Neutral Citation Number: [2023] EWHC 2148 (Comm)

Case No: CL-2018-000510

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 06/09/2023

Before :

MR JUSTICE ANDREW BAKER

- -

Between :

MICHALIS S. A. KALLAKIS	**Claimant**
- and -	
ACHILLEAS M. KALLAKIS **MICHAEL K. BECKER** **ALLIED IRISH BANKS PLC**	**Defendants**

- -

Julian Malins KC and Linda Hudson (instructed directly) for the **Claimant**
Achilleas Kallakis in person
Neil Kitchener KC, Sandy Phipps and James Fox (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for **Allied Irish Banks plc**
Michael Becker did not appear and was not represented

Hearing dates: 13, 14, 19, 20, 21, 22, 26, 27, 28, 29 June, 6, 7, 10, 17, 18 July 2023

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Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.
Copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. Achilleas Kallakis, named as the third defendant in these proceedings, and Michalis Kallakis, named as the claimant, are father and son. To distinguish between them in this judgment, I shall refer to them by their first names.

2. The Claim Form as issued in July 2018 named AIB Group plc and AIB Group (UK) plc as first and second defendants. Michael Becker, a Swiss lawyer, was named as fourth defendant. By an Order made on the papers on 12 July 2019, I granted permission for Allied Irish Banks plc ('AIB') to be added as fifth defendant, with liberty to any of the defendants (including AIB) to apply for that to be reconsidered.

3. AIB, together with the first and second defendants, sought to strike out the entire Claim, or, in the alternative, a summary dismissal of it. That application was heard by Moulder J, DBE, who gave judgment on it on 28 February 2020: [2020] EWHC 460 (Comm). By her Order of that date, Moulder J struck out some individual claims, but not others, and refused summarily to dismiss the entire Claim. This will not be the first or last time when claims that never had merit are dismissed only after a trial because it was not clear enough, prior to trial, that they were indeed without foundation.

4. By the same Order, Moulder J also varied my earlier Order such that now the claimant had permission to substitute AIB for the first and second defendants, rather than permission to add AIB as an additional defendant. An Amended Claim Form was eventually issued in March 2021 in accordance with that permission, adding AIB as fifth defendant and striking through all reference to the first and second defendants. There were Amended Particulars of Claim to go with the Amended Claim Form.

5. As a result, the proceedings were subsequently listed for the trial of claims brought, at least nominally, by Michalis, against AIB and also, at least nominally, against Achilleas and Mr Becker. That trial came before me in June and July 2023. This is my judgment upon that trial.

6. Michalis was a litigant in person at times during the proceedings, although:

   (i) Darren Stapleford was allowed by Moulder J to speak for him at the hearing of the AIB strike-out application and (I have inferred, although he did not put his name on them) settled or at least helped with the Particulars of Claim and Amended Particulars of Claim. Mr Stapleford was at that time a non-practising barrister whom Achilleas had met in prison when he (Stapleford) was serving a sentence for the fraudulent use of his grandmother's bank account to benefit himself, conduct for which he was eventually disbarred in March 2023. I do not know what Moulder J was told about him that persuaded her to allow him to argue the strike-out application for Michalis;

(ii) Brown Rudnick LLP were on the record for Michalis, acting *pro bono*, between 1 July 2021 and 24 November 2021. As a result, he was represented by them (and by junior counsel instructed by them, who also acted *pro bono*) for the main CMC in the action conducted by Moulder J on 1 November 2021;

(iii) Clyde & Co LLP acted *pro bono* for Michalis in relation to costs budgeting in January 2022;

(iv) CJJ Law and junior counsel acted for him, on a paid basis, for a second CMC before Robin Knowles J on 4 November 2022; and

(v) Michalis was represented for a pre-trial review before Dias J, DBE, on 21 April 2023, and at trial, by Julian Malins KC and Linda Hudson, acting on a direct instruction.

7. Achilleas has been a litigant in person throughout, while AIB has been represented by CMS Cameron McKenna Nabarro Olswang LLP, instructing leading and junior counsel. For the pre-trial review and for trial, counsel for AIB were Neil Kitchener KC, Sandy Phipps and James Fox.

Summary

8. Achilleas was and is profoundly and persistently dishonest in relation to the business with which these proceedings were concerned, namely real property investment business founded upon a fraud he practised as to the value of the properties being acquired. Each property was purchased by a special-purpose company (a 'Kallakis SPV', one per property), using funds advanced by AIB on the basis of a false understanding, induced by Achilleas' fraud, of what was being purchased. The aggregate loan balance owed to AIB was c.£710 million. Some basic factual details in relation to the property loans are set out in the Appendix to this judgment.

9. Achilleas was convicted of the fraud against AIB, and served a lengthy prison sentence. Michalis and Achilleas both accepted that for the purpose of these proceedings the court was bound to proceed on the basis that the conviction established that Achilleas was guilty, as found by the jury, since neither of them sought to rebut the presumption that he was rightly convicted. Achilleas stated that this was a position adopted strictly for these proceedings only, and that he should not be taken, for any other purpose, to have admitted any fraud or dishonesty.

10. For its part, AIB relied on Achilleas' conviction as proof, absent any attempt to rebut it, that Achilleas was guilty as charged; but AIB also relied on the weight of the evidence presented at this trial as demonstrating, so it contended, Achilleas' dishonesty on a host of particular matters that might or might not be individually proved (absent rebuttal) by the conviction, since they might or might not have been strictly necessary to the jury's verdict. Through AIB's skeleton argument for trial, together with some supplemental notes provided for openings, AIB set out a detailed narrative of the background, spelling out the many different ways in which it says Achilleas behaved dishonestly.

11. The true nature and extent of Achilleas' dishonesty is relevant to the position AIB found itself in, when the fraud came to light in and after September 2008, to the question whether Michalis had any title to bring claims against AIB, to the question whether Michalis was acting independently or on Achilleas' direction in bringing those claims, and to Achilleas' credibility when assessing his witness evidence. The acceptance of the conviction, for present purposes, and with it whatever individual propositions of fact must necessarily have been true for Achilleas to have been guilty, therefore does not obviate the need to set out, as I do below, a reasonably full narrative of the original transaction and dishonesty history, as I find it to have been proved by AIB on the evidence at this trial.

12. As I have just alluded to, AIB also alleged, over and above what it said about the original history, that this litigation was commenced and pursued by Michalis as nominee claimant for Achilleas; that the proceedings were in truth brought and pursued by Achilleas, through Michalis and using his name, not independently by Michalis. An aspect of that allegation was that the claims pleaded against Achilleas in the proceedings were contrived.

13. The Amended Claim Form (likewise the Claim Form as originally issued) did not make any claim against Achilleas or Mr Becker. It intimated only a claim against AIB (a similar claim having been asserted against the first and second defendants originally) that AIB:

> "*1. Fraudulently or negligently made misstatements regarding its intentions as mortgagee of the assets [of] a collection of Companies ("the Companies") that were all owned by [Mr Becker] on trust for [Michalis] and others;*
>
> *2. Fraudulently or negligently sold a number of assets (circa 15), mainly properties ("the Assets") owned by the Companies without legal authority or cause to do so;*
>
> *3. Fraudulently or negligently undersold the Assets to a 3rd party without marketing the Assets far and wide, getting a formal independent market valuation and obtaining the best possible price.*
>
> *These actions cause [sic.] the Trust, for which [Mr Becker] was Trustee and Sole Shareholder of the Companies, to suffer loss.*
>
> *[Michalis] claims: for losses suffered directly by him, and by way of an equitable assignment of the Claim by [Mr Becker], and on behalf of the Trust by way of a derivative action.*"

14. The Amended Claim Form thus did not articulate any reason why Mr Becker was named as a defendant; but it might have been inferred from that statement of the claim brought, and the references to Mr Becker within it, that he had been joined as (alleged) trustee in case that was necessary to enable the pursuit of substantive claims against AIB. The Amended Claim Form equally did not articulate any reason why Achilleas was named as a defendant; but in his case, by contrast, it is impossible to infer, from the statement of the claim brought, any explanation at all for his being party to the proceedings.

15. Michalis claimed in evidence to have come to an understanding "*that it was necessary that the Trustee (Michael Becker) should be added as a party*", and to have received a suggestion – from whom he did not say – that "*I should include my Dad since he was Chief Advisor to the Trust*". "*I learned*", Michalis continued, "*that these suggestions were "procedural", and not out of the ordinary*". I do not accept that evidence. It was contained in Michalis' trial witness statement, which I am confident was written for him by Achilleas, or to his order, so that Michalis would tell the story that Achilleas wanted him to tell – in fact, a substantially false story – of how these proceedings came to be brought.

16. I find that these proceedings were brought at the instance of, and to pursue the interests of, Achilleas, using Michalis as his nominee. They were dishonest in conception, inception, and prosecution. They have been an abuse of the court's process, and of a son's misguided loyalty to his father.

17. The proceedings were never lawfully served on Mr Becker, and he has not participated in the proceedings at all. In opening, Mr Malins KC gave a strong provisional indication that any claim against Mr Becker might not be pursued; and any such claim was abandoned by Mr Malins KC's written closing submissions, on the stated basis that Michalis is not satisfied that proceedings were properly served on Mr Becker. I do not consider, however, that there was ever any real intention to pursue any claim against Mr Becker.

18. The claims pleaded against Achilleas were in my judgment a contrivance to enable him to participate in the litigation. They were constructed artificially upon an allegation that Achilleas failed to give proper advice about what to do with the properties when his fraud in relation to their acquisition came to light, which it did in September 2008 just as the global financial crash began, so he could then make common cause with Michalis as (nominal) claimant in trying to blame AIB for not dealing appropriately with the properties, making it to appear that the claim was being brought by an innocent third party rather than by a fraudster against the victim of his fraud. Glaringly absent were the obvious claims to make against Achilleas (and Mr Becker) that Achilleas, with Mr Becker's knowing assistance, took for himself or used for his own benefit very substantial sums, perhaps approaching £80 million of the funds lent by AIB, for example, that ought to have been trust property to which he had no right and should have been given no access if the companies were indirectly owned by Mr Becker as trustee for Michalis and his siblings, as now alleged.

19. In any event, the claims against Mr Becker and Achilleas are unfounded on the facts. The allegation pleaded was that as trustee of and advisor to a trust called the Hermitage Syndicated Trust ('the HST'), they "*negligently allowed AIB to deplete the HST of all of its assets and value*". I find, to the contrary, that AIB exercised security rights it had, and did so reasonably and in good faith, in respect of the properties whose acquisition AIB had funded by secured lending, realising proper value for them, albeit value that left insolvent and valueless the Kallakis SPVs whose parent companies' shares are alleged to have been held by Mr Becker as trustee of the HST. Neither Mr Becker nor Achilleas was in any position to procure a better outcome for those companies.

20. The claims against AIB are also without foundation on the facts. In summary, AIB did not:

    (i) misstate its intentions as mortgagee of the assets;

    (ii) sell any of the assets without legal authority or cause; or

    (iii) undersell the assets so as to obtain less than the best price reasonably obtainable for them (although it is true that they sold them without marketing them far and wide, and without getting a formal independent market valuation).

21. An unjust enrichment claim, devoid of any analysis or particulars, was also pleaded against AIB, although no such claim was within the scope of the Claim Form (for which, see paragraph 13 above). As formulated in Mr Malins KC's closing argument, the suggestion was that if the value of the Kallakis portfolio, as sold by AIB, exceeded the debt owed to AIB at the time of sale, "*then AIB was enriched to the extent of the difference*", and "*AIB's retention [of that enrichment] is obviously unjust*".

22. That is a hopeless contention. AIB lawfully sold the properties, pursuant to the security documents, for c.£57 million less than the debt it was owed. It was not enriched by any difference (if there was one) between a higher aggregate value at which the portfolio might have been sold and the price at which AIB in fact sold it. If the existence of such a difference in value amounted to an enrichment of AIB, it would have been enrichment at the expense of the Kallakis SPVs, not at Michalis' expense, even if (as he alleged) the SPVs' parent companies were owned by Mr Becker as trustee of the HST, and Michalis was a beneficiary of the HST; and the Kallakis SPVs would not have had an unjust enrichment claim, they would have had (if at all) a claim for breach by AIB of its equitable duty as mortgagee to obtain a proper price for the portfolio in late November 2008, having chosen to exercise then its accrued right to sell.

23. AIB in fact sold the properties for a little over £650 million, which I find was at least £100 million more than could realistically have been realised in late November 2008 from an ordinary, open-market sale. The Kallakis SPVs could not have complained, and would have had no claim against AIB, if AIB had simply sold (directly or by appointing a security enforcement receiver) so as to realise £500-550 million, leaving at least £100 million more in debt owed to AIB that the SPVs could never pay than the £57 million or so that AIB was in fact left having to write off.

24. The very much higher price obtained by AIB (c.£650 million) was obtained at the cost, to AIB, of funding the purchasers' acquisition and management of the properties on a non-recourse basis. The mortgagor companies could not have complained if AIB had been unwilling to bear any such cost. A complaint made that AIB should have offered the opportunity of acquiring the properties on an AIB-funded, non-recourse basis to others, hoping for an even higher sale price that it would then have had to fund, was misconceived, and was not pursued by Mr Malins KC in closing argument.

25. In return for its non-recourse funding, the transactions by which the properties were sold entitled AIB to a species of profit share, some 35% of a measure set out in the transaction documents of, in effect, ultimate net capital profit (if any) generated across the portfolio. No claim was made that some net present value of that right as at 21 November 2008 (the date of the portfolio sale by AIB) should have been credited against the £57 million debt balance, and no attempt was made to assess any such value, let alone to suggest that it might have exceeded that debt balance or to claim that, if it did, AIB could be said to have achieved a surplus on the sale that ought to have gone to the mortgagors.

26. In the event, no profit share came to be payable, and AIB's unchallenged evidence was that it lost nearly £100 million on the funding facility it granted to the purchasers as part of the sale. Given the approach to causation and remoteness of loss that is adopted when compensating victims of fraud, it is not obvious why, stepping back, and far from AIB having some liability, Achilleas and the mortgagor companies whom he represented in his relevant dealings with AIB were not liable to AIB for that loss, on top of the £57 million shortfall on the original funding.

