

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BL-2020-001343

BETWEEN:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

- (1) MICHAEL ANDREW THOMSON
~~(2) SIMON HUME-KENDALL~~
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
~~(10) HELEN HUME-KENDALL~~

Defendants

Transcript of proceedings made to the court on

Day 20 - Tuesday, 26 March 2024

The claimants are represented by Mr Stephen Robins KC, Mr Andrew Shaw & Mr Philip Judd

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry

Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

Tuesday, 26 March 2024 (10.30 am)

Housekeeping

MR ROBINS: Your Lordship said you wanted to start at the outset with the letter about privileged documents. I am told by Mr Curry that a letter is being sent to us in response, I don't think we've received it yet. I certainly haven't seen it, so it may be we have to postpone consideration of that.

MR JUSTICE MILES: When will that letter be?

MR LEDGISTER: Some point this morning, my Lord. Today certainly.

MR JUSTICE MILES: Well, you can have a look at that, perhaps over the short adjournment.

MR ROBINS: Yes.

Cross-examination by MR ROBINS (continued)

MR ROBINS: Mr Thomson, yesterday we were looking at an email sent to you by Oliver Clive & Co. If we could bring it up, it is <MDR00019239>. I asked you if Oliver Clive & Co were asking these questions for audit purposes and you weren't sure. I should have shown you the second page of the email. Towards the end, on the right, do you see, after 11, it says:

"The above information covers most of the audit work too."

A. Yes, I can see it says that.

Q. Having seen that, do you think that Nick Angel was asking these questions for audit purposes?

A. Could I just have a look at the whole email again to refresh my memory?

(Pause).

Yes, I believe that is what it confirms.

Q. Now, we looked also yesterday at your response, <MDR00019297>, where you said:

"Katie ... [doesn't] have a copy ... I'm not in the office at the moment so only have an unsigned copy on my laptop, which I have included for your reference, I can get you a signed copy on Monday."

You explained to his Lordship yesterday, your evidence is that an agreement with a limit of £2 million had been signed a few months after the signature of the original £675,000 agreement but that it had been lost. I just wanted to clarify your evidence. Are you saying that the electronic version had been lost and that you had to sit down and type out the whole thing from scratch, or is it your evidence that it was simply the signed copy that had been lost, you were able to locate the unsigned electronic version and that that is what you sent to Nick Angel?

A. No, no my evidence is I believe that there was a loan agreement that we signed relatively shortly after the 675. I didn't confirm whether that was electronic or paper copy. My recollection is there was a loan agreement that was signed and we were simply putting in place one that replaced the one that was lost.

Q. Yes. That's what I am seeking to clarify. Are you saying that you typed out the agreement from scratch because there wasn't even any electronic record, or are you saying that you managed to find the unsigned electronic version and that is what you sent over to Nick Angel?

A. No, I didn't -- I -- back in 2023, when it was -- when we put a facility in place, as you saw with the 675,000 facility, that was largely written out. So we provided a loan document, it was signed back then, it was lost, so we recreated another one on terms that we believed are correct, with the same people, to fix a lost document. I am not saying that I retyped it out, I am saying that we put a loan document in place because the other one was lost. I cannot tell you that I typed the one out in 2013, I don't believe I did.

Q. Let's phrase it differently. Let's not worry about who typed it out, are you saying that what you sent to Mr Angel in 2015 was a version that had been freshly typed out or was it the original electronic version that had been found on your laptop or somewhere else?

A. I imagine that it was created at the time to replace the one that was lost.

Q. Okay. Perhaps I can assist with that. If we look at <MDR00019298>. Can we open it in native form. Can we look at the document properties tab that extracts the metadata.

Mr Thomson, do you see on the -- if we click -- we are on the case memorandum for some reason. Sorry.

A. That was created 2023.

Q. That's completely the wrong document, Mr Thomson. Let's see if we can get the right one. Do you want me to read out the number again?

Do you see there it says "Document date 23/10/2015 at 10.20". It is six down?

A. Yes, I can see that.

Q. So, having seen that, you said, a moment ago, you imagine it was created in October 2015 to replace the one that was lost. Do you think that's correct?

A. That's what that looks like, yes.

Q. Okay. Can we have a look at the document itself, please, and look at page 6.

We saw, yesterday, it has you signing for both parties. Do you think the version you say previously existed, which had been lost, also had you signing for both parties?

A. Sorry, yesterday, we saw it was myself signing and Mr Peacock signing.

Q. Well, this is what you sent to Nick Angel, so I am asking if you think the version which you say existed previously would have also had you signing for both --

MR JUSTICE MILES: Sorry, Mr Robins, just for Mr Thomson's assistance, was this attached to the email of the 23rd?

MR ROBINS: Yes.

MR JUSTICE MILES: So you were shown an email earlier Mr Thomson where you wrote to Mr Angel attaching a document on 23 October, and this is the attachment to that email.

A. Yes. And then, did -- Katie sent another email pointing out that, actually, it should be Mr Peacock that should be signing as well in the subsequent email, and then we dealt with that. Was that the chain of emails that we were referring to?

MR ROBINS: I am referring to this email at the moment. Do you think the original version of this document, which you say existed in 2013, had you signing for both parties?

A. The document that was 675, I believe had myself and Mr Peacock signing, and I believe the one that was signed subsequently after this, because we had lost the other one, had myself and Mr Peacock signing. So --

Q. So do you think the original version of this document, which you say existed in 2013, did not have you signing for both parties?

A. I don't have the original document in 2013, otherwise we would have evidenced it. I am not -- there was -- we covered this yesterday and it was changed because -- to reflect that myself and Mr Peacock should be signing, which is what we did in 2013. That was the email from Katie Maddock. I am sorry, I don't understand the point you are trying to get to.

Q. To be clear, Mr Thomson, the reason you haven't evidenced it is because the 2013 version never existed, did it?

A. That is contrary to what I told you yesterday.

Q. Let's look at Katie Maddock's email that you mention. <MDR00019429>.

She says:

"Does it not need to say Michael Peacock for Sales Aid Finance rather than yourself? Or acting as an officer of the company?"

Is that what you were referring to a moment ago?

A. That is, I believe, the email I referred to earlier and that we went over yesterday.

Q. Is your evidence that you were taking care to ensure that the document was accurate?

A. I believe so. And in accordance with what happened in 2013.

Q. Let's have a look at the attachment, <MDR00019430>, page 6. It has your signature at the top. Had you signed this or had Katie Maddock applied your signature?

A. That looks like an electronic signature.

Q. Do you think Michael Peacock would have signed it or has she applied his signature?

A. I am not an expert, but I think he would have signed it. But I can see the document has got my name against where Michael Peacock has signed. But he has printed his name.

Q. So you think he would have signed where it says "Sales Aid Finance ... Acting by Michael Andrew Thomson a director ..."?

A. That is what it should have been, yes.

Q. Although you say you didn't sign it yourself, she applied your signature, obviously you were aware that she was doing that and you were content for her to apply your signature where it says, "Sanctuary International PCC Limited Acting by Michael Andrew Thomson a director ..."?

A. That is -- the signature doesn't look like -- it is blurred around the edges, so I am assuming that it was applied electronically.

Q. But you knew she was doing that and you were happy with it?

A. If I had authorised her to do it and she did it, yes.

Q. Okay. Let's look at the next document <MDR00019432>. You sent her a further draft and, if we look at that, <MDR00019433>, on page 6 at the bottom do you see the reference to you has gone and it now says "Acting by an officer of the company"?

A. Yes, I can see that.

Q. Is your evidence that that was a change that you made to ensure that this was accurate?

A. What was the timings of these emails? I didn't catch the time.

Q. Let's go back to it. This one was at -- they are all on the 2nd. The first one was at 11.15. This is <MDR00019432>. It is in response. At 11.46. So it is about 31 minutes later, almost 32 minutes later?

A. So this one is after the one that Michael Peacock signed?

Q. Yes.

A. Okay.

Q. Is your evidence that you changed it to say "an officer of the company" to ensure that it was accurate?

A. I can see that the document was changed, yes.

Q. Then <MDR00019475>. Katie replies:

"Hi Andy, loan agreement attached ..."

Can you see that?

A. Yes, I can see that.

Q. Let's look at the attachment, <MDR00019476>, on page 6. Do you think Katie has applied your electronic signature again?

A. It is the same blurred around the edges, but the other writing on there looks like it is handwritten.

Q. But you knew that she was applying your signature?

A. I may well have been out of the office at this point and authorised her to do that.

Q. But you were happy with it, you didn't have any concerns about her doing that?

A. No, because it replaced a lost document.

Q. Do you think Michael Peacock would have signed this one as well?

A. It looks like it is a signature by Michael Peacock. I am not that familiar with his signature. It bears his name and there is a signature there --

Q. Is your evidence that --

A. -- and, again, he has dated it.

Q. Is your evidence that this was changed and re-executed because you were being careful to be accurate?

A. I believe so, yes.

Q. Let's have a look at the next document <MDR00019513>. This is an email from Katie to Nick Angel. It is copied to you. She says:

"Please find attached the two invoices you requested ... as well as the signed Sanctuary loan agreement." She didn't tell Nick Angel anything about the original being lost and it having to be re-executed, did she?

A. I don't see any reason why she would have had to have told Nick that.

Q. That is something that you made up yesterday, isn't it?

A. No.

Q. Can we have a look at <A1/5/71>.

This is from schedule 1 to the neutral statement of uncontested facts, it records accurately the uncontested facts in relation to LCF, formally known as Sales Aid Finance (England) Limited. There is a heading "Directors and Officers" about halfway down the page. You can see the first entry is that Michael Peacock ceased to be a director of SAFE on 15 August 2013. Do you see that?

A. I can see that, yes.

Q. He wasn't an officer of SAFE after that time, was he?

A. I don't have Companies House filings, so ...

Q. Perhaps your solicitors can check this themselves and confirm to us that it is correct?

A. Can we just go back to the document and check something, please?

Q. Which document?

A. The last loan document that Michael Peacock signed.

Q. Sure. We can go back to <MDR00019514>, page 6, please. This is the version that was sent to Oliver Clive & Company?

A. Okay, so "An officer of the company". Would you mind bringing up -- sorry to ask -- the 675,000 loan document that was originally put in place --

Q. Yes, we can --

A. -- and I can explain why I would like to see that.

Q. We can see that as well.

A. Sorry if that is inconvenient.

Q. That was at <MDR00007913>, page 7.

A. No, I don't think that was the one.

Q. Yes.

A. No, there was a handwritten one.

Q. We didn't see any handwritten document yesterday.

A. There was.

Q. Oh, the application notice that you signed?

A. Yes.

Q. That is <MDR00007911>.

A. Was there a second page to that? Okay. The reason I am looking is I believe Mr Peacock is acting as a loan officer and that is, indeed, the capacity I believe he is signing in.

Q. So you say, although he wasn't a statutory officer, he was another form of officer?

A. When I was employed by various banks, I signed loan documentation. As a loan officer, I was duly authorised to sign that and I believe that is what he was signing in capacity as.

Q. Let's look at your capacity. We saw that you signed as a director of Sanctuary and, indeed, it says here "Michael Andrew Thomson, director"?

A. Sorry, I don't have that document in front of me.

Q. It is where we are looking here?

A. Oh sorry, this one.

Q. Director.

A. Yes.

Q. Were you a director of Sanctuary PCC?

A. Sanctuary PCC was out of -- it's a protected cell company, I believe it was out of Guernsey, and there were nominees there which took my instruction.

Q. So you weren't a director?

A. The nominee acted through myself, yes.

Q. So when you wrote here in your handwriting, "Michael Andrew Thomson, director", that was untrue?

A. The company had a nominee director that took my instruction, so I was signing in that capacity. I can see how that isn't worded particularly well. I should have expanded on that.

Q. Did you ever become a director of Sanctuary PCC?

A. As I say, Sanctuary PCC was a protected cell company out of Guernsey and required a nominee director, I believe.

Q. Can we look at <MDR00016275>, please. This is from the Guernsey registry, do you see, dated 12 June 2015?

A. Yes.

Q. And the "Directors to be added to the company", well, it is you?

A. I can see myself down there as well, yes.

Q. Do you accept that you became a director of Sanctuary PCC on 12 June 2015?

A. Yes, I can see that. But, again, it also had nominees, which I think have -- which was Sovereign Trust, I think, for Sanctuary PCC.

Q. Do you say that they continued to be a director after your appointment?

A. I -- I have seen, in the documents that there have been in this case, that they have signed, I don't remember the dates off-hand, no.

(Pause).

My Lord, do you mind if I stand?

MR JUSTICE MILES: No that's fine.

A. Thank you.

MR ROBINS: Could we have a look, please, at <MDR00016284>. Do you see this is dated the same date and it says, on the right:

"Directors to be removed from the company: Sovereign Directors (CI) Limited.

A. Yes, I can see that.

Q. So, do you accept that, in June 2015, you became a director of Sanctuary PCC and Sovereign Directors were removed as a director?

A. Yes, I can see that.

Q. Do you remember consenting to be a director of Sanctuary PCC?

A. Well, I would have had to have consented for that to be changed.

Q. Yes. If the Sanctuary loan agreement in the sum of £2 million had really been agreed at some point in late 2013, you couldn't have signed it as a director on behalf of Sanctuary PCC, could you?

A. But, again, Sovereign Directors were nominees back in 2013 and they would have acted on my instruction. So, as I previously said, I agree that the wording that I put on there isn't entirely accurate; however, if I had asked the nominees to put their name on there, they would have done.

Q. Mr Thomson, it is not accurate at all, is it, because the date on the front page was inaccurate, even according to your own evidence; it said you were a director of Sanctuary when you weren't; it said Mr Peacock was an officer of SAFE when he wasn't; and it purported to show that the loan facility had been increased to 2 million when, in fact, that had never occurred?

A. Sorry, was that a question?

Q. Yes.

A. Yes. I disagree with you. It would have been a simple thing, and I accept that the wording I applied to the documentation isn't 100 per cent accurate and I am sure I will be criticised for that. However, I don't think, back in 2013, that if I had asked Sovereign Directors to sign on behalf of Sanctuary PCC, they would have said anything but -- they would have just said yes. It wouldn't have been a problem for myself and Mr Peacock, acting as a loan officer back in 2013, to increase the facility that it has, as we have said we have done. The documentation was lost; it was simply replaced.

Q. That's not true, is it? This is a loan agreement that you created because the accountants had asked you for it for audit purposes. It didn't exist, and so you brought it into existence for their benefit?

A. No. As I said before, it would have been a really easy thing to do to have decided that 675 wasn't sufficient, and to have increased that. And I think, if you look at the accounts for the company, I think back in 2014, the loan that was mentioned in that was nearly up to its limit. So it would have been a very simple thing for myself and Mr Peacock to have dealt with the paperwork, because we decided very early on that, actually, 675 was not a sufficient limit and we put in place documentation for a larger limit. That documentation was lost, so we have put in place a document to deal with that lost document and, from memory, in 2015, we drafted it as we thought we would have done two years previously.

Q. Can we look at <C2/1> page 22, please. This is your trial witness statement. You say:

"I am aware that there are allegations that loan documents were backdated. I have no knowledge of this whatsoever."

That's not true, is it?

A. This isn't a backdating, this is a lost -- a document was lost and we have recreated the document that had been lost because we couldn't find it. Again, as I explained to you yesterday, the -- sorry, do you want me to wait?

MR JUSTICE MILES: Sorry, you didn't quite complete.

A. No, I didn't, because they were having a conversation.

MR JUSTICE MILES: That's very fair. I think, while the question is being answered, you must allow the witness to answer, please.

A. Thank you.

MR JUSTICE MILES: Do you want to complete your answer?

A. Yes. So I don't think it is fair to accuse me of backdating that. A document was lost, myself and Mr Peacock recreated the document as best as we could from memory that was agreed back in 2013 and we put that in place. It is as simple as that. I know you are not going to accept that, but that is what happened.

MR ROBINS: Well, you are right, Mr Thomson, I don't accept that. But we will move on.

MR JUSTICE MILES: I might just ask a question if you are moving on from there.

Just so I understand your evidence, Mr Thomson, you say, do you, that the 2 million agreement was reached several months after the original?

A. I don't remember -- sorry, my Lord, I don't remember the exact date, but it was very shortly after.

MR JUSTICE MILES: But I think yesterday you said it was a few months?

A. Within a couple of months, I believe.

MR JUSTICE MILES: So that would then be in late 2013/early 2014?

