Neutral Citation Number: [2024] EWHC 630 (Ch)

Case No: BR-2018-001451

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

In The Matter Of JAMES STUNT
And In The Matter Of THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 22/03/2024
Remote Hearing (Teams)

Before :

I.C.C. JUDGE JONES

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Between :

ADRIAN HYDE
(As Joint Trustee
in Bankruptcy of James Stunt)

Applicant

and

GEOFFREY LEE STUNT

Respondent

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JOSEPH CURL K.C. (instructed by **Ashfords LLP**) for the **APPLICANT**
LEE SCHAMA (instructed by **Knights plc**) for the **RESPONDENT**

Hearing dates: 4-7 MARCH 2027

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Approved Judgment

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I.C.C. JUDGE JONES:

A) Introduction

1. Around the year of 1640 Sir Anthony van Dyck painted the portrait ("the Painting") of two sisters, wearing copper and silver coloured gowns, standing against an English countryside background. It is known as the "Double Portrait of the Cheeke Sisters", who by their respective marriages became Essex, Countess of Manchester and Anne, Lady Rich. Just over four hundred and eighty years later, this Court is asked to decide who the current beneficial owner is: the Trustees of the bankruptcy estate of Mr James Stunt or his father, Mr Geoffrey Stunt. The answer will turn on two questions: (i) to whom did property pass under ***the Sale of Goods Act 1979*** when the painting was sold by Fergus Hall Limited ("FHL") in 2013? (ii) Did that person, Mr James or Mr Geoffrey Stunt hold the Painting on trust for anyone?

2. They are questions arising in the context of limited contemporaneous documentary evidence. Namely, an invoice and export licence documents, none of which refer to Mr Geoffrey Stunt and all of which suggest the buyer was Mr James Stunt, and the bank records for the cheque which paid for the Painting. It was drawn on Mr Geoffrey Stunt's bank account in the sum of £600,000.

3. Mr Geoffrey Stunt's position is that he negotiated the sale price, agreed the sale, and paid for the Painting as its legal and beneficial owner. The Trustees assert that Mr James Stunt purchased it under a contract between himself and FHL using his father's money but either as a gift or a loan. As a result, the Painting now vests in them as part of the bankrupt's estate.

4. It is an issue which has been complicated by the making in 2018 of a restraint order against the assets of Mr James Stunt pursuant to ***the Proceeds of Crime Act 2002***. It is an order which remains extant some 6 years later pending (as I understand it) a retrial of one count remaining against Mr James Stunt due to be heard later in the year. However, the Painting was released from the ambit of this world-wide asset freezing order by a variation made on 11 May 2021. As will appear below, nothing therefore turns on that complication for the purposes of this trial.

5. It is an issue for which there have been a variety of submissions concerning the law. The principles to be applied will depend upon the factual findings. They are, however, all reasonably straightforward: (i) Property in the Painting will have passed at latest when the cheque cleared; (ii) If the oral contract was made with Mr Geoffrey Stunt, property passed to him and he was the legal and beneficial owner absent any evidence of trust in favour of or gift or subsequent transfer to his son; (iii) If the contract for sale was made with Mr James Stunt as his father's agent, whether as a disclosed or undisclosed principal, absent any other facts, Mr Geoffrey Stunt will be (at least) the beneficial owner; (iv) If the oral contract was made with Mr James Stunt and agency is not established, the fact that the price was paid by his father will mean that a rebuttable presumption of advancement (i.e. of a gift to Mr James Stunt) will arise but if rebutted, subject to any other relevant facts, there will be a rebuttable presumption that the Painting was held for him on resulting trust when property passed to Mr James Stunt.

B) The Statements of Case

6. The Trustees began these proceedings by an application notice issued on 11 May 2022 seeking directions and declarations that title to the Painting vests in them as trustees in bankruptcy. This occurred in the context of Mr Geoffrey Stunt previously, on 11 April 2022, having started proceedings in the Queen's Bench Division to claim ownership and delivery up of the Painting, which the Trustees sought to have stayed. Their Particulars of Claim are framed in general terms and this application has proceeded on the basis that the statements of case are to be identified from the evidence.

7. The Trustees' case relies upon the oral evidence of Mr Fergus Hall, who sold the Painting on behalf of FHL. In addition, as set out in the evidence in support from Mr Defty, a now retired (from 17 August 2023) joint trustee, they contend that the contemporaneous documentation together with subsequent documentation identifies Mr James Stunt as the purchaser and owner. They rely in particular upon: the invoice; export documentation; and assertions of ownership by Mr James Stunt when the Painting was auctioned, whilst subject to the restraint order, and when proposing an individual voluntary arrangement. They also rely, in contrast, upon the absence of documentary evidence identifying the owner as Mr Geoffrey Stunt. An assertion, they contend, was first made only during the summer of 2020 following failed attempts by Mr James Stunt to discharge the restraint order and his subsequent indictment for various offences. Their conclusion is that the Painting is owned by his bankruptcy estate and vested in them pursuant to the provisions of ***the Insolvency Act 1986*** when it was released from the restraint order.

8. Mr Geoffrey Stunt in his second witness statement of 30 August 2022 states that he paid for and purchased the Painting after his son had suggested in 2012 that he should but it as an investment. Mr Geoffrey Stunt visited FHL's gallery to view it in early January 2013 and reviewed its provenance with his son. His son had been negotiating a price, which had started at around a million pounds and lowered to £630,000. Following the visit, Mr Geoffrey Stunt's evidence is that he negotiated the price with Mr Hall by telephone reducing it to £600,000. He therefore agreed the final price personally, for his personal purchase and paid it by cheque dated 7 January 2013 drawn on his personal bank account. Subsequently, and with his consent, his son exported the Painting for viewing in America, including its loan to the prestigious "Huntington Library Art Museum". This was organised by his son, although he kept an eye on what was happening and, for example, read a letter from the expert, Mr Malcolm Rogers, written to James after he had viewed the Painting at the Huntington.

9. A period of personal trauma for his son which caused a cocaine addiction caused Mr Geoffrey Stunt to break off contact for his son's good from about spring or summer 2018 to Spring 2020. During that period he thought the Painting was still, safely at the Huntington. It was in March or April 2020 that he discovered it was held by the well-known auctioneers, Christie, Manson & Woods Limited ("Christies") and he instructed solicitors to recover it. It became apparent that his son had been claiming the Painting as his own in different circumstances. He had been wrong to do so. However, Mr Geoffrey Stunt had been unaware of the facts or of the making of the restraint order. That was information provided to him by Christies. The Painting was eventually released by a Court Order made on 11 May 2021 following correspondence from his solicitors with the police and Crown Prosecution Service.

10. The Trustees rely in particular upon the following asserted facts and matters to undermine that case:

a) The evidence of Mr Fergus Hall that the parties to the contract were Mr James Stunt and FHL, with the result that the presumption of advancement from father to son applied to the payment of £600,000.

b) There was a complex financial relationship between father and son and Mr Geoffrey Stunt has failed (despite request) to provide the disclosure required to scrutinise that relationship and to enable the Trustees to understand the basis on which the payment was made.

c) The Painting was never delivered to Mr Geoffrey Stunt and instead was exported to America with all the necessary export and shipping documentation identifying Mr James Stunt as the owner and with no reference to his father.

d) Mr James Stunt was held out to be the owner whilst the Painting was at the Huntington Library with no reference to his father. In addition, correspondence from an expert, Mr Malcolm Rogers on the notepaper of the Museum of Fine Arts, Boston, described the Painting as being Mr James Stunt's.

e) Mr James Stunt sought to sell the Painting through Christies as the owner under a contract made 21 May 2018 having caused the Painting to be delivered to the famous auction house with warranties of ownership. Christies had not been informed of Mr Geoffrey Stunt having an interest in the painting sent to them by Mr James Stunt for sale.

f) The Painting having remained under Mr James Stunt's control from the date of purchase until enforcement of the civil restraint order made on 29 August 2018 and that his required disclosure of assets statement to the court identified himself as owner on 18 September 2018.

g) The inclusion of the Painting as an item he owned within his proposed IVA of 12 August 2019 following his bankruptcy on 6 June 2019.

h) The delay in any claim to ownership of the Painting by Mr Geoffrey Stunt until after his son was charged with serious criminal offences on 4 May 2020.

C) Issues During the Trial

C1) Reporting Restrictions

11. On the first day of the trial, counsel for Mr James Stunt applied for and was granted a reporting restriction order concerning specific matters to prevent substantial risk of prejudice to the administration of justice in the criminal proceedings to take place later in the year. An oral judgment giving the reasons was delivered. However, the next morning complaint was made by Mr Schama, counsel for Mr Geoffrey Stunt, that an online article published in the Daily Mail newspaper had breached the order and/or demonstrated that wider relief was required.