27. In any event, I find that Michalis never had title to sue, in that:

    (i) the property-owning companies were (indirectly) owned by Mr Becker as nominee for Achilleas as beneficial owner, not as trustee of the HST (which, if it existed at all, was and is a sham device for pretending that assets are not beneficially owned by Achilleas);

    (ii) the claims in Michalis' name asserted by the Amended Particulars of Claim were purported claims of his in the following alleged capacities only, namely:

        (a) personally, as a beneficiary of the HST;

        (b) as assignee of claims against AIB vested in Mr Becker as trustee of the HST; and/or

        (c) on behalf of the HST, or on behalf of its trustee or trustees, as a derivative claim;

    (iii) it follows from (i) above that no such claims would have existed even if AIB had dealt with the assets inappropriately. For completeness, I note that any claims by Michalis as alleged assignee ((ii)(b) above) and any derivative claims ((ii)(c) above) were in any event abandoned by Mr Malins KC in closing argument, on the stated basis of a concession that any such claims were time barred, as indeed, beyond argument, they were; and

    (iv) although Mr Malins KC advanced a suggestion that there could be judgment in Michalis' favour on the basis that any duty of care owed by AIB not to misstate its intentions (paragraph 20(i) above), and/or AIB's duty to sell at the best price reasonably obtainable (paragraph 20(iii) above), was owed also to Michalis personally as (at the time) a

dependent child of Achilleas, (a) no such claim was available on the pleadings, and (b) no such claim is sensibly arguable.

28. All the claims in these proceedings will therefore be dismissed. The remainder of this judgment sets out the main factual narrative to which I referred in paragraph 10 above, followed by my reasons for reaching the conclusions I have now summarised (where the summary I have given is not already as much as I think needs to be said).

Main Narrative

29. Achilleas was born in 1968, and brought up, as Stefanos Michalis Kollakis. He is a grandson of the Kappa Maritime shipping magnate Stefanos Kollakis from the Greek island of Chios. Achilleas' grandfather Stefanos had three sons. One of them, Achilleas' uncle Pantellis 'Lou' Kollakis, took over responsibility for the family shipping business. Achilleas and his father, Michael Kollakis, have never had any role in or responsibility for that business. Michael Kollakis was a port captain who later (in the early 1990s) ran an unsuccessful nightclub in Liverpool.

30. At university, Achilleas met Martin Alexander Lewis, who is now Alexander ('Alex') Williams. They embarked upon a life of acquisitive dishonesty using fraud and forgery. In 1993, Mr Williams was convicted of fraud offences involving the use of the identities of deceased individuals to create fake UK passports. In 1995, he and Achilleas were convicted together at Southwark Crown Court, on their guilty pleas, of conspiring to commit forgery, and were given community sentences. That related to their use of elaborately forged purported heraldic titles bearing wax seals issued by bogus organisations they had created (such as the 'Institution of Heraldic Affairs') and (or so it was reported at the time) the forged signature of Lord Denning.

31. The fake heraldic titles were sold to victims in the US and the Middle East. The biggest losers were reportedly a couple in the US who parted with US$63,000. The fraudsters were described in press reports as a "*travel agent*" (Achilleas) and "*jobless*" (Mr Williams).

32. After the 1995 convictions, in the hope (as I find) that it would enable them to embark on other business without their criminal record coming to light, the two rogues changed their names by statutory declaration. Thus, Stefanos Kollakis became Achilleas Kallakis, and Martin Lewis became Alex Williams. For over a decade, they successfully avoided being identified as the fraudsters Kollakis and Lewis; and under their new identities they developed a mortgage fraud that grew to the staggering proportions already summarised (paragraph 8 above and the Appendix below) and beyond (AIB was not the only bank they duped).

33. During that period, Achilleas married and had four children: a daughter; then twin sons, one of whom is Michalis; then another son. Michalis claimed to have the support of his siblings (albeit not their financial support) for the bringing and pursuit of these proceedings. There is no evidence for that apart from his word, which I regret to say I do not consider I can trust. None of his

siblings gave evidence or (so far as was shown to me) played any other part in the proceedings.

34. As will tend to happen, Achilleas' and Alex Williams' dishonest past caught up with them eventually. In May 2008, AIB was alerted by another bank to the possibility that Achilleas had been Stefanos Kollakis and had been convicted under that name of the bogus heraldic titles fraud. From there, the mortgage fraud eventually unravelled, culminating in convictions by a jury at Southwark Crown Court in 2013 and lengthy prison sentences (7 years for Achilleas, increased to 11 years by the Court of Appeal on an Attorney-General's reference, and 5 years for Williams, increased to 8 years: [2013] EWCA Crim 709; an application by Achilleas some years later for leave to appeal against sentence out of time was dismissed by a differently constituted Court of Appeal: [2017] EWCA Crim 2461).

35. There were some initial property transactions conducted with Bristol & West in the early 2000s. A purported reference from that bank dated 20 June 2002 was then created, addressed to Mark Jeffers at property finance brokers CLP Structured Finance ('CLP') and apparently under the name of, and signed by, David Nicholson, a Commercial Loans Manager at Bristol & West with whom Achilleas and Mr Williams may have dealt. The content of that letter, and a supposed c.v. of Achilleas that went with it, was wildly inaccurate as regards Achilleas' background, business experience and wealth.

36. Though Achilleas refused to accept it when he was cross-examined by Mr Kitchener KC, I am confident that this 'Bristol & West' letter was a forgery, created by him or on his instruction. The cross-examination also afforded a glimpse into a rather self-satisfied, but also callous and manipulative, side to Achilleas' nature:

"*A: … we had done quite a bit of business with Bristol & West.*

Q: Well, I don't accept that. But let's have a look at what your father was doing in 1992 when it was suggested [in the 'Bristol & West' letter] that he retired or semi-retired in order to give you room to take over as chairman of this group. If we go to [doc. ref.]?

A: Yes, but just to be clear I didn't say that I took over as –

Q: Of course you did.

A: I am not saying that.

Q: Of course you did. That is in the first paragraph of this letter.

A: Yes, well, I have already said I don't think that was correct at all. I mean, it isn't correct.

Q: How on earth did they get -- whoever wrote this letter, how on earth did they get that impression?

A: I don't know, ask David [Nicholson].

Q: Well, yes. I mean that is a fairly revolting suggestion, isn't it, given that you know that he has passed away?

A: There you go."

37. To give a flavour of the extent of the falsity of the purported Bristol & West reference:

(i) It claimed that Achilleas was "*appointed Chairman and CEO of the Pacific Group of Companies, a substantial privately owned group, built on and around its shipping interests in 1992 (at the age of 24) following the semi-retirement of his father*", none of which was true (save, possibly, for the detail that by June 2002, Achilleas may have been styling himself as Chairman and CEO of a 'Pacific Group of Companies'). The truth in 1992 was that Achilleas was conducting his heraldic titles fraud with Williams, and may have been working as a travel agent, and his father was in Liverpool trying to make a success of the nightclub.

(ii) It went on to state that Achilleas' 'Pacific Group of Companies' had "*considerable property interests on a global scale, which began with various acquisitions of ports and properties close to ports to facilitate their principal operations. This has naturally expanded, and in the UK Mr Kallakis has recently undertaken two major refurbishment projects on prime west end office properties which have been undertaken with senior debt provided by Bristol & West plc. His ambition is to build a substantial UK portfolio of prime properties, either in his own right or in conjunction with outside groups.*" The first sentence was an utterly false financial origin story for Achilleas' real property adventures, rendering the second sentence misleading even if the description given of two property projects funded by Bristol & West may have been largely accurate in itself. The third sentence was no doubt true, but it failed to note that Achilleas' intended method for achieving his ambition was fraudulent.

(iii) The letter went on:

"*The Kallakis family has been involved in the shipping industry since the 1860's – approaching 150 years. They have grown to become the world's largest privately owned shipping group, operating a substantial fleet of Bulk carriers, Oil tankers and Cruise liners (operated as a charter fleet) in the Baltic and Mediterranean. Guestimates [sic.] as to the size of the group are frequently made in the various "Rich Lists" that are published from time to time.*

Under the direction of Achilleas Kallakis the group diversified in the early 90's to include property management and ownership. They have large amounts of property under their management in the UK, in particular the group specialise in the regeneration of property located in and around ports where their experience is most effectively utilised. In addition, Mr Kallakis has begun to use this experience of

> *regenerating and renovating properties to build an investment portfolio in his own right*." (my underlining).
>
> The statement I have underlined was of course true. The rest was fiction, even if (which I do not have the evidence to judge one way or the other) some or all of its content might have been true of the *Kollakis* family business empire that had nothing to do with Achilleas, albeit he was by blood a member of the Kollakis family.

38. There were also from about that time:

    (i) dated 5 July 2002, and addressed to Mr Nicholson of Bristol & West, a forged reference for Mr Williams supposedly from Credit Suisse; and

    (ii) dated 10 August 2002, a forged reference for Achilleas addressed to whom it may concern supposedly from Lord Harris of High Cross, a prominent economist who had worked at the Institute of Economic Affairs and may have known Mr Williams' father.

    Mr Williams' attempts in evidence to suggest that these were or might have been genuine were, I regret to say, laughable.

39. The probability is that any property transactions undertaken with funding from Bristol & West involved fraud on the part of Achilleas and Mr Williams; but that did not come to light except as part of the much later prosecution that led to their convictions for defrauding AIB and Bank of Scotland. There was no evidence or suggestion that any Bristol & West funding was not fully repaid in accordance with its terms. I consider that the success of those transactions will have emboldened Achilleas, in the consistently rising property market of the 2000s up to the credit crunch that arose from the late summer of 2007 and led eventually to the global financial crash from mid-September 2008.

40. In his written opening (and in materially similar terms in his written closing), Mr Malins KC invited the view that "*in contra distinction to many, perhaps most, fraud cases, it is plain that the intention of [Achilleas'] deceits [upon AIB] was to obtain the loans and thereafter to make money legitimately through property developments and improvements and not simply to run off with moneys transferred at some time in the future (unlike a Ponzi scheme fraudster).*" I do not agree that there is any relevant distinction to be drawn. Achilleas' essential trick was to tell lies about the transactions he was proposing, backed up by fake documents, to cause AIB to lend substantially more than was needed to fund the transactions that Achilleas was actually concluding. He would then be able to, and did, help himself to the surplus funds he had generated.

41. True it is there were real property transactions that Achilleas hoped would be sufficiently profitable that AIB's funding would be fully repaid. The game was to monetise dishonestly up front, whereby to fund a lavish personal lifestyle, profits Achilleas hoped he would make, and might perhaps have made if the property market had not turned, but which he was not in a position to seek out honestly. I accept that is not a Ponzi scheme, in which investors or lenders are

repaid out of subsequent investors' or lenders' funds, rather than out of real investment returns, although some of the evidence hinted at the possibility that surplus AIB loan funds generated from later loans may have been needed, in part, to keep up with servicing all the prior loans. However, even if there was no 'Ponzi' element here, I do not accept the idea that Achilleas' dishonest scheme should be thought less wicked. In particular, given that the entirety of AIB's funding was procured by fraud, I reject the submission that there would have been anything legitimate about generating a profit, had Achilleas done so, on the bulk of the funds provided by AIB that was used for the real property transactions.

42. That is not just a formal point that (a) the AIB loans were procured by fraud and (b) they were loans in the amounts actually advanced. It was an essential ingredient of AIB's willingness to lend that it understood Achilleas to be providing substantial funds from his own wealth, when in truth he was not doing so or in any position to do so. Without his dishonest method, Achilleas' property empire (as it became) could not have got started, and he would have had to find some other means of making a living.

43. Achilleas was introduced to AIB in 2003 by CLP. In September 2003, CLP approached Andy Rogers of AIB on behalf of Achilleas, seeking funding for the purchase of a building at 355 Euston Road, near Regent's Park in London. CLP provided AIB with the fake Bristol & West letter and accompanying false c.v. for Achilleas. AIB accepted the proposal and funded the purchase of 355 Euston Road by an SPV, Andromeda Alliance Inc. The property was leased to and occupied by Network Rail. It was later sold at a profit and AIB's lending was repaid in full. Andromeda was then free to be used again, and was in fact used, for a later transaction (see the Appendix, below).

44. As presented to AIB by CLP, on Achilleas' instructions, and by Achilleas personally, 355 Euston Road was to be leased to a subsidiary of Sun Hung Kai Properties Limited ('SHKP'), so that Network Rail would become a sub-lessee rather than the Kallakis SPV's direct tenant. SHKP was and is a listed Hong Kong property development company owned and controlled by the Kwok family, and one of the largest, perhaps the largest, property developer in Hong Kong. This supposed head lease was to be for 20 years at a high rent (against then current market levels) with upwards-only reviews, with a guarantee of the rental covenant from SHKP itself.

45. The supposed involvement of SHKP, or any SHKP subsidiary, was fictional, however, and this was the principal fraudulent device used by Achilleas in his dealings with AIB, together with his Walter-Mitty-esque fictional backstory. It enabled him to present to AIB, as he did, a truthful account of the purchase cost of 355 Euston Road (a purchase price of £16.5 million plus transaction costs estimated at £1 million), yet to persuade them to lend more than that cost (£18.88 million). Achilleas' claimed backstory was accepted at face value by AIB, as apparently supported by the forged Bristol & West reference. He was described in the internal credit approval request as "*a very wealthy shipping magnate of Greek origin (British Citizen) and head of the family's business empire – the Pacific Group of Companies*".

46. Without the supposed SHKP covenant, AIB would have valued 355 Euston Road at £16.5 million and would have been willing to lend up to 70%, that is £11.55 million, requiring Achilleas to find £4.95 million plus transaction costs (say, £5.95 million). However, with the length and strength of the supposed SHKP rent covenant, AIB valued 355 Euston Road at £23.6 million and was prepared to lend up to 80%, that is £18.88 million. Achilleas falsely represented that the head lease was to be purchased for a 'reverse premium' of £4 million, to be paid at the outset to the SHKP lessee, and a profit-share clause in the SHKP lessee's favour.