A. Yes, Christmas/New Year time.

MR JUSTICE MILES: So can we just bring up the signed version of the document of the 2 million?

MR ROBINS: Yes, <MDR00019514>.

MR JUSTICE MILES: Go to the first page, please. Your evidence is that this was, as it were, replacing a lost document?

A. Yes.

MR JUSTICE MILES: Are you able to explain why the document is dated 2 October 2013?

A. Because, when we put the document in place, the only reference that we had was the original 675, so we just took it from there. We didn't remember the exact date of the document that it was replacing and so we alighted on that date.

MR JUSTICE MILES: The first agreement had been signed the day before?

A. Mmm hmm. Yes, I think that was the ...

MR JUSTICE MILES: That was for 675?

A. Yes.

MR JUSTICE MILES: Right. Thank you.

A. Yes, we didn't see any harm, my Lord, in using a similar date. We didn't remember the exact date of the lost document, so I believe that is why that date was used.

MR JUSTICE MILES: Thank you.

A. Sorry, would it be possible to have a break at this point?

MR JUSTICE MILES: Yes, all right. If you are moving on to something else, Mr Robins?

MR ROBINS: Yes.

MR JUSTICE MILES: We will take a break for five minutes. In fact, we will take it until -- I am using the clock over on the wall there, and I will break until 11.10 am. Thank you.

(11.02 am)

(A short break)

(11.10 am)

MR ROBINS: Mr Thomson, you are aware, aren't you, of a facility agreement in favour of Leisure & Tourism Developments in the sum of £25 million?

A. Yes.

Q. And you say, don't you, that LCF took its lending obligations seriously?

A. Yes.

Q. You say LCF acted responsibly?

A. I believe that we did.

Q. Can we look at <C2/1> page 39, please. This is your trial witness statement and, at the bottom of the page, two lines up, on the left, you say:

"Contrary to the claimants' characterisation of LCF providing sham loans to sham companies, LCF took its lending obligations seriously [you see on the right] and acted responsibly."

A. Sorry, can we just go back? I was sitting down at the time you read that.

Q. There we are, that is everything on one page. Just below the page number 39, it says:

"For example ..." or you say:

"For example, LCF sent a default letter to L&TD on 5 December 2016, pointing out that as L&TD had not filed its statutory accounts, it was in default of its loan agreement and requiring the company to rectify the default by filing its accounts within 21 days or face the termination of the loan facility and enforcement against the security to recover the sum outstanding. In my view, this is not the action of a sham lender. On the contrary, it is the action of a responsible lender rightly enforcing the terms and conditions of the loan it has made."

Is that what you are asking the court to believe?

A. That is what is in my statement.

Q. Is it true?

A. Yes.

Q. Do you say that you are telling the truth?

A. Yes.

Q. Are you sure?

A. I have just told you so.

Q. It is not true, is it, Mr Thomson?

A. Sorry, I have just told you twice that it is.

Q. Can we have a look, please, at <D2D10-00023276>. Do you see an email from Katie Maddock to Mr Peacock copying you, among others? Yes?

A. Yes, I can see that.

Q. Do you see in bold at the end of the first paragraph she says she is a little confused about what Michael has said:

"... as Companies House (LTD Plc) is requesting accounts up to 30 September 2015 not 2016 that were due October 2016?"

You see she is raising that concern?

A. I can see what she has said there, yes.

Q. And the concern that she is raising, which you shared, is that LCF would be in an awkward position when it came to its next audit because the auditors would notice that LCF had continued to lend to a company in default of their agreement. That was the concern, wasn't it?

A. Sorry, I don't remember. If you brought up the letter that we wrote.

Q. We will look at that in a moment, I am asking you if the concern was essentially a concern about how it would look to LCF's auditors?

A. It would have been a concern for the company. I don't necessarily characterise it as a concern for the auditors. It was a concern for the company, which is that's why I believe we were writing to them.

Q. The reason it would have been a concern for the company is because the auditors would notice that the company continued to lend to a borrower in default of their agreement?

A. It is a concern to the company.

Q. Because of how it would look to the auditors?

A. You are trying to put words in my mouth. It is a concern for the company. That is why we wrote to them.

Q. It would put the company in an awkward position when it came to the audit. That is why it would be a concern?

A. We are going over the same ground.

Q. So, do you say --

A. I think it is a concern for the company. I am not -- you are trying to get me to say that it is because how it would look to its auditors. It is a concern for the company and that is, indeed, why, I believe, we wrote to the borrower to point this out.

Q. Can we look at the next page, please. Do you see, in the final paragraph, Katie says:

"I am always willing to help but please do not ask me these same questions again, I have taken the time to answer these twice for you now. The company will be in awkward position when we come to audit next year when our auditors notice that we have continued to lend to a company who is in default of their agreement, please can I ask to you make it your priority to file these accounts and rectify the default as soon as possible." So I will ask my question again: the concern was about how it would look to the auditors wasn't it?

A. That's Katie's concern, yes, and it says it there in black and white.

Q. In an email she copied to you?

A. Yeah, I can see that she copied it to me, yes.

Q. You shared that concern?

A. It is a concern that a borrower may be in default because they haven't filed the accounts.

Q. Because of how it would look to the auditors; yes?

A. It's because it is a concern to the company as a lender. This is Katie's view here. My concern would be that they could potentially be in default. It is a concern for the company and it is the company needs to get it rectified.

Q. You shared Katie's concern about how it would look to the auditors?

A. That, again, this is Katie's concern here. My concern is that it would have been at the time that they needed to be in compliance with their loan agreement.

Q. Can we look at <MDR00071397>, please. Do you see there is an email from you to Mr Sedgwick, dated 16 January 2017?

A. Yes, and I see that the attachment is hopefully the default notice that we sent over that I mentioned previously. I don't remember the body of the document.

Q. When you say they are the letters you "sent over last week", "last week" would have been the second week of January 2017, wouldn't it?

A. Yes, it is -- sorry, your question was, again?

Q. When you say "last week", that would have been the second week of January 2017, wouldn't it?

A. It could have been. It could be a turn of phrase. I don't remember when the -- "These are the letters I sent over last week". Perhaps you have an email from when the default letters were sent.

Q. Let's look at the attachment <MDR00071398>. Do you see, at the top, it says:

"Letter to London Capital & Finance Plc dated October 25th 2016."

A. Yes.

Q. Do you agree that it should have been "2016"?

A. Yes. I think that should be a typo.

Q. So, at some point in January 2017, you provided Mr Sedgwick with a draft letter to LCF with the date 25 October 2016; yes?

A. So, sorry, this letter -- this is the attachment that I sent?

Q. Yes.

A. Could we just bring that up so I can see the body of it, please?

(Pause).

Yes, I can -- thank you.

Q. So my question was: at some point in January 2017, you provided Mr Sedgwick with a draft letter to LCF, dated 25 October 2016. I think the answer to that is yes, isn't it?

A. Well, looking at this, I imagine they asked for some form of words which I provided. Mr Sedgwick's -- by email to Mr Sedgwick when I said, "These are the letters I sent over last ..."

I can't remember the exact wording of the email. It could be a turn of phrase. I could have sent them weeks before or it could have been the week. I don't recollect.

Q. What it says is:

"I regret that it is not going to be possible to finalise the accounts for Leisure and Tourism Developments Plc in time to file them by their due date on 28 October."

Then, in the final paragraph:

"I appreciate that this is a default under our facility agreement and would be grateful if you could agree to extend our time to file these accounts."

A. Mmm hmm.

Q. You were asking Mr Sedgwick to arrange for a copy of this to be sent to LCF so that you could have something on file to show the auditors; yes?

A. So we had something on file. The default would have, I can't remember Katie Maddock's email that you brought up before, the date on that, the default would have been discussed as defaults were discussed when I was in the bank on filing accounts on numerous occasions. When in the bank, a default for late filing wasn't considered a significant issue and we provided, in the bank, sample wording for our borrowers. And I think this is me just being asked for sample wording and giving it to their lawyer to use.

Q. On the timing, if a default was to occur on 28 October, by the time you are sending the letters to Mr Sedgwick, that default has already occurred, hasn't it?

A. Well, it would have done. But what I am saying is we would have discussed it at the time.

Q. You wanted a document on file to make it seem to the auditors as though you had been requested to waive, and had waived, the default before it occurred?

A. You keep going back and you are pushing the point that it is for the auditors. It is just doing correct paperwork. And when I was working in the bank, numerous times, our clients didn't file on time. It wasn't considered a significant breach of a loan document. You discussed it with them, verbally you agreed, "Yes, that's fine", didn't even always send out a letter confirming that that is okay. A verbal agreement is sufficient, and I believe this is what would have happened at the time. However, looking at this, I would have wanted something in paper form for correct recording. I don't see anything wrong with that.

Q. So your evidence now is that there was a verbal agreement at some point before 28 October about waiving this default, is it?

A. It is clear that we were aware that the default was there. It is -- I believe we wouldn't have just kept it to ourselves, of course we would have discussed it with our borrowers.

Q. Could we go back please to <C2/1> page 40. At the top of the page, we saw in your witness statement you say: "... LCF sent a default letter to L&TD on 5 December 2016, pointing out that as L&TD had not filed its statutory accounts, it was in default of its loan agreement ..."

Your evidence is, as I understand it, that in October, you had a verbal discussion where you agreed to waive the default, and then, on 5 December, you wrote a letter saying, "You are in default. You must rectify that by filing accounts within 21 days". Is that your evidence, Mr Thomson?

A. Yes. We would have discussed it at the time. The letter says 5 December. The email that I re-sent to Mr Sedgwick was -- you know, "last week", that could very well be a turn of phrase. But a default letter for late filing of accounts, as I go back to in the bank, it is not considered a major issue. It is not usually noted on the system and a letter isn't even sent out. This is just administrative housekeeping.

Q. If you had had a verbal agreement in October waiving the default, you wouldn't have sent out a letter in December notifying L&TD of a default, would you?

A. Well, as I have just said, administrative housekeeping.

Q. Administrative housekeeping to have something on file to present a false picture to the auditors; yes?

A. Again, you keep coming back to the auditor point and this is company housekeeping.

Q. Let's have a look at the other document that you sent to Mr Sedgwick in January 2017. It is <MDR00071400>. Do you see this is another letter to be sent to London Capital & Finance Plc?

A. Yes. I can see that.

Q. Can you see that it asks for you to consider a temporary extension of the facility to £30 million?

A. I can see that. So they would have asked for draft wording that we were happy with. So this is us supplying that.

Q. You were asking them to send this to you so that you could have something on file to show your auditors?

A. This is draft wording that I provided them, that we, as a lender, were happy with.

Q. That you wanted them to send to you; yes?

A. Yes, it is draft wording.

Q. Do you see there are some blanks in the middle of the page for the values in the company's portfolios of assets to be added?

A. Yes, that would be for the borrower to add.

Q. Now, the reason you were providing Mr Sedgwick with this on 16 January 2017 is because Leisure & Tourism Developments had, fairly recently, exceeded the £25 million limit. That's right, isn't it?

A. Yes, I remember, at that time, when we were concerned with what was going on, they were nearing their limit. So, yes, we would have discussed increasing it, pending -- you know, I believe there was a restructure shortly after this, and they asked for draft wording, which is what we provided as a lender that we were comfortable with.

Q. Let me show you the precise figure and see if you can agree it. <MDR00071309>.

Do you recognise this as an LCF loan profile document?

A. Yes, could be.

Q. This is what they looked like, isn't it?

A. It looks like an extract from one of the spreadsheets.

Q. At the top, it says "Funds sent to LTD less all funding costs".

This is the L&TD funding profile, isn't it?

A. It looks to be.

Q. If we look at the next page, please, we can see various drawdowns, and then, on the page after that, we see the position as at 10 January 2017.

A. Mmm hmm.

Q. So the gross sum owing by L&TD, as at that date, was in excess of £27 million, wasn't it?

A. That's what it records, yes.

Q. You wanted to have a letter from L&TD with them requesting an increase in the facility to £30 million?

A. That was the draft wording I believe I sent over to them.

Q. So you sent that when they were already in breach of the 25 million facility limit?

A. You didn't provide a date on the letter that was --

Q. No, but you sent it to Mr Sedgwick on the 16th?

A. Yes. Sorry when you brought up the draft letter I didn't see a date on it.

Q. It didn't have a date on it. When it came back to you, it did have a date on it. Let's look at that.

A. Sorry to interrupt, but your point is that I sent them that after they were over their limit, and what I am saying is, do you have a date that I sent that draft wording to Mr Sedgwick?

Q. Yes, the 16th. Do you remember we looked at this? You said in that email, "These are the letters I sent over last week", which would have been the second week of January?

A. Yes, so I had already sent it. "Last week" may very well have been a turn of phrase because it is Christmas and New Year.

Q. "Last week" would have been last week, Mr Thomson, surely?

A. Not necessarily. The other turn of phrase I use is "the other week". Again, Christmas and New Year.

Q. Let's have a look at <MDR00071455>. Do you see the email from Nicola to you saying:

"Herewith are two letters from Simon."

A. Yes.

Q. Do you remember receiving that?

A. Not particularly, but I can see that I did.

Q. Let's look at <MDR00071456>. On page 1 is the first letter we saw. Do you see the date now? The year has been corrected so it says "October 25th 2016"?

A. Yes.

Q. So you were asking them to send you a letter to make it look as though you had waived the default before it occurred, when, in reality, that had never happened?

A. No, as I have previously said to you, I provided them draft wording that we, as a lender, were comfortable with. I previously said to that you we discussed said default with them, as I would have done in the bank. In the bank it was unusual to send -- to get a default letter. It was just for this type of thing. But this is, I see, administrative housekeeping. I don't see anything wrong with that. We would have discussed it at the time. We had a continuing security over their assets, we were relatively comfortable. The default letter is just, from our point of view -- I say, "our point of view", all the directors of LCF at the time. This is just administrative housekeeping. Everyone was happy with it.

Q. It is to ensure that you had documents on file to present a false picture to the auditors, isn't it?

A. Again, we come back to your auditors point. No, this is just housekeeping for the company.

Q. Can we have a look at the second page, please. That is the second letter. Do you see the date of 20 December 2016 has been added?

A. Yes.

Q. That is a date you were happy with, was it?

A. We would have discussed the increasing of the facility during that period of time and we would have already had verbal agreement and I provided them, or LCF provided them, with wording that we were happy with. And I can see that they have added the valuations of the various different assets in there. And the date may very well reflect the time of the agreement.

Q. Do you say you were content with those valuations?

A. We must have been because we accepted them as a company.

Q. And you, personally, were content with them?

A. Everyone was content with them.

Q. We saw this had been prompted by Katie's concern about how it would look to the auditors. It would be right to assume, wouldn't it, that these documents were indeed shown to the auditors in due course?

A. The auditors saw absolutely everything that LCF had. So I can't confirm that they actually saw these documents. They would have been open to the auditors, as were all of our back-office systems, bank accounts loan agreements, information memorandum. They looked at everything.

Q. You didn't tell the auditors these are backdated documents that were put in place in January 2017, did you?

A. I don't believe I would have had that conversation. Again, the default letter is just administrative, we would have discussed it at the time and been comfortable. The increase in facilities, we would have discussed at the time and had been comfortable with it, and then, yes, we would have agreed to provide sample wording. Looking at the time of year, we probably said, "Let's sort that out after

Christmas and New Year". When in the bank, it was normal to extend someone's facility. We had limits that -- on people's discretion, that you could increase a facility for. As long as you had continuing security and were happy with the valuations, then that wasn't a significant issue. So this, I believe, is just putting in place what was agreed, and looking at the time of year, both parties, borrower and lender -- and when I say "lender", all the directors in LCF -- agreed that that was when it should be done and put the paperwork in place for it.

Q. Mr Thomson, it is not the actions of a responsible lender rightly enforcing the terms and conditions of the loan, it is the actions of people engaging in pretence and deceit?

A. No. No. This is putting paperwork in place for what had been agreed between a borrower and a lender. Again, in the bank, the verbal agreement was -- that is what you do, and then you put the paperwork in place. It depends what the facility is for.

So, again, looking at the time of year, we would have seen that they were also nearing their limit when we were discussing the default, we would have discussed at the time, "You are nearing your limit, what are we going to do about it?" We were well aware that there was going to be a restructure/sale in quarter 1 into quarter 2 in 2017, we would have discussed that, we would have discussed increasing the limit because they were near it, we would have looked at the security, we would have -- as a group, we were happy with that facility. So given the time of year, we dealt with the paperwork after Christmas and New Year. Both parties were happy with that.