12. I concluded that: the issue of contempt of court was not for these proceedings; and the issue of wider relief required an application identifying the terms of such relief together with any evidence needed in support. I refer to this, however, because I should repeat what I stated in Court on 5 March having had read out to me the title of the article and knowing that this matter is the subject of press coverage that might affect the future criminal trial:

    a) This case has nothing to do with the criminal proceedings yet to be heard.

    b) It does not concern allegations of civil fraud or crime.

    c) It is a case concerning the law of contract and trusts to determine ownership in a civil dispute for which the documents are relatively few in number and memories must try to recall events over ten years ago.

C2) Bank Accounts

13. During opening Mr Curl K.C. directed me to a ***CPR Part 18***, Request for Information of October 2023 in which the Trustees sought information including the disclosure of additional bank statements. It was responded to in correspondence which, in effect, stated that disclosure had been provided to show the purchase price came from monies lent on overdraft from Mr Geoffrey Stunt's bank account, and that the request for further disclosure of his bank accounts was a fishing exercise. Whether that was correct or not, the request was not pursued by any application for an order for further information or disclosure.

14. The potential relevance of this request, as explained by Mr Curl K.C. was twofold: first, as a matter of fact, there was a closer than expected economic link between the financial dealings of father and son relevant to the source of funds for the Painting; and second, as a matter of fact, Mr James Stunt had a history of using third party accounts to purchase goods for himself. The evidence sought by the Request would be relevant, therefore, to sustain the case that the £600,000 payment by Mr Geoffrey Stunt should be treated as a payment to enable his son to buy the Painting for his own substantial art collection and to counter any attempt to rebut the presumption of advancement.

15. At trial both Mr James and Geoffrey Stunt were in turn cross-examined on various entries in various back statements for various accounts which had been disclosed. Mr Curl K.C. submitted that this was justified in principle and in circumstances of the issue of payment having been raised within Mr Geoffrey Stunt's statement and exhibits.

16. The reality for Mr James Stunt was, however, that the process was unfair without the witness having had proper fore-warning including the opportunity to search for documents that might assist but which they had not anticipated were relevant.

17. The practical effect of the problem was amply demonstrated by the cross-examination of Mr James Stunt in which he was taken to a variety of bank statements of himself and his father. He had no forewarning of this, he did not know or potentially understand the conclusions sought to be drawn from the questions, and he had not had the opportunity to consider any financial information to enable him to respond. In consequence he was

being asked in the stressful atmosphere of a court room to address financial transactions that had taken place over 10 years before without necessary preparation. In addition, insofar as he could answer the questions, his reliability would inevitably be in issue in any event due to the lapse of time. Furthermore, he could not reasonably be expected whilst in the witness box to follow the transactions through the different statements for the different accounts and appreciate their relevance within the overall context of the finances of himself and his father.

18. In those circumstances I have concluded that there should be no adverse inferences drawn from the occasions on which Mr James Stunt could not provide apparently satisfactory answers. In addition that even those answers must be viewed with caution because of the lapse of time.

19. The position with regard to Mr Geoffrey Stunt is different because he addressed the issue of payment within his trial witness statement: the fact it was for a moment overdrawn and the source of the payments restoring it to credit. To that extent, the fact that the £600,000 was paid by Mr Geoffrey Stunt's funds has not been undermined. However, he too struggled with recollection of payments/transactions which it appeared he had not been expecting to be questioned about. They included a payment of some £800,000 for his son to buy a flat in Chelsea Harbour and a transfer of some £425,000 which entered Mr James Stunt's bank account from "Mr Geoffrey" and was the source of funds for a payment to another well-known auction house, Sotheby's. As to the former he belatedly found documents overnight to evidence that it was a loan and he could not recollect the latter.

20. I would probably have reached the same conclusion as I have for Mr James Stunt concerning such evidence but for the fact that such matters are also potentially relevant to the presumption of advancement. The point being that there is an onus to rebut and the general financial affairs between father and son are likely to be potentially relevant both at the stage of disclosure and for trial. I will need to consider this further in the course of my judgment.

C3) The Restraint Order

21. In the course of opening the defence, Mr Schama emphasised that the restraint order, which had the effect of preventing the property restrained from forming part of the bankruptcy estate, had not been discharged. As a consequence, he submitted, ***section 306A(2)(c) of the IA*** did not apply. The Trustees, therefore, need to review their claim it provides that property subject to a restraint order will vest in the trustee as part of the bankrupt's estate only when that order is discharged.

22. I disagree. ***Section 306A(2)(c) of the IA*** concerning the consequence of discharge does not have the effect that property removed from a restraint order by variation will not vest in the trustee if it was the property of the bankrupt at the date of the bankruptcy. The submission was misconceived. The statutory position is as follows:

    a) Property of the bankruptcy estate vests in the trustee immediately on their appointment taking effect subject to exclusions (***s.306 IA***).

b) The exclusions include, as provided by ***section 417(2)(a) of the Proceeds of Crime Act 2002***, property *"for the time being"* subject to a restraint order made before the bankruptcy order under ***ss 41,120 or 190 of that statute***.

c) The restraint order was made under ***s.41*** before the bankruptcy order, and the Painting was excluded whilst the restraint order applied to it ("*for the time being*").

d) The exclusion ceased to apply when the variation was made removing the Painting from its ambit, because the Painting was then not *"for the time being"* subject to such restraint order.

e) Once the exclusion no longer applied, ***s.306 IA*** took effect.

23. Appreciating this, Mr Schama altered tack during his oral submissions. He asserted that the Trustees had notice of the intended variation releasing the Painting from the restraint order on the ground that it did not belong to Mr James Stunt. Yet the Trustees stood by and did not oppose the application despite the release being on the ground that the Painting could not form part of his bankruptcy estate because it was owned by Mr Geoffrey Stunt. This presumably (I say without addressing the merits) might lead to a submission along the lines that the Trustees are in some manner estopped from claiming ownership in these proceedings.

24. To assist the formulation of a submission from those assertions, I asked for it to be drafted in writing. The result reads:

> *"The Painting was not released on the basis that it belonged to Mr James Stunt, it was released on the basis that it belonged to Mr Geoffrey Stunt and, therefore, if this Court now declares the painting belongs to Mr James Stunt it will continue to be restrained under the terms of the restraint order."*

25. The answer to that submission was clear: let the trial proceed as between the Trustee and Mr Geoffrey Stunt, leaving it to the CPS to decide whether they wish to make anything of the matters referenced by Mr Schama should the Trustees' case succeed. It would not comply with the overriding objective to stop the trial for that process to take place or to await the outcome of the criminal trial and I was not asked to.

D) Witnesses

D1) General Observations – False Memory

26. The main event in this case, the purchase of the Painting, occurred during 2012/early 2013. It has always been recognised by the courts that lapse of time may have significant adverse effect upon the memories of witnesses. It is now also recognised, following in particular the decisions of Lord Leggatt at a lower level, that this needs to be considered within the context of "false memory". Namely, the potential for memories to be unreliable not by intention but because the process of recollection involves reconstruction rather than retrieval of a fixed, stored memory. That process gives particular scope for memories to alter over time whilst leaving the witness believing that their current recollection is true. There is no expert evidence before the Court

relating to any witness but plainly this is something that must be borne in mind. That is particularly the case when there are a limited number of contemporaneous documents.

D2) General Observations – Post Event Evidence

27. The problem of potential false memory also applies to post-event evidence but the admissibility of that evidence also needs specific consideration. Contemporaneous evidence can obviously be admitted to prove intention at the time of the relevant event, such as the formation of the contract to purchase the Painting. Evidence of subsequent events obviously cannot provide such proof directly. However, subsequent documents, words and conduct may have evidential weight by providing the overall picture and presenting facts and matters that may enable conclusions to be drawn from later events to explain the preceding event in issue. Nevertheless caution must be exercised because they post-date that event. For example they may be self-serving or reflect an alteration of mind, and it must also be remembered that their weight is likely to be less the further away from the event they occurred. I will adopt that approach.

D3) General Observations – The Presumptions

28. The weight of the evidence required for the purpose of rebutting the presumption of advancement will generally vary according to the facts and circumstances which give rise to the advancement. The presumption arises because the father (and now, albeit far too belatedly, mother) can be expected (whether as a moral obligation or not) to help their children including financially. That may not need particularly strong evidence to rebut in the context, for example, of an adult, working child as compared with a minor. However, that will depend upon the circumstances and each case must be addressed on its own facts. The same conclusion applies when addressing the weight of the evidence required to rebut the presumption of a resulting trust (subject to the necessary contextual changes).

D4) The Trustees' Witnesses

29. Mr Defty was required for cross-examination but the reality is that he does not have personal knowledge of the events that occurred before his appointment. There was obviously to be no argument with him concerning the merits of the evidence he tendered to the Court as a result of his investigations. The fact that he has reached an opinion as to ownership does not assist and need not be challenged. No facts and matters concerning events involving Mr Defty and those assisting him with performance of his duties after his appointment were relevant to determining the case. Mr Curl K.C. rightly conceded that no point would be taken from the fact that matters relevant to the issue of ownership were not put to Mr Defty.