47. On that basis, AIB understood the total transaction cost for Achilleas to be £21.5 million (£16.5 million to purchase the property, £4 million to purchase the head lease, plus (say) £1 million in transaction costs), so that his 'equity' contribution was reduced to £2.62 million. That appeared to be a 'win win'. With the benefit of hindsight, it might be thought to look rather too good to be true, but it is neither moral excuse nor legal defence if the victim of a fraud is more readily taken in than perhaps they should have been. Looking back, it is no surprise to find that when AIB came to review how it had been duped, so as to learn lessons for the future, its failure to do any independent due diligence on the claimed SHKP connection, trusting instead to information and documentation that all came to AIB through Achilleas, was highlighted.

48. Thus, AIB was induced to approve lending for 355 Euston Road of c.108% of Achilleas' actual total funding requirement, on a true LTV ratio of nearly 115%, believing itself to have approved lending of only c.88% of the total funding requirement on an LTV ratio of 80%. Achilleas made an immediate dishonest profit of £1.4 million (plus or minus any difference between actual transaction costs and the estimate of £1 million to which I have referred).

49. For the 355 Euston Road transaction, AIB was given *inter alia* the following forged documents:

    (i) a copy of a purported SHKP board minute apparently signed by SHKP directors Walter Kwok and Mike Wong, recording that the supposed head tenant, Causeway Capital Corporation, was a subsidiary of SHKP and that the transaction presented the opportunity to benefit from capital and rental growth and a possible regearing of the underlease (i.e. the Network Rail lease), and authorising Messrs Kwok and Wong to sign the transaction documents;

    (ii) a copy of a purported guarantee by SHKP of Causeway's obligations apparently signed by Messrs Kwok and Wong;

    (iii) copies of other documents purportedly signed by one 'James Ng' on behalf of Causeway, including an invoice for a reverse premium of £4 million and a letter confirming that the money had been received by Causeway.

50. Mr Wong and Mr Kwok were directors of SHKP, but neither they nor SHKP had anything to do with the transaction or with Causeway. 'James Ng' was entirely fictional. Mr Kwok and Mr Wong were later to tell AIB, and gave

evidence to the Crown Court, that neither SHKP nor any of its subsidiaries had ever employed any such person; and no trace of any 'James Ng' has been found in the 15 years since the fraud was uncovered. Perhaps needless to say, no reverse premium was paid to Causeway.

51. Part of AIB's due diligence before the 355 Euston Road transaction completed was to ask about the beneficial ownership of Andromeda and the source of the funds which would comprise the supposed equity contribution. AIB received a letter dated 27 October 2003 apparently from and signed by Mr Becker stating that:

    (i) Mr Becker handled "*a number of fiscal responsibilities and capacities for the Kallakis family*";

    (ii) Andromeda's source of funds for the transaction (other than the AIB lending, obviously) was a loan of £4 million from its parent company, Cassiopeia Alliance Inc, the funds for which had "*come directly from profits derived from the trading, sales and capital growth of other companies controlled by the family*"; and

    (iii) "*Andromeda Alliance Inc is beneficially owned by Cassiopeia Alliance Inc and … the beneficial owner of Cassiopeia Alliance Inc is Mr Achilleas Kallakis.*"

52. There might be room to debate whether that final statement was inaccurate, or incomplete so as to be misleading, if the true ownership position was that the shares in Cassiopeia were held by Mr Becker as trustee for a trust of which Achilleas was the beneficiary. But the substance conveyed by that statement that in my judgment would have mattered to AIB would still have been true, namely that Andromeda (and therefore, ultimately, 355 Euston Road once purchased) was indirectly beneficially owned by Achilleas. Without doubt, the statement would have been untrue if, as was alleged in these proceedings, the shares in Cassiopeia were actually held by Mr Becker as trustee for the HST, of which Michalis and his siblings were the only beneficiaries and from which Achilleas had been excluded. Come what may, the letter was false in its claim that Andromeda would contribute to the 355 Euston Road transaction from funds that were independent of AIB's lending.

53. I have no doubt that Achilleas knew and intended that letter to convey that he was the (indirect) beneficial owner of Andromeda (and therefore, it would be, of 355 Euston Road once acquired). That is also what he told Lee Medlock, a solicitor at Speechly Bircham whom he instructed to act for Andromeda in relation to the transaction. Mr Medlock's attendance note of 22 October 2003 records Achilleas as having confirmed that he (Achilleas) was the beneficial owner of Andromeda, and that SHKP was the beneficial owner of Causeway. In the Crown Court, Achilleas claimed to have no recollection of giving that confirmation to Mr Medlock, and said it could not have happened because he was in Mauritius at the time. But Mr Medlock testified that the meeting was a telephone call of which he had a specific recollection, and that he recalled it had taken place because the solicitors acting for AIB in the transaction had asked for confirmation of Andromeda's beneficial owner.

54. Achilleas claimed in his evidence before me not to appreciate that the letter conveyed that he was the beneficial owner of Cassiopeia (and thus, indirectly, the beneficial owner of Andromeda), and not to have intended that. He sought to rely upon the fact that the shares were bearer shares and a story about changes of intention over whether the company might be used for a transaction for Mr Becker's own benefit. I am confident that was all a smokescreen. It was also a prepared script for which he had sought to lay the ground by producing on the eve of the trial a document that purported to be a copy of a resolution by Mr Becker as sole director of Cassiopeia (i) requiring the bearer shares in Cassiopeia to be "*retrieved from Mr. Achilleas M. Kallakis and given to Michael Becker*" and (ii) declaring that Mr Becker held the bearer shares on behalf of the HST, as trustee of the HST.

55. In cross-examination, Mr Kitchener KC confronted Achilleas with the fact that this made no sense – Mr Becker *qua* director of Cassiopeia would have had no business issuing orders as to who was to hold the shares or on what basis. Achilleas had no answer to that. More fully: he acknowledged the point (the document made no sense); but he had no answer to the obvious consequence, namely that Mr Becker (whether honest or dishonest) would surely never have written such nonsense, or to the inference to be drawn that the document was a recent fabrication by Achilleas intended for use at trial to bolster what he had thought (wrongly) was a clever way of talking himself out of having told AIB at the time that he was the sole beneficial interest under the 355 Euston Road transaction.

56. Achilleas disclosed in these proceedings a copy of what purports to be a letter from him under a 'Pacific Group of Companies' letterhead to CLP (Mr Jeffers) dated 17 September 2003 stating *inter alia* as follows: "*Concerning the … Heads of Terms …, as I mentioned the other day, whilst the Borrower is an SPV (BVI), it will be owned itself by my childrens' [sic.] Trust, so I am not sure whether this is to be reflected on this document (if at all) or if it just goes on the record internally at AIB……or maybe there is to be a final loan document that the Trustee/Sole Director signs. I got the impression that the Bank would prefer the simplest KYC route, which is fine by us, but I wanted to just clear it up from a legal and structural perspective.*" I do not accept that this is a genuine document. There is no record of Mr Jeffers raising the point with AIB, as surely he would have done if he had received this letter. It is inconsistent with what, at the time, Achilleas told AIB, directly and through the 27 October Becker letter, and Speechly Bircham, his own transaction solicitors; and the reference to AIB wishing things to be steered in a way that made KYC simpler does not ring true at all. As AIB's witnesses made clear, and as one would expect, the bank's KYC processes would follow the facts as stated by the customer, they would not drive a steer by the bank to the customer as to what the facts should preferably be.

57. The next AIB/Achilleas transaction was the purchase of India Buildings in Liverpool in January 2004. That transaction and all those that followed, with some changes of detail, used the same structure as was used for 355 Euston Road:

(i) A property was identified by Achilleas for purchase (or, in two cases, for refinance).

(ii) The purchaser and borrower (i.e. the 'Kallakis SPV', as I have defined the term) was a bearer share company incorporated in the BVI of which Mr Becker was the director and another BVI company was the parent. There was a separate Kallakis SPV for each purchase, but there were only four SPV parents: Cassiopeia; Evergreen Equities SA; Silver Angel Investments SA; and Galileo Acquisitions SA. The SPV parent deposited the share certificate in the Kallakis SPV with Mayer Brown, AIB's solicitors, under cover of a letter confirming that it was the sole beneficial owner of that Kallakis SPV.

(iii) Two of the properties were residential (apartments in West Eaton Place and Ennismore Gardens, London). In every other case, there was supposedly a valuable head lease. Ten (of twelve) supposed head tenants were represented to be SHKP subsidiaries. The other two were Oregon Finance Corp and an Oregon subsidiary. Oregon Finance Corp was a BVI company presented by Achilleas as being hugely asset-rich and valuable, but which was in fact, as he knew full well, a worthless shell.

(iv) The purported head tenants were supposed to be paid reverse premiums or other funding (for example, in the India Buildings transaction, the SPV parent was supposedly providing £11 million by way of equity contribution to the head tenant), in exchange for entering into the head leases. Where the purported head tenant was supposedly an SHKP subsidiary, AIB received receipts signed by 'James Ng' purporting to confirm receipt of reverse premiums although none was ever paid.

(v) The properties were managed after acquisition by Atlas Management Corporation Limited ('Atlas'). Mr Williams was the director of Atlas, and its day to day general manager, but he, and therefore Atlas, was subservient to Achilleas and under his general control. Atlas' role was purportedly formalised in agreements between it and the supposed head tenants under which it was appointed to act as managing agent in exchange for fees.

58. As part of the India Buildings transaction, AIB again sought confirmation as to beneficial ownership interests. AIB was again effectively told that Achilleas was the beneficial owner:

(i) Through Mayer Brown, AIB asked for a letter similar to the 27 October 2003 letter, confirming the beneficial ownership of the SPV and its SPV parent, in terms making clear that AIB understood the position to be that Achilleas was the beneficial owner.

(ii) A draft for a letter from Mr Becker was created that would have stated that the SPV "*is beneficially owned by Silver Angel Investments S.A. and … the beneficial owner of Silver Angel Investments S.A. is*

Cranskill Limited. Mr Achilleas Kallakis is the beneficial owner of Cranskill Limited".

(iii) Concerns were raised by AIB that Mr Becker was not sufficiently independent to certify beneficial ownership. An initial solution suggested was for another person at his firm to sign the letter, but in the event it was decided instead that Mr Becker should sign the letter but omit the paragraph about beneficial ownership, and that is the form in which a letter was ultimately provided to AIB, apparently signed by Mr Becker on 11 January 2004.

(iv) Taylor Wessing, the solicitors acting on Achilleas' side of the deal, sent an email to Mayer Brown on 7 January 2004, confirming that "*the details of the intended holding company of Silver Angel Investments SA are BVI incorporated Cranskill Limited (company number 570371), owned by Achilleas Kallakis and Michael Becker*". In context, I do not think that could have been intended or would have been understood to indicate that Mr Becker had any beneficial interest, rather than that he may have held shares for Achilleas as beneficial owner.

59. The picture presented to AIB during the first two transactions was therefore that Achilleas was the principal, and sole beneficial interest, behind the transactions, while Mr Becker was the director of the Kallakis SPV through which Achilleas indirectly held his interest. There was no mention of the HST, and no suggestion that Achilleas had no personal interest in the transactions. AIB was never shown any documentation relating to the HST, or to any other trust.

60. AIB proceeded thereafter on the faith of what it had been told on the initial transactions, and on the understanding (therefore) that the property purchases were all ultimately, beneficially, for Achilleas, through the SPV ownership structure. It is clear from some of the documents I was shown and some of the witness evidence at trial that Achilleas may have made mention, at and from an early stage of the relationship with AIB, of the existence of some kind of family trust as a source of funds or repository of family wealth. However, (a) the possible existence of such a trust, to which Achilleas had access, does not imply and would not have conveyed that it had any beneficial interest in the property transactions being funded by AIB, and (b) on no view was AIB ever told that Achilleas was in fact *excluded* from having any beneficial interest in those transactions, which was the claim made in these proceedings.

61. Mr Cooke, who was called as a factual witness by Michalis, had allowed himself to refer in his trial witness statement to the HST and to Achilleas' children being the beneficiaries, rather than Achilleas, as if that was something he understood when dealing with Achilleas as AIB's relationship manager. It was clear to me from his cross-examination, however, that he has no such recollection, and in my judgment any awareness he now has of the HST by name or by supposed connection to the Kallakis portfolio comes from his later participation, as a prosecution witness, in the Crown Court proceedings, in which Achilleas sought to connect the HST to the transactions as he has done in these proceedings. I prefer and accept Mr Muldowney's evidence, and that

of the documents, that AIB was always given to understand that Achilleas was the sole beneficial interest, and that it would have conducted KYC processes on any non-Achilleas beneficiaries if it had been told there were any, but did not do so because that was never said.

62. The process by which Achilleas took his dishonest up-front profits out of AIB loan funds can be illustrated by the purchase of Hanover House by Andromeda in July 2005:

(i) The loan facility was for £8.6 million and was fully drawn down.

(ii) A drawdown notice for 7 July 2005 itemised the purchase price and the costs and expenses of the transaction, and showed a balance of c.£1.86 million to be paid to Carter Lemon Camerons ('CLC'), solicitors acting for the purchaser/borrower.

(iii) A payment instruction from Andromeda, signed by Mr Williams, directed CLC to pay that transaction surplus to a "*Michael Becker Client Account*" at Banca Coop in Lugano.

(iv) A purported receipt from Causeway, supposedly signed by 'James Ng', was created supposedly confirming the receipt of a reverse premium of £2.2 million, but no such payment had been made.