Q. Mr Thomson, I don't accept your explanations. Can we look, please, at <C2/1> page 39.

We were looking at your evidence at the bottom of the page and, over on the next page, we saw you said: "... LCF sent a default letter to L&TD on 5 December 2016, pointing out that as L&TD had not filed its statutory accounts, it was in default of its loan agreement and requiring the company to rectify the default by filing its accounts within 21 days ..." That is not true, is it?

A. Again, we are going back over the same thing. It was discussed and agreed at the time and the paperwork was put in place to reflect that.

Q. You say it is true?

A. What, that we discussed the default at the time? Sorry, I am not following your question.

Q. Is it true, or not true, that LCF sent a default letter on 5 December 2016, pointing out what you say was pointed out?

A. I think the default letter -- I don't remember the date on the default letter, I saw the letter that LTD wrote us, I don't remember the -- I mean, it says here on the 5th, so I imagine I would have looked at the document to give me that date. When looking at this statement, I don't specifically remember, sitting here, the day on the document, no, but I am sure you will take me to it.

Q. Let's go back to it <MDR00071456>. The date we saw 25 October 2016.

A. Yes, that's the letter to LCF.

Q. Yes. So is your evidence that this was sent in October 2016 or January 2017?

A. No, this was -- this would have been dated the day that we had agreed and, again, this is administrative.

Q. So we come back to the point I asked earlier, and I am not sure I got an answer to it. Your evidence is that you agreed to waive the default in October but then sent a letter notifying L&TD of the default in December. Is that right?

A. Can you take me to the default letter that we sent them then?

Q. We haven't seen the letter that you are referring to, that's why I am asking if your evidence is true or not true?

A. I can imagine that we would have sent a default letter. I have said in my witness statement.

Q. You can imagine it, but it didn't really happen?

A. Why would I not mention it? I mean, this is -- we would have discussed this at the time. They have written to us and said, "We would be grateful if you could agree to the extension". We would have had discussions at the time and, yes. So, do I know where that letter is now? No. I had hoped it would be in disclosure.

Q. It's not really very plausible, is it, that you would agree to waive the default in October and then send a notification in December. Why would you do that?

A. Because it was administrative and, as we were happy with the loan, as we were happy with what the company was doing, there was no -- I imagine, at the time, there is no specific, you know, pressure to send it on a particular day. So it is, again, administrative.

Q. You keep saying Mr Thomson "I imagine". Is it the position that these things didn't happen but you can imagine them happening?

A. I believe, looking at the circumstances around all the documents you have just shown me, that I believe we would have done. It is -- I can't say any more than that.

Q. Mr Thomson, I don't accept your evidence. My Lord, I am moving on to a new topic. Now, it is your opinion, isn't it, that it is acceptable to backdate a document, provided that all the parties agree and no one is deceived? That is your opinion, isn't it?

A. Which documents are you referring to?

Q. Documents in general. It is your opinion it is acceptable to backdate documents, provided all the parties agree and no one is deceived?

A. Well, it is appropriate to date a document when agreement was reached. I don't see anything wrong with that. I mean, there's different ways you can write that. You can date it this day but effective from that day, and perhaps that is, on occasion, what we should have done, but -- I am sure I will be criticised for that, but I don't see anything wrong with dating a document when an agreement was reached as long as all parties are in agreement.

Q. And no one is deceived?

A. So lender/borrower, are we talking about that?

Q. We are just talking about your opinion. Do you say it's acceptable, or not acceptable, to backdate a document, if all the parties agree and no one is deceived?

A. Well, what I have just said is if -- in terms of lender/borrower, which is, I think, what you are referring to, to date a document when agreement was reached, I think that is perfectly acceptable.

There are different ways to do it and, as long as the lender/borrower are all in agreement with that, I don't see what is wrong there.

Q. So you say it doesn't matter if someone is deceived?

A. Well, who?

Q. A third party, any third party. You say it doesn't matter?

A. You are trying to get at a point and I have given you my answer that if a borrower and a lender reach an agreement and then put the document in place after that date, I think it is correct to reflect the day the agreement was reached.

Q. So is it, or is it not, your opinion that it is acceptable to backdate a document, provided all parties agree and no one is deceived?

A. To correctly date the document when agreement was reached.

Q. I am sorry, I didn't expect this to be so difficult. Can we go to <C2/1>, page 23.

A. That's because you are trying to get me to say something and you are not telling me who this third party you are referring to is.

Q. I am just referring to paragraph 65 of your witness statement, where you say in line three: "Equally, where a document is replacing an earlier document by agreement between all the parties, I can see that it would be acceptable to date the new document with the date of the earlier document if all parties agreed and no one was deceived."

A. Yes. Referring to the parties in the agreement, which is what I have been saying to you.

Q. So it doesn't matter about third parties?

A. Sorry, excuse me.

Third parties aren't parties to the agreement. I am talking about, here, the parties to the agreement, which is what I have been telling you.

Q. If they all agree, why do you need to add the words "and no one was deceived"? Did you write this statement yourself?

A. I wrote it with my lawyers.

Q. Does this express your opinions?

A. Yes, the parties -- as long as the parties to the agreement are all happy with it, I don't -- really don't see the point -- I am not understanding, perhaps, what you are trying to get at.

Q. It doesn't matter if they are happy with it but the reason they are happy with it is because they are planning to deceive a third party with it?

A. So, I think the point in this that you are getting to is that, sorry, fifth line down. Is that where we are?

Q. The middle --

A. "If all parties are agreed and no one was deceived." I am referring to the parties of the agreement.

Q. So if a third party is deceived, it is still acceptable?

A. No, that's not what this is saying.

Q. Well, you have spoken in your witness statement about a facility agreement between LCF and LOG dated March 2016, haven't you?

A. I would have discussed the facility agreements. I can't remember the specific date.

Q. Let's look at page 42. Paragraph 118 you say: "LCF offered LOG a facility early in 2016, I believe in March, and permitted the first drawing the same month. I will call this loan facility 'LOG 1'." LOG 1 had a limit, or commitment, of £20 million, didn't it?

A. Erm, if that is what the loan agreement says. I don't -- you haven't brought it up, so ...

Q. Let's bring it up <MDR00100801>. That is dated March 2016?

A. Yes.

Q. And if we go to page 2 -- page 2 internally, sorry -- do you see, in the middle of the page [page 3], the commitment is a gross sum of £20 million?

A. Yes, I can see that.

Q. This is what you call LOG 1, isn't it?

A. I believe this is LOG's first loan. Yes.

Q. If we go back to page 42, please, of Mr Thomson's statement <C2/1>, page 42. In paragraph 118, line 2, you say:

"... I will call this loan facility 'LOG 1'..." That is the document we were just looking at, isn't it?

A. Yes.

Q. Then you say:

"In or around August 2017 LOG neared the facility limit and, as the valuation of LOG's assets, particularly its investment in IOG, continued to climb, supported by regular asset updates, regulatory filings and financial updates, LCF increased the facility limit to I believe £50 million by a side letter on the same terms as the original loan."

Now, just stopping there, that is your evidence, is it?

A. Yes.

Q. Just focusing on the side letter, you say, in the final sentence, that you cannot find a copy of the side letter either, I think, among your own records or in the disclosed material; is that right?

A. Erm, if that's what it says.

MR ROBINS: Do you need a five-minute break, Mr Thomson?

A. Sorry, I am getting some cracking, referred pain.

MR JUSTICE MILES: Would it be sensible to take another break, Mr Thomson?

A. Please.

MR JUSTICE MILES: Let's break for five minutes. (11.47 am)

(A short break)

(11.54 am)

MR JUSTICE MILES: Mr Thomson, are you able to carry on at this stage?

A. The medication that I need is back at my hotel, my Lord. The nerve-blocking pain medication, unfortunately. I can get it at lunchtime.

MR JUSTICE MILES: Are you able to carry on until lunchtime or is that going to be -- it looks as though you are in some difficulty.

A. I would prefer to go and get it if we could, please.

MR JUSTICE MILES: Mr Robins, I am inclined, generally, to allow Mr Thomson to speak to his own legal team about his level of pain and his ability to carry on.

MR ROBINS: Absolutely.

MR JUSTICE MILES: Is there any objection to that?

MR ROBINS: Absolutely, my Lord. We discussed the scope of purdah yesterday. It is his evidence or the case against him. But pain medication, medical difficulties, fine. Absolutely fine.

MR JUSTICE MILES: I think you should be in a position to speak to Mr Thomson and, in particular, during the short breaks, if he feels the need to discuss with you this question of his -- you know, how he is feeling and his pain tolerance, and so forth.

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: Then you would be able to discuss it with me.

I am inclined, Mr Robins, to allow Mr Thomson to get his medicine, but we will come back a bit earlier, so we will break now and we will come back -- well, I will just check. Yes, we will come back at 1.30 pm so there will be a bit of a break, I am afraid.

MR ROBINS: My Lord, there won't be any pushback from us. The only point I might need to raise in due course is obviously that I might need to take a little bit longer than the time allocated in the timetable.

MR JUSTICE MILES: I understand that. That goes without saying.

MR ROBINS: There is now time, given that Mr Hume-Kendall won't be cross-examined.

MR JUSTICE MILES: Yes.

Mr Thomson, I will rise now, we will start again at 1.30 pm. You will have an opportunity to get your medicine. Perhaps if you are able to bring it in the future?

A. Yes.

MR JUSTICE MILES: And, as Mr Robins has just explained, it may be that the overall length of your cross-examination will go on longer because of the breaks that we are having to take, but that is inevitable.

A. That's okay, my Lord. I understand that. Thank you for letting me get my medication.

MR JUSTICE MILES: We will rise now and resume at 1.30 pm. (11.57 am)

(The short adjournment)

(1.30 pm)

MR JUSTICE MILES: Sorry, I have just been logged out a minute.

(Pause).

Sorry, can I just check, I have just opened the transcript -- oh, here we go, it says "Resume real-time". Yes, thank you.

MR ROBINS: I assume Ms Dwarka is standing --

MS DWARKA: My Lord, I have two points to make. First, I am instructed that Richard Slade and Partners has received some press request to obtain copies of Mr Thomson's witness statement. I have mentioned it to Mr Robins and he doesn't see any problem with us giving it, as Mr Thomson has started giving evidence, but, as your Lordship is dealing with the trial, I just wanted to mention it.

MR JUSTICE MILES: No, that is perfectly normal and proper. So, yes.

MS DWARKA: That is the first one. The second one is Mr Thomson was in quite a lot of pain, even if he did tell you that he is okay. I just ask your Lordship to bear that in mind.

MR JUSTICE MILES: Right. Thank you.

MS DWARKA: Thank you.

MR ROBINS: Mr Thomson, we were looking at <C2/1>, page 42, paragraph 118 of your witness statement. I showed you the facility dated March 2016 with a commitment of £20 million, which you referred to as "LOG 1". Then we were looking at your reference to a £50 million side letter, which you say, at the beginning of line 3, was put in place in August 2017 and, at the final sentence of the paragraph, you say you couldn't find a copy of the side letter.

I was about to show you the side letter if we could look at that please <MDR00134419>. Do you see that this is a side letter increasing the commitment to £50 million "from the date hereof"? It's paragraph 1.

A. Yes, I can see that.

Q. You see "the date hereof", at the top of the page, is 1 December 2017?

A. Yes, I can see that.

Q. So it can't have been August 2017, as you said in your witness statement, can it?

A. I couldn't locate the letter, but the agreement to extend would have been verbally agreed before this date, is all I can say about that. The date is the date.

Q. Okay. In early 2018, LOG was being audited by BDO and you were aware of that, weren't you?

A. They told me they were being audited yes.

Q. That was an audit to 31 December 2017, wasn't it?

A. I don't remember the date. I know they were being audited by BDO.

Q. Let's see if we can confirm the date. <MDR00126564> please. Can we look at the bottom of the page. There we are. Do you see, on the right-hand side, the reference, in the email to Katie, to a later audit to 31 December 2017?

A. Sorry, I am just reading the bottom. (Pause).

Yes, I can see that. Was I in copy on that?

Q. No, you weren't on this email, but you were involved in resolving issues to assist LOG to get through the audit, weren't you?

A. We worked closely together, so I imagine, if they needed assistance, we would have been happy to oblige.

Q. Can we look at --

MR JUSTICE MILES: Just before you leave that document, I think Mr Thomson was copied in on the one further up the chain, if that helps, Mr Thomson.

MR ROBINS: Yes. Sorry, I hadn't spotted that, my Lord.

A. Sorry, we hadn't looked at that one. Yes, I was copied in.

MR ROBINS: Can you remember that one of the issues you were asked to help resolve related to evidencing LOG's facility for BDO?

A. I can imagine we had been requested that. I think it is a normal request of a lender.

Q. Let's have a look at <MDR00133709>, on page 2. This isn't copied to you, it is highlighted in yellow. It says:

"Essentially the £50m LCF facility is key ... We will need to see a signed/binding version of this before sign off ..."

Do you remember being told that LOG needed your assistance in producing that document for BDO?

A. I wasn't copied in, but I imagine that there was a conversation that was held between us to -- because the letter is there and you showed it before, so ...

Q. Do you remember Michael Peacock was dealing with getting all this documentation together from BDO?

A. We would have been talking to Michael, David, Simon during the course of business, I imagine. I don't recall specific conversations, but I can see them happening, which would be normal between a borrower and a lender.

Q. So you think it might have been Simon told you about this?

A. I don't recall who told me about it. I am not on copy on the email, but what I am saying is that, yes, I acknowledge that we would have had discussions. I talked to Michael, David and Simon about their financials, which, again, would be normal.

Q. Do you remember discussing with Mr Hume-Kendall that he should tell BDO that there was a letter agreement in the sum of £50 million already in place?

A. I can see that I would have discussed the letter of 50 million. I can see we would have discussed it in line with, as the facility grew, if they needed anything else. I don't remember a specific conversation, it was a good few years ago. But I can see that it happened.

Q. Let's look at <MDR00133748>.

If we look at the email on that page, you are not copied into this, but it refers to you. Michael Peacock says, in the second paragraph:

"Simon has spoken to Andy at LCAF who has confirmed that Andy has a letter agreement extending the initial facility agreement to £50 million."

He also refers to negotiations to lead to new facilities of £100 million.

Just sticking with the letter agreement, is that what you and Simon had agreed should be told to BDO?

A. Looking at that, I can see conversations would have been had at the time, and previously. It depends on how their facility grew and when the limits needed increasing. So a conversation about increasing their facility could have happened before this.

Q. Do you see the date on this email is 7 March 2018?

A. Yes, I can see that.

Q. The letter agreement that we just looked at hadn't actually been created yet, as at that date, had it?

A. The date on the letter was ...?

Q. 1 December.

A. December, wasn't it?

Q. 1 December 2017.

A. What I said was that increasing the facility, the conversation could have happened and may very well have happened, and I think would have happened, as the facility increased. So the conversations around this, I believe, would pre-date this.

Q. Well, you agreed with Mr Hume-Kendall that he could tell BDO that you had a letter agreement, but, in fact, there was no letter agreement yet, was there?

A. I believe there would have been an agreement. Whether we would put it in letter form or not at that particular moment, I don't remember.

Q. Saying there was a letter agreement wouldn't have been true, would it?

A. Again, I believe we would have agreed it. I can't tell you exactly when we drafted the letter, but the date on the letter, I imagine, would have reflected the agreement at the time as the facility increased. We had a continuing security over the assets that we were extremely comfortable with as a group of directors. So, yes, we spoke about LOG's facility on numerous occasions through the years.

Q. Let's look at another document <MDR00134332>. This is an email from Alex Lee to you, dated 9 March 2018. Do you see that?

A. Yes. And he has properly drafted a letter to reflect what had been agreed.

Q. He has drafted a letter to reflect what you told him, hasn't he?

A. Well, told him I had agreed with -- or LCF had agreed with LOG, so I would have instructed him, yes.

Q. What you instructed him would have been reflected in his letter. Is that what you are saying?

A. That would follow.

Q. Let's look at the draft <MDR00134334>. Do you say that reflects what you told him to draft?

A. I don't remember the specifics at the time, but if this is the attachment, then -- I thought the commitment was 25 not 20 in the letter that was signed.

