed that it did. He showed me and I believed that the Challenge Stradale bumper was real*".
113. Sometime before the Ferrari's first service under Mr Connor's care, Mr Gardner went to Mr Connor's house and had a look at the car. Mr Connor said that Mr Gardner said something like "*it has got all the Challenge bits on it*" and Mr Gardner accepted that he said something along those lines. I therefore accept that evidence and find that Mr Gardner did say "*it has got all the Challenge bits on it*" to Mr Connor prior to the service on 10 December 2012.
114. It is apparent from this evidence that Mr Connor is saying that he was told by Mr Williams that the Ferrari had Challenge Stradale features, but he does not go so far

as to say that Mr Williams or Mr Gardner told him they were factory-fitted. His evidence that he believed that the Ferrari had Challenge Stradale bumpers and wheels is consistent with Mr Gardner's acceptance that he pointed out the specialist bits of the car to Mr Connor. It is also consistent with Mr Connor's oral evidence at the preliminary trial, namely that he believed they were "genuine" (which he was careful in that evidence to distinguish from "*factory-fitted*").

115. I therefore find that Mr Williams told Mr Connor that the Ferrari had Challenge Stradale features and pointed them out to him, and Mr Gardner confirmed that the Challenge Stradale features were on the car, but neither of them said whether or not they were factory-fitted, something that Mr Connor was careful to express as his "*belief*".
116. By the time the advert was placed, Mr Connor had been told by Mr Williams and it had been confirmed by Mr Gardner that the Ferrari had Challenge Stradale "*bits*", i.e. the bumper and the wheels. He had not been told anything, on paper or orally, about whether the Challenge Stradale bumper and wheels had been factory-fitted.
117. Mr Connor's case in relation to his belief that the Challenge Stradale bumper and wheels had been factory-fitted is that when he carried out an inspection of the Ferrari in October 2012, he was satisfied that no external paintwork had been carried out, indicating that no exterior parts had been replaced since the Ferrari had been manufactured.
118. I have therefore concluded that Mr Connor had no basis for believing that the Ferrari had factory-fitted Challenge Stradale bumpers or wheels. He was not told that by Mr Williams or Mr Gardner; he had not checked with Ferrari, which Mr Torr later did and received responses consistent with the Ferrari database that they were not original features on the Ferrari. That, in my judgment, is sufficient evidence on its own for me to reject Mr Connor's evidence on that point.

The Franco Granell Email

119. I have already set out my conclusions on the Laser Garage Services Report above. Had it been authentic, it may have had a bearing on whether the Representations were true; but it does not have a bearing on Mr Connor's belief as to whether they were true. The same applies to the Franco Granell Email. However, in deference to the evidence submitted and the submissions made in respect of the Franco Granell Email, I will set out my conclusions in relation to it.
120. I have read a report from a computer forensic analyst, Mr Joseph Naghdi. In his view, on the evidence he had, the Franco Granell Email was genuine and had been sent by Franco Granell to Mr Connor. He said in response to a question by Mr Torr that emails can be modified, and expressed some suspicion about the Granell Email Chain that was disclosed in the proceedings because of visual inconsistencies in its formatting and appearance.
121. Mr Torr felt sure that the Franco Granell Email and the Granell Email Chain had been dishonestly created by Mr Connor. He pointed to the fact that Mr Connor had

destroyed his laptop after Mr Naghdi had taken an image of it, and refused to give his password, as further evidence of Mr Connor's intention to conceal evidence in relation to the emails.

122. I do not think that any of this takes Mr Torr very far. While he is right that Mr Connor absolutely should not have destroyed his laptop when there was ongoing litigation in relation to its contents, I am not satisfied that the expert's view demonstrates that the email was forged. While Mr Naghdi could not establish the authenticity of the emails by extracting metadata from them, he did find a copy of the emails stored in a file on Mr Connor's laptop image and concluded that the email appeared to be authentic. He acknowledged that it is possible to alter a genuinely received email after it has arrived, and described how that could be done, but on that Mr Torr assumes what he seeks to prove. The expert evidence does not demonstrate that Mr Connor forged or altered the Franco Granell Email, and I therefore find that it and the Granell Email Chain were genuine emails sent by Mr Granell to Mr Connor on 8 October 2013.
123. There is one further evidential point to be made about it, however, which, along with the Laser Garage Services Report, does give me cause for further concern about Mr Connor's evidence. It was prompted by Mr Connor's contacting Franco Granell on 7 October 2013. He says he did so because Mr Torr had raised an issue with him about the Ferrari after it had arrived in Australia.
124. But that is not entirely correct. In fact, Mr Connor had an email from H R Owen, a Ferrari dealer, that he received on 6 September 2013. That email reflected what was shown in the Ferrari database, i.e. the Ferrari did not have factory-fitted Challenge Stradale bumpers or wheels. I asked Mr Connor why, when he had that email from H R Owen giving him that information, he called Franco Granell. He said he was "*double checking*". I regret to say that I did not believe him. If he already had an email from a reputable Ferrari dealer, what need would there be to double check? His solicitors, in their response dated 3 October 2013 to Mr Torr's letter of claim said "*H R Owen will confirm that the registration number and VIN [vehicle identification number] number [sic] on this vehicle was the original body kit which was factory fitted when the car was ordered from new*". That is not of course Mr Connor's own evidence, but it will have been sent on his instructions. The inference I draw from that is that Mr Connor was intending to rely on H R Owen confirming his belief, and when they did not, he asked someone else in the hope he would get a different answer. I asked myself whether if H R Owen had said in their email of 6 September 2013 that the Challenge Stradale features had been factory-fitted, Mr Connor would have felt the need to double check. I concluded he would not.
125. The fact that Mr Connor sought an alternative view when he already had a response from a reputable Ferrari dealer that he himself had initially relied upon leads me to treat his evidence on this point with caution. That, together with my finding that the Laser Garage Services Report was dishonestly procured by Mr Connor is a further reason why I do not believe his evidence that when he inspected the Ferrari, the lack of external paintwork led him to believe that no external parts had been replaced. That seems to me to be reconstruction.

126. Mr Connor did not know whether or not the Ferrari had Challenge Stradale features that were factory-fitted or whether, if it did, they would add value to the car. He was therefore what I will call “*Reese River ignorant*” of those facts when he made Representations 1 and 3. He is therefore liable in fraudulent misrepresentation as having made those representations without belief in their truth.

Conclusion

127. Mr Torr’s claim on the Dishonesty Issue succeeds. Mr Connor made Representations 1, 2, 3 and 4 without belief in their truth and therefore fraudulently.
128. The trial is adjourned and any consequential matters (including permission to appeal) shall be determined at a further hearing to be listed at the convenience of both counsel and the Court. Time for any application for permission to appeal shall be extended accordingly.
129. It remains only for me to thank Ms Jarron and Mr Jones for their able and helpful submissions, and the solicitors and their teams on both sides for their efforts in bringing the case to trial. I am grateful to them all.

(End of Judgment)