(v) The Banca Coop account was an account opened by Mr Becker in the name of the HST, under his control as account signatory, but he was acting as nominee for Achilleas and beneficially it was Achilleas' account. Mr Becker declared to Banca Coop in the account opening documentation that Achilleas was the sole beneficial owner of the account, and Achilleas treated any funds held in the account as his to use as he pleased for his own purposes. For example, he used it extensively to cover his and his wife's lavish personal expenditure on American Express cards, including the purchase of expensive jewellery as gifts for his wife. Achilleas sought to suggest in evidence that buying such gifts constituted investing on behalf of the HST. That is nonsense, as I am sure Achilleas knows full well; and it is absurd to suppose that Mr Becker would have allowed Achilleas free access to the Banca Coop funds as he did, if he controlled those funds as trustee for a trust from which Achilleas was excluded.

63. As regards the forging of the purported SHKP documents, the evidence and the probabilities point towards Mr Williams as the forger, as he was the person to whom all documents supposedly executed by Hong Kong parties were sent and he was the experienced document forger in Achilleas' team:

(i) CLC would send Mr Williams sets of documents supposedly to be signed by SHKP parties, noting that: "*[a]s on previous transactions similarly structured, this firm is acting only for the acquiring company and not any other party. We are sending these to you as you have a relationship with* [the SHKP parties in question] *under which you can arrange execution of the documents if they are approved.*"

(ii) While the borrowers' solicitors, such as CLC, were responsible for obtaining most legal opinions required on the transactions, Mr Williams would obtain purported opinions from a firm called Haldanes regarding the effectiveness of the guarantees as a matter of Hong Kong law. For example, a checklist for the 111 Buckingham Palace Road transaction noted that: "*Haldanes comes with Alex – Bring to 10AS with signed docs please Alex*"; and in an email responding to a request for legal opinions, CLC noted that while other draft opinions were on their way, "*Haldanes we never see in advance*".

64. AIB did not have any direct contact with SHKP and, as AIB's exposure increased, it considered whether steps should be taken to give itself more comfort as to the SHKP connection. Credit approval for the King's & Queen's House transaction in May 2006 was given on the basis that AIB would "*need to increase our analysis on SHKP for next deal*" and determine "*the up lift in valuations attributed to the SHKP base on all related transactions*".

65. Mr Cooke reported back later in the month, having prepared a spreadsheet ('the Kallakis Spreadsheet') comparing the property purchase prices to their estimated present value including and excluding the head leases. The present value including the head leases was shown as £192.9 million (giving an LTV of 67%) and excluding the head leases as £139.8 million (giving an LTV of 92%). Thereafter, the Kallakis Spreadsheet was updated and attached to credit applications for each subsequent transaction, beginning with Apollo & Lunar House in July 2006.

66. That transaction involved AIB lending £102 million, considerably more than in any previous transaction. It had to be passed by three AIB Credit Committees and then be approved by AIB's Board. In advance of that process the property finance team was told that AIB's exposure to SHKP needed to be "*explored fully and results presented to both CMCC and GCC before final approval*". This led to a paper from Mr Cooke and Mr Muldowney regarding SHKP. Among other things, the paper stated their continuing understanding, induced by Achilleas' fraud, that "*AK has a long standing business relationship with SHKP*".

67. The transaction was approved by the first two Credit Committees on the basis that AIB would closely monitor the level of its exposure to SHKP. The final Credit Committee endorsed that approval but added: "*[a]greement between Kallakis and SHKP is also to be examined and found to be satisfactory to the Bank*". There is an email note from Mr Cooke from around this time giving further information of what he had been told about that alleged agreement, including that "*the amount [i.e. the supposed profit share amount] is agreed on each deal but is usually split 80/20 in Kallakis favour*". That was fictional, and will have come from Achilleas and/or Mr Williams.

68. AIB's increased interest in checking the SHKP connection probably explains why for the next transaction, 32 St James's Square in December 2006, Achilleas proposed that the head tenant would be a subsidiary of Oregon, meaning SHKP would not be (supposedly) involved. This was the first time there was any suggestion that Oregon would play a part in the transactions.

69. The increased focus on the SHKP connection also led to one of several very extraordinary events orchestrated by Achilleas as part of his fraud, namely a meeting in early 2007, hosted by Mr Williams, between Messrs Cooke and Muldowney and one 'Jonathan Lee', supposedly of SHKP. AIB's Chief Credit Officer had instructed Mr Cooke to travel to Hong Kong to meet SHKP. Mr Cooke passed on the request to Achilleas, for whom any such visit would have been his undoing. Achilleas therefore proposed that AIB should instead meet an SHKP treasury official when he was travelling through London, leading to a meeting in Achilleas' offices at 8 Carlos Place, probably in late March 2007. (When Mr Muldowney was asked in September 2008 to write a file note of the meeting, having not done so contemporaneously, he dated the meeting as 28 March 2007).

70. The meeting was attended by Mr Muldowney, Mr Cooke, Mr Williams, and 'Jonathan Lee'. Achilleas was supposed to attend, but cancelled at the last minute claiming to have a clashing personal appointment. Matters discussed included SHKP's history with Achilleas, which was said to have originated in shipping activities, and the management of the properties. 'Mr Lee' reported that SHKP was very happy with the way all the transactions had gone to date and was keen to do more. Since SHKP in fact had no connection to any of the transactions, obviously that was not true, and no SHKP treasury official could have thought it was true.

71. At the time, though, Messrs Cooke and Muldowney did not know that, and they were satisfied with the meeting, which was reported internally at AIB in July 2007, in a Credit Committee paper for the next transaction supposedly involving SHKP, 111 Buckingham Palace Road, which was the largest single transaction. Based on the meeting, that paper stated that "*We have now met a senior director of SHKP and discussed in detail the overriding lease structure, the company itself and its strategy going forward. From SHKP's point of view, they are very happy with the structure and the way transactions have run to date and are keen to do more business with AK.*"

72. No trace of 'Jonathan Lee' has ever been found, and despite Achilleas' and Mr Williams' protestations to the contrary in evidence, the probability is, and I find, that he was an impersonator, engaged by them, to play a part. There is a sense in which this doubling down by Achilleas on his fraud may have been what led to ruin all round. If he had had the nous to realise that his dishonest game could not continue to be successful, though it would mean having to face up to what had gone before, I envisage that in the summer of 2007, the Kallakis portfolio as it stood then may have been capable of being sold or refinanced on an honest basis, without substantial loss to AIB. That might not necessarily have meant Achilleas avoiding prosecution, but any sentence, on a guilty plea for a substantially smaller, admitted, fraud, that had not left AIB with a significant net loss, could be expected to have been very different.

73. As proposed by Achilleas, Oregon was involved on the 32 St James's Square transaction in December 2006, with Cambaluc Trading Company, said to be an Oregon subsidiary, as head tenant. Cambaluc's obligations were guaranteed by Oregon, which also guaranteed the AIB loan itself. Oregon was then used as head tenant for 8 Carlos Place in May 2007, and gave guarantees of AIB's

lending for that transaction, and also gave guarantees for Kingston House South, 111 Buckingham Palace Road, and 7 & 8 St James's Square.

74. In order to induce AIB to accept Oregon as a counterparty and guarantor, Achilleas, with Mr Becker and Mr Williams, presented it as a well-established, asset-rich company with healthy revenues. It was said to be a trading company with principal activities in cargo shipping and cruise line operations around the world. None of that was true.

75. Purported accounts for Oregon for 2005 and 2006 were created and sent to AIB. They were relied on in subsequent lending decisions. They purported to show very substantial shipping assets and revenue. The main assets were said to be ships valued at US$1.458 billion in 2005 and US$1.928 billion in 2006. Gross cargo freight income was stated to be US$396 million in 2005 and US$486 million in 2006. The accounts were said to have been prepared for Oregon's directors and appeared to have been signed by accountants, 'John Taylor' signing the 2005 accounts, and 'John Papas' the 2006 accounts (who signed, supposedly, on 23 March 2007).

76. Like 'James Ng' and 'Jonathan Lee', no trace of 'John Taylor' or 'John Papas' has subsequently been found, and I consider it more probable than not that they too were fictional. There were no Oregon ships (or other assets) and there was no cargo (or other) income. Oregon was wound up on AIB's petition in 2009 and was found to be a worthless, insolvent shell, with insufficient assets even to discharge the liquidator's fees.

77. In the Crown Court, Achilleas dishonestly claimed that the missing assets had been held in bearer share companies which Lou Kollakis had allowed him to use to bolster Oregon's balance sheet, on terms that the shares would be returned on demand. There was and is no reason why Mr Kollakis would have entered into such an arrangement. There is no documentary (or other) evidence to support it; and on 22 September 2008, after the fraud was discovered, Mr Kollakis told AIB that he did not know anything about Oregon and did not know Mr Becker. As with some of Achilleas' other falsehoods (for example, the letter referred to in paragraph 54 above), it was also not the clever answer Achilleas evidently thought he had identified to a difficulty with his account of himself and his business. If the bearer share story were true, the obligation to return them on demand would obviously have to be reflected in the balance sheet too, and the balance sheet pretending that they represented assets of Oregon's free of any such liability would still have been fraudulent.

78. Oregon was presented differently to Bank of Scotland, as a shipping and real estate company that indirectly owned at least some of the properties against which AIB had lent. For that purpose, purported accounts were created for 2006 and 2007 (each also reporting the preceding two years' supposed results), purportedly signed by 'John Papas' on 8 February 2007 and 11 January 2008, in the former case claiming he was "*Chief Group Accountant*". The figures given for 2005 and 2006 were the same, but not the descriptions of what they purported to represent. For example, the main category of fixed assets was stated as "*Ships and Real Estate*" rather than just "*Ships*", and the principal operating income was said to be "*Gross Cargo Freight Income +*

Gross rental" rather than "*Gross Cargo Freight Income*". Oregon's primary fixed assets (the "*Ships and Real Estate*") had supposedly increased from US$1.928 billion at the end of 2006 to US$2.943 billion at the end of 2007. These accounts, like the similar but different accounts presented to and relied on by AIB, were works of fiction created by Achilleas or to his order.

79. I have already noted that the Apollo & Lunar House transaction in July 2006 led to an increased focus on the SHKP connection. It also led to a change in AIB's security structure, with Achilleas agreeing to cross-collateralise Apollo & Lunar House with the other AIB-funded properties. This was repeated with each further transaction thereafter. Each Kallakis SPV entered into a cross-guarantee of the lending of every other Kallakis SPV, with the final cross-guarantee being entered into, therefore, as part of the 7 & 8 St James's Square transaction in November 2007.

80. With 111 Buckingham Palace Road and 7 & 8 St James's Square added in July 2007 and November 2007, respectively, AIB had reached the limit of its lending appetite for Achilleas. The lending on those transactions was very substantial (£224 million and £152 million, respectively); and AIB considered that but for the supposedly valuable purported head leases, the aggregate lending on the Kallakis portfolio would be at greater than 100% LTV. The updated Kallakis Spreadsheet showed, respectively, lending of £554.7 million on a portfolio that AIB would have valued without the head leases at £546.9 million, if 111 Buckingham Palace Road proceeded (as it did in July 2007), and then lending of £706.7 million on a portfolio it would have valued without the head leases at £678.9 million, if in addition 7 & 8 St James's Square went ahead (as it did in November 2007).

81. That last assessment dates from mid-October 2007, and the credit approval process for the 7 & 8 St James's Square transaction. It valued the Kallakis portfolio, with the benefit of the valuable head leases that AIB did not then know to be bogus, at £1,021.4 million. Thus, the supposed SHKP connection and supposed value of Oregon as head tenant or guarantor was assessed to be worth c.£340 million at that time. In proportionate terms, therefore, as at October-November 2007 it was thought to enhance the value of the portfolio by 50% (1,021.4 / 678.9 = 1.5045). I dwell on that for a moment so as to deal with a specious submission advanced by Mr Malins KC:

    (i) Mr Malins KC cited an AIB portfolio review in early April 2008 valuing the Kallakis portfolio, on the faith of the SHKP/Oregon elements, at £992.8 million, and an internal AIB email exchange in early May 2008 giving an equivalent figure of £1,001.5 million.

    (ii) The submission made, then, was that "*Even if one attributes to that valuation £200,000,000 for the benefit of the SHKP guarantees (as AIB was later to do) that still leaves a March 2008 valuation of £792,800,000, which was more than the existing debt, which was £703.8m*".

    (iii) Even if that submission were sound on its own terms, the lack of basis for the claims made against AIB in these proceedings would be laid

bare. No rational assessment would value the portfolio in late November 2008, two months after the collapse of Lehman Brothers, above 80% of its value in March 2008; and 80% of £792.8 million is £634.24 million, implying negative equity in November 2008 of at least £70 million.

(iv) In fact, however, the submission is plainly unsound, and the suggestion that AIB attributed only £200 million to the value of the supposed head leases, and did so only after Spring 2008 (with possible insinuation that AIB's treatment of that value was contrived), was without foundation. A portfolio value of £992.8 million, with SHKP/Oregon, implies a value without them, i.e. a true value, of no more than c.£660 million. If that was the value of the portfolio in March 2008, it could not rationally have been thought worth more than 80% of that (say c.£530 million) by November 2008, meaning negative equity of at least £175 million or so.

(v) It is possible that Mr Malins KC derived his figure of £200 million from an AIB Credit Committee document dated 27 March 2008 giving portfolio values of £688.4 million (with SHKP/Oregon) and £487.4 million (excluding SHKP/Oregon), a difference of £201 million. But that was an analysis of how the portfolio would look on AIB's books if 111 Buckingham Palace Road were sold or refinanced so as to repay all of AIB's lending on that most expensive of the properties. The SHKP connection on 111 Buckingham Palace Road was given a value by AIB of approaching £130 million. If, instead, Mr Malins KC's reference was the fact that AIB demanded an immediate cash injection of £200 million as a first step towards Achilleas ensuring, if he could, that AIB did not suffer a loss, the submission was still flawed – that amount, demanded in mid-September 2008, was not and was never said to be a measure of the 'SHKP/Oregon' factor in any valuation of the portfolio.