Q. I think that might be right. This version doesn't have a date on it, does it?

A. No, it has, obviously, an error.

Q. You hadn't asked Mr Lee to insert any particular date at this point, had you?

A. If he is just providing draft wording, it is just draft wording.

Q. Do you think, when you received this, you would have called him and asked him to insert the date of 1 December 2017?

A. I may very well have done, if that is what we had agreed with LOG the previous year.

Q. If that is what you had wanted his letter to say; yes?

A. Yes, that's ...

Q. Sorry, I didn't hear. Did you say "yes"?

A. Yes, I did. I said, if that is what the letter says, then that is the instruction he would have got. The instruction would have reflected what LOG and LCF had agreed. Again, we had a continuing security. We were more than comfortable with their continuing borrowing.

Q. Let's look at the next document, <MDR00134357>. Do you see he says:

"Further to our call just now ..."

You agree you must have spoken to him?

A. Yes, I spoke to Alex all the time, but ...

Q. Let's look at the attachment, <MDR00134358>. Do you see this version has the date of 1 December 2017?

A. Yes, and it has the 20 corrected to 25.

Q. Yes, well spotted. So you would have asked him to make those changes?

A. Yes, I imagine I would have done. If that reflected the date that agreement was made, then that is the date on the letter.

Q. But it doesn't reflect the date of some oral agreement, does it? What it reflects is the date --

A. Sorry, can you repeat that again? Someone coughed and I missed a little bit.

Q. It doesn't reflect the date of an oral agreement, does it? It reflects the date on which LOG's gross drawings exceeded the facility limit of £25 million?

A. Well, that is what I said to you previously, that we would have been discussing their facility limit with them as their company grew and, at the time, we would have agreed that they could go up to another amount. This letter is just papering up what had been agreed. Again, we had a continuing security, which I believe the claimant has relied on in these proceedings. It is the same security as we put in place originally, and we were comfortable that the debt was covered. This was just reflecting what had been agreed between the parties and, yes, I agree we should have probably dated it the day in March and then put "with effect from", but both parties were comfortable with that, so I didn't see anything wrong with it.

Q. Both parties were comfortable with it, but it was done to deceive BDO, wasn't it?

A. No.

Q. It was designed to make it look as though LOG had always stayed within the facility agreement limit, when, in fact, that was not the case?

A. Again, I disagree. This reflected the conversations that we regularly had with LOG. We monitored their facility agreement, we were in discussions with them quite regularly, and meetings. So it would have been agreed and this date on the letter reflects the agreement.

Q. You knew this was going to BDO, didn't you?

A. Yes, we covered that off earlier.

Q. And you were happy to sign this version with the date of 1 December 2017 on it?

A. Because that reflected when the parties had agreed.

Q. That is what the parties agreed should go on the letter to deceive BDO?

A. No. That isn't what I said. I said the date on that letter reflects when the parties had agreed that their facility could go up to 50 million. Again, we had a continuing security over the assets of London Oil & Gas, all the directors were comfortable with it, the claimant has, indeed, relied on that very same security, and we were comfortable to let the facility go higher. And the date on the letter reflects when that agreement was reached.

Q. You would agree, if you signed this on 9 March 2018 with the date 1 December 2017, it is a backdated loan document, isn't it?

A. It is a document that reflects when the agreement was reached between the parties and, yes, I do accept, and I do accept there will be criticism of me and, indeed, Simon. We should have, with reflection, written on it the date in March but "with effect from", and referred to agreement between the parties. So, yes, it could have been drafted differently, but it doesn't get away from the fact both borrower and lender agreed to increase the facility. There was no need to change the security, it is a continuing security and, again, as I acknowledge, the claimant has relied on that very same with a much higher amount, and the letter reflects when agreement was reached.

Q. My question was, it is a backdated loan document. I think your answer is yes, isn't it?

A. No. No. It isn't. I said the date of the document is the date that the parties agreed.

Q. The document is backdated, isn't it?

A. The document, as we have seen, was created in March, but it reflects the agreement that was reached in December and it was dated the day agreement was reached.

Q. Mr Thomson, there is no contemporaneous evidence about any agreement being reached on 1 December 2017. That is something you have made up, isn't it?

A. No. And, Mr Robins, you weren't there. So there's discussions between both parties, were regular, all directors were involved, and that was when agreement was reached. Both parties were happy. There was no disagreement. Again, we were happy with the security, the continuing security, and the date on that letter reflects the date that agreement was reached. I do acknowledge that we should have drafted that letter at the time, but we didn't. Do we acknowledge that we should have probably written parts of this letter to confirm when the document was created but "with effect from"? No one is infallible, and I accept the criticism I am no doubt going to get for that, but that doesn't move away from, we agreed. Both parties were comfortable. I can't add any more to that.

Q. It also means it is a backdated loan document, doesn't it?

A. It reflects when the agreement was reached.

MR JUSTICE MILES: Was the document itself backdated?

A. The document was drafted in March.

MR JUSTICE MILES: And it was dated in December?

A. It was dated in December to reflect when the agreement between the parties was reached. So we didn't see, my Lord, any -- both parties didn't see any issue with that because that is when the agreement was reached. I do accept I will have criticism for that, but we didn't, at the time, think that there was anything wrong.

MR ROBINS: When BDO saw it, you would have expected them to think it had been in place from 1 December in this documentary form, wouldn't you?

A. But you have to look at what BDO wants. BDO wants to know that, did LOG -- or, sorry, London Oil & Gas -- have a facility to a certain limit provided by a lender? Namely, London Capital & Finance. And this document reflects when that agreement was reached. Again, I am going to -- I will accept the criticism that we should have done it at the time, I accept the criticism that we should have probably put on there "with effect from"; however, looking at what BDO wanted to know, did London Oil & Gas have a facility to that limit at that time? Yes, they did. And the evidence of that is that we allowed the loan to continue and all directors of LCF allowed that. Everyone was comfortable. We had a continuing security.

Q. Could we look at <C2/1>, page 22.

MR JUSTICE MILES: Sorry, can I -- I am sorry.

MR ROBINS: Sorry, my Lord, feel free.

MR JUSTICE MILES: Would you just ask that question again?

MR ROBINS: When BDO saw the letter agreement, you would have expected them to think it had been in place from 1 December 2017 in the documentary form, wouldn't you?

A. My answer was what I understood that BDO needed, or was asking, was, did London Oil & Gas have a facility at that time to that amount? The answer to that is yes, because the parties had agreed to it. So that is why we dated the letter the date that we did, because that was the day the parties had agreed. We had a continuing security so we didn't see any harm in dating it when the agreement was reached. Again, both parties, both sets of directors, were comfortable with that. And, again, I will accept the criticism that I should have put, or we should have put, "with effect from", but we didn't. Both parties were in agreement and that is what we did.

Q. Is your evidence that LOG effectively had the facility because you hadn't said no to the drawdown requests that took them above the previous limit?

A. No, that's --

Q. Or are you saying that, in fact, you agreed, on 1 December 2017, that it would be extended to 50 million but you just didn't get around to documenting it until the subsequent March?

A. I believe the conversations -- we spoke with LOG and met with them on a regular basis, both myself and the other directors, and I believe the increase in facility would have probably been discussed on a number of occasions through November. An agreement was reached and the letter, again, reflects the day that agreement was reached.

Again, I will accept the criticism that we should have perhaps reflected that in the letter, but we didn't, and both sides were happy and content. And, from BDO's point of view, they wanted to know did the lender extend the facility up to that level at that time? And the answer to that was yes. We just hadn't done the requisite documentation. I accept that criticism and, again, we should have put in there, dated that day but "with effect from" to reflect the agreement between the parties.

Q. If we go back to <C2/1>, page 42. We were looking at paragraph 118. You say, at the end of line 2: "In or around August 2017 LOG neared the facility limit and ... LCF increased the facility limit to I believe £50 million by a side letter ..." Should that date, August 2017, be December 2017 or should it be March 2018?

A. We would have -- as I said before, we discussed the facility limit as a group. The conversations would have been had prior to the agreement to allow it to go to 50. I don't remember the exact day. That is why I've said "in or around". It was summer into autumn into winter time. I don't remember the exact date discussions happened, but they would have done as the facility neared its limit.

Again, we had a continuing security from LOG, we were more than comfortable with the value of the assets that it held, and we allowed the facility to continue.

Q. In fact, Mr Thomson, you let the facility go over the limit and, when it came to preparing this document, you looked back at the drawdown profile to work out when the limit would have been breached and you used that information to select the date of 1 December, didn't you?

A. With all due respect, Mr Robins, that wasn't the conversation we were having at the time. I don't know how many times I can explain that to you. London Oil & Gas and LCF, as all directors, met. They were all comfortable with the facility as it was growing, it was monitored, and agreement was reached at the time.

Q. Can we go back to <MDR00100801>, please. On page 2, this is what you called "LOG 1", the March 2016 facility?

A. Yes.

Q. Page 2 of the internal pagination. We saw the commitment of £20 million. So you are saying that, as LOG approached that 20 million gross sum limit, you had a discussion about increasing the facility?

A. Yes, we actually changed that to 25.

Q. There is no evidence you changed it to 25. This is the document you confirmed earlier is March 2016?

A. Yes, I saw the front page, yes. But I believe the LOG facility went up to 25, as we saw in those letters.

Q. Where do you cover that in your witness statement?

A. I am just looking at the document and reacting to the document you have presented me.

Q. You are tailoring your evidence to fit the documents that appear on the screen?

A. No. The letter that you took me to earlier, and I believe I mentioned it to you at the time, one had "20 million", I think that is incorrect, it was 25 million. I acknowledged that. I am just pointing out the document in front of me here is 20 and I believe that we, shortly after that, or around that exact time, changed that to 25.

Q. When do you say that happened? Shortly after March or around the same time?

A. I don't remember when the 20 million was 25. I seem to remember it was -- it was on or around, I don't have a date in mind, but my recollection is the LOG facility is in 25, or the majority of that time. I am trying to come up with a date for you, but, I am sorry, I can't.

Q. Mr Thomson, this is all very imprecise. The reality is you didn't care whether LOG was within the facility limit or not, provided that there were documents in place by the time of the audit to satisfy the auditors?

A. No. I disagree. There are documents that reflect the conversations and I don't know why there isn't a loan document for 25 million. You are going to tell me you couldn't find one, but I would disagree.

MR ROBINS: Unless my Lord has any further questions, I was going to move on to the next loan agreement. Go back to <C2/1>, page 42, please.

After referring to the side letter, seven lines down, you say:

"Sometime later, it was decided that a more robust document should be put in place to replace the side letter. I will call this LOG 2. I believe that when this document was signed, as it was replacing the side letter, it was dated the same date as the side letter."

A. Mmm hmm.

Q. Is that what you say is true?

A. That's what my witness statement says. When I drafted this, it was from memory.

Q. And you say it is true?

A. When I drafted it, it was from memory, so I believed it to be true at the time.

Q. Do you still believe it to be true?

A. Again, from memory, I am doing the best I can.

Q. So you say:

"With hindsight, the document should have been dated with the actual date and explained in the text that, by agreement of the parties, it was replacing an earlier document and took effect from the date of the earlier document. But Alex Lee prepared the document on the former basis and it was signed on behalf of all of the parties on that basis. Everyone agreed. No-one was misled."

Do you see that?

A. Sorry, it went small and then got big again. Yes, that's what I said.

Q. When you say "No-one was misled", do you mean none of the parties or do you mean no one?

A. I am always referring to the parties.

Q. So you think a third party might have been misled?

A. I am not referring to a third party, I am referring to the parties in the agreement.

Q. So you are saying that the parties to the agreement weren't misled but a third party might have been misled?

A. No, I didn't say that. I am saying what I am talking about in my witness statement here is the parties to the agreement.

Q. What about third parties? Do you say they were, or were not, misled?

A. I am not saying anything about third parties here.

MR JUSTICE MILES: No, he is asking you the question now.

A. Sorry. I believe the documents reflect what the companies agreed.

MR ROBINS: That wasn't the question, Mr Thomson. Would you like me to repeat the question?

A. You are asking if parties were misled, and I believe from that I am going to infer that you think auditors were misled. I don't believe so. I believe that we acted with the dates that things were agreed at the time. I didn't put any documents in place to mislead any third parties, if that answers your question.

Q. So your evidence is that what you call LOG 2 was just a more robust document to replace the side letter, dated the same date as the side letter; yes?

A. That's, indeed, what I said, I believe, at the time, yes.

Q. So that would be dated 1 December 2017?

A. If that is indeed the date on that. You are probably going to take me to that now.

Q. You say that LOG 2 just was more robust, but it is your evidence it didn't materially change the commercial terms of the side letter?

A. Well, the commercial terms of the side letter were reflecting the terms of the original LOG loan. There are no additional terms in the side letter, I believe it was just increasing the facility.

Q. So LOG 2, you say, is 50 million as well? Same as the side letter?

A. I can't remember the figure on LOG 2, but we put in place, as it says, a document to replace that. We may very well have increased the limit when we did that document.

Q. You say the side letter reflected an agreement that had actually been made on 1 December when you increased the commitment to £50 million; yes? That is your evidence?

A. That was the date on the letter, yes.

Q. That's your evidence?

A. Yes. I believe I confirmed that earlier.

Q. So you put in place a more robust document to replace the side letter and dated it the same date as the side letter; yes?

A. From memory, yes. But I don't have the document.

Q. Okay, well, let me see if I can help you. If we go to <MDR00178709>. Do you see an email from Mr Lee to you on 15 October 2018?

A. Yes.

Q. He says:

"Please see attached the LOG facility dated [he says] 17 December ..."?

A. Mmm hmm.

Q. That seems to be a bit of a mix up, but we can look at that in a moment:

"... in marked up and clean version for signature." Do you remember receiving this email?

A. I would have done, I can see it is addressed to me.

Q. Let's have a look at the attachment. It is <MDR00178710>.

Do you see --

A. 4 December.

Q. -- it is dated 4 December 2017, not the 17th, as Mr Lee had said?

A. Or, I believe, the 1st, which is, I think, the letter.

Q. That's right. The letter said --

A. I think (overspeaking) --

Q. -- the 1st?

A. -- several days.

Q. So your evidence is this is just a more robust document to replace the side letter?

A. Yes, and there was negotiations all the way through 2018 because there were -- London Oil & Gas was concerned that, if LCF ran into trouble as their primary lender, they wanted some more robust terms, so there was a lot of negotiation through 2018 and I believe that was around refinancing clause that was added into it. The other parts of the loan are, I believe, the same.

Q. My question was, your evidence is this is just a more robust document to replace the side letter. You went on to say something else, but I think your answer to my question is yes. Is that correct?

A. Yes, it is a more robust document.

Q. Can we look at page 3, please. Do you see the commitment is a gross sum of £120 million?

A. Yes.

Q. That's not something that had been agreed on 4 December 2017, is it?

A. No, but it would have -- you have to understand where the companies were at the time. We had a continuing security from London Oil & Gas, we were very comfortable with the value of that security, and they continued to borrow. So, yes, it took over from the side letter; yes, it is far more robust; yes, it does have an increased facility. But that increased facility was dealing with where they were at the time and where they were going. If we had just changed that and reflected 50 million, then I imagine, given the size of LOG's loans, we would have had to immediately put another one in place. But we had a continuing security from London Oil & Gas, we were all -- all the directors were very comfortable with the loan to London Oil & Gas. Indeed, my fellow directors wanted a debt for equity swap, they were that comfortable after meeting independently with London Oil & Gas. And the limit was agreed to be that when we put this in place. Yes, it took over from the side letter. That was the agreement between the parties at the time.

Q. But the 120 million gross sum commitment was not something that was agreed on 4 December 2017, was it?

A. No, it would have been agreed through 2018. So what would be the point in putting the 50 million here and then doing one immediately afterwards?

Q. Precisely.

Can we look at <MDR00183474> please. This is a further version of the same thing dated 4 December 2017. Just to show you that it is the same, can we look at page 3, please. The commitment is the gross sum of £120 million.

Can we look at page 24, please?

A. Sorry, is that the same document you took me to before?

Q. Yes.

A. It looks like the same one.

Q. Exactly. That is your signature, isn't it?

A. Yes, that looks like my signature.

Q. Do you remember Eloise Wade?

A. She was one of LCF's employees, yes.

Q. Do you recall that she sent a scanned version of this document bearing your signature to you?

A. I don't, but I am sure you will take me to an email that shows she did.

Q. Sure. Let's look at <MDR00183469>.

There is the email dated 2 November 2018. Just to confirm that she is attaching the signed version of that agreement, let's look at <MDR00183470>. If we look at page 24, we can see that is your signature, isn't it?