30. In contrast, Mr Hall was an important witness of contemporaneous fact. I consider that he gave his evidence with the firm intention of assisting the Court and that he did so in an assured manner. I have no reason to find and do not find that any of his evidence was intentionally false or misleading. Indeed, that was not asserted by Mr Geoffrey Stunt. He had a tendency to want to give an opinion and reach a conclusion from the facts

rather than to restrain his answers to evidence within his knowledge. I have taken that into consideration when reaching my findings. In note in that regard that Mr Schama objected to the fact that Mr Hall had been shown his skeleton argument. That may explain Mr Hall's mistaken tendency but Mr Schama did not advance any point from this objection in submissions.

31. The conclusion to be drawn from Mr Hall's evidence was that he was sure that the buyer of the Painting was Mr James Stunt. He acknowledged that as the vendor, he was not concerned with beneficial ownership only as to the identity of the buyer. However, that conclusion will need to be addressed in the light of the evidence as a whole and in the context of lapse of time and the potential for false memory.

D5) Messrs Geoffrey and James Stunt as Witnesses

32. Mr James Stunt is a difficult witness to assess. At the hearing (whether attributable to his ADHD or not) he was "gushing" with keenness both to ensure he answered the questions helpfully and with a desire to be accurate. I was entirely satisfied that he was intending to tell the truth and gave his evidence as he recollected it. Indeed Mr Curl K.C. very fairly expressly recognised this within his closing submissions. As a result, I am satisfied that he now believes that he was never the owner of the painting, that his father did not pay for the Painting for him to add it to his art collection and that his father purchased the Painting for himself. That does not of course mean that his recollection is accurate. It is that which must be tested against contemporaneous evidence and the evidence as a whole bearing in mind to the extent relevant, lapse of time.

33. However and hence a difficulty compared with the other witnesses, there is the fact that from 2016 Mr James Stunt has had to address: the death of his brother in 2016; an acrimonious divorce with custody/access issues starting mid-2017; the 2018 restraint order; civil litigation; attacking, personal press articles; a bankruptcy petition; bankruptcy; and particularly serious criminal proceedings. All of this led to and continued, he told the court, a serious cocaine dependency between mid-2017 and early 2020, although he is to be congratulated on being "clean" for the 4 or so years.

34. Those events will inevitably have affected his mental attitude and added to the potential for erratic behaviour at the time and to subsequent false memory. I have reached this judgment ensuring that I have had regard to this but at the same time appreciating that the fact that such events occurred does not necessarily mean that his evidence is unreliable whether in whole or in part. In addition, appreciating that, as with all witnesses, if he proves unreliable in respect of a particular aspect of the case, that does not necessarily mean he will be unreliable in respect of other matters.

35. Those events may or may not be relevant to the second difficulty. This is the fact that on a number of occasions, as identified within the facts and matters summarised above as relied upon by the Trustees to undermine Mr Geoffrey Stunt's case, Mr James Stunt has represented the Painting to be his own and/or treated it as his own. There are various options that may result from that including: this conduct reflects the truth; he made a mistake; or he ignored the true fact of his father's ownership. This evidence will need to be considered in the context of the evidence as a whole, bearing in mind of course

that the person claiming to be the owner is Mr Geoffrey Stunt and Mr James Stunt is a witness.

36. Mr Geoffrey Stunt's evidence must also be considered in the context of those events. His son lost a brother but he lost a son. In addition he has had to deal with Mr James Stunt in the extremely difficulty circumstances summarised above. Such matters could affect his recollection or explain why, as will appear, he had little interest in the Painting after he had purchased it. I will take all these matters into consideration and mention them when necessary but appreciating that the fact that such events occurred does not necessarily mean that his evidence is unreliable whether in whole or in part. I can state that it was apparent to me whilst listening to him in the witness box that throughout all this and whilst making difficult decisions, it is plain he has been and remains a loving father. He is to be complimented for that.

37. Mr Geoffrey Stunt appeared to me to be somewhat reticent when giving evidence. I use the word "appeared", however, intentionally because I do not consider it represented his subjective intention. It reflected the fact that he appears to be a quiet gentleman and the fact that he is in his mid-seventies. Whilst Mr Curl K.C. treated him as a successful experienced businessman, and plainly financially he has been, he is not to be treated as the equivalent to a successful "Dragon" when judging his evidence. That is not to be read as a criticism. He is someone who formed a successful printing business at about the age of 28, made a good living and invested well with the result that he became a wealthy man.

38. The appearance of reticence also reflected the fact that he has little evidence to give. There was no detailed history to his involvement with the purchase. He attended the gallery with his son and together they viewed the Painting and considered its authenticity. He completed the negotiations, agreed the contract and then did little more until he sought to recover the Painting in 2020. There was little detailed recollection of those events beyond that in his witness statement. That does not mean he does not have the evidence required for his defence to succeed but it made it less easy for him to respond to questions especially when framed within (and I mean this as a compliment to skill) the challenging cross-examination approach generally adopted by Mr Curl K.C. It was not easy to respond forcefully to strongly put suggestions supporting the Trustees' case when the evidence to give in answer is short. I have taken this into account.

D6) Missing Witnesses

39. There are three potential witnesses who might have been called by Mr Geoffrey Stunt and whose absence leads Mr Curl K.C. to ask for an adverse inference to be drawn. Two have unsigned witness summaries presented with a solicitor's witness statement seeking permission to rely upon those summaries. One is Mr Nicholas White, a senior director of Christies. His evidence would have been relevant to post contractual events and specifically to Mr James Stunt's evidence concerning his intended inclusion of the Painting in the auction held by Christies. As a result, although either side could have called Mr White, his absence will be borne in mind.

40. The second is Mr Charity, a Senior Investigator of the West Yorkshire Police whose investigations caused him to reach the opinion that the Painting should be released from the restraint order. I do not consider that his evidence was required. Mr Charity would only have information derived from his investigations. He has no firsthand knowledge of the purchase of the Painting. For the purpose of this case, his opinion as to ownership or indeed his method of investigation would not assist. Any evidence which he relied upon that is not before this Court could presumably have been produced since it would be hearsay.

41. There is no summary for the third potential witness, Mr O'Keefe, but there is a sworn statement from him in the restraint order proceedings. Similar to Mr White, he is plainly a potentially relevant witness because he drew up a list of paintings which were acknowledged to be included within the ambit of the order because of Mr James Stunt's ownership. Relevance is clear if Mr James Stunt challenges the accuracy of the list by reference to the inclusion of the Painting. I will need to consider his role and his absence.

42. There are also other witnesses who might have been called. There is Ms Brinkley, who worked for FHL and drew up the invoice and the export documentation. She was also responsible for communicating with the Arts Council Exporting Unit. I will address her absence noting that in principle either side could call her, although she would be expected to be a witness for the Trustee. Her absence has not been explained.

43. In addition there is no witness evidence from the Huntington Library to address their knowledge of ownership as told to them by Mr James Hunt (insofar as this is in issue) or from the above-mentioned Mr Malcolm Rogers of the Museum of Fine Arts, Boston. This will need further consideration. It has been observed by Mr Curl K.C. that Mr Geoffrey Stunt's wife has not been called but there is no evidence she had any direct knowledge of the purchase and it has not been suggested that his investment was discussed with her.

E) The Evidence

44. Mr James Stunt knew of the availability of the Painting for purchase from FHL by April 2012 and expressed an interest. He was an avid collector of art and plainly a knowledgeable one. Indeed, the lists subsequently compiled establish that his collection of Old Masters, impressionist and modern art was remarkable. There appears little doubt that he will be able to annul his bankrupty through discharge of his debts and liabilities should the restraint order be discharged.

45. There is an issue as to the extent to which negotiations advanced. Mr Hall's recollection was that the matter was close enough to conclusion to have caused him to apply for an export licence with a price of £925,000. The twelve month export licence is dated and signed 4 April 2012 by Ms Brinkley of FHL. It records the owner as "Fergus Hall" and the consignee as Mr James Stunt. It is signed and dated by the "Arts Council England" on 12 April 2012. There is also a handwritten note and potentially (because it is undated) a compliments slip referring to urgency. Mr James Stunt's evidence was that no price was agreed and he did not give instructions for an export licence, noting that was usually a matter for the vendor dealer in any event.

46. My inclination is to conclude that Mr Hall thought he might be achieving a sale but in the context of Mr James Stunt soon returning to his home in California, hence the urgency to ensure he could close the deal having obtained an export licence. However, the reality is that this is speculation and there is no need to reach a conclusion of fact because there is no doubt that an agreement was not concluded.