82. The credit approvals given by AIB for those two final transactions required further due diligence to be undertaken on Oregon's financial position and on the 'family trust' which it was thought might have some connection. As a result, AIB was provided with further false information about Oregon's finances and was told that the ultimate beneficial ownership lay with a 'family trust', which was not said to be the HST or any trust from which Achilleas was excluded as a beneficiary. In relation to the 7 & 8 St James's Square transaction, for example:

(i) Achilleas met Jerry McCrohan, AIB's Head of Corporate Banking, to provide what Mr Cooke described as "*further details of the shipping side of the business – an area that he generally treats with utmost confidentiality*".

(ii) AIB met Achilleas, with Mr Becker and Mr Williams, on 3 October 2007, to discuss Oregon and the 'family trust'. The discussion was based on a series of questions emailed to Achilleas the previous day, which included: "*[w]hat is the legal and beneficial ownership structure*

of the Trust". AIB was told that Mr Becker looked after the wider Kallakis family money, but was not given any details of those arrangements, despite being asked; and Achilleas was not prepared to divulge the details of any trust arrangements. It was said, however, that the trust had been set up at the instigation of Achilleas' mother before she died. A false 'origin story' for a Kallakis family trust, to the effect that there was some original trust settlement by Achilleas' mother, was concocted between Achilleas and Mr Williams in October 2004. It was a lie persisted in by Achilleas in his evidence in these proceedings.

(iii) At a further meeting with AIB, Achilleas agreed to disclose the makeup of his fleet in Oregon and to provide a signed letter from Credit Suisse as to their loans to him and cash balances they held. A forged Credit Suisse letter dated 29 October 2007 was shown to AIB, but Achilleas refused to let AIB take a copy. It was addressed to Mr Becker at the "*Pacific Group Family Trust*", which was said to be the owner of Oregon. It went on to give a positive credit reference, stating that Oregon had consolidated cash holdings in excess of US$410 million. The Credit Suisse officer whose purported signature appeared on the document gave evidence in the Crown Court that the signature on the document was not his and that the contents of the letter were untrue. Drafts of the letter were found by the SFO at Achilleas' offices, some of which were addressed to Achilleas personally and some of which contained different figures.

(iv) Information about Oregon's supposed fleet was provided by way of a pack of documents providing information about specific vessels and also including the purported Credit Suisse letter and the 2006 Oregon 'accounts'. But Oregon owned no ships, and the accounts were false. The document pack was purportedly signed by 'John Papas'.

(v) AIB was provided with another purported letter to it from Mr Becker, apparently dated 26 October 2007. The letter stated that it was written in Mr Becker's capacity as "*Trustee of the private Family Trust*" that owned Oregon, and set out false information about Oregon's alleged shipping assets that was in line with the fake accounts.

83. The 7 & 8 St James's Square transaction was approved on the basis of this new information, but on terms that AIB's exposure was to be considerably reduced thereafter. AIB was looking for a reduction by £46.5 million through a sale of India Buildings, and syndication to bring about a further reduction of £100 million. Achilleas agreed to the principle of reducing AIB's position, but expressed a preference for disposals and refinancing over syndication. A note circulated within AIB by Mr Cooke on 18 October 2007 records as much, no doubt from discussions with Achilleas. It proposed that:

(i) India Buildings would be sold by the end of November 2007 (Achilleas was supposedly lining up a sale to Warner Estates for £63 million);

(ii) Market Towers would be refinanced with another bank, for which it was said that Achilleas would agree to achieve that within 4-6 months, failing which AIB would either sell or syndicate its position; and

(iii) King's and Queen's House should be sold or refinanced within 6 months, on which it was said that Achilleas had agreed that absent progress within 3 months (i.e., as I read it, if there was no progress towards finding a buyer), he would syndicate or refinance within a further 3 months.

84. Thus, Achilleas was actively encouraged by AIB to seek out purchasers and alternative lenders. In late November 2007, he emailed AIB claiming *inter alia* that he had been approached by the Canadian Embassy to buy "*St James*" from him. He said he was "*in formal conversations with them and taking advice on the value of the property once completed, as offices*".

85. The process continued through the first half of 2008 and at times seemed to be bearing fruit. For example, in mid-June 2008, Mr Cooke reported to Mr McCrohan that Raiffeisen was credit approved to refinance 111 Buckingham Palace Road and RBS was credit approved to refinance 7 & 8 St James's Square. The same email referred also to the German bank Helaba as having been "*credit approved for a £460m facility on 3/4 properties for some time but their approval is subject to sell-down and they have been talking to a couple of German banks to partner with them.*" As Mr Cooke was not to know, since he was not told, Helaba went cold on getting involved because its background checks uncovered Achilleas' fraudulent past as Stefanos Kollakis.

86. However, despite Achilleas' no doubt best efforts, no purchasers or lenders were prepared to commit, and no purchase, refinance or syndication contract was concluded with anyone.

87. Returning to Helaba, Achilleas had approached them in February 2008, and it does appear that they may have been interested in principle in becoming involved. However, on or about 23 May 2008, Charles Orme, an AIB compliance officer, received a telephone call from a counterpart at Helaba who reported information from private investigators indicating that Achilleas had previously been known by a different name, under which he had been convicted of a fraud in 1995. Helaba forwarded the information they had received to AIB, and Mr Orme reported the matter internally to Donall O'Shea (then Head of Property in AIB's Corporate Banking Britain division).

88. This development was kept confidential to a small group, and a core team was formed to co-ordinate AIB's response. The group comprised Mr McCrohan, Mr O'Shea (and therefore David McWilliam, his line manager), and Michael Ryan, a senior corporate banker from AIB in Dublin, who was brought in as a fresh pair of eyes. Mr Cooke was not informed of the development; nor was Mr Muldowney.

89. AIB decided that it should conduct its own investigations before confronting Achilleas. In the meantime, AIB continued to press Achilleas to sell or refinance the properties. On 30 May 2008, Mr McWilliam wrote to Mr O'Shea

saying that Achilleas "*still thinks that Helaba are proceeding so I have asked Mike to push AK on this and others, as sell down is imperative. We should assume we know nothing of Helaba info and press on*". AIB also pondered how, if there was a fraud, Achilleas might be benefitting, and the 'reverse premiums' AIB had been told were being paid for the supposed head lease commitments were identified as the most obvious possible means.

90. Private investigators engaged by AIB confirmed in June and July 2008 that Achilleas was indeed probably Stefanos Kollakis, and that he and 'Martin Lewis' had previous criminal convictions. Investigations into SHKP revealed that its supposed commitments as guarantor of head leases were not reflected in its published accounts, as they reported no exposure to the UK property market. This led Mr McCrohan on 29 July 2008 to emphasise to the core team "*the need for urgent action and focus in relation to this 'SHKP' matter and the resolution of the veracity of Guarantees etc. There is no other duty which requires more urgent attention*". The same day, AIB wrote to the Company Secretary of SHKP, Yung Sheung-tat ('Sandy Yung'), asking for confirmation that SHKP had executed the guarantees.

91. On 7 August 2008 Mr McWilliam asked Achilleas to arrange a meeting for him and Mr McCrohan on 13 or 14 August 2008 to meet a senior executive of SHKP in Hong Kong, for example (it was suggested) SHKP's then new CEO. Achilleas invented excuses for why such a meeting could not happen. He said that he was already in the process of arranging a London meeting in October 2008. He said that it was too short notice. He said that the (Beijing) Olympics and various celebrations meant that a meeting was not possible. Then he said that many of the people whom Mr McCrohan might wish to meet would be in Greece in early September or the second half of October 2008.

92. On 28 August 2008 SHKP answered AIB's request to confirm its execution of the head lease guarantees. Mr Orme received a call from Jason Yeung of SHKP's Legal Department. Mr Yeung said that he worked with the Company Secretary and that SHKP:

    (i) had no knowledge of any guarantees provided to the Kallakis SPVs;

    (ii) had no record of any assignment of guarantees in favour of AIB; and

    (iii) was concerned that AIB believed that such SHKP guarantees existed.

93. This led to a letter from CMS, on behalf of AIB, to SHKP, dated 28 August 2008, enclosing one of the guarantees and asking for a meeting in Hong Kong on 4 September. In the event, two meetings took place, in Hong Kong, on 5 September, one in the morning and one in the afternoon. SHKP denied all knowledge of the properties, and said that it had nothing to do with Achilleas and had not received any reverse premiums. Mr Wong, one of the supposed SHKP signatories, attended the second meeting and provided specimen signatures. He said he had not signed the documents and did not know any SHKP representative called 'Jonathan Lee' or 'James Ng'. SHKP's corporate seal was compared to the seal on the documents received by AIB and found to be similar but different.

94. SHKP instructed Clifford Chance, who corresponded with CMS, reiterating SHKP's position that its name had been misused and saying that the matter had to be reported to the authorities. AIB was very concerned that the SHKP connection was a fraud on Achilleas' part, and that AIB was potentially facing a substantial loss, since without the enhancement of the property values that connection brought (if real), AIB assessed the property portfolio to be worth less than its lending against it.

95. A meeting was arranged between AIB and Achilleas, for which Achilleas was told that CMS (Mr Aldred) would attend and that he should have his solicitors attend. It was set for 15 September 2008, the very day, as it would turn out, on which Lehman Brothers collapsed, filing for bankruptcy protection in the US and administration in London, ultimately precipitating the turn from what had been a difficult time in many markets, including the UK commercial property market, with steady declines as the 'credit crunch' had its impact, into the global financial crash with collapsing markets of Q4 2008 / Q1 2009.

96. Andrew Makins, a property surveyor and consultant whom Achilleas had used in building up the property portfolio, attended for the first part of the meeting, to give an update on progress relating to a possible sale of 7 & 8 St James's Square. Mr Makins indicated that a price of c.£175m had been agreed, subject to a change in the existing planning status of the property. It was suggested that there was a timetable for a late October or early November closing; and Achilleas said that, given market conditions, that proposed sale was not being relied on as the only source for an exit, claiming there to be a potential joint venture with Deutsche Bank.

97. Mr Makins having left the meeting, Mr Aldred advised Achilleas that he had a major problem as AIB had found a very serious situation. He explained what SHKP had said about its supposed involvement, meaning that AIB now had significant doubt about the guarantee structure for the portfolio. Achilleas claimed to be dumbstruck. He was asked what had happened to the reverse premiums referred to in the transactions, and claimed that they had been paid to the provider of the lease apart from an amount that was withheld to top up rents. He also claimed that his contact with SHKP had not been direct, but through an intermediary.

98. It was made clear that Achilleas was being given an opportunity, which would be short (how short was not specified) to try to rectify the situation, and only if he complied with a number of requirements, one of which was to effect an immediate reduction of £200 million on AIB's lending on the portfolio. There was no promise, reassurance or representation that AIB would not exercise its security rights as and when it saw fit if Achilleas did not comply with all of AIB's demands, including that one.

99. At the end of the meeting, Mr Aldred asked Achilleas whether he had always operated under the name Achilleas Kallakis and was told yes. That outright lie caused Mr Aldred to think, as he put it in his trial witness statement, that "*we were 99% of the way to finding out that we were dealing with an out-and-out fraudsman who could not be trusted an inch*".

100. Mr Aldred sent an email after the meeting to set out clearly what AIB required from Achilleas. The email noted that Mr Makins had reported to the meeting about a proposed sale and that after he had left the meeting, Achilleas had been informed about AIB's concerns in relation to SHKP's supposed involvement. It continued as follows:

"*The Bank has settled upon a course to protect its own interests in this situation, but it wishes first to give Mr Kallakis a brief opportunity if he so wishes to demonstrate that he will cooperate completely to ensure that the Bank will suffer no loss in the light of these circumstances. If the Bank does not receive this cooperation, it will continue to implement its intended course.*

The Bank's requirements are as follows.

1. Mr Kallakis will arrange, by 5pm tomorrow (Tuesday 16 September), payment to the Bank of £200 million in cash or by way of an acceptable Bank Letter of Credit. …

As indicated by Mr Kallakis at the meeting, funds are being held for future top-up interest payments and these must also be credited to the HSBC bank account referred to in the attached letter to be issued by Atlas (see paragraph 4 below).

It is vital, of course, that the Bank should be able to ascertain to its own satisfaction that the funds that are now paid to it tomorrow come from an appropriate source.

2. Mr Kallakis will procure that the Bank and its advisers are given full access to all records relating to the relevant properties.

3. Mr Kallakis will procure that full cooperation will be given to the Bank to allow for the realisation of assets or refinancing of the relevant properties as is considered appropriate.

4. Atlas will need to issue the attached letter to the Bank at 11 am tomorrow (Tuesday) [a draft was provided for a letter by which Atlas would undertake to ensure that rent and other income from the properties was paid to an HSBC account under AIB's control]. In addition, I attach a template for letters to be signed on behalf of Atlas … directing all tenants to pay rent on the properties into [the HSBC account]. Letters will be printed and signed on behalf of Atlas, addressed to all relevant tenants together with appropriate standing order or direct debit forms. Those letters will be available for AIB to collect from Mr Kallakis's offices at 11am tomorrow (Tuesday).

5. Mr Kallakis will procure the attendance of Michael Becker at my firm's offices, [address given], at 5pm tomorrow (Tuesday). By 11am tomorrow (Tuesday), Mr Kallakis and Mr Becker will give use details of any bank accounts held by any of the borrowing companies; and will procure that, by 5pm tomorrow, letters signed on behalf of each of those companies in the terms of the attached draft are handed over to us [these would be letters authorising banks at which the property-owning companies had accounts to

give information to and act on the instructions of AIB in relation to those accounts].

6. Mr Kallakis will attend at my firm's offices at 5pm tomorrow to enable AIB to review the extent of the cooperation that he has by then provided to the Bank."

101. For the meeting, Achilleas was advised and attended by Rufus Ballaster of CLC. In response to the meeting and Mr Aldred's follow-up email, Achilleas retained Withers LLP, and took some initial advice from Ali Malek QC (now KC). Withers thereafter acted for Achilleas and the companies, corresponding extensively with CMS on behalf of AIB.