A. Mmm hmm. That looks like my signature.

Q. If Alex Lee sent the draft to you on 15 October 2018, and then Eloise Wade sent the signed version to you on 2 November 2018, you would agree that you must have signed it at some point between those two dates; in other words, at some point between 15 December 2018 and 2 November 2018?

MR JUSTICE MILES: Sorry, you got the dates slightly wrong.

MR ROBINS: Did I? I am so sorry.

MR JUSTICE MILES: 15 October.

MR ROBINS: October. I am so sorry, Mr Thomson.

A. Sorry, could you repeat all that?

MR ROBINS: Yes. Let me say it again.

If Alex Lee sent the draft to you on 15 October 2018 and then Eloise Wade sent the signed version to you on 2 November 2018, you must have signed it at some point between those two dates; in other words, at some point between 15 October 2018 and 2 November 2018?

A. That follows.

Q. We have seen what you signed wasn't in the same terms as the side letter, was it?

A. Well, no, I think we have established that already. And there was, I believe, a long negotiated refinance clause in there as well.

Q. Not in this version. I think you are thinking of something else. But the answer to my question was no, wasn't it?

A. Sorry, your question was, again?

Q. What you signed wasn't in the same terms as the side letter, was it?

A. No, I think we have already established that. As I said, it was a more robust document.

Q. It wasn't a truthful document, was it?

A. It reflected where the companies were at the time and what they agreed.

Q. It wasn't a truthful document, was it?

A. The same answer.

Q. Well, are you saying it was a truthful document?

A. The document that was entered into then reflected what the companies had agreed, it reflected what the -- the loan, and it had gone further, because the companies had grown and borrowing requirements grew. So if it was just a document to replace a letter, then we would have had to have put another document in place fairly swiftly, given where LOG was at the time. It was a more robust

document and, yes, the facility limit did increase. I can't tell you the other bits that are in the document, we have not gone through that.

Q. Do you say it was a truthful document or not a truthful document?

A. Yes, it was a -- it reflected where the companies were in agreement at the time.

Q. Is your evidence that, on 4 December 2017, you agreed a £120 million facility letter?

A. No, that is not what -- that isn't what I am trying to explain to you. I am trying explain is the companies evolved, the requirements of the borrower increased. If we had have just put a facility in place to replace the letter, yes. If that was all it was doing and catering for, it would have been 50 million, but the document doesn't cater for that. You have a borrower that has increasing requirements and there is a reason that this has taken so long to get put in place, and I think there was other parts that were negotiated and it reflects where the companies were at the time and the requirements of the borrower. I don't think it would have -- if it was just to replace a loan -- sorry, a side letter, yes, I agree it should have been (inaudible). However, the companies had evolved since then. So it was a working document. It would have been wrong to put 50 million.

Q. I asked you: is it your evidence that, on 4 December 2017, you agreed a 120 million facility? And you said no.

If you signed an agreement purporting to show that, on 4 December 2017, you had agreed a 120 million facility, it follows, doesn't it, that that document is not a truthful document?

A. The 50 million facility by the side letter reflected where the companies were at the time. What I am trying to explain is the companies had evolved by this point and the 50 million that we had agreed was already -- would have been incorporated in the larger limit. It is not a new limit.

Q. You signed the letter so that BDO would be led to believe that there was a £120 million facility in place from 4 December 2017; yes?

A. The letter was 50. The loan agreement was 120, I believe.

Q. Sorry, did I say "letter"?

A. Yes.

Q. I'm so sorry.

You signed this agreement so that BDO would be led to believe that there was a £120 million facility in place from 4 December 2017?

A. Again, you have to understand that companies are -- the 50 million side letter was included in the facility or the limit in that document. The companies have moved on considerably since 1 December.

Q. Let's say that -- can I ask the following question? Yes or no, let's see if we can do it that way. You signed the agreement so that BDO would be led to believe there was a 120 million facility in place from 4 December 2017; yes or no?

A. No, they would have had the side letter which confirmed 50. This facility already incorporated the amount that was in the side letter and provided them further.

Q. You were signing a false document to deceive BDO?

A. No.

Q. When you say in your witness statement no one was misled, that's not true, is it?

A. No.

Q. BDO were misled, weren't they?

A. No.

Q. BDO were misled by you?

A. No.

Q. You lied to BDO?

A. No.

MR ROBINS: Unless my Lord has any questions on that, I am moving on to another topic.

MR JUSTICE MILES: Are you able to explain to me why the document was not dated in October or November 2018?

A. Because we wanted to take it -- because we wanted to replace the side letter, because we felt it was the right thing to do. That is why we dated it at that date, because it did take over the side letter and the 50 million increase was incorporated in the limit that we gave them then. The directors in LCF didn't see that there was an issue with that. We had -- as I say, we had a continuing security and we were very comfortable with that.

MR JUSTICE MILES: The limit was -- sorry, the limit was much higher than that in the side letter?

A. The limit in the side letter, sorry, was the 50 that we agreed in December, but, when we put this in place, there has been a considerable amount of time between when the side letter was agreed and when this was put in place, and the companies had evolved and it was quite a bit of negotiation.

MR JUSTICE MILES: So this was a further -- this was a different agreement from anything in the side letter?

A. Yes, but it incorporated the limit that we had previously agreed in the side letter.

MR JUSTICE MILES: It was a different limit? A much larger limit?

A. Yes, absolutely, but it is not -- sorry, I am not explaining myself properly. It is not they have a 50 million facility over here and a 120 million facility over here; it is a continuing facility.

MR JUSTICE MILES: Right. Thank you.

MR ROBINS: You mentioned --

A. If there is a break, would it be possible just to have a walk, if you are moving on to a different --

MR JUSTICE MILES: Yes.

MR ROBINS: Yes.

A. Thank you.

MR JUSTICE MILES: Just give me a moment. (Pause).

Right, we will take a break until 2.30 pm by the wall clock. Thank you.

(2.20 pm)

(A short break)

(2.28 pm)

MR ROBINS: Mr Thomson, you mentioned earlier today the importance of security. Is that something you say that you kept yourself informed about?

A. Yes.

Q. Did you keep a close eye on the value of secured assets?

A. Myself and the other directors in LCF, yes. Kobus, specifically, kept a ledger of it.

Q. He would have got the information from you, would he?

A. We would have got the information from our borrowers.

Q. You would have considered that information carefully, would you?

A. We would have looked through it and got comfortable with it. We wouldn't have gone through it in the minutiae.

Q. You wouldn't have accepted it, if you had known it was wrong, would you?

A. We accepted the security, we didn't believe it to be wrong, no.

Q. You mention in your witness statement the security valuations that you added to the L&TD loan profile, don't you?

A. That was the profile that we went through with the three columns?

Q. It is another version. Let's look at what you say there.

A. That was the loan ledger. Was that the loan ledger?

Q. Yes, the loan profile.

A. Yes.

Q. Shall we look at what you say? <C2/1>, page 39. In paragraph 113, you say, at the bottom of the page, on the left, in the second line:

"The L&TD loan profile shows the last valuation update was on 13 December 2016 with total valued assets of £108 million against a loan balance of £24.4 million."

Is that correct?

A. That's what I have put there, yes. I would have got it from somewhere.

Q. Let's look at what I think is the right document. You haven't referred to a document, but I think I have worked it out. It is <MDR00111233>. We need to open it in native form.

On the left, can you see the drawdowns?

A. Yes.

Q. And the funds actually sent are in column D, aren't they?

A. Yes, but the gross borrowed is B, so gross borrowed against.

Q. Yes. And then, on the right under "Security" -- in cell I1, there is the heading "Security", do you see that?

A. Yes.

Q. And then, let's look at, for example, L9, "Land at Playa Magante", and it says, in column L, £37,950,000. Do you see that?

A. Yes, I can see that.

Q. Below that "Land at El Cupey"?

A. Mmm hmm.

Q. And it says £19,350,000. Do you see that, on 2?

A. Yes.

Q. Then "Paradise Beach" -- do you see where it says that?

A. Yes.

Q. Then K, it says £40,550,000. Do you think that should be euros?

A. Erm, I don't remember what the valuation said that Savills provided, but I don't remember the currency in the valuation.

Q. It doesn't say Savills here, but you think that is a Savills' valuation?

A. That was the only valuation I believe that we had on Cape Verde, so ...

Q. So, do you think the sterling equivalent is that £35 million-odd figure in column L?

A. It could be. Without seeing the document, I --

Q. In L13, I think it is, that is a total security value of £108.5 million-odd?

A. That just adds up column L.

Q. Oh, I see. You're referring to the formula bar?

A. Yes. I imagine it just adds up column L.

Q. Yes. Are these the sorts of figures that you say you kept on top of?

A. We received valuations and we took the valuations from the third parties as read that that was the value of the available security if they wanted to draw up to a certain amount. With Paradise Beach, that would be the total value of the security, but you would need to register that against the loan because it was a staged purchase, for want of a better word.

Q. If we look across at column M.

A. That should be a total that could be available.

Q. So 108.5 million is a total amount. I think you say LCF would only lend to a 75 per cent loan-to-value ratio. Is that right?

A. Mmm hmm.

Q. So the total --

A. Sorry, yes.

Q. Thank you. The total loan against this security would be something in the region of £77 million; yes?

A. You would go against the individual valuations and, yes, that is -- 75 per cent of 108 is --

Q. Okay.

A. What dates were these, by the way? Do we have --

Q. I tell you what we can do, if we scroll down and look at column A, it will show us the last drawdown date. So 28 April 2017.

A. And then column B164 is the total amount. Correct?

Q. Oh, just under £41.3 million, is that what you are referring to?

A. Yes.

Q. Yes, that is the total gross loan amount. You know, don't you, that Surge would use the value of security held for marketing purposes?

A. It is a constant question. They shouldn't use it for sales purposes, no. I am aware that they did try to.

Q. But you didn't approve of that?

A. I remember we had numerous discussions on that.

Q. And you told them they shouldn't use it for sales purposes?

A. It depends in what context.

Q. The sales context.

A. On the telephone, having discussions, that type of -- is that what you are referring to, or more --

Q. You said:

"Answer: ... They shouldn't use it for sales purposes, no. I am aware that they did try to." I asked you if you approved of that.

Did you approve of it; yes or no?

A. I am sorry, I don't think it is a yes or no question because, in various different documents, it refers to it. They are allowed to use what we believe is factual information, but are you referring to discussions on the telephone? It depends how they use it.

Q. I am referring to what you said a moment ago. You said: "Answer: ... They shouldn't use it for sales purposes, no."

So just to clarify what you had said, did you or did you not approve of them using the security value for sales purposes?

A. Sorry, I am struggling. I know I discussed the security value with them. I know I was -- I don't remember, to be -- I know they would have done because they saw it in the audited accounts, that that was public information. But it's not -- I was keen for it not to be a -- let's call it a sales tool, for want of a better word.

Q. Did you tell them you weren't keen for it to be a sales tool?

A. I don't know.

MR JUSTICE MILES: Sorry, is that --

(Conversation off the record)

MR ROBINS: So would you have been aware in, say, April 2017 or thereabouts, that Surge were using a security value of £215 million for sales purposes?

A. I don't remember. There are lots of things that Surge did that I wasn't aware of. I don't have a recollection of that, sorry.

Q. So, is your answer that, if they were doing it, you weren't aware, or is your answer you don't remember?

A. I don't remember.

Q. If they had been doing it, would you have approved or not?

A. It depends in what context.

Q. The sales context.

A. Written, verbal?

Q. For selling bonds.

A. I was keen for the bondholders to come on board with the literature that we had provided. I wouldn't have wanted Surge to go beyond that. I am aware, through the process of going through all of this, that Surge, in terms of their communications with bondholders, especially on the phone, exceeded some of the bounds that they should have stuck to, but Kobus was monitoring that and was monitoring their -- the call recordings. So, if they had used the figures that were available incorrectly, then that was his task to deal with that.

Q. You are saying you wouldn't have given them a £215 million security figure to use for sales purposes?

A. I don't remember.

Q. Okay, can we look at <MDR00082474>.

Do you see you emailed Mr Phillips? He was an employee of Surge, wasn't he?

A. Yes, he was.

Q. And you say:

"Just go with in excess of £55m in loans and in excess of £215m of secured assets."

That was a secured assets figure you were happy for them to use for marketing purposes, wasn't it?

A. I can't remember why Mr Phillips was asking for that and the email doesn't confirm why.

Q. Let's have a look at the email.

A. I don't want to confirm with you something that isn't necessarily correct.

Q. Fair enough. Let's have a look at the email below to see if it helps jog your memory.

A. Sorry, could you make that bigger for me? Sorry, that bit doesn't --

Q. Maybe the bottom left.

A. Yes, that is what it says.

Q. So £215 million was a secured assets figure you were happy for them to use for marketing purposes, wasn't it?

A. With discussions with bondholders, it looks like I have confirmed that, yes.

Q. But for marketing purposes specifically, yes?

A. Well, communicate with bondholders. When you say "marketing purposes", that implies that it could be a plethora of things from online to brochures to discussions on the phone to --

Q. Are you trying to draw a distinction between communications with existing bondholders, on the one hand, and advertising for new bondholders, on the other?

A. No, all I am saying is that you are saying it is marketing purposes. I am saying, "for marketing purposes", is a very broad brush. I can see I am telling him there it is absolutely fine to communicate to investors, but you are just saying "for marketing purposes", which is a very wide spectrum. Communications could be discussions, it is --

Q. Let's say, just broadly speaking, for the purposes of trying to sell bonds, you were happy for that figure to be used?

A. Well, I am sorry to be picky, I don't know if this is -- I don't remember the conversation, I don't remember the email. What he is saying is, "Are you happy to communicate to investors and bondholders?", that doesn't say new or -- existing or new. So, when you talk about "marketing purposes", it entirely depends on the context of how -- the discussions we were having and, I am sorry to be picky, but it doesn't stipulate. So I am just saying it may very well have been to a wider audience. I am just saying on what is in front of me and I don't remember the email.

Q. So, were you happy for that figure to be advertised to the general public or were you not happy for that figure to be advertised to the general public?

A. I don't remember, at the time, the context in which I have allowed him to do this.

Q. Do you think you would have been happy for them to advertise that figure to the general public?

A. In discussions, probably. Putting out in brochures and other things, online marketing, I don't think I would have been.

Q. What about print marketing, brochures and so on?

A. That would have been Kobus's remit. If Kobus was happy with these figures to go into the marketing, then he was director of compliance and risk, so this is more Kobus.

Q. So it was his remit, not yours; is that what you are saying?

A. It is Kobus's remit that -- he has to sign off all marketing and, if Kobus was happy for this to go out and be communicated, then that is his job. So ...

Q. Let's look at <D7D9-0009136>. Do you see there an advert in The Times?

A. Yep.

Q. Do you see the three black circles under the red circle, and do you see the left says "Value of security +£215 million as of 4 April 2017"?

A. Kobus would have absolutely had to have signed off on all of that.

Q. But you would have known about it, wouldn't you?

A. I would have known that they were doing these campaigns, but at the time -- this was, sorry, when, in 2017?

Q. April 2017.

A. So, April 2017, I am busy, I am out of the office, I am in the office maybe a day, day and a half a week. I am working with Lewis Silkin to try and put together a regulated bond on all, I am up and down the country meeting IFAs, so, yes, I am aware they put advertisements out and I am aware we interacted with these guys, but Kobus would have had to have signed off on this.

Q. You are saying -- I think I am hearing you right. You are saying you weren't really involved in preparing this sort of advert. Is that right?

A. The advert was created by Surge as part of their remit. And any financial promotion, regardless of where it is, be it email, Facebook, online, paper, has to be signed off by Kobus. He is the compliance officer.

Q. And you would have been involved or you would not have been involved? Which is it?

A. I would have been lightly involved, probably.

Q. You would have been involved in commenting on it and approving it?

A. No, Kobus approved it. I couldn't overrule our compliance officer. What is the point in having one? It is Kobus's remit to have the final say on these things.

Q. You were the person in charge of LCF and you were the person in charge of things like this?

A. Again, Kobus is a qualified compliance officer, he was recruited for that purpose and he signed off all financial promotions.

Q. But you needed to approve them as well before they could appear anywhere?

A. Kobus has the final approval. Yes, I may very well have had input from time to time, but he was the compliance officer.