47. Nevertheless I do consider it right to bear in mind two pieces of evidence from Mr James Stunt. First, that whilst he acknowledged that purchase of the Painting would enhance his or anyone's collection, he was looking to diversify his collection with impressionist and contemporary paintings. In that context and bearing in mind liquidity issues (i.e. there had to be a limit on what he could buy), his evidence was that he did not want to buy the Painting. This was challenged by the Trustee, Mr Curl K.C. emphasising in particular the importance of Van Dyck to Mr Stunt as a collector and the importance and quality of this painting (one Mr James Stunt emphasised would be a stand out piece for any collection). Nevertheless, I found Mr James Stunt's evidence from the witness box to be entirely genuine as recollection, realistic (noting that there is no doubt he purchased impressionist and contemporary paintings, although the time line was not investigated), and credible. That does not mean, however, that he would not seek to buy the Painting in the future if he had available funds. Mr James Stunt's recollection is that his decision not to purchase certainly did not mean he did not appreciate the value of the painting both in terms of artistic merit and as an investment.

48. The second piece of evidence is that Mr James Stunt would spend most of his time in America and he suggested only perhaps 10% of his time in London, usually during one or two visits a year. This is vague but understandably so in the context of the lapse of time and the questions being answered in the witness box. This evidence was not challenged in principle. It is probable, therefore, that the prospect of a sale of the Painting ended until Mr James Stunt returned to London. That appears to have been during December/the beginning of January 2013. The exception to that is if there had been telephone conversations between Mr James Stunt and Mr Hall from time to time when the Painting may have been mentioned. Mr James Stunt recollects telephone conversations with both Mr Hall and his father to the effect that his father was interested in purchasing the Painting. That appears to be mis-recollection, however. Neither Mr Hall or Mr Geoffrey Stunt thought that was so and I accept their evidence by majority.

49. Mr James Stunt recollected suggesting to his father that he might buy the Painting as an investment. Mr Geoffrey Stunt's recollection was that the idea of him purchasing a painting as an investment was discussed and that the Painting was identified shortly before he attended FHL's gallery to view it in early January 2013. It is to be noted that neither suggested this was a common event. Indeed both gave evidence to the effect that Mr Geoffrey Stunt's involvement in a purchase of a painting with his son was a one-off and it can be observed that amongst all of the art works included in the restraint order list, this appears to be the only for which Mr Geoffrey Stunt has claimed ownership.

50. It is hardly surprising, however, that recollection of date and circumstance was somewhat vague. Nevertheless I also note that Mr Geoffrey Stunt's evidence did not address the circumstances which caused him to decide to invest £600,000 in what was for him a new form of investment. There was no evidence concerning his existing investment portfolio or even as to why he considered that he had an "available" £600,000 would could be invested in that way bearing in mind that he would not be

purchasing it to hang on his own walls. Indeed, his evidence is that he would not have given it wall space.

51. Whatever the time sequence, it is with reference to the period of (probably late) December/the beginning of January 2013 that Mr Geoffrey Stunt states:

> *"James told me that he thought that buying the Painting would be a good investment. James and I then visited FHL's gallery to view the Painting in, as I now recall, early January 2013 and we reviewed the provenance for the Painting presented by FHL in the form of emails from Mr Christopher Brown and Mr Malcolm Rogers dated 3 January 2013 and 20 September 2011.*
>
> *Following our visit … I spoke to Fergus Hall on the telephone regarding the price to be paid for the Painting. I was able to reduce the price from, I recall, the price discussed with Fergus Hall in the gallery of £630,000, to £600,000. At that reduced price I was content to proceed with the purchase. Most of the prior negotiations concerning the purchase … were however conducted by James … James had, he told me, been able to reduce the price … from … about £1m or so. In closing the purchase at £600,000 I did so for myself as the purchaser and not on behalf of James … I was buying it for myself".*

52. It is also to be noted that this is not evidence asserting that Mr Hall did or may not have realised that Mr Geoffrey Stunt was to be the owner of the Painting rather than his son. It is a case based on a positive assertion that the contract was agreed in terms of contractual offer and acceptance between Mr Hall and Mr Geoffrey Stunt. In other words, that Mr Geoffrey Stunt was the buyer for the purposes of ***the Sale of Goods Act 1979***. Therefore, that Mr Hall knew or ought to have known that he was and that any contractual documentation, including any acknowledgment of purchase and receipt of funds, should have been drawn accordingly.

53. Mr Curl K.C. in submissions emphasised that when he asked Mr Geoffrey Stunt about Mr Hall's understanding, he said words to the effect of: I do not know what FH's assumptions were. However, I viewed that more as evidence that he did not consider it right to comment upon Mr Hall's state of mind than an admission. He fell within the apparently reticent category of evidence but it also drew attention to the absence of detail. This may be attributable to lapse of time but there is no reference to the gist of what was said to Mr Hall whether at the gallery or in the subsequent telephone call other than the reduction of price is referred to.

54. Mr Geoffrey Stunt's witness statement reads well insofar as it sets out facts leading to the assertion that he was the buyer but, and I say this as a matter of comment not finding, in a context where he will have to face documentary evidence referring to Mr James Stunt as "the owner" one might have expected more detail of: background circumstance; more detailed descriptions of the conversations/discussions he had with his son before visiting the gallery (eg about the quality of the Painting, why it would be a good investment, what would happen to it after purchase, what the insurance position would be, the extent to which it might increase in value and what the risks were) not just that he was advised to invest; what happened during the visit to the gallery (eg this being an important event he might have described what he saw, how long the visit took, what he was told about the artist and the Painting, the manner and approach of Mr Hall, whether anyone else was there, what sale documentation there would be, or what would

happen after its Purchase); and the gist of the words used on the telephone. Alternatively, a statement explaining how his recollection of such detail is prevented by the mist of time even though he can specifically remember negotiating the final price.

55. Mr James Stunt's evidence in the witness box agreed with his father. He emphasised the skills of his father as a negotiator and described his own role as a "marketing agent", the person who was concerned with authenticity and provenance. His evidence ran into some confusion over his description of himself as a negotiator and his father recollected that he had been negotiating the sale price but nothing decisive can be derived from that.

56. Mr James Stunt's statement referred to an earlier witness statement he had made of 7 October 2020. In that he recollected that the negotiations were *"largely conducted by me" and that "we agreed in January 2013 ... the price ... £600,000"*. He was not, of course, party to the telephone conversation recollected by his father but it is to be noted that he does not refer to his father agreeing the final price without him. Instead he stated: *"we agreed"*, and went on to state:

> "*The price having been agreed, my father then purchased the Painting for himself at that price. He paid ... by a cheque which I am told is dated 7 January 2013 ... At no stage, was it understood between my father and me that the Painting should be mine, whether by way of gift from him to me of the Painting or of the funds which were used to buy it for himself."*

57. It is to be noted that account must be taken of the following facts and matters when considering that evidence (matters which subject to context are relevant to all witness statements/oral evidence): this is not contemporaneous evidence but based upon recollection with all the dangers of false evidence; very often the content will inevitably be influenced by the solicitors requiring the statement (in the sense that they identify what should be covered not in the sense that they identify what should be written) so that a lay witness's thoughts might not bring to mind all the evidence which is in fact relevant and the drafting may be remiss; and the fact that one witness does not recollect something or recollects it differently does not mean the other is wrong. In addition, and importantly, that he corrected his recollection in his trial statement, although that raises the question as to what caused him to recollect matters differently.

58. Although all those matters should and will be taken into consideration when reaching a decision, it has to be borne in mind that Mr James Stunt's recollection was different at that stage to the extent that the price was agreed by both him and his father. In addition, that evidence might be read (a matter for consideration) to the effect that the reason why his father claims ownership is because he paid the price rather than because he was also the buyer for the purposes of ***the Sale of Goods Act 1979***.

59. In contrast, Mr Hall has no such recollection. He does not recall a telephone conversation and his evidence is that he only met/spoke to Mr Geoffrey Stunt at that gallery visit. His recollection of that meeting was that Mr Geoffrey Stunt was quiet, and it was Mr James Stunt who was buying the Painting and negotiated the price. I have to observe from having seen Mr James Stunt in the witness box that he would have been likely to have been at the heart of all discussions. He was the Van Dyck expert, he was guiding his father and his personality characteristics suggest he would have been full

of enthusiasm and good will. That does not mean, of course, that he would not have made clear that his father was the purchaser and on the balance of probability I believe he would have done. Yet there is no express evidence describing the meeting, the gist of the conversations or the atmosphere or the reasons for not providing such evidence.

60. There is a clash of recollection, therefore, in a context of a purchase that was likely to be memorable. For Mr Geoffrey Stunt that is because it was his first venture into the purchase of an "Old Master" and the price. Whilst his evidence was that he only saw this as an investment, he would not have given the Painting wall space in his own house, it is difficult to view this as anything other than a significant purchase in his eyes. Memorability might be less obvious for a dealer of many paintings but Mr Hall's evidence was that this was a significant sale. That was not only because of the quality of the painting, which he certainly appreciated, but also because it was the highest value sale he had been involved with at that time. Nevertheless both witnesses have to recollect events now over a decade away and in both cases the prospect of false memory needs to be borne in mind.