102. From then until the sale of the properties in the third week of November 2008, Achilleas claimed to be taking steps to try and sell or refinance the portfolio, or individual properties from it, and AIB was considering how best to proceed if, as seemed more and more likely as time progressed, Achilleas did not come up with any credible proposals. Mr Malins KC sought to criticise the way in which AIB, through CMS, dealt with such mitigation possibilities as Achilleas communicated to it, through Withers. The consistent theme of AIB's response was that it would consider seriously any proposal that appeared credible, but as a first step would need to have something more than just Achilleas' word (via Withers) that there was a proposal to consider.

103. In my judgment, there was no substance to the criticism of that approach. Achilleas was not a man whose word could sensibly be trusted. The tone and content of much of Withers' correspondence failed utterly to reflect the reality of the predicament in which Achilleas found himself. No doubt Withers were doing no more than reflecting a dishonest client's insistence that he was not a fraudster; but it would have been folly for AIB to take seriously any claim made by Achilleas that was not independently corroborated, so it could be pursued by AIB, or at its direction, with the supposedly interested parties. Mr Malins KC's cross-examination of AIB's witnesses on this aspect of the case, like Withers' correspondence, lacked any significant connection to reality.

104. In early October 2008, through the solicitors' correspondence, AIB was pressing for Mr Becker to answer questions regarding the letters seemingly from him that AIB had had regarding beneficial ownership and the source of Achilleas' supposed equity in the property transactions. On 6 October 2008, Withers asserted in a letter that Mr Becker had been in error in stating that Achilleas was the beneficial owner of Cassiopeia (and therefore, indirectly, the ultimate beneficial owner of any property owned by Andromeda). It was said that, to the contrary, Mr Becker had "*always been the legal and beneficial owner of Cassiopeia and Andromeda*".

105. This surprising new claim was discussed at a meeting on 15 October 2008. Mr Becker claimed to be the legal and beneficial owner of all the borrower SPVs, and that Achilleas was merely an adviser. Achilleas was at the meeting and said that what Mr Becker had said was "*100% true and accurate*". No doubt on Achilleas' instructions, Withers doubled down on that piece of nonsense, asserting in a letter to CMS on 20 October 2008 that AIB had "*always been*

aware of the ownership structure of the SPV companies and that Mr Becker was both the legal and beneficial owner of those companies. The information was provided as part of the transaction and was common knowledge amongst the parties."

106. The same Withers letter also claimed, as regards what should have been £114 million in reverse premiums paid to SHKP subsidiaries as the price of head leases, that AIB had known all along that "*the mechanism was not to pay the reverse premiums in cash flow terms to the BVI subsidiaries of … SHKP …*", on the basis (supposedly) that they were to be retained to meet any rent shortfall and in order to upgrade and refurbish the properties (and for other related purposes). AIB had been told no such thing at the time of any of the lending decisions; and the only truthful report, if Achilleas could have brought himself to give one to Withers for them to pass on, would have been that there had never been any BVI subsidiaries of SHKP, SHKP had no connection whatever to the Kallakis property portfolio, and no reverse premiums had ever been paid, but rather the supposed existence of valuable SHKP-backed head leases had been the means by which to avoid having to provide any owners' equity for the transactions and to generate a surplus from AIB's loan funds to which Achilleas would and did help himself as he saw fit.

107. I agree with this submission in AIB's skeleton argument for trial in relation to that Withers letter, namely that: "*Nothing could better illustrate the fact that nothing Achilleas (or Becker) might say as to the ownership of the SPVs (or anything else) [could] be believed absent unimpeachable corroboration*".

108. Other examples from this period of Achilleas' propensity to tell new lie upon old lie in a desperate but doomed effort to talk himself out of his fraud, but being unable to provide any credible evidence to support his claims, are the following:

(i) On 16 September 2008, Achilleas told AIB that Oregon's funds had been used to shore up other transactions, but the company was still worth between US$2.5 billion and US$3 billion. On 22 September 2008, this became a claim that he did not know what Oregon was now worth given the effect of "*all this*"; and thereafter Achilleas refused to provide any more information about Oregon.

(ii) Achilleas and Mr Becker maintained that, despite the critical role of SHKP in the structure and the supposedly long history of dealings between Achilleas and SHKP, all dealings with SHKP had been done through a 'freelance broker' called 'Richard Lee', another individual of whom no trace has been found. Achilleas said that all dealings with 'Richard Lee' had been conducted by Mr Williams, and that it was questionable whether documentary evidence would exist. The truth is that no documentary evidence existed because there were no such dealings; and this is one of a number of examples where Achilleas with varying degrees of directness or indirectness sought to distance himself by intimating that if anything untoward had occurred, it was Mr Williams' doing or responsibility, not his own.

(iii) AIB repeatedly asked for, and Achilleas promised, a detailed account of what happened to the reverse premiums. For example, on 6 October 2008 Withers wrote that "*Mr Kallakis has confirmed to us that he has nearly completed a full and clear document showing all the reverse premiums paid by the bank to the various companies in question and how that money was ultimately used*". No such document was ever, or has ever, been produced. Nor could it have been, because no reverse premiums had ever been paid.

109. Achilleas' reported efforts to find alternative buyers or funders were extensive, but there is very little evidence from sources other than Achilleas to corroborate the reports, so I do not consider it safe to find that he in fact made any significant attempt. For example:

(i) On 18 September 2008, Withers wrote that Achilleas had arranged "*approximately 12 meetings in London, Athens and the Middle East with predominantly existing investors and two potential new investors with whom he has already started full disclosure of information*". I was shown no evidence of any such meetings, and in any event Withers' claim immediately begs the question of what 'full disclosure' Achilleas might have been giving.

(ii) On 24 September 2008, it was said that Achilleas was meeting with Santander for detailed and substantive disclosure and discussion. The same observations arise. He was also then reportedly meeting with "*one of the largest private property groups in London in order to discuss the portfolio*", but again there is no evidence of that.

(iii) On 6 October 2008, it was said that Achilleas was meeting a very senior executive at HSBC Private Banking in the Middle East to discuss the possible disposal of the portfolio to Middle Eastern interests; and that 111 Buckingham Palace Road had been placed with Mr Makins for sale to "*a few individuals in the Middle East and the USA*", that there had been three viewings of 32 St James's Square, and that there had been discussions with Vincent Tchenguiz about providing "*£100m security for AIB*".

110. As I have said already, AIB's consistent message in response was that credible proposals would be taken seriously. For example, on 20 October 2008, CMS said in the correspondence with Withers that "*if Mr Kallakis reaches the point where he has a concrete written proposal from a third party, he should provide that written evidence to AIB and AIB will, at that stage, be willing to consider it*". No concrete written proposal was ever forthcoming, however.

111. One early possibility considered by AIB was whether, if there was at least some grain of truth to Achilleas' claims to be connected in business to the Kollakis family's interests, Lou Kollakis might be willing to purchase or refinance one or more of the properties. A meeting between AIB, Achilleas and Mr Kollakis was arranged for 22 September 2008. This was when, as I noted in paragraph 77 above, Mr Kollakis said he was unaware of Oregon or Mr Becker. He said it was clear that 111 Buckingham Palace Road and 7 & 8

St James's Square had to be sold, and said that he would make every effort to assist in selling them. He also said that he might be able to purchase some of the properties himself, but he was not there to overpay for anything.

112. Following that meeting, on 24 September 2008, Withers reported that Mr Kollakis would consider purchasing 32 St James' Square, 35 Berkeley Square and 8 Carlos Place, and also that he might be interested in the residential apartments (West Eaton Place and Kingston House South). A further meeting was arranged for 26 September 2008, without Achilleas, at which Mr Kollakis said he could make a decision, and purchase quickly, if the figures were acceptable. He said that he was not interested in any of the larger properties, but would speak to other potential investors among his contacts in Greece.

113. After that, Withers claimed that the five properties in which Mr Kollakis had indicated either interest or interest in helping had been placed by Achilleas with an agent to make discreet enquiries to see what interest might be generated. But if that was true, no such interest was generated; and in due course Mr Kollakis himself decided against any involvement, emailing CMS on 10 October 2008 to say that he had "*decided not to proceed with any acquisitions whilst these chaotic financial markets exist*".

114. As regards the requirements set by AIB for there to be any possibility of Achilleas avoiding AIB taking matters into its own hands, pursuant to its security rights, the various letters to be issued by Atlas or Mr Becker were issued as demanded, however:

    (i) Neither £200 million, nor any lesser amount, was paid so as to reduce the level of AIB's lending, either immediately or at all.

    (ii) Achilleas procured that AIB and its advisers were given some access to records relating to the properties, but it was not full access and after a few weeks that element of co-operation was withdrawn. By 23 October 2008, co-operation had ceased altogether and it was reported to AIB by Deloitte, who had been instructed by AIB to try to get to the truth of the property portfolio finances and who had been allowed to go into Atlas' offices to pursue their investigations, that Atlas staff were under a standing instruction not to provide information.

115. One allegation pleaded was that AIB had no right to sell the properties in the portfolio as it did on 21 November 2008. I can identify no basis upon which that allegation could ever properly have been made; and it was withdrawn by Mr Malins KC in closing. For completeness, I should record that it is clear on the transaction documents that AIB was acting within its rights to sell as it did:

    (i) On 17 September 2008, AIB served notice on Vortex, the Kallakis SPV for 111 Buckingham Palace Road, cancelling its facility agreement and demanding repayment of the full loan balance of £222,284,000. It was entitled to do so on the basis it gave for doing so, namely that the supposed head tenant, Cambaluc, was not a subsidiary of SHKP.

(ii) Vortex neither challenged the demand nor paid, so as to be in default on its loan. Under their respective cross-guarantee obligations, every other Kallakis SPV was liable to satisfy Vortex's obligations on demand.

(iii) Oregon had guaranteed the repayment of the Vortex facility up to a limit of £20 million. AIB called on that guarantee on 23 September 2008, and Oregon neither challenged nor paid. (Achilleas attempted an argument before me that this guarantee had expired because by January 2008, Vortex had met two payment obligations totalling £19.7 million arising from a decision it made to terminate certain interest rate swaps; but there was no evidence that Oregon's guarantee had been called upon for that, so the argument was unsound.)

(iv) Additional defaults occurred on 25 and 27 October 2008, when payments of principal and/or interest fell due from the Kallakis SPVs. By that stage, AIB had procured the payment or collection of most of the occupational rents into its HSBC account. As regards all but one of the Kallakis SPVs (Madison Bay Holdings, in relation to 35 Berkeley Square), the rent collected was insufficient to pay the amounts due to AIB. AIB served notices of the outstanding sums on 28 October 2008. The notices were neither challenged nor paid.

(v) As I relate in more detail below, over the next three weeks, AIB developed at some pace, in confidence, the transaction under which the portfolio was sold ('the Kish Deal'). I accept AIB's evidence that even at this late stage, if Achilleas had presented some serious proposal for the portfolio or any individual property in it, for a sale or refinancing, AIB would have been willing to consider pursuing that instead of the Kish Deal for whatever property or properties might be involved. AIB would have examined any such proposal on its business merits.

(vi) As it is, no serious proposal came forward from Achilleas, and on 20 November 2008 default notices cancelling their facilities were served on all of the Kallakis SPVs. The notices relied on various valid grounds of cancellation including failure to pay, false representations, and the fact that purported head tenants were not SHKP subsidiaries. None of the notices was challenged and none of the resulting obligations to repay the lending immediately was met, entitling AIB under the security documents to sell the properties.

(vii) On 21 November 2008, no payment having been received, notices were served on all the Kallakis SPVs under the cross-guarantee demanding payment of the entire outstanding sum. Those notices were likewise neither paid nor challenged. The Kish Deal was concluded and completed later that day.

116. AIB considered diligently the 'self-help' options available to it to minimise its losses if Achilleas did not provide a commercial solution. The options were: (i) appointing a fixed charge receiver to sell the properties in the open market; (ii) taking possession as mortgagee and managing or selling properties itself;

and (iii) selling the properties via private (off market) treaty. AIB's reasonable view (as I find, below, an accurate view) was that the open market value of the properties without the head leases was less than the outstanding debt. That had become AIB's reasonable view even before the fraud was discovered and the global financial crisis had arrived, precipitated by the collapse of Lehman Brothers.

117. On 19 November 2008, with the Kish Deal on the verge of being concluded, Mr Muldowney (who was unaware of the fraud and who was not involved in the Kish Deal) revised the Kallakis Spreadsheet, reducing "*Value Today (exc SHKP) by between 10% and 20% to reflect current estimated Market Values*", as he explained in a covering email to Mr McWilliam. Mr Muldowney's revised portfolio value was £677.9 million against debt of over £700 million, but that was on any view a substantial overstatement of the portfolio's value. It included 7 & 8 St James's Square at £180 million in light of an offer subject to contract of £185 million received by Achilleas in July 2008 that was not being pursued by the purchaser. Without that offer, in June 2008, AIB had valued 7 & 8 St James's, reasonably, at £140 million, and it was such a speculative development project in the post-crash market of November 2008 that it would have required (at a minimum) a discount at the top of Mr Muldowney's range of 10 to 20%. Substituting £112 million (£140 million less 20%) for £180 million would have brought Mr Muldowney's revised value down to £610 million (and AIB in fact had one independent assessment at the time valuing 7 & 8 St James's below £70 million).

118. For his part, Achilleas accepted and acknowledged that there was negative equity in the portfolio. As early as 17 September 2008, through Withers, he reported having consulted King Sturge, who were familiar with the portfolio, and having been advised by them that "*their immediate calculation of the current loan to value shortfall is £76 million*", indicating a portfolio valuation of c.£630 million. The following day, in the context of AIB's demand for an immediate cash injection of £200 million, Withers reiterated that view: "*Mr Kallakis, having spoken to the valuers, believes the shortfall is closer to £75 million than £200 million*". Indeed, from the first meeting on 15 September, Achilleas agreed that, whatever else might be true (and he lied over and over again about almost everything else), if the SHKP connection was unreal and therefore worthless, then there was a serious commercial issue of AIB being under-secured. The idea, upon which all the claims now pursued ultimately rest, namely that in November 2008 the portfolio was worth substantially more than AIB had lent against it, did not occur to anyone involved at the time.