I think CF10 is the technical expression for the FCA.

Q. Could we have a look, please, at <MDR00085731> and can we go to page 4. Maybe page 3 as well, just so we can see the top of the previous email.

Do you see someone called Adam Cleverley is sending an email with the subject "Adverts for Andy"?

A. Yes, I can see that.

Q. Just above that, on the left, he is asking: "Hi Aaron, did Andy have a chance to review?" So you were sent the advert we just saw and you were asked to review it, weren't you?

A. And I would have given it to Kobus.

Q. Can we look at the previous page. Do you see, in the middle of the page, he says:

"Revised version including Andy's feedback on it." So you would have given him some feedback on it; yes?

A. That is what it says and I would have got that from Kobus. I wouldn't have signed this off on my own. We had a compliance officer for a reason.

Q. On the previous page, at the bottom, it says: "Revised version including ... Andy's last changes ..." There's no mention of Kobus here, is there?

A. Not on there, but, then, you have had disclosed to you -- indeed, you have already, in your servers, Kobus's entire compliance file and it shows, through that file, that every financial promotion and advert, he signed off. So, yes, I may very well have been the one communicating with these guys because Kobus was possibly doing something else, but, absolutely, it would have gone through him. If he has said, "Yes, that's fine", I was the one that communicated at the time. We were a team.

Q. I will have some questions for you, in due course, on Kobus, but sticking with the advert, do you accept that you were given the revised version of this advert on the day before it was published in The Times?

A. If it was published on the 3rd of the 5th, I can see I had that, because these were on the 2nd of the 5th.

Q. Can we look at <MDR00085742>. Do you see, at the bottom of the page, you asked him to change "loans to value" to "loan to value"?

A. Yes, that's just a drafting, that is not contentious.

Q. You were happy with the security figure of 215 million plus in the advert, weren't you?

A. That was the figure that we would have added up based on the documentation that we had in front of us and also sitting down with Kobus, and he kept an eye on it. So that was the figure that we were comfortable, as a group, and was signed off by our compliance director.

Q. Do you say that you would have been comfortable with that figure on the basis of looking at the security values or did you not really look at the security values?

A. The security values would have been taken into account. I can't -- the figures that you took me to before were different to 215 million, so I imagine that there is London Oil & Gas in there as well. So we would have had a look at the figures for all of our borrowers and agreed that that was where it was.

Q. So you think --

A. It wasn't just me doing it.

Q. But you think there would have been a more extensive version of the figures we looked at earlier that included London Oil & Gas?

A. There should be, because we would have discussed it as a --

Q. Can we look at <MDR00077856> to see if this might be what you are referring to. Can we see it in native form.

Do you see, in row 22, it says "London Oil & Gas"?

A. Mmm hmm.

Q. Is this the document that you were just referring to?

A. It could be. It doesn't look like Kobus kept a spreadsheet of asset values against loans. This doesn't look like his, but it is a --

Q. This looks -- at the top, under "Leisure & Tourism Developments", it looks very much like the document we just looked at?

A. Yes, I know, but what I am saying is this doesn't look like Kobus's document that he kept.

Q. This was your document, wasn't it?

A. It is a document that we had in LCF, it looks like that, yes.

Q. It is a document you would have been familiar with at the time?

A. I am familiar with all the values in that. This may not have been my document, it might not have been me keeping it, but I am familiar with the security as you are listing it there.

Q. You think this is a calculation that you were basing the 215 million plus figure on?

A. It could very well have been, yes.

MR ROBINS: My Lord, I am moving to a new topic in case your Lordship has any questions.

MR JUSTICE MILES: No.

MR ROBINS: Going back to 2012/2013, you worked for Mr Golding, didn't you?

A. No.

Q. You worked as a director of his company Clydesdale Property Developments Limited, didn't you?

A. 2012, I was at the bank.

Q. Let me check I have got the date right. 2013, then. Let me ask it by reference to 2013?

A. (Inaudible).

Q. If we change the date to 2013, the answer to both my questions is yes?

A. Erm, I was a director of Clydesdale Property; that's not saying I worked for him.

Q. Him and his brother were the beneficial owners of the company, weren't they?

A. Yes, they were.

Q. And Mr Barker held the shares in Clydesdale Property on trust for Spencer and Ryan, didn't he?

A. I believe he did, and I became a director to oversee the sale of the asset, and then I was a director for a short period of time.

Q. The reason it was necessary for you to be a director and for Mr Barker to hold the shares was because Mr Golding had been disqualified as a director?

A. Erm, yes, I was aware that he was disqualified, yes.

Q. If I were to refer to "The Hill" and "The Beach" in the Dominican Republic, you would know what I was talking about, wouldn't you?

A. Yes, they were on the spreadsheet you previously pulled up.

Q. You had some involvement with The Hill and The Beach in 2013/2014, didn't you?

A. Yes. That was the Sanctuary PCC International Resorts Group, El Cupey.

Q. Let's look at your evidence on it at <C2/1>, page 6. In paragraph 18, you say:

"... LCCL ... acquired rights in two properties in the Dominican Republic known as 'The Hill' and 'The Beach'. Those properties were held in a company called Sanctuary International PCC, which was brought into the group. The circumstances surrounding these properties were similar to Lakeview ..." You were involved in the planning and financing, but whereas, in relation to Lakeview, you conducted negotiations with disenfranchised investors: "... on this occasion Simon did that and took a 'roadshow' up and down the country presenting our plans. I never knew the terms on which the properties were acquired, save that I believe, in general terms, that no money changed hands."

Is that all true?

A. The top bit, LCCL, I don't think acquired the rights to the two properties, I think they were held in Sanctuary PCC, ultimately, and then International Resorts Group, so I think that first line is not quite correct.

Q. Subject to that clarification, is that what you ask the court to accept?

A. I believe that was true when I drafted it. Just reading it through now.

Yes, broadly speaking, I think so.

Q. You became involved with Sanctuary at some point in 2013, didn't you?

A. Yes.

Q. You were a director of a company called Sustinere Group, weren't you?

A. That was one of the groups of companies. I can't remember how long I was a director for.

Q. This was a company known previously as the South Eastern Counties Finance House Limited, wasn't it?

A. I don't have specific recollection of it, but I am sure, if you are telling me that's what it was, then you have good reason.

Q. You and Mr Hume-Kendall were the directors, weren't you?

A. Again, I can't remember, but I am sure you are correct.

Q. Let me see if I can assist. <R1/21>, please. This is an extract from Companies House. It says the "South Eastern Counties Finance House Limited", but I think, if we look at the next page, we will see the previous names, and it was known, in 2013, as Sustinere Group Plc. That is the company you and Mr Hume-Kendall were directors of?

A. Yes, I remember the company. Yes.

Q. If we look at <R1/22>, I think we might see the directors registered, to help you with the dates. If we look at the next page, we see that you were appointed on 22 March 2013. Does that seem right to you?

A. Yes. That looks correct.

Q. In 2013, Sustinere was providing money to Sanctuary, wasn't it?

A. 11 years ago, I know Sustinere was kind of the group company that did things. I can't remember specifics of what it did. It may very well -- I can see that it may very well have lent money into.

Q. Well, Sanctuary had got into a spot of financial difficulty and Sustinere was keeping it afloat, wasn't it?

A. I didn't deal with the banking arrangements for it, but it was the group company that did things, so I can see that that would have probably happened.

Q. You did deal with payments by Sustinere to Sanctuary, didn't you?

A. I may very well have been on the bank account, but that is -- the admin people in the office dealt with it. In March -- what period of time are we talking?

Q. Let's have a look at <MDR00012710>. It is an email dated 7 May 2013. Fair to say it is a long time ago. You are asking Mr Sedgwick to pay £15,000 to Sanctuary. That is the sort of payment that I was referring to, and Sustinere was keeping Sanctuary afloat, wasn't it?

A. I don't know if "afloat" is the term. I wasn't -- but I can see it was giving it money, yes.

Q. You understood, at that time, that Sanctuary had acquired the property known as The Hill for about £708,000; yes?

A. I don't remember that. I was, at that time, that is May 2013, I was spending quite a lot of time in Cornwall with Lakeview trying to get that back on its feet. So I didn't have lots to do with Sanctuary.

Q. Well, as you say in your witness statement, you were involved in the planning and financing of Sanctuary, weren't you?

A. Sorry, are we talking planning and financing -- what time period are we talking? You are talking here about giving it money, but then, funding Sanctuary towards the end of 2013, yes, because we lent to it, as we spoke about it earlier. So ...

Q. Let's say, at least from towards the end of 2013 --

A. Yes, we -- we --

Q. -- to be precise about it, you were aware, from that point, that Sanctuary had acquired The Hill for about £708,000?

A. I don't remember the specific amounts, and the acquisition figures, I don't remember when they were.

Q. They pre-date your involvement so let's have a look at it. <MDR00005360>. This is a reciprocal purchase and sales prompt between Parque Residencial Ecologico Sun Raise and Inversiones 51588. You understand that Inversiones was the company that actually acquired The Hill?

A. Did they? The Hill?

Q. Yes. And on the next page, do you see the first whole paragraph head that begins with the word "Paragraph"? It refers to a piece of land measuring just over 1.3 million square metres. That is what we call The Hill, isn't it?

A. That's -- I don't remember the amount of land and we relied on surveys, but it's -- what it said it is, that's what it said it is. I don't remember this document.

Q. Okay. Article 4 has the figure that I referred to, the precise figure. I think I said £708,000, but do you see it is £708,752?

A. As you say, this pre-dates me.

Q. Yes, but when you became involved in planning and financing the Sanctuary project, you would have become familiar with the fact it had been acquired by Sanctuary for £708,000, wouldn't you?

A. No, I would have become familiar with the valuations we had for the site. I wouldn't have necessarily gone through this document, no.

Q. Do you say that this is a document that you didn't necessarily see?

A. I don't remember it, is what I am saying, and when planning and financing for or, indeed, lending to Sanctuary PCC, which were for these projects, we would have gone by the valuations that we had. I am saying I don't necessarily remember this document at all.

Q. It is a document that you saw many times, isn't it?

A. The same answer. It pre-dates me and, when we looked at funding for it, we would have looked at the valuations. Was this document contained in the valuations?

Q. It is a document that was in LCF's files as delivered up to the administrators, it is a document you must have seen before, surely?

A. We had lots of old documents that I didn't necessarily go through. Again, we focused on what the valuation was, which was provided by a third party.

Q. Let me take you to one example, <MDR00086565>. Do you see, at the top of the page, Mr Ingham is sending you an email. He says:

"Attached are contracts for El Cupey."

A. Mmm hmm.

Q. One of the attachments is <MDR00086574>. This is a document you were well familiar with, isn't it, Mr Thomson?

A. I wouldn't say "well familiar". The email before mentioned Magante, but this is Inversiones.

Q. This is El Cupey, yes.

A. Sorry, the email before was referencing --

Q. He said he would send Magante separately?

A. I am saying I don't particularly remember this document, no, and it is not one that strikes me. I concentrated on the valuations.

Q. You were aware, through your role in the planning and financing of the Sanctuary project, that Sanctuary had also entered into a contract for the purchase of various parcels of land known as The Beach?

A. Magante, yes.

Q. For, yes, Magante, for \$3.5 million?

A. There were purchases of, I think -- you might correct me -- 36 or 38 parcels of land that comprised all of that.

Q. Yes, and there was a contract to buy it all for \$3.5 million. Is that right?

A. 3.5 -- I remember a figure of around that and it was cumulative and there was various different sellers.

Q. You are quite right. It is a figure of around that. Let's look at that. It is <MDR00005290>. It is just as you describe. If we look at pages 1 to 5, these are the various different sellers you refer to.

A. Mmm hmm.

Q. Let's flick through it. The owners of the various different parcels; yes?

A. Yes. I don't remember the names, but I remember there were various of them.

Q. And then, on page 14, at the top of the page, you are quite right to say that you recall it being a figure of around 3.5. The precise figure is in line 3. Do you see that?

A. Can you make it bigger for me? Yes 3,000,527.

Q. In dollars; yes?

A. Yes.

Q. And, at the exchange rate at the time of this contract, that would have been about £2.2 million, wouldn't it, or thereabouts?

A. There or thereabouts, I would imagine.

Q. It sounds, from what you have said, as though you are reasonably familiar with this document.

A. I am familiar with that there was numerous different parcels of land that there was an agreement to purchase, yes.

Q. Do you know this is a document from your disclosure?

A. I had numerous documents that were saved to files. I don't specifically remember this one, but it looks like it reflects my understanding of it.

Q. Your understanding, in 2013, when you get involved with Sanctuary, Sanctuary had sold villas off-plan to investors?

A. Yes.

Q. The meaning of "off-plan" is that the villas hadn't actually been built yet, isn't it?

A. Yes.

Q. Sanctuary had taken deposits from investors, hadn't it?

A. Previously, yes. I wasn't involved in any of that.

Q. No, before you were involved, they had taken those deposits. Again, before you were involved, it had agreed to pay interest to those investors on their deposits, hadn't it?

A. I believe there was interest payments due, yes.

Q. During May 2013, you and Mr Hume-Kendall were putting together a proposal for the Sanctuary investors, weren't you?

A. I would say that is more Mr Hume-Kendall. I think I was spending a lot of time down in Cornwall at Lakeview at the time. We were a group of people that were working together, so it wasn't just myself and Mr Hume-Kendall. There were others involved too.

Q. You say in your witness statement that you were involved in planning and financing of the project. You were involved with Mr Hume-Kendall in putting together the proposal for the Sanctuary investors, weren't you?

A. As I said, I believe, in my statement, that I was involved but Mr Hume-Kendall dealt with the majority of that and I was dealing with Lakeview.

Q. But he would have copied you into emails concerning it and discussed it with you?

A. I would have been aware that it was going on. I don't remember the specifics. I dealt with -- 2013, I was running around a lot dealing with Lakeview.

Q. But you were kept informed about what Mr Hume-Kendall was proposing in respect of Sanctuary?

A. To a certain extent. Not everything.

Q. Let's look at <D2D10-00005332>. There is a rather long email from Mr Hume-Kendall to Mark Ingham, copied to you and others, and copied to *****@gmail.com. You know that is Mr Golding's email address?

A. Yes, I am aware.

Q. I am not going to read it out. If you would like to read it yourself, I am happy to pause to let you.

A. Yes.

(Pause).

Thank you.

(Pause).

Yes, I have read that.

Q. So you understood at the time that the basic proposal was that, if the Sanctuary investors paid additional deposits, they would get benefits, including security?

A. Yes. There was a benefit to them.

Q. That was --

A. I am just looking for the security bit, sorry.

Q. Sorry, feel free.

A. Mmm hmm, I can see that. I think it is the last large paragraph I think, beginning, "To achieve ..."

Q. That is essentially the proposal that Mr Hume-Kendall was presenting to the Sanctuary investors on the roadshow that you mention in your witness statement?

A. Yes. I didn't go on the roadshow. I don't know if this is the final version of what he presented.

Q. But you were kept informed about the terms of the proposals to the Sanctuary investors?

A. I can see I was copied in.

Q. Well, let's look at another one, <D2D10-00003561>. Did I say it incorrectly perhaps? Let me <D2D10-00005361>. Do you see, in the middle of the page, the email from Mr Sedgwick to Mr Hume-Kendall to you and to Mr Visintin?

A. Yes, I can see that. Let me have a read. (Pause). Yes, I have read that.

Q. So, at the time, you knew the terms of the proposals to the Sanctuary investors, didn't you?

A. I was copied in, I wasn't dealing with this on a regular basis. I can see I have been copied into these emails. Again, looking at the -- can I see the date of it? Sorry, it has just cut off at the top.

Q. Sure.

A. June 2013. So I was extremely busy in the summer season down in Lakeview, trying to put Lakeview back on its feet. Simon, you have Mark, Andrew Visintin, they were the ones that were dealing with this. Yes, I am copied in, I would have had a look, but it would have been a cursory look because I am dealing with a different resort. So I would have had an awareness, I wasn't dealing with this.

Q. Well, you were aware of the terms being put to the Sanctuary investors and you were also aware that the Sanctuary investors started paying additional deposits to Buss Murton, weren't you?

A. Yes, I was aware of that.

Q. You were involved in setting up the trust for the Sanctuary investors, weren't you?

A. El Cupey?

Q. El Cupey Limited, that's right.

A. Yes, I think I was a director for about two weeks to set it up, I think.

Q. We can check the length of your directorship, but you and Mr Hume-Kendall were the initial directors of the company weren't you?