61. Mr Geoffrey Stunt's recollection has no documentary support except for the cheque. The fact that he paid for the Painting is clearly important evidence, although in itself it does not necessarily establish he was the buyer and might only lead to the presumption of advancement versus resulting trust issue. Mr Geoffrey Stunt has the support of his son's recollection in the witness box subject to the issues that arise over the accuracy of that recollection. However, Mr James Stunt's evidence will also need to be considered further in the light of subsequent actions of Mr James Stunt.

62. Mr Hall's recollection has potential support from contemporaneous documents: the invoice is addressed to Mr James Stunt; and the export licence and shipping documentation also identify the owner as Mr James Hunt. Turning to the invoice: It is addressed to Mr James Stunt at his address in Los Angeles. It is dated 4 December 2013, evidencing a certain carelessness when it also refers to a 3 January 2013 email. Mr Hall thinks it probably should have been 4 January 2013. The price is £600,000 and it represents that emails from two experts (Mr Malcolm Rogers and Dr Christopher Brown) dated 20 September 2011 and 3 January 2013, copies of which have been received, confirm the Painting's attribution.

63. On its face, therefore, it is a bill for the Painting addressed for payment to Mr James Stunt. It supports the evidence of Mr Hall but it is certainly not conclusive evidence that Mr James Stunt was the buyer for the purposes of ***the Sale of Goods Act 1979***. Based upon Mr Geoffrey Stunt's evidence, the fact that it was addressed to Mr James Stunt could have been a mistake or for convenience because Mr James Stunt would be the consignee responsible for dealing with the Painting once it arrived in the USA. On the other hand, there is also nothing in its content to suggest that Mr Geoffrey Stunt was the buyer nor that he had any involvement with the transaction. Indeed it is far from clear whether he even saw it.

64. Whichever side has the upper hand, this was, very much a "gentleman's agreement", whoever it was with. There was no written contract. There was no contractual document recording between the two that FHL had agreed to sell the Painting to [x]. There was not even any such record within the internal books of FHL. The position was that a price had been agreed between FHL and [x] and nothing further was required because property would not pass until (at earliest) the price was paid. Once paid, and this is not

in dispute, it would be shipped to the USA either to Mr James Stunt or in accordance with his requirements.

65. Moving to the export documents, it appears from Mr Hall's evidence that his usual practice was to give Ms Brinkley the relevant details for her to render the invoice and to complete any export licence application form. On 8 January 2013, there is an email from Ms Brinkley sent to Mr James Morrison of the Arts Council Export Licensing Unit referring to the export licence *"granted on 12th April 2012"* for which *"shipment [has been] delayed"*. She wrote that FHL are intending to ship the Painting to the consignee during January 2013. She asks if it was right to use a European Community application rather than a United Kingdom application. She described the Painting with a stated value of £925,000.

66. This is rather confusing. There seems to be no apparent reason to refer to the April 2012 application when there is or is going to be a new sale agreement which no-one suggests will be at the price of £925,000. This is a new (actual or potential) contract not a delay in performance of an earlier one even if (which does not appear to be correct) there had been an agreed price in April 2012. In one sense none of this matters but it raises doubt as to either the accuracy of the information Ms Brinkley has received from Mr Hall or as to the reliability of her drafting that is to be borne in mind when considering the subsequent communications and when reaching a decision.

67. Mr Morrison responded very promptly the same morning. In summary he wrote that an EU licence was required. Ms Brinkley replied more or less straight away asking for a copy of the application (presumably the April 2012 application). Mr Morrison replied, still the same morning, that he did not have it and had to search the archive. Later that morning Ms Brinkley's email informed him that she had *"just been informed that the value has decreased to £600,000"* needing a new form as a result.

68. It would have been helpful to hear her recollection of those events and whether, for example, her reference to being "just informed" was to cover up her error in the first email or because her misunderstanding had just been corrected or because the final price had just been agreed. Bearing in mind the date of the invoice, 3 or 4 January 2013, the latter does not appear to be a viable option. Therefore it does not provide supporting evidence for the telephone call after the gallery visit.

69. Ms Brinkley then drafted the first export licence application for this £600,000 transaction. It is dated 8 January 2013. The "Applicant" and "owner" are identified as *"Fergus Hall"*, and the consignee as *"James Stunt"* of Los Angeles. The "purpose" of the export is represented to be: *"To be sold and exported to James Stunt in LA, USA."*

70. An issue arose as to the meaning of that clause but I find it difficult to envisage that the solution to the meaning of "To be sold and exported to" can be found in the strict application of the rules of English grammar. There is potential, therefore, for this "purpose" to refer to Mr James Stunt either as the person to whom the Painting is to be sold and exported or purely as the consignee. However, that potential makes relatively little sense when the whole point about the licence application is that it is required because there will be a sale. It is probable that Ms Brinkley was recording that the sale was to the person to whom it was to be exported.

71. The reference to FHL being the owner suggests the cheque had not yet been received. There is a bank statement recording that the £600,000 was debited from Mr Geoffrey Stunt's Lloyd's bank account "xxx151" on 11 January 2013. The date when and circumstances in which this cheque was received by Mr Hall is unclear but it is not unreasonable to expect it to be banked the day of receipt and to clear within 2 business days. That would suggest the cheque was received by Mr Hall around Tuesday/Wednesday 8/9th January 2013.

72. In any event, there is another European Community "Cultural Goods" licence application signed and dated 10 January 2013 by Ms Brinkley. It shows the Applicant to be *"Fergus Hall"*, the consignee now *"The Huntington Library"*, the owner *"James Stunt"* of Los Angeles and the price £600,000. The purpose of the export is represented to be: *"on loan to Huntington Library before going to the owner's residence"*. The description of the Painting has next to it an initial and a date of 14 January 2013. That is the same date as the Arts Council England's stamp. Plainly the application shows that Ms Brinkley has now identified the owner and, based upon Mr Hall's evidence, it is probable she would have been informed by him. This being despite the fact that the cheque from Mr Geoffrey Stunt would probably have been banked by then. The contemporaneous documentation supports Mr Hall's recollection that the buyer was Mr James Stunt for the purposes of ***the Sale of Goods Act 1979***.

73. Mr Geoffrey Stunt had not seen any of this export documentation. Mr James Stunt's evidence was that he had not seen it either and would not have expected to do so. The vendor gallery would address such matters. However, he did not understand the reference to the consignee being *"The Huntington Library"* when the Painting was delivered to his home in Los Angeles. That recollection is supported by the export application required of the shipper, "Gander + White". It has a 21 January 2013 date stamp, and names Mr Stunt as the consignee giving his Los Angeles address. It also names him as the owner. Mr Stunt was clear that the shipping was arranged by FHL, which I accept, and, therefore, it is reasonable to treat this as (in effect) a repeat of Mr Hall's understanding of ownership to be found in the 8 and 10 January 2013 application form.

74. This is the end of the contemporaneous evidence. What happens next is evidence which needs to be considered in the context of it being post the sale agreement.

75. The fact that the Painting was delivered to Mr James Stunt and then lent to the Huntington Library is relied upon by Mr Geoffrey Stunt as an event in accordance with his son's advice. This was an investment, as previously explained, and it was for his son to look after the Painting. The problem is that there is no evidence until 2020 of Mr Geoffrey Stunt seeking any documentation from FHL to evidence that he had bought the Painting. Not even a receipt. There is no evidence of him enquiring about the Painting whether as to the reaction of the Huntington, how long it might be kept there or even how its value was improving.

76. The only evidence that he provides is that he was shown by his son on one of his return trips from the USA a letter by the expert, Mr Malcolm Rogers. Mr Geoffrey Stunt commented that he was interested to know the comments of an expert knowing this would add to the Painting's value. I will refer to that letter below but this evidence has a contrived feel since there does not appear to have been any issue over authenticity. On the other hand, Mr James Stunt explained in evidence that there were three

renowned experts, that he had authenticity evidence from two and that the addition of Mr Rogers added considerable value (forming the holy trinity).

77. Subject to receipt of that letter, however, Mr Geoffrey Stunt's position appears to be that he was not concerned about the Painting. The investment was in the hands of his son, he had no interest in the Painting as a work of art, he had other priorities (which I will come to) and he had the emails of expert attribution. It is nevertheless surprising that he did nothing further with regard to or concerning the Painting until 2020.

78. The Trustees rely upon the evidence of Mr James Stunt in his 7 October 2020 statement that the Huntington described the Painting as an exhibit derived from *"my art collection"* and to there not being any mention of it being owned by his father. In the witness box he described this as meaning that it stated it was from an anonymous private collection.

79. That was a piece of evidence that has given rise to some dispute because of Mr Curl K.C.'s interruption. I am not going to enter that arena of dispute. There is no need to do so. The post agreement, evidential point is that there is no evidence the Huntington Library represented that the painting was on loan from Mr Geoffrey Stunt. Mr James Stunt under cross-examination was sure that he had told them, however, there is no evidence from someone from the Huntington Library to support that recollection which is at potential odds with the 7 October 2020 statement.