119. As might be expected, the extraordinary market conditions of the time featured heavily in AIB's deliberations as to whether to appoint a receiver and sell on the open market. Given those conditions and the 'forced sale' nature of such an approach, AIB reasonably came to the view that it was the least attractive option, measured by the likely end result for AIB in terms of value recovered from the portfolio.

120. AIB also considered the possibility of taking possession of the properties as mortgagee and managing or selling them itself. In that event, AIB would be bringing the properties on to its own balance sheet and assuming all the risks

and responsibilities of an owner, including the responsibility of managing a large and diverse portfolio. That was not something that AIB felt equipped to do, nor something of which any of those involved at AIB had any experience. It is trite law that as mortgagee AIB owed no obligation to take the portfolio over to manage for itself in that way, and incurred no liability by choosing not to do so.

121. That left the option of selling as mortgagee, i.e. directly rather than through a receiver. There was no reason to suppose that an open market sale by AIB would be perceived any less of a forced sale than a sale through a receiver, so that had no particular attraction. In practical terms, therefore, the choice was between appointing receivers after all, accepting whatever forced sale outcome they achieved, and finding a buyer to negotiate privately a direct sale. I note immediately that the latter does not mean or imply acting otherwise than at arm's length with such a buyer, if found, even if of course it may also be true that if a seller acted otherwise than at arm's length with a buyer, it would be likely to do so in private.

122. As I explain below, the transaction that AIB negotiated and completed in the event was not a simple portfolio sale. It included a sale of the portfolio, for (just under) £653 million, but also lending by AIB such that AIB funded the purchase, lending the full purchase price, plus substantial further sums to cover the purchasers' costs (including Stamp Duty and other transaction costs, and working capital). The new lending was secured against the properties but the only personal covenants on the loans were those of purchasing SPVs incorporated in the Isle of Man ('Kish One' to 'Kish Fourteen'), each of which would have no assets or source of income other than its respective property, so that the lending created no risk of loss for the business interests behind the purchasers. It was therefore referred to (at the time, and in these proceedings) as 'non-recourse' funding.

123. I was shown no evidence that AIB attempted to find for itself a buyer for a simple portfolio sale, or for a simple sale of one or more individual properties from the portfolio, beyond the unproductive contact it had with Lou Kollakis to which I have already referred. It would be speculative to attempt to say what AIB would have done if the possibility of the Kish Deal, as it became, had not arisen as it did.

124. One paragraph of AIB's Defence was worded in such a way as might give the impression that the Kish Deal became a prospect in September, and took until a date in November to be negotiated. There is however no evidence of that, and clear evidence, to the contrary, that it came into view only in late October 2008, as I now set out.

125. On 20 October 2008, Mr McCrohan met Pat Gunne, then a partner in CBRE in Dublin. Mr Gunne was due to leave CBRE and join the Green Property Group, an Irish property management business. Green's assets, business and level of debt was such that it was not in financial distress despite the market turmoil of the time. AIB had been involved, with other banks, in some of the syndicated financing utilised by Green, but there was no other connection between them. One assertion made against AIB, as part of a contention that the Kish Deal

was not at arm's length, was that Gary Kennedy, who had been group finance director at AIB, was with Green in November 2008. In fact, however, Mr Kennedy left AIB some years before the events of 2008, joined Green only in 2013, and there is no evidence that he had any involvement at all in putting the Kish Deal together.

126. Another assertion made against AIB was that "*AIB brought in Pat Gunne, then Deputy Chairman of CBRE (CB Richard Ellis in Dublin) to advise AIB on the portfolio and he then introduced Green to AIB … and then he promptly joined Green. The natural inference is that he did so well for Green, that Green took him on.*" Those are not the facts, and no such inference arises. There was some contact between AIB and CBRE about possibly taking advice from CBRE on market conditions for property sales and a strategy for managing the properties if AIB kept them. That did not go ahead, however.

127. When Mr Gunne met Mr McCrohan on 20 October 2008, he was already leaving CBRE for Green come what may; and he introduced the idea that developed into the Kish Deal for and on behalf of Green, not as an adviser to AIB. Whether, whilst still at CBRE, Mr Gunne should have been starting to develop possible business for Green, is irrelevant to the issues in these proceedings. It would be a matter between Mr Gunne and CBRE, and is not something the evidence allows me to investigate, to see, for example, whether Mr Gunne did what he did with the knowledge and consent of CBRE.

128. In his meeting with Mr McCrohan on (Monday) 20 October 2008, Mr Gunne introduced the idea of a deal structure under which Green could take on debt-stressed property assets, in the hope of turning them around so as ultimately to clear the debt and perhaps even generate a profit. This was a generic thought, not a proposal specific to the Kallakis property portfolio, although obviously that portfolio was a candidate for such a deal structure if AIB liked it, and the follow-up correspondence suggests that Mr McCrohan must have given Mr Gunne at least some indication, either at or shortly after the meeting, that AIB had a debt-stressed portfolio that might be suitable for Mr Gunne's model.

129. Mr Gunne emailed Mr McCrohan after their meeting, as follows:

> "*Hi Jerry great to see you……myself and Stephen look forward to seeing you in your office at 12:30pm on Wednesday.*
>
> *I have a matrix in mind for putting a structure around the Commercial agreement which I'll bring into you so we can use it as a discussion point.*"

The Stephen in question was Stephen Vernon of Green. The later exchanges indicate that the Wednesday in question was the week later, not the immediate Wednesday, i.e. 29 October 2008, not 22 October 2008.

130. In reply, Mr McCrohan asked Mr Gunne to send his ideas to Michael Gaffney of KPMG and Mr Ryan of AIB in advance of the follow-up meeting. In a further email that evening (20 October 2008), Mr McCrohan noted that it ought to be possible "*to come to terms generically on how we would operate. The portfolios are irrelevant at this time. What we need is a framework. When*

and if specific cases come up later they can just be inserted into structure. What I need is to agree a suitable framework." In reply, Mr Gunne said he had a framework from their discussion that day and that he had "*done it out on a spreadsheet so I can bounce it off Stephen*".

131. On 28 October 2008, Mr Gunne duly sent to Messrs McCrohan, Gaffney and Ryan, his "*indicative structure which I feel would be a good reference point, although each asset or portfolio would have to be taken on their own merits and agreed on a consultative basis.*" Mr Gunne continued:

"*Key thing here is to align the parties' interests which is what it achieves.*

It is only a first draft, but it is formatted along the lines of an asset management business so we don't need to reinvent the wheel. I have run it by Stephen who agrees it is a sensible approach again on the proviso that each project would need to be debated by itself."

132. The 'indicative structure' document from Mr Gunne was headed "***PROJECT BANK***", and set out Mr Gunne's ideas for "***Process***", "***Performance Matrix***" and "***Issues***" on a single page (each) for (i) "***London or Dublin***" and (ii) "***Outside London or Dublin***". The two pages were identical, save that the Performance Matrix contemplated in both cases an Asset Management Fee and Performance Fees, and the Performance Fees indicatively suggested for Outside London or Dublin were slightly higher. Not only was this indicative structure not specific to the Kallakis portfolio, it was not specifically for AIB, as it contemplated that Green might look for transactions of the type indicated with various banks. Hence Issue 5 was "*Addressing conflict vis a vis servicing more than 1 Bank*".

133. The Process indicatively described was as follows:

"*1 - Bank transfers asset(s) into SPV at 100% debt value funded on nonrecourse basis*

2 - Strike price for the purposes of performance matrix agreed asset by asset

3 - Business plan presented for each asset with indicative capital requirement over 3 years

Management fees

Interest Roll up

Capex

Consultancy fees

4 - Agreement on fees and performance with reference to matrix

5 - Quaterly [sic.] reporting

6 - Exit"

134. A point of interpretation arises out of the way Mr Gunne articulated the first step, i.e. transferring property to a (new) SPV "*at 100% debt value funded on a nonrecourse basis*". On its own terms, given the general context (a proposed process to deal with debt-stressed assets), and since it seems to be different (or at least capable of being different) to a "*strike price*" (to be agreed) that would drive the Performance Fees (if any) that would be earned, I would take "*100% debt value*" to refer to the existing debt on the asset being taken into the new structure. So, for example, if Mr Gunne's indicatively proposed process were applied to 7 & 8 St James's Square, on which AIB had lent £152 million, the first step would be a transfer of the property to a new SPV for £152 million, lent to the transferee by AIB. That is to say, in commercial substance anyway, as between AIB and the transferee, a transfer of the property to the transferee for nothing, in consideration of the transferee accepting responsibility for the existing debt. Issue 1 identified by Mr Gunne was "*Structure (tax and legal)*". One aspect of that, I would think, on which I would expect legal advice to be taken by parties contemplating such a deal, would be whether such a transfer would discharge the original borrower's liability for the existing debt, or any part of it. I do not regard it as self-evident that it necessarily would, depending on how exactly that commercial substance was given effect by the transaction documents.

135. Mr Ryan in evidence said he read Mr Gunne's "*100% debt value*" as referring to "*the debt that is attributable to [the transferee] when they bid … for the properties*". By contrast, Mr O'Shea said he read it as I do. Neither of them was at the initial discussion between Messrs McCrohan and Gunne, from whom I did not have evidence. Mr Ryan, but not Mr O'Shea, appears to have been part of the follow-up meeting on 29 October 2008 for which Mr Gunne's document was provided. At the same time, though, Mr Ryan could easily be confusing what he thought, or Mr Gunne may have explained, was meant by Mr Gunne's initial idea, on the one hand, and the process ultimately conducted for the Kish Deal, on the other hand, a process in which a portfolio price less than the outgoing debt was negotiated and agreed, and a sale at that price was transacted, funded by fresh lending by AIB to the Kish SPVs. In that, final, structure, each transferee's opening purchase debt (a) was not equal to the respective former mortgagor's loan balance, (b) was funded by separate lending, and (c) was treated therefore (rightly, without doubt) as discharging *pro tanto* that outgoing loan balance. I do not think "*Bank transfers … at 100% debt value funded on a nonrecourse basis*" is how someone would be likely to describe that; I would think it much more likely to be described as "*Bank transfers … at price to be agreed, funded on a nonrecourse basis*", or similar.

136. Mr Gunne sent a further email to Messrs McCrohan, Ryan and Gaffney on 28 October 2008, concerning his 'Project Bank' idea, addressing his Issue 5 (see paragraph 132 above) as follows:

"*On the conflict issue of servicing more than 1 institution again we [which I interpret to mean Mr Gunne and Mr Vernon] have discussed and feel:*

1 – We can limit to 4 institutions once there is adequate scale reached, although the reality is that if this takes off in a meaningful way it will be 2 or 3.

2 – The issue of conflict doesn't arise except where there are competing schemes in small population areas which is not likely, and not relevant for the portfolio that is up for debate [which I infer was the Kallakis portfolio – hence my comment at the end of paragraph 128 above]. Again if this conflict arises then it is dealt with on a case by case basis.

3 – The reward structure would be similar across the board.

4 – As per chat with Stephen, no other arrangement will be put in place with someone else until this project [viz., I infer again, Kallakis] is bedded down. I suggest a backstop date of end November is relevant in this context as it is a 'hot topic' at the moment and once the word is out I suspect the phone will be active."

137. Thus, Mr Gunne requested urgency, with a backstop date of 30 November 2008, for any transaction in relation to the Kallakis portfolio, in return for making it the only project Green would pursue for an initial period, albeit one of rather loosely defined length. What became the Kish Deal was pursued, by AIB and Green, with that requested urgency. By 8 November 2008, a 'Project Kish' timeline / work plan drawn up by Mark Munro at Green that took the project from initial structuring and tax analysis by KPMG on which work had begun on 4 November to finalisation of transaction documents by (Sunday) 23 November, ready for a completion date of 25 November. In the event, as I have noted already, completion was achieved a few days earlier, on (Friday) 21 November 2008.

138. As part of the work on the Kish Deal, AIB gave Green information on the properties in the Kallakis portfolio. In particular, on 3 November 2008 AIB sent Green a draft report from King Sturge on the properties in the portfolio, which King Sturge had codenamed the 'Apple Portfolio'; and on 7 November 2008, AIB sent Green tenancy schedules prepared by Deloitte giving the best information available to AIB at the time about the then current real world income on the properties (as distinct from the supposed income in Achilleas' fictional world of SHKP-guaranteed head leases).

139. By 7 November 2008 also, KPMG had produced a first draft heads of terms. In contrast to Mr Gunne's indicative 'Project Bank' idea, the draft heads of terms envisaged that "*Each Purchaser will buy the Property for the Purchase Price on the Closing Date*", where "*Purchase Price*" meant "*the price agreed between the parties for the property*", and "*The Bank will provide loan finance to Purchaser to enable Purchaser to pay the Purchase price as well as agreed related costs*". A description of the essential proposed terms of that lending was given, the effect of which was that it would be non-recourse in the sense I have been using. In short, the proposal now was for AIB to transfer each property to a new owner, at a price to be agreed, funded on a non-recourse basis (*cf* paragraph 136 above).

140. The draft heads of terms also proposed that for each property there would be an agreed investment plan, the funding requirements of which would be financed by AIB, and a sharing in proportions to be agreed of any ultimate aggregate net surplus from onward sales or market values of properties not sold on within 7 years after completion.

141. Following a meeting between AIB and Green on 10 November 2008, Green produced its own draft heads of agreement, the substance of which was similar to KPMG's draft heads of terms. It provided that newly established SPVs, "*the Purchasing Companies*", would buy the 'Apple Portfolio' properties, "*for an aggregate consideration of UK£[XXX] million ("the Consideration"), the analysis of which consideration is set out in Appendix 2*"; that AIB would lend to the Purchasing Companies to fund that purchase consideration, plus stamp duty and all other transaction costs, enhancement or development expenditure, and operating costs and expenses for managing the portfolio for up to 8 years; and that there would be performance fees and, for AIB, the possibility of an eventual 20% profit share, calculated by reference to a proposed "*Assumed Transfer Value*" of the portfolio of £675 million. AIB shared the draft with KPMG and with its Irish solicitors, Arthur Cox, who provided comments, and continued to be advised on English law matters by CMS. Green was advised by Addleshaw Goddard on English law matters and a different team at Arthur Cox on Irish law matters.