A. Mmm hmm.

Q. Do you remember the single share in El Cupey Limited was held by Buss Murton (Nominees) Limited?

A. Not off-hand, but I am sure you are correct.

Q. Do you remember that you signed the El Cupey trust deed?

A. I have seen in these proceedings that I did do. I don't remember it, but I have seen that I did.

Q. Let me just put a document to you. It's <MDR00014026>. Do you see that is dated 30 July 2013 and it is between Sanctuary PCC and El Cupey Limited?

A. Yes.

Q. If we look at page 3, that is your signature at the bottom half of the page?

A. Yes, that's my signature, yes.

Q. This is the document that you were just referring to?

A. Yes. And, previously, we had talked about Sanctuary PCC and I can see Sovereign Directors have signed that as well.

Q. Yes, that is because they were the director at that time.

A. Yes.

Q. Sorry, did you say "Yes"? I think we spoke across each other.

A. Yes, I was just confirming.

Q. You were also involved in putting in place the contract between Sanctuary and the investors in respect of their additional deposits?

A. I imagine I would have had a hand in it.

Q. You would have signed the contracts?

A. I don't remember. They may have been signed for me electronically, but I don't have a specific recollection. But I am sure you will take me to something to show that.

Q. They wouldn't have been signed electronically unless you had authorised it, surely?

A. Yes, if my signature is on there, I would have authorised it. I don't specifically remember signing them but that doesn't mean to say I didn't authorise them.

Q. Let me take you to one to see if it jogs your memory. <MDR00065292>. This is an example there is one for each investor. This is for Mr and Mrs Hughes. If we look at your signature on page 20, it is possibly a stamp?

A. I think that's a stamp. You can see my name is -- that is not written in. So that is stamped.

Q. But you would have authorised this?

A. I imagine, at the time, I would have said, "Yes, use the stamp for these investors". And then, again, with -- you can see Simon is a stamp above it as well.

Q. Yes, it looks like he is signing on behalf of El Cupey Limited and you are signing on behalf of Sanctuary International Resorts, Cayman.

A. That looks like that, yes. I was just saying it looks like it is a stamp for Simon as well as myself.

Q. Yes, it does. You would have been aware from your involvement that this process resulted in the payment of almost £2.4 million of additional deposits to Buss Murton?

A. I am aware. I can't remember the figure, but I am aware of something around that, yes.

Q. And you were aware that the monthly interest bill payable to the Sanctuary investors on their deposits came to something in the region of £88,000?

A. I don't remember the figure, sorry. Michael Peacock dealt with all of that.

Q. Let's look at some Michael Peacock figures <D2D10-00006944>. See if this helps. Do you see an email from Mr Peacock, I think it is copied to you?

A. Yes, I can see I am CCed in. Simon, Michael, Spencer is there, Robert Sedgwick.

Q. Let's see what he says in the email. He says he has a plot price of £49 million, a deposit of £16.68 million but we can see, in the box below that, that is the total of the additional deposit of almost 2.4 and the original deposit of almost 14.3, isn't it?

A. Yes, I can see that.

Q. Then, looking at the top table, there is a column, "Final payment with BB bonus". That is the final payment that would be due if all the Sanctuary investors elected to proceed to completion of the purchase, isn't it?

A. I don't recollect that. This is not my spreadsheet.

Q. Okay. Do you think "Owed; Buy back" is the total sum that would be owed to the Sanctuary investors if they all exercised their buyback options under the contracts that you had signed?

A. Quite possibly. I don't remember the body of the contracts, but --

Q. Let's see if the attachment casts any light on it. <D2D10-00006946>. We might need to look at it in -- is it available in native form? Okay, let's look at that document.

Do you see the list of client surnames?

A. Yes.

Q. They are all Sanctuary investors, aren't they?

A. I will take your word for it. I don't ...

Q. Okay. Then, on the right-hand side of the page, "Final payment with BB bonus", it says "To Complete". That is the sum payable by each of them if they proceed to completion, isn't it?

A. I have not seen this document before, this is the first time, so that could very well be, but, as I say, this is the first time I have seen this document.

Q. First time for a long while, but it was sent to you at the time, wasn't it?

A. Yes. I don't remember this document.

Q. Is that your understanding of it, looking at it now?

A. Looking at it, it could very well be that, yes, I am not disputing it.

Q. "Owed; Buy Back", that is the sum payable to each of them if they exercise their buyback option, isn't it?

A. That looks to be what that is yes.

Q. Then the final column on the right, "Monthly equivalent. Monthly total"?

A. Mmm hmm.

Q. That is the amount of interest payable to each of them per month, isn't it?

A. That looks to be what that is.

Q. Do you think the reason it says "Monthly equivalent" is because some of them wanted their payments quarterly or --

A. I don't know.

Q. -- every six months?

If we look at page 10, on the right, towards the bottom, do you see the figure of £88,067.06?

A. Yes, I see that.

Q. That is the monthly interest bill for the Sanctuary investors, isn't it?

A. Is that the whole?

Q. Yes, that is the total of everything above.

A. So, was page 1 of that what we just saw and then we come on to this?

Q. Exactly. This is the bottom of the spreadsheet.

A. It does seem rather a lot for those figures.

Q. How many pages are there to this spreadsheet? Ten pages to the spreadsheet?

A. Okay, fine. Sorry, I thought this was page 1 and then it was page 2. It looked like quite a lot.

Q. This is page 10.

A. Then I can see how you would get there.

Q. I can't remember, in total, how many Sanctuary investors there are. Can you remember, off the top of your head? It's something like 269, isn't it?

A. I don't remember.

Q. Oh, I see. Right at the bottom -- Mr Shaw has pointed it out -- it says 285 clients, right at the bottom of the page. Do you see that?

A. Yes.

Q. Does that look right to you?

A. I don't remember, but I am sure the spreadsheet is correct.

Q. You became a shareholder in Sanctuary International Resorts in June 2013, didn't you?

A. I know I became a director, I can't remember the date.

Q. You became a shareholder as well, did you?

A. I can't remember the date. I can't remember the specifics around that at time. As I say, I was very busy down in Cornwall.

MR ROBINS: Let's see if I can assist. <D2D10-00007428>. I see Ms Dwarka is standing?

MR JUSTICE MILES: We will just -- after this document, I think we might take a break.

MR ROBINS: Do you see that it refers, in the middle of the page, to a charter of 30 shares to you.

A. Yep.

Q. The date at the bottom is 25 June 2013?

A. Yep.

Q. Does that look right to you?

A. It sounds about right at the time. I don't remember the specifics of it, but I am sure that looks correct.

Q. There were 80 shares in total in Sanctuary International Resorts Limited, so you are holding, at this point, 30 out of the 80. Is that right?

A. That looks like what it says, yes.

MR ROBINS: I understand we will have a break now?

MR JUSTICE MILES: Yes, we will take a break now. By that clock over there, we will come back at 3.40 pm. Thank you.

(3.30 pm)

(A short break)

(3.40 pm)

MR ROBINS: Mr Thomson, before we stray too far from it, we were looking at Mr Peacock's spreadsheet about the Sanctuary investors. If we just go back to the covering email <D2D10-00006944>. Do you see he says: "Hi Robert.

"Further to my earlier email, as requested by Andy, the El Cupey client contract summary details are attached."

A. I can see that. I don't remember the email. I don't remember why I was requesting it.

Q. Even though you were focusing on Lakeview, as you said, this is something you were keeping on top of and requesting detailed financial spreadsheets in respect of?

A. I don't know why I requested it. As I say, I was extremely busy, I was several weeks at a time down at Lakeview, a week at home, several weeks down there. It was a very busy time. So I don't remember the email and I don't remember why I asked.

Q. Before the break, we were looking at the shareholding and we got to the point where you had got 30 out of 80 shares in Sanctuary International Resorts. Do you remember you then got a further 25 shares in December 2013?

A. I remember getting the shares, I don't remember the date.

Q. Let's see if we can jog your memory. <D2D10-00007423>. This is -- do you see the date at the bottom? -- 31 December 2013, and in the middle of the page it is a further 25 shares; yes?

A. Mmm hmm.

Q. So, by this point, you had got 55 out of 80, and then, at some point, the shares in the subsidiary company, Sanctuary PCC, were transferred to you, weren't they?

A. I don't remember when they were transferred. I know we looked at the directorships earlier on in Sanctuary PCC. I don't remember when.

Q. Do you think it would have been early 2014?

A. I don't remember. Sorry.

Q. Let's see if we can cast some light on that. <D2D10-00006709>.

This is a group reorganisation paper about International Resorts Group. Do you see it is dated 4 April 2014?

A. Yes.

Q. On page 5, on the right-hand side, there is an oval with your name in it. Below that is a box with "Sanctuary PCC (Guernsey)"?

A. Yes.

Q. Do you see it shows that you own 5 per cent, and then, to the left of that, it says "95 per cent - beneficial ownership. Legal ownership resides with Andy Thomson". Do you see that?

A. Mmm hmm.

Q. So, by this point, you would agree you were owning 100 per cent of the shares in Sanctuary PCC but you held 95 per cent of them on trust for others?

A. Yes. I believe that is what it is saying.

Q. I think we can see the figures if we look over on the left: 71.25 per cent was bare trusts, those were for Mr Golding and family, weren't they?

A. Yes. I held shares in various companies for the Golding family.

Q. Then 23.75 for Helen Hume-Kendall. That is part of the 100 per cent that you held legal title to; yes?

A. I believe so, yes.

Q. So if we go back to your trial witness statement, <C2/1>, page 6, I would just like to clarify.

A. Sorry, could we just go back to the previous document? There was a note at the bottom I was halfway through reading.

Q. Oh, sure.

A. Sorry. Okay, sorry, that is just about --

Q. While we are here. I mean it might be helpful to look at it. On the right-hand side, there is a reference to Inversiones. That is the company that owned The Hill, isn't it?

A. And Tenedora is The Beach.

Q. That is the company that had the contract in respect of The Beach; yes?

A. Yes (inaudible) for 3.5 million and --

Q. That's --

A. -- (overspeaking), I think.

Q. That's a document we saw earlier?

A. Yes.

Q. When we go back to your witness statement, <C2/1>, page 6. At the end of paragraph 18, I just want to clarify -- it might be that you didn't quite choose the right words. You say:

"I never knew the terms on which the properties were acquired save that I believe, in general terms, that no money changed hands."

Are you actually referring there to the shares in Sanctuary rather than the properties?

A. Yes. I think -- hang on, let me just have a read. Yes, I could very well have been talking about how The Hill and The Beach came over. I agree it's not worded the best.

Q. But, as far as you are aware, in general terms, no money changed hands in respect of the shares in Sanctuary?

A. As far as I am aware.

Q. So the ultimate beneficial ownership had been, I think, Ryan Golding, Mark Ingham and Andy Woodcock. Is that right?

A. I seem to remember, yes.

Q. Then, by early 2014, you are holding 100 per cent, but most of that is on trust for Spencer and family and Helen Hume-Kendall?

A. Yes, I mean, the Crowe Clark Whitehill document you took me to was dated in April '14. I don't remember when exactly those transactions happened, but they would have been around that time.

Q. Fair enough. As far as you believe, in general terms, no money changed hands in those transactions?

A. Yes. I would agree with that.

Q. You were a director of a company called One Monday, weren't you?

A. I owned One Monday and I gave that over to Elten and Michael.

Q. You and your wife held the shares in it, I think?

A. Yes, it was a company that I was going to use, I had for -- it was dormant for years, didn't use it. They required a company with a bank account, I was going to close it, I agreed that they took it over.

Q. Let's look at --

A. I handed control over to Elten and Michael and the banking over to them and I didn't have much to do with it after that point. I can see, from what we have gone through, that I wasn't removed as a director and shareholder. I should have been. But can't do anything about that now.

Q. I see. So, when we look at <A1/5/91>, it must be the previous -- ah, no. Next page. One Monday Limited.

A. Yes.

Q. We can see that Debbie Thomson -- that is your wife, is it?

A. That is my wife, yes.

Q. She is a director until 7 August 2013?

A. Mmm hmm. The company was dormant, didn't really do anything.

Q. You are a director from 9 May 2012 to 2 February 2016?

A. I should have been removed before that. Well before that. 2013, I should have been removed.

Q. But you weren't?

A. No. Unfortunately, Mr Peacock, sometimes his administration isn't the best in the world. Indeed, there is a number of directorships he added me to that I shouldn't have been, and then didn't take me off when he should have done. But One Monday was run by Mr Barker and Mr Peacock.

Q. You didn't have anything to do with it, you say?

A. Not much, no. It was used as a -- I believe, a payment services provider.

Q. After what date?

A. I can't remember. It was when Mr Barker became a director, it was around that time, I should have been --

Q. That is not true, is it? You remained in control of One Monday Limited?

A. That is why I should not have been. I didn't run it, Mr Barker and Mr Peacock did. I should have been removed from it, but I wasn't, and I didn't keep an eye on it.

Q. Everyone understood it was your company?

A. Again, I handed the company over. They ran it. I should have been removed, but I wasn't.

Q. Let's look, please, at <MDR00014024>. It is an email from Mr Sedgwick to you on 30 September 2013. In the final sentence he says: "I will also let you have a payment agency agreement for One Monday Limited."?

A. Mmm hmm. That confirms what I just said.

Q. He is saying that because he understands that you are the person in charge of One Monday Limited?

A. I have handed it over to Mr Barker and Mr Peacock and they ran it.

Q. You didn't respond to this email to say, "That's not my company, I have handed over to Mr Barker and Mr Peacock", did you?

A. No. There was a period of working on numerous different things and, again, looking at the time period, we are 2013 and I am up and down to Lakeview and, you know, there is -- it's not a black and white. There is a handover.

Q. By this date, there hadn't been any handover?

A. I don't remember, you know, when I finally, but it was around that time. Yes.

Q. You still had access to One Monday's bank account, didn't you?

A. I think I gave access to Katie Maddock to run the banking.

Q. So is your evidence you didn't have access to One Monday's bank account?

A. I don't remember. I believe I gave it over. I know Mr Barker got added to the bank account. I am not sure if Mr Peacock did. My recollection of the time is, you know, it was a busy period. There was lots going on and we were working as a group.

Q. You were aware at the time that Buss Murton paid a large amount of the additional deposits from the Sanctuary investors to One Monday, weren't you?

A. It is a -- as you can see down at the bottom, it is a -- and that's why I confirmed earlier it was essentially a payment services agreement.

Q. And you administered the payment services agreement?

A. I may very well have had a hand in it during a changeover period. But, as I say, the body of control was the others.

Q. You were kept informed about payment being made to and from One Monday's account, weren't you?

A. I could very well have been. I don't have a recollection.

Q. Well, let's have a look at <D2D10-00006245>. At the bottom of the page, Nicola Wiseman is emailing Mr Sedgwick, copying you, and in the final paragraph she asks him to transfer the remaining £40,000 to the One Monday account. She is copying you because she understood that was an account you operated.

A. We are talking about other things as well, so, you know, One Monday is -- she is messaging Mr Sedgwick, copying me in, I think, possibly because it is to do with John Russell-Murphy dealing with clients.

Q. Nicola Wiseman kept you informed about the --

A. I can see I am in copy on this email. Yes, I can see that, but ...

Q. And she kept you informed about the bank balance on One Monday's bank account, didn't she?

A. I can see that I have been copied in on this email. The emails deals with two different things. Also, you are talking about Lakeview Country Club that I was dealing a lot with. So there is three things she is dealing with on that email. I wouldn't infer from just one email that I am being copied in and operating.

Q. Well, you were kept informed about the balance on One Monday's account and all other related companies, weren't you?

A. You are inferring something from one email.

Q. Let's look at <D2D10-00006247>. Do you see Nicola Wiseman is emailing you with the subject "Balances"?

A. Mmm hmm.

Q. Do you see the date 7 January 2014?

A. I can see that.

Q. The attachment is <D2D10-00006248>. We need to zoom in. If we could look at the top. Do you see the balances, it is "Lakeview Country Club", "Lakeview Operations", "One Monday", "Safe Client Account" and "Sanctuary Client Account"?

A. Yes, I can see all of those.

Q. Then there is Clydesdale, Natwest and Barclays, Sanctuary, Abitus, Leisure & Tourism?

A. And Lakeview operations, down the bottom, and Buss Murton in there as well.

Q. Yes. She is telling you, because you are the man who used to work for the bank; you are in charge of the group's accounts, aren't you?