80. The Trustees also rely upon the letter to Mr James Stunt from the expert, Mr Malcolm Rogers on the notepaper of the Museum of Fine Arts, Boston, dated 21 January 2014. Mr Rogers refers to his trip with Mr James Stunt to the Huntington Library, expresses his admiration for the Painting and describes it as: *"your Van Dyck ..."*. However, this is a letter flowing with thanks for a visit over a weekend which included also viewing (for *"much time"*) Mr James Stunt's *"remarkable collection"*. It cannot be concluded that this possessive pronoun has evidential weight except in the limited sense that it is not inconsistent with the overarching submission that there is no positive, post contractual evidence of Mr Geoffrey Stunt's ownership.

81. There is, however, a considerable amount of positive evidence of Mr James Stunt's asserted ownership of the Painting based upon his actions. He explains those actions as a mistake within a torrid personal period which included serious cocaine addiction. It is appropriate to set that scene first.

82. The period in issue starts with the death of his brother in 2016, at the age of 39. Pausing there, that tragic event was held in restraint in the witness box by his father. Avoidance of the topic being his obvious and understandable preference. However, it would be wholly unrealistic and wrong not to recognise that his mind will have been seriously affected from 2016 even after the utter blackness of the event clouding his thoughts will have to some extent lifted. Plainly, the above-mentioned "surprise" expressed at an absence of any apparent interest in the Painting after its purchase will need to take this into consideration from 2016.

83. For Mr James Stunt this was the start of a nightmare period. His marriage fell apart and divorce proceedings started around April 2017. He explained that he had not wanted a divorce, it was acrimonious and it involved custody/access issues concerning the children. Next, on 29 August 2018 the restraint order was made without notice turning

his financial world and day to day living upside down. *"Out of the blue"*, in a world-wide order, he suddenly had all his assets and assets of two companies frozen. The relevant exceptions to the Order being expenditure of £1,000 a week for ordinary living expenses (and this was subject to notification and consent of the prosecutor), and the repayment of mortgage instalments and other secured loans. There was no other provision for the payment of his or the companies' debts as the statute permits on a discretionary basis.

84. I have not been addressed upon the history of the restraint order or upon any variations. It was unnecessary to do so but the fact that he was unable to pay his creditors led to the bankruptcy petition presented on 24 September 2018 which resulted in his bankruptcy on 6 June 2019. It is unnecessary to review the history of the petition but it should be noted that a fundamental problem was that Mr James Stunt did not appear to be able to obtain the release of assets from the order to pay his creditors despite the time provided by this Court to do so. Whether that was his fault or not does not matter for this judgment.

85. Mr James Stunt was charged with serious criminal offences on 4 May 2020, although, as I understand it, he has been acquitted of all charges except one concerning money laundering for which there was a hung verdict. This is the subject of the retrial later this year, some 4 years after having been charged and some 6 years after the restraint order was made.

86. Added to this crescendo of crisis was full scale media coverage, which I will simply describe as having painted Mr James Stunt in a very poor light and which led to his involvement in heavy litigation with "the Daily Mail". Within this hiatus, there is no dispute that Mr James Stunt turned to cocaine from about April/June 2017. The evidence from Mr James Stunt is that he became a recluse and in effect wallowed in his substance abuse to the extent that his mind was addled as the mind of any serious cocaine addict will be. It is not in dispute that this addiction ended at the beginning 2020, that he has been clean since but that the effects of coming off such a drug will have had the usual consequences for his mental and physical health.

87. That addiction caused his father to decide to sever connections including financial assistance in about 2018. This side of the trauma added to the continuing grief he will have been suffering and is also material to the question whether it should be considered surprising that the Painting was not in his mind during this period. I should add in case it is thought otherwise, that his father never stopped keeping an eye on his son through third parties.

88. During those traumatic times the following occurred: First, by 21 May 2018 Mr James Stunt had entered into an agreement with Christies to sell the Painting in auction as its owner. The Painting had been identified by Mr White who had flown to the USA to "select" potential auction items in a context, as I understood Mr James Stunt's evidence, of him requiring funds because of the divorce. At an auction held on 5 July 2018 it failed to meet its reserve.

89. Mr James Stunt will still have been suffering from the impact of grief, as well as having to deal with the break down of his marriage and custody issues. His evidence was to the effect that he did not concentrate on the list of items to be sold. However, he signed the list on 23 May 2018 on which there are only 8 paintings and the Painting is not only the

first listed, and the only "Van Dyck" but the most expensive with an estimate of £2-4 million, whilst all the others have highest estimates of less than £200,000 except for one with a range of £200-300,000.

90. The Painting, therefore, stood out not only because of its high artistic merit and (if this is correct) it was the only painting he held belonging to his father in the context of a memorable purchase but also because of its obvious prominence in the list. In addition, the purpose of the auction was to raise money and he would be expected to be concerned to ensure that the paintings would raise a significant sum. That being so, he would be likely to look at the list even assuming he had not been party to any discussions/agreement concerning its inclusion beforehand. Absent this painting, the total value was relatively low.

91. The second event is that in response to the restraint order's ancillary order requiring disclosure of assets, Mr James Stunt provided as true a list which included the Painting. His evidence was that this was a mistake attributable to the hiatus as then in existence. This was during the cocaine period and the points are also made that this list is particularly long and contains numerous "Old Masters" as well as many painting from other well-known, top artists so that even this painting might not be thought to stand out.

92. Nevertheless his evidence will need to be considered in the context of this list being provided in compliance with a most serious court order. The claim of mistake needs to be considered in the context of a requirement to justify the removal of the Painting from such a list.

93. The statement was and had to be made within a period which can only be considered short in the context of the assets that he owned. Very sensibly, Mr O'Keefe was retained to prepare the list. He made a statement in the restraint proceedings as a freelance, private investigator with thirty years previous experience as a police officer for the purpose of compliance by Mr James Stunt with the disclosure order. He stated: *"Specifically, I was asked to help him (a) Compile a register to inform the Crown of [amongst other matters] i) All works of art (including but not exclusively paintings ….in which James Stunt [and the companies] hold any interest … whether in their possession or held on their behalf …"*.

94. The statement dated 16 September 2018 explained as a methodology that he interviewed Mr James Stunt and obtained any existing documentation and photographs. There was a brief description of a conversation with Mr Stunt which appears to have included (although its inclusions as part of a conversation is not entirely clear on the balance of probability) specific reference to the Painting. In any event, conversation or not, the Painting was expressly referred to in the statement which ends with the statement that the list was provided by Mr James Stunt with his help.

95. At number 19 on the list is the Painting as located with Christies in London. There are errors: the date of purchase is given as 2011 and the purchase price as £1,000,000. Whilst this can be relied upon to raise doubt over the accuracy of the information, it is detail compared with the sworn fact of ownership. In addition, there are no documents explaining the mistakes which suggests that the information may have come from a conversation with Mr James Stunt.

96. The third incident concerns Mr James Stunt's individual voluntary arrangement proposal, dated 12 August 2019 and signed by him. It is to be noted that this too is a very important document not just because it is sworn and ***the Perjury Act 1911*** applies but because addressed the assets available to pay his creditors. A dividend of 100p in the £1 was proposed on the basis that money could be raised by borrowing secured upon some of his art collection. This included the Painting. The price paid was again inaccurate (£1 million) and the valuation of £4 million was also considerably less than many other paintings, for example by Monet, Chagall, Picasso, Dali and others including three other Van Dyck's.

97. This too occurred at the time of cocaine addiction, whilst the hiatus was at its height and in the context, as argued, that the "mistake" started with the Christies' list and percolated through the years with later lists repeating the mistake. There is, however, no question from the terms of the IVA that he was doing other than representing the Painting to be his own.

98. The fourth occasion concerns a message on an Instagram account. It includes a photograph of the wrong painting but in text describes the Painting as being jointly owned with his father adding that he *"attempted without my father's permission which is a nightmare to put into Christies …"*. Mr Curl K.C. in submissions accepted that this should be treated with great evidential caution even though it was made after Mr James Stunt had successfully fought himself off cocaine. It is a "message" in a context of anger and distress made after a long enduring period of turmoil and suffering.

99. Despite or perhaps because (depending upon which side is arguing the case) of all that was occurring in Mr James Stunt's life, Mr Geoffrey Stunt did not assert his claim to the Painting until the summer of 2020. He was aware of the events forming the hiatus except for the first, the intended auctioning of the painting by Christies. By letter dated 5 June 2020 solicitors for Mr Geoffrey Stunt informed them of his ownership and requested collection. Christies disputed that and referred to the restraint order before in a letter dated 5 July 2021 referring to documentation showing that the Painting was loaned to the Huntington Library as Mr James Stunt's property and to the fact that he consigned it their 2018 sale with warranties of ownership.

100. On 9 August 2021 a letter to the Trustees' solicitors asserted ownership enclosing the invoice, evidence of payment and a correcting statement from Mr James Stunt. The letter refers to Mr Geoffrey Stunt's name being appended in manuscript to the invoice but it is accepted this was made by Mr Hall in July 2020 to identify the recipient as Mr Geoffrey Hall following the recent request for it. There was also reference to a purchase receipt being available.

F) Submissions

101. The points made in submissions concerning the evidence that I consider the most potentially relevant have been brought into play when considering the evidence above. Neither they or the submissions of law need to be summarised here subject to two matters. They can be addressed within the decision insofar as it is necessary to do so.

102. The first matter is the burden of proof. I do not consider it correct that the Painting "prima facie" vests in the Trustees as part of the bankruptcy estate. Nor do I think that the issue of where the burden lies rests on the outcome of who is to be treated as starting proceedings first.

103. Mr Curl K.C. advanced the "prima facie" on two bases. First because the contract was entered into between FHL and Mr James Stunt. However, that is an issue of fact and, even if established in favour of the Trustee does not determine beneficial ownership. Second because restraint and release of the Painting presupposes it was vested in Mr James Stunt. However, that can only be based upon the evidence of ownership presented by Mr James Stunt within his disclosure of assets evidence. That is subject to his plea of mistake but even if that fails, it does not bind Mr Geoffrey Stunt.

104. This is a case where both sides present positive cases. In my judgment it is for each to establish the facts and matters they need to rely upon bearing the civil burden of proof subject to the application of the presumptions already addressed. There may of course be circumstances where that onus can be assessed on the basis that the evidence presented is sufficient to shift the evidential burden. That will need to be addressed if and when it arises.

105. The second matter is to record that during submissions, in other words in the light of the evidence, Mr Schama made clear expressly that no case of agency is being advanced. Therefore, there was no such argument. As a result the answer to the first question identified at the beginning of this judgment is either Mr Geoffrey Stunt or Mr James Stunt as principal. It is to be noted that Mr Curl K.C. made clear that he would otherwise have opposed a case of agency on the (at least initial) ground that it was not part of the defence as set out in the evidence. I need not address that.

G) Decision

106. My starting point is to address the post-agreement evidence of Mr James Stunt for the period from 2016 and ask whether Mr James Stunt's plea of mistake can be accepted. In either case, the relevance and weight of that evidence will need to be addressed insofar as it is necessary to do so to resolve the issue of beneficial ownership.

107. Whilst the balance of probability standard applies to this plea of mistake, it is a high standard of burden when Mr James Stunt has acted in the manner identified within the evidence above. First in time, he asserted ownership by warranty to Christies and allowed the Painting to enter an auction under those warranties of ownership with the absence of its sale only being attributable to a failure to meet the reserve.

108. I have great sympathy for Mr James Stunt's position at the time but what is needed in any event and bearing in mind the matters identified in paragraph 83 above is far more specific evidence from him to explain not only the circumstances in which the Painting was selected, the list drafted, he decided to warrant title and in which he allowed the sale but also far more detail evidencing the circumstances which prevented him at any time from telling Christies he had got it wrong. Such evidence needed to deal, for example, with the actions of Mr White and really he should have been called as a witness, even if he would prove to be a hostile witness. The fact that this was a

possibility in itself emphasises the need to call him to test Mr James Stunt's evidence as applied to the detailed circumstances. Such detailed evidence has not been provided. His evidence of mistake does not meet the difficulties identified at paragraph 82 above. In my judgment the evidence of personal difficulties he had at the time do not overcome them.

109. The same problem in effect arises for both the restraint order disclosure evidence and the IVA proposal. A person who makes a representation to the Court and/or who states a proposal is true and subject to ***the Perjury Act 1911*** cannot lightly be relieved of that representation. If they were, it would undermine the importance of the representation not only subsequently but when making it. Establishing the balance of probability is a hard test when a person has sworn to the opposite facts to those now said to be true, and so it should be.

110. By the time of those second and third events, the factual scenario had worsened for Mr James Stunt to a high degree and was added to significantly by his cocaine addiction. However, he does not have witness statement evidence from Mr O'Keefe concerning his involvement in the compilation of the restraint order list. He does not have the evidence of the supervisor of the IVA proposal concerning its preparation. The same point concerning the need to test their evidence applies as it does for Mr White. There is no third party evidence addressing Mr James Stunt's understanding of the relevant events during the periods in issue. Mr Geoffrey Stunt (for whom of course the evidence of Mr James Stunt is given) does not have sufficient specific evidence from his son and/or from any third party witness to satisfy the burden of establishing mistake.

111. Therefore, in my judgment the evidence from 2016 onwards concerning Mr James Stunt's admissions of ownership and treatment of the Painting as his own must stand as evidence. The extent to which such evidence affects the case of Mr Geoffrey Stunt is another matter. However, in the light of that decision, I consider it best to now address the issue of ownership in the light of the contemporaneous evidence and the evidence of subsequent events prior to 2016. It can then be considered whether the post 2015 evidence need be addressed.

112. It is important to appreciate that the sale transaction itself was not concerned with the beneficial ownership of the buyer except to the extent that property would transfer to them. That is important from two perspectives. First as a matter of law, and second from the factual perspective of FHL and the buyer at the time of their agreement.

113. In accordance with ***the Sale of Goods Act 1979***, the transaction involved an agreement whereby FHL as vendor transferred the title it held in the Painting to the buyer it contracted with for the agreed price (see ***section 2*** and the definition section, ***section 61(1) of the Sale of Goods Act 1979***). As a matter of detail: The time when property will pass to the buyer (defined by statute as the person who buys or agrees to buy goods) of specific goods, such as the Painting, is determined by the intention of the parties to the contract applying established presumptions in the absent of a different intention. In the case of an unconditional contract of goods in a deliverable state, property will pass when the contract is made subject to a different intention (see ***sections 17 and 18 of the Sale of Goods Act 1979***). In this case it is to be concluded from the facts that property was intended to pass when payment was made in cleared funds.

114. The passing of property transferred the entirety of the seller's ownership rights in the Painting to the buyer. However, the buyer may or may not have been the beneficial owner. An obvious example where this may not occur is if the buyer contracted as agent and either transfers the property to the principal or holds it on their behalf (whether on constructive or resulting trust for them or otherwise). Another example, potentially relevant to these facts, might be when the buyer acted as principal but a resulting trust arises because another paid for the Painting.

115. The starting point, however, is to identify the buyer. I raised at the beginning of the trial (although I emphasised that this all depended upon the evidence yet to be heard and heard objection from Mr Curl K.C. to the effect that this was not the case the Trustees had to meet) the possibility that the facts might produce the answer that this may have been a contract with an agent of a disclosed or undisclosed principal. That would be contrary to the evidence of Mr Geoffrey Stunt that he was the principal contracting party (by reference to what occurred at the gallery and in the later telephone conversation that he recollected) but it could in principle still arise from the evidence. The fact that Mr Geoffrey Stunt was not the buyer would not automatically mean there was no agreement between himself and his son to affect the beneficial ownership of the Painting even if his son was the buyer.

116. As explained, the decision as to who the buyer was will at this stage (at least) be based on the contemporaneous evidence and the post agreement evidence before 2016 alone. It therefore needs to consider from the evidence presented on behalf of Mr Geoffrey Stunt: his recollection concerning the circumstances leading to visit to the gallery, the visit itself, and the subsequent telephone call agreeing the price with Mr Hall. In addition, there is the evidence of Mr James Stunt's recollection concerning those events and the payment of the purchase price by Mr Geoffrey Stunt's cheque. There is also, however, as post contractual evidence, the fact that the Painting was exhibited by Mr James Stunt at the Huntington Library without specific reference to his father, although I do not give that great weight as evidence against his father's claim because that might have occurred in a number of circumstances which have not really been examined. In addition the evidence of the letter received from the expert, Mr Malcolm Rogers.

117. The evidence in favour of Mr Geoffrey Stunt's case that he was the buyer of the Painting not merely the payee must be weighed against the evidence of Mr Hall. His firm recollection was that he sold the Painting to Mr James Stunt as supported by the contemporaneous documentation. The weight of that evidence, the invoice and the export licence documentation and correspondence must also be addressed.