A. I would say, in terms of banking and paying money, that would be more Mr Barker.

Q. Mr Barker wasn't copied in on the email we have just looked at, was he?

A. I have asked for information.

Q. You were the man from the bank who needed to be told about banking, because that was your responsibility?

A. I wasn't responsible for all the banking for all of these companies.

Q. So was this email from Nicola Wiseman just a one off?

A. I don't remember. I don't remember the email. I don't remember why I was asking for the email. These figures, these types of figures were usually kept by Michael. Nicola worked with Michael, and Mr Barker was the one that operated the various different bank accounts.

Q. Let's look at one just a few days later. <D2D10-00006251>, please. This is the 10th, just three days later. She is sending you the balances and payments again, isn't she?

A. Mmm hmm.

Q. Let's look at the attachment. It is <D2D10-00006254>.

A. The same spreadsheet.

Q. Just a few days later, yes?

A. Mmm hmm.

Q. She updated you very regularly about the balances in these accounts and the payments being made from them, didn't she?

A. I can see she sent these emails. I don't remember these emails, I don't remember the spreadsheet, and the spreadsheet doesn't provide for who is authorising what payments where. You are inferring that I am the banker doing all of this and I am saying that is not quite right.

Q. You were the money man in the group, weren't you?

A. No, I would say that rested with Mr Barker and Mr Peacock. I am being kept informed.

Q. Because you were the man with oversight of the finances of all these companies?

A. No.

Q. You knew what was going into the One Monday bank account and what was coming out of it?

A. I can see she kept me informed.

Q. Can we look at <EB0002122>.

This is an email from you to Mr Sedgwick in April 2015, asking him to transfer £20,000 held in the SAFE client account to One Monday. Do you see that?

A. Because I was responsible for SAFE, that is why I have said that. But we are now a year on from the previous spreadsheet, I think.

Q. Bear with me one moment, Mr Thomson. (Pause).

Could we look, please, at <L1/6>, page 1. Do you recognise this as LCF's annual report for the period ended 30 April 2015?

A. Yes, that is what it says.

Q. If we look at the bottom of page 4, is that your signature on the strategic report?

A. Looks like my signature.

Q. On page 6, is that also your signature?

A. Indeed, looks like my signature.

Q. You would have reviewed these accounts before signing them, wouldn't you?

A. I would have looked through the figures, yes.

Q. You would have looked through the notes as well, wouldn't you?

A. I don't know if I would have paid particular attention to the notes.

Q. Are you saying you signed without looking at the notes?

A. No, I would have signed with having discussions with the accounts that prepared the notes. I would have paid more attention to the figures than reading through the minutiae of the notes.

Q. So are you saying you wouldn't have read through the notes?

A. No, I said I wouldn't have paid as much attention to the notes as I did the figures.

Q. But you would have at least looked at them?

A. I would have had a look through them.

MR JUSTICE MILES: You are aware that the notes are part of the accounts, aren't you?

A. Absolutely. I just would have paid more attention to the figures than the notes is all I am saying.

MR ROBINS: If we look at page 18 of the accounts, we can see a note, note 13, about related party transactions. You are familiar with the concept of related parties?

A. Mmm hmm.

Q. And it says, after the table:

"During the period the company advanced loans of £20,000 ... to Sanctuary International PCC Limited who are the parent company of One Monday Limited. A company connected by common directorship - MA Thomson. One Monday Limited drew down these amounts." Do you see that?

A. Sanctuary PCC wasn't the parent company of One Monday. I don't think.

Q. So are you saying you signed incorrect accounts?

A. I don't think that statement is correct.

Q. You were content for the accountants to disclose a related party transaction involving One Monday, because it was still your company?

A. Yes, by common directorship.

Q. You didn't tell the accountants, no, no, no, I gave it to Elten Barker and Michael Peacock two years ago, did you?

A. Erm, it is clear I didn't do that but they would have put it in there because I hadn't been removed as a director. That doesn't mean that I didn't -- I was running One Monday. The day to day running of One Monday was Mr Barker and Mr Peacock.

Q. You were running One Monday. Everything you have said about giving it to them is untrue, isn't it?

A. No, why would he become a director in 2013 if that was untrue?

Q. That is why Nicola kept giving you the information about the bank statements, it was still a company that you were in control of?

A. No, it was run by Mr Barker. That is why he became the director. And I should have been taken off but I wasn't, so, hence the common directorships. But the parent company of One Monday is (inaudible) I have missed that too.

Q. You knew that Buss Murton was paying a large amount of the additional deposits from the Sanctuary investors into One Monday's account, didn't you?

A. Yes, I was aware of that. Again, they had an agency agreement, I think. Payment agent.

Q. If we look at <MDR00013555>. This is part of the Buss Murton client account. You would have been aware that the Sanctuary investors, Mortlock, Jones, Rundle Bristow and Glenton, were paying additional deposits to Buss Murton?

A. I was aware they were paying additional deposits, I don't remember the specifics of these people. Again, Simon dealt with the roadshow and organising all of that while I was dealing with Lakeview.

Q. Let's look at <MDR00013330>.

Do you see the email from Mr Sedgwick to Simon and you, copied to various. He says:

"In addition to the forms received this morning, I also received a cheque for [almost £18,000] ... from Mr Rundle (no form with it) and a bank credit from Janet Mortlock."

You were kept informed on a day to day basis about the additional deposits being paid to Buss Murton, weren't you?

A. I can see I was sent the email. I don't remember the email, I don't remember these. Just because Robert has pinged me them, doesn't mean I paid them. Because I wasn't dealing with Sanctuary; Simon was. So I didn't pay a whole lot of attention. I was dealing with Lakeview.

Q. You and Simon were dealing with Sanctuary, weren't you?

A. No. Simon -- as I said in my witness statement, Simon dealt with roadshow, he dealt with the Sanctuary investors. Yes, I was copied in, I didn't pay it as much attention as I should have done, because I was dealing with Lakeview. I can't do two things at once. Lakeview was really, really time consuming. We had to renovate a resort whilst it was in the middle of the summer.

Q. Mr Thomson, you weren't copied in, you were one of the two addressees of this email, weren't you?

A. Just because Mr Sedgwick sent me the email, it doesn't mean I have paid it a lot of mind, because it is entitled "Sanctuary", and mentally, Simon is dealing with that, okay, fine, and didn't pay it a whole lot of mind.

Q. Let's look at <MDR00013555>. Is that the same document? So those are the investors who we just saw mentioned. You accept you would have been aware that their deposits were now turning up in --

A. I can see I was on copy, I am just -- I don't think I paid the email a whole lot of attention because it was Sanctuary related at that time, and I was heavily involved with Lakeview and Simon was dealing with Sanctuary. So --

Q. Given the visibility you had over this, you knew the monies were arriving and you knew Buss Murton was paying a large amount of them to One Monday?

A. Yes, I think I have already said that.

Q. If we look at <MDR00194997>, which I think we need to open in native form.

If we scroll up to the top, can you see Mortlock, Jones and Rundle in 8, 9 and 10?

A. Is this a One Monday bank account?

Q. This is the Buss Murton client account. We were just looking at these investors --

A. Oh, the other spreadsheet that you --

Q. Yes, the Buss Murton. Is this a document you would have been familiar with?

A. I don't particularly remember it, no. If it is the Buss Murton client account, I am sure I would have seen it.

Q. If we look down to 157, we can see that all the monies that have come in from the Sanctuary investors, in the sum of almost £958,000, get transferred to another Buss Murton client account. Is that something you would have been aware of?

A. I don't remember that. Which other account did they go to?

Q. Let's have a look at it. <D2D10-00049660>. If we open it in native form, we can see that amount arriving in this account in row 2. Do you see the figure that we were just looking at, almost £158,000?

A. Yes, so which -- this is a different --

Q. This is another Buss Murton --

A. -- client account. Does it have a name?

Q. -- client account. I don't know the name. It seems to be called "S12171/1".

A. Right.

Q. In view of what you have said about your awareness of the payments from Buss Murton to One Monday, could you just specifically confirm, if we look down at row 42 there is a payment there to One Monday, do you see that?

A. Yes. "Further development of site in DR".

Q. That's what it says. Then 47, or is it 48? 47. Do you see that one?

A. Yes. Same thing.

Q. "Properties in the DR". So are you saying that that is what these payments to One Monday were for? Development society in DR?

A. I didn't have control of this spreadsheet, but that's what whoever put that in there says.

Q. You were pointing it out a moment ago. I just wanted to understand if you were relying on it or not?

A. No, this isn't my spreadsheet so I was just reading out what it said.

Q. I see. Then 58. Let's see. That is another One Monday. Do you see that?

A. If this is a lawyer's client account, I imagine this is Mr Sedgwick.

Q. I imagine it is. Then 74.

A. He is just copying, so he is just copying the payment narrative on each one. Nothing has changed on it, so it is the same thing and the same thing.

Q. I see. Then 99, there is another.

You have said earlier you were aware that these monies were being paid to One Monday, yes?

A. I am aware One Monday received them, yes.

Q. It is right, isn't it, that One Monday paid some of these monies to you?

A. I believe I remember 30 grand coming in.

Q. That's right. One Monday also paid some to Mr Golding's company, Clydesdale Properties?

A. Do you know who made that payment?

Q. One Monday.

A. Who authorised that payment?

Q. You authorised that payment.

A. Okay.

Q. Are you aware of that?

A. I don't remember that.

Q. Do you remember that One Monday paid money to Mr Hume-Kendall's company, LV Management?

A. I don't have recollection of those. The only reason I remember the 30,000 is it is in documents that my lawyers took me to earlier.

Q. If we look at <D2D10-00006194>. We can see a One Monday Limited trial balance at 20 November 2013. As a director of that company, you would have seen this, wouldn't you?

A. Not necessarily, no. At the top of that page you have "MP", which I imagine is Michael Peacock, "20 November 2013". Again, Michael ran all the accounting for this and Mr Barker dealt with the banking.

Q. You knew that Sanctuary had paid a large amount of money to One Monday, didn't you?

A. Yes, there was an agreement about it. I believe I confirmed that earlier.

Q. And you knew that One Monday had paid over £500,000 of that money to Clydesdale Properties?

A. I don't remember this and I don't remember the authorisation.

Q. Do you remember that One Monday had paid over £200,000 to LV Management?

A. I don't remember that.

Q. Do you say you didn't know or you don't remember?

A. I don't know. I have no recollection. You are showing me this here and it looks like a trial balance off a Sage spreadsheet, and it has the amounts going to them. What I am saying is I didn't run the bank account and I don't necessarily remember the payments.

Q. Do you remember £100,000 being paid to Mr Russell-Murphy?

A. Erm, the same answer.

Q. Could we just -- I think we saw this earlier, *****@me.com was one of your email addresses, wasn't it?

A. No, that is an iCloud address, it is not an email. ".me" is an iCloud address.

Q. Could you send emails from it?

A. I don't think you can. It's not an email. It is my iCloud reference.

Q. So is it the sort of place where you might have saved documents that you have typed, is that what you are saying, on the Cloud?

A. Things get auto saved, I think.

Q. So documents you have prepared would get --

A. Or documents I have received, if I have saved. Or -- I am not particularly au fait with how iCloud exactly works.

Q. Okay. Could we look at <D1-0000521>. When it says at the top, "from *****@me.com" --

A. Something I have download from an iCloud account.

Q. Or saved to your iCloud account?

A. I don't know. But "*****" is my email address, "*****" is my iCloud.

Q. I see.

A. It's not a --

Q. Do you see the date, 23 September 2014? That is the date you would have saved it or received it, is it?

A. Quite possibly. I don't know how iCloud really works.

Q. Then it says "Clydesdale directors loan". That is going to be a reference to Clydesdale Property developments, isn't it?

A. I guess so.

Q. Then, "£735,000 transferred from SPCC to 1M", that would be?

A. Sanctuary PCC to One Monday.

Q. Yes. And then, "£200,000 paid to LVM", that would be LV Management, wouldn't it?

A. I expect so. I don't know any other LVM.

Q. And then, "£535,000 paid to CPD as directors loan", that would be Clydesdale Property Developments, wouldn't it?

A. I believe so.

Q. Then it says:

"If funds into CPD are a directors loan then AT would have to have withdrawn from 1M, if so a £233,000 tax liability is created, if funds were transferred for SPCC to AT the repatriation of funds drives a £233,000 tax liability!"

Were you concerned that these payments would give rise to a tax liability for you?

A. I don't remember this document. I don't know how it has got into my iCloud. It looks like the narrative at the bottom of it is written about me, so it doesn't look like it is me writing this.

Q. Do you remember being told about a concern regarding a tax liability?

A. No.

Q. But you were aware that money from the Sanctuary investors was being used to make payments to Clydesdale Property Developments and LV Management?

A. I don't particularly remember this at all. And I don't know how it has got into my iCloud.

Q. You knew that money from the Sanctuary investors wasn't being used to develop The Hill, was it?

A. No. They went -- Simon and Elten went over to the Dominican Republic on a regular basis, so did Mark Ingham, and I believed that they were developing the ground work for the resort.

Q. Well, you had on your iCloud a document confirming what we saw in the trial balance; a large amount of the money had been paid to companies associated with Mr Hume-Kendall and Mr Golding, hadn't it?

A. But what I am saying is I don't know how this got on there. It is not an email address that I use. I think it is my iCloud address, I may be wrong. I don't remember this at all.

Q. You were aware --

MR JUSTICE MILES: Sorry, Mr Robins. Just leave aside how this got on to your system or whatever.

A. Yes.

MR JUSTICE MILES: I think the question was were you aware that large amounts of money had been paid to companies associated with Mr Hume-Kendall and Mr Golding?

A. I know some was. I don't know -- I don't have a recollection of exactly how much. Those figures look considerably large. I didn't have access. I didn't run the One Monday bank account, Mr Barker did that. He had control of it. I -- sorry, I don't remember these figures.

MR ROBINS: You were a director, I think you said earlier, of Clydesdale Property Development, weren't you?

A. I can't remember for how long.

Q. So were you aware that over half a million pounds of the money from the Sanctuary investors had been paid from one company of which you were a director to another company of which you were a director?

A. I was asked to be a director of Clydesdale Property just to oversee the sale. Mr Barker ran the bank account for that company. I didn't have anything to do with the bank account.

Q. Mr Thomson, that is completely the wrong way round. Mr Barker dealt with the sale and you dealt with the bank account, didn't you?

A. No. I was asked to go on there by Mr Golding to hold his interest. His family's interest.

Q. You say that, if we look at emails relating to the property sale, they will involve you and not Mr Barker?

A. Sorry, say again?

Q. If we look at emails relating to the sale of property by Clydesdale Development, you say that they would involve you and they would not involve --

A. No, they would involve Mr Barker but Mr Golding's family wanted someone sitting alongside him so they asked me to do it.

Q. It would have involved Mr Barker in those emails and not you, because you weren't involved in the property sales on behalf of Clydesdale Property Development?

A. Just because I wasn't involved in the email, it doesn't mean I didn't meet the buyers, didn't take them round the property. That's what I did. Mr Barker dealt with the banking.

Q. Well, that's not true, is it? Mr Barker dealt with the property sales; you dealt with the banking?

A. That is incorrect.

Q. Are you saying you didn't know that over £500,000 of the money from the Sanctuary investors was paid from One Monday to Clydesdale Property Development?

A. I don't remember that.

Q. Just to be clear, are you saying you didn't know at the time or that you might have known but you can't remember now?

A. I can see it sitting there now, but I don't remember, no.

Q. It is likely that you did know, isn't it, Mr Thomson?

A. I will say again, I don't have a recollection of that.

Q. But it is more likely that you knew than that you didn't know?

A. Again, the same answer.

MR ROBINS: My Lord, I am about to go on to a new topic. I see the time.

MR JUSTICE MILES: We will pause now.

Right, we will return at 10.30 am tomorrow. The same rules apply about not discussing the case.

A. Can I ask one thing. I was approached by a member of the press last night in my hotel, that tried to get me to talk about what we are discussing. I have told them absolutely not. I don't know if my Lord could assist with that?

MR JUSTICE MILES: No, you must not discuss the case with the press. If it is of assistance to you, you can say that I have told you that.

A. Thank you, my Lord.

MR JUSTICE MILES: Right. We will resume at 10.30 am tomorrow.

(4.25 pm)

(The hearing adjourned until 10.30 am the following day)

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