118. In the light of all the evidence (including the recollections by oral evidence and my assessment of the witnesses) I have reached the following conclusions but without at this stage considering any post-agreement evidence arising after 2015:

a) Mr Geoffrey Stunt's recollection has to be questioned in the absence of him apparently not even having given the Painting any real thought throughout 2013, 2014 and 2015 except insofar as he recollected at some time (and I will assume it was before 2016) having been shown the letter from Mr Malcom Rogers. As to that, he provided no details of the occasion he was shown and/or read it.

b) In addition, there has to be an issue over his reliability of memory due to the lapse of time (over ten years) and bearing in mind all he has had to endure from

2016. That must be so despite the fact that this purchase would have been a memorable occasion, the price significant and this appearing to be the only "Old Master" he has purchased, although those matters remain relevant to the assessment of the weight of his evidence.

c) It is to be borne in mind that the issue of reliability features in the context of an absence of evidence dealing with matters which might reasonably have expected would be addressed within a witness statement to support the reliability of Mr Geoffrey Stunt's recollection (see paragraphs 50 and 54 above). It should have been reasonably apparent that such detail was required bearing in mind that as a matter of oral evidence this would be a "yes he did, no he didn't" case concerning identification of the buyer and the fact that the contemporaneous documentation on its face supports Mr Hall's recollection.

d) Whilst Mr James Stunt's witness statement and witness box recollection supported his father's case (ignoring the events concerning the Huntington Library and from 2016) there is not only the issue of the lapse of time to consider but also the above-referred to content of his first witness statement (see paragraphs 56-58 above). Whilst, this was corrected in his trial witness statement, and it is certainly possible that his memory may have been revived, this feature must be borne in mind. It is a feature which is consistent with the absence of reference by the Huntington Library to his father.

e) Lapse of time must also be a relevant factor to bear in mind when addressing Mr Hall's recollection. There is, however, the paperwork. I have identified potential concerns over the email correspondence of Ms Brinkley but at the end of the day, the invoice plainly addresses Mr James Stunt as the buyer and the export licence documentation identifies him as the consignee and owner. If there was a direct agreement between Mr Geoffrey Stunt and Mr Hall by telephone, one would expect (unless otherwise agreed and there is no such evidence) that the invoice would be addressed to him and that he would be named as owner whilst Mr James Stunt remained the consignee.

f) The fact that payment was made by cheque by Mr Geoffrey Stunt on its own establishes no more than that he chose to pay for the contractual liability of the buyer. It raises potential support for his evidence that he was the buyer but it is not the only possible explanation. Alternative possible explanations are that he chose to gift or lend the money to his son or (if asserted) that his son was acting as his agent. The fact that someone pays the invoice does not establish them to be the buyer for the purposes of ***the Sale of Goods Act 1979***.

g) In the circumstances of an oral dispute which must be addressed in the context of the conclusions drawn above, the final conclusion is and must be that the contemporaneous documentation which expressly identifies the owner and is documentation that is created as a direct result of the sale agreement is the evidence that swings the Trustees' case over the line and prevents Mr Geoffrey Stunt crossing the line when applying the balance of probability test.

119. In the witness box Mr James Stunt was very concerned that if his father loses this case, it will be his fault. I do not consider that to be so. The decision I have reached is attributable to an event which occurred more than a decade ago for which the

contemporary documentation is to be considered evidentially decisive. If the balance of probability evidential test has not produced an accurate record of the facts, the real problem will be that Mr Geoffrey Stunt entered into a transaction without paper work (whether with regard to the original contract, the payment required by invoice or any subsequent documentation concerning performance of the contract) in circumstances where he was not to have possession of the Painting and would not be taking any real interest in it. In the face of that problem he has not produced sufficient evidence to overcome the conclusion to be drawn on the balance of probability from the documentary evidence after consideration of its content in the light of the oral evidence.

120. In my judgment, therefore, on the balance of probability, Mr James Stunt was the contracting buyer under ***the Sale of Goods Act 1979***. There is no case of agency advanced by Mr Geoffrey Stunt for the Court to consider. The next matter to consider, therefore, is the consequence of the fact that Mr Geoffrey Stunt paid the purchase price by cheque. The initial issue being whether Mr Geoffrey Stunt has rebutted the presumption of advancement.

121. In ***Lavelle v Lavelle*** [2004] EWCA Civ 223, Lord Phillips M.R. explained as follows concerning the presumption of advancement in the circumstance of the purchase of real property in the name of another who did not contribute towards the purchase price which equally applies to this case when Mr James Stunt was the buyer but Mr Geoffrey Stunt paid for the Picture and would be otherwise able to rely upon the rebuttable presumption of a resulting trust by reason of his paynment:

> *14. ... Where there is no close relationship between A and B, there will be a presumption that A does not intend to part with the beneficial interest in the property and B will take the legal title under a resultant trust for A. Where, however, there is a close relationship between A and B, such as father and child, a presumption of advancement will apply. The implication will be that A intended to give the beneficial interest in the property to B and the transaction will take effect accordingly ...*
>
> *19. ... It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. But words or conduct more proximate to the transaction itself should be given the significance that they naturally bear as part of the overall picture. Where the transferee is an adult, the words or conduct of the transferor will carry more weight if the transferee is aware of them and makes no protest or challenge to them."*

122. A difficulty for Mr Geoffrey Stunt when seeking to rebut the presumption is that his evidence does not specifically address this issue. A reason for that is, of course, that his recollection is that he was the buyer. However, he does not go on expressly to provide evidence of the relevant facts to cover the position in the event of his recollection being rejected. Clearly he was able to do so.

123. What can be inferred from his evidence is that a case that the payment of the purchase price cannot have been a gift because he wanted to buy the Painting and thereby make the investment that had been recommended by his son. In other words: He may not have been the buyer under ***the Sale of Goods Act 1979***, and his son was not his agent, but the reason he paid the price was to own the Painting as an investment and Mr James Stunt not only knew that to be so but had advised him to buy for that reason. He and his son intended there to be a resulting trust not a gift.

124. However, the details behind this are evidentially thin. Mr Geoffrey Stunt does not address his financial circumstances at the time of his decision to invest. For example, by evidencing the money he had available to invest and why (bearing in mind he did not appreciate the artistic merits of the Painting) he chose to diversify his investments at that time, and to do so through the art market with the Painting. There is no reference to his past, his business background or to his financial strategy during his retirement. He does not deal with his investment aims for the Painting, for example whether it was viewed as a short, medium or long term investment. He does not mention the return he was looking for. He does not refer to his exit strategy. He does not deal with the approach he took to the cost of insurance (whether limited to any period it was not loaned to others undertaking that financial commitment or not).

125. Mr Geoffrey Stunt does not produce or say he does not have any record of personal assets held after the purchase (whether simply kept for his own purposes or for financial advisers, if he had any, he does not say) and whether any such record includes(ed) the Painting. He does not address his financial dealings concerning his son except in the context of asserting that his money paid for the Painting. That is despite the fact that it is clear that considerable sums of money were transferring between the two via the American Express card arrangement and on other occasions. I consider this absence of evidence to be detrimental to his task of rebutting the presumption whatever its reason (no explanation having been given).

126. It was only at the trial that a picture of a retired gentleman with an estimated net worth as at 2013 of some significance began to emerge. Only then that a background of the sale of a printing business started when 28 years old together with successful property investments was drawn out. This in reality was the first time that evidence was presented that might begin to explain the circumstances in which he wanted to buy the Painting as an investment following his son's advice. However, not only was it too little evidence too late but the fact that it answered my questions meant it had not been the subject of the opportunity to enable investigation and cross-examination. Indeed, it does not appear to have been the subject of disclosure.

127. There was cross-examination concerning the source of the £600,000 and this extended to other entries in the available bank statements. This drew attention to his son being able to use his father's black American Express card for very substantial sums, to the continuation since school of a monthly allowance, to an £800,000 property loan to his son and to the receipt of £425,000 (potentially from him) which his son used for a purchase from Sotheby's. However, this evidence suggested a generous, supportive father who assisted his son through loans in substantial sums, albeit possibly very soft loans which might not be recovered if left unpaid, rather than one who made gifts. Obviously a loan would rebut the presumption but be of no assistance to Mr Geoffrey Stunt's claim of ownership. Equally obviously the fact that he made loans would not mean this could not be a personal investment but the point is that he simply has not advanced a case to rebut the presumption by addressing any of these matters. He could have in principle and in my judgment ought to have done if able to do so to rebut the presumption.

128. In those circumstances, in my judgment Mr Geoffrey Stunt has not rebutted the presumption of advancement which he needed to do in the context of the Court being satisfied on the balance of probability that his son was the buyer of the Painting under ***the Sale of Goods Act 1979***.

129. That means I do not have to address further Mr James Stunt's conduct after 2015. Plainly, however, it would not have assisted Mr Geoffrey Stunt's claim to ownership if this had remained an issue requiring such facts to be weighed in the balance.

H) Conclusion

130. In my judgment on the balance of probability, Mr James Stunt was the contracting buyer under ***the Sale of Goods Act 1979***. There is no case of agency advanced. He did not hold the beneficial interest on trust for his father. The fact that Mr Geoffrey Stunt paid by cheque was taken into consideration when reaching that conclusion. Whilst payment might nevertheless result in a rebuttable resulting trust relationship, the father and son relationship means the presumption of advancement must first be rebutted. It has not been. The Painting forms part of the bankruptcy estate.

Order Accordingly