142. A corporate structure chart circulated by Green on 12 November 2008 gave the proposed structure on its side of the transaction. It provided for individual SPVs incorporated in the Isle of Man (later named Kish One etc, after the Kish Sandbank and lighthouse c.7 miles off the cost of Dublin) that would buy the Kallakis portfolio properties. They would all be owned by an Isle of Man holding company, owned by Directors of Green (which at the time was owned 50:50 between the Directors and Bank of Scotland). A new Green subsidiary, owned 20% by Green and 80% by Green's Directors, would have a property management agreement with a new management company incorporated in the Cayman Islands, which in turn would have a management agreement with the Isle of Man holding company of the property-owning SPVs. The Cayman Islands management company would be owned by the Green Directors.

143. By 13 November 2008, the draft heads of agreement was in its sixth version, now providing for an aggregate purchase consideration for the properties of £685 million including stamp duty. The Appendix 2 'analysis' of the price was also included, but it was in fact just a list of the properties showing how much of the aggregate consideration was allocated to each property, albeit totalling £683.123 million rather than £685 million.

144. In parallel with the evolution of the draft heads of agreement, Arthur Cox was putting draft transaction documents into circulation, which were then passed between the parties in the usual way.

145. AIB did not obtain full or formal independent valuations of the properties prior to or during the course of negotiating the Kish Deal. It did have other forms of information or advice as to value, for example information on the rent profile of the properties from Deloitte, the King Sturge 'Apple Portfolio'

report, and a report it commissioned from Cushman & Wakefield, and which it received on 18 November 2008, on the West End and Thames Valley office markets. It also had historic (pre-crash) valuation evidence that had informed the values shown from time to time in the Kallakis Spreadsheet. The Cushman & Wakefield report provided information on occupation rates, rents and rental yields which AIB used (along with the other information available to it) to form its own view of the value of the Properties. Mr Ryan recalls concluding that it suggested a shortfall (value below lending) of £86 million, indicating a view being taken that the portfolio was worth only £620 million or so.

146. The Kish Deal was considered and approved by AIB's Board on 20 November 2008 and by the Group Credit Committee the following day. A note prepared for those meetings summarised the position and the rationale in these terms:

"*The imperfection in our security structure has impacted significantly on the value of our portfolio, and the Bank cannot rely on the overriding leases and SHKP Guarantees as a source of income. Therefore, we are relying on the underlying occupational rental income as our sole source of debt servicing. To maximise the value of the portfolio, a sale by the Bank as Mortgagee of all properties to Project Kish is recommended.*"

147. There were some small price adjustments. One draft of the credit application shows a total sale price of £683.227 million including stamp duty, whereas the final version showed £679.067 million (£652.949 million before stamp duty). The difference appears to have been a last-minute reduction of £4 million in the Kish Deal price for Market Towers, for which the evidence I was shown and heard does not enable me to find the explanation. The final version of the profit-share formula, however, the detail of which does not now matter, still used a base line of £685 million.

148. One complaint made against AIB was that it ought to have sold the Kallakis SPVs rather than the properties, so that (under the tax rules as they stood then) the Kish SPVs might not incur a stamp duty liability. The complaint never had any relevant end product, because in the context of the Kish Deal there is no reason to suppose that Green would have offered to pay more, and no reason why AIB should have been willing to lend more to fund any such higher price, if the transaction would be free of stamp duty. This was not a simple sale, in respect of which the expert evidence was that at that time stamp duty 'savings' of this kind *did* tend to become a negotiating point, with the 'benefit' usually being 'shared' between vendor and purchaser by an upwards price adjustment of some agreed portion of the 'saving'. The natural impact of an absence of stamp duty in the Kish Deal structure would just have been a reduction of AIB's lending commitment, and the Kish SPVs' corresponding opening debt, a matching adjustment to the base line in the profit-share formula and, therefore, in principle, an increased chance of a profit in terms of that formula eventually being made (though in practice none would have been).

149. The complaint was misconceived in any event. AIB gave consideration to the possibility of selling the Kallakis SPVs rather than the properties. It decided against because it was unwilling to take the risks of the unknown that would come with passing on the corporate vehicles of a fraudster that had been at the

centre of his fraud. That was plainly a reasonable attitude to adopt, given that it was reasonable (and in fact accurate) of AIB to consider that Achilleas was a fraudster through and through, and the complaint did not feature in Mr Malins KC's closing argument.

150. Upon completion of the Kish Deal, CMS wrote to Withers to say that AIB had exercised its power of sale and that the net loan balance due from the Kallakis SPVs was now £54.351 million. Therefore, Withers, Achilleas, Mr Williams and Mr Becker, would all have been aware immediately that the properties had been sold for c.£650 million. Withers did not challenge AIB's entitlement to sell. They did, however, assert that AIB had not given their clients "*the opportunity to see if they could obtain better terms*", and reserved rights as to whether the price obtained by AIB was the best price reasonably attainable. (The net loan balance left was in fact £56.8 million, as the loan balance outstanding on 21 November 2008 was £709.75 million. It does not matter for my purposes why CMS stated a slightly lesser net balance on the day.)

151. The suggestion that there had been no opportunity for Achilleas to see if he could obtain better terms was baseless. He had had over two months, and had come up with nothing serious. Whilst there was a reservation of rights about the price achieved by AIB, there was no hue and cry to the effect that the properties were obviously worth much more than the sale price. Withers continued their correspondence with CMS into January 2009, raising some of the issues which in due course featured in these proceedings (for example, the fact that the properties rather than the Kallakis SPVs had been sold). However, there was no suggestion that AIB had not been entitled to sell, and there was no complaint that a sale price of c.£650 million was materially below the value of the properties when sold. That is not surprising, since (as I noted, above) Withers' instructions from Achilleas immediately after the collapse of Lehman Brothers were that having consulted King Sturge, the portfolio loan to value deficit was £76 million, meaning that the properties were thought to be worth c.£630 million in aggregate; and very obviously the open market value of the portfolio would have been substantially lower again in late November 2008.

152. On 9 December 2008, CMS wrote to Mr Becker to say that AIB no longer required custody of the bearer shares in the Kallakis SPVs, and asked where they should be sent. Withers responded on 10 December 2008, taking objection to CMS having written directly to Mr Becker, but saying that the certificates should be sent to him.

153. Following completion of the Kish Deal:

(i) The bogus head leases had to be brought to an end and the real world tenancies regularised, if possible, as lease-holdings from the new Kish SPV landlords.

(ii) Atlas went into members' voluntary liquidation (overtaking a trade creditor's winding up petition that had been presented on 19 November 2008). A first creditors' meeting was held on 19 December 2008.

(iii) On 14 January 2009, AIB applied to wind up Oregon, leading to a winding up order on 4 March 2009. The company was found to be an empty shell, hopelessly insolvent.

154. By early April 2009, Green had visited all the properties and was preparing an investment strategy that was later presented to AIB in the form of detailed and individual appraisals of each property, put together with the assistance of third party professionals where appropriate. The lengthy document that resulted seems to have been ready by about June 2009. Thereafter, Green continued to manage and/or sell the properties. The process, envisaged when the Kish Deal was negotiated and concluded as a 5 to 7 year effort, was extended into 2017, by agreement. Ahead of an AIB Board review in December 2012, AIB appointed CBRE to carry out an independent assessment of Green's approach, and CBRE reported that in their opinion the Kish business strategy for all the properties was the correct strategy. The Board was asked at that review to approve a provision of approaching £70 million in respect of AIB's likely ultimate net loss on the Kish Deal; and CBRE's report was expressing more pessimistic views than Green/Kish were on the likely outturn result for some of the properties.

155. In the event, the 35% profit-share entitlement came to nothing because the properties were sold for substantially less than the cumulative Kish Deal debt. The team at AIB responsible for managing the Kish Deal calculated and presented the overall outcome in January 2017 in a 'Transaction Summary' document. It evidences a total loss of c.£58 million on the lending to the Kallakis SPVs. I am not in a position to make any finding to explain the small difference between that loss figure and the net loan balance of £56.8 million as at 21 November 2008 that had to be written off, although I envisage it could be 'aftermath' costs, e.g. legal costs, allocated by AIB to the Kallakis connection rather than to the Kish Deal. The Transaction Summary also notes that AIB made an insurance recovery against that £58 million loss of c.£31.7 million.

156. In relation to the Kish Deal, the Transaction Summary records that not all final costs had yet been discharged. Subject to that, the AIB loss on the Kish Deal was calculated as c.£98 million. AIB's overall net loss, therefore, prior to the insurance recovery referred to above, was c.£156 million. Although an unjust enrichment claim was pleaded and pursued, AIB's evidence of that huge overall net loss was not challenged at trial, the suggestion instead becoming that if the Kallakis portfolio was worth more than the price at which AIB had sold it to Kish, then AIB was unjustly enriched in the amount of the unrealised difference.

157. Achilleas and Mr Williams were indicted at Southwark Crown Court in January 2011 on charges relating to their frauds against AIB and Bank of Scotland. There were 23 Counts, on all of which both of them were charged, as follows:

(i) Count 1 charged conspiracy to defraud AIB, and in the particulars of the offence it was alleged that Mr Becker had been a co-conspirator; similarly, Count 21 in relation to Bank of Scotland.

(ii) Further in relation to AIB:

(a) Counts 2 to 10, 12, 15 and 17 each charged use of a false instrument, contrary to s.3 of the Forgery and Counterfeiting Act 1981, in respect of documents used in the fraud;

(b) Count 11 charged obtaining a money transfer by deception, contrary to s.15A of the Theft Act 1968, as part of the fraud;

(c) Counts 13, 14, 16 and 18 charged fraud, contrary to s.1 of the Fraud Act 2006; and

(d) Counts 19 and 20 charged money laundering, contrary to s.327(1)(d) of the Proceeds of Crime Act 2002.

(iii) Further in relation to Bank of Scotland:

(a) Count 22 charged fraud; and

(b) Count 23 charged use of a false instrument.

158. A first trial commenced in September 2011, but was terminated in January 2012, during Achilleas' evidence, because of ill-health on the part of Mr Williams. The re-trial commenced in September 2012 and resulted in guilty verdicts returned by the jury on 16 January 2013. As the Court of Appeal later explained when increasing sentence, [2013] EWCA Crim 709 at [2]-[3], the individual substantive offences charged by Counts 2 to 20, respectively Counts 22 and 23, were tried as alternatives to the primary charges of conspiracy under Counts 1 and 21. The jury found Achilleas and Mr Williams guilty of both conspiracies, so they were discharged from reaching any further verdicts.

159. Bank of Scotland was induced by fraud on the part of Achilleas and Mr Williams to lend funds for the purchase of a passenger ferry for conversion to a superyacht. Like the fraud against AIB, this fraud featured Oregon and the forgery of documents. The forgeries included:

(i) A purported death certificate for Achilleas' mother showing a date of death of 15 October 1992, giving her name as 'Erinoulla Kallakis' (and also identifying her widowed husband as 'Kallakis'). The date of death is correct but the certificate was a forgery. The SFO obtained the true death certificate, which naturally was in the name 'Kollakis'. Achilleas was obviously responsible for this forgery, although he denied it, and Mr Williams will have been the forger, though he denied it.

(ii) A "*Legal Confirmation of Trust Deed*" document dating from April 2008 in relation to the HST, addressed to Bank of Scotland and purportedly from Paul Harden, a London solicitor used by Atlas as an in-house lawyer who worked from the Atlas office at 8 Carlos Place, trading as Paul Harden & Co. Mr Harden's signature on the document was forged, and his 'Paul Harden & Co' stamp had been used without

his authority. The document lists 'Erinoula Kallakis' as the supposed settlor of the HST (said to have been established in 1997) and Mr Becker as the sole trustee. There was no 'Erinoula Kallakis', of course, and Achilleas' mother, Erinoula Kollakis, died in 1992. Again, the overwhelming probability, their protestations notwithstanding, is that Achilleas was responsible and Mr Williams was the forger.

(iii) A purported deed supposedly effecting the retirement of FTS Worldwide Corporation ('FTS') as trustee of the HST and the appointment of a BVI company called Suisse Custodians Limited ('Suisse Custodians') in its place. The document describes FTS as the sole trustee, but the purported Trust Deed said to constitute the HST provided that Mr Becker and FST were joint trustees. The purported FTS retirement deed bore another forged Paul Harden & Co signature and stamp.

(iv) Another purported deed of retirement by which Suisse Custodians supposedly retired to leave Mr Becker as sole trustee, again with a forged Paul Harden & Co signature and stamp.

160. Confiscation proceedings followed against Achilleas under the Proceeds of Crime Act 2002. This resulted in an order made on 23 September 2014 for confiscation of an available amount assessed at £3.25 million, though on the basis that Achilleas' benefit from his frauds had been just over £95 million. Most of the proceeds of the fraud have not been traced.

161. The confiscation order was made with Achilleas' agreement. In agreeing the order he accepted that assets he had previously claimed to be HST assets were his own property, including a 50% share of the former family home in Brompton Square in London. The other 50% was claimed by Achilleas' wife, and agreed by Achilleas to belong to her. She like Achilleas was excluded from being a beneficiary of the HST, if the HST was real.

162. Most recently, for the reasons given in a judgment dated 17 March 2023 of HHJ Baumgartner at Southwark Crown Court, a further £92,500 was confiscated from Achilleas as the culmination of another extraordinary episode. In his wealthy pomp, albeit with wealth generated by fraud, Achilleas donated £250,000 to the Francis Holland School in Regent's Park, at which his daughter was a pupil, paying £75,000 in July 2004 and £175,000 in November 2005. The donation was to be put towards the building of a new theatre at the school, which was named "*The Kallakis Theatre*" because of this generosity.

163. The school removed the Kallakis name from the theatre after Achilleas' conviction of the mortgage fraud against AIB and Bank of Scotland. In response, Achilleas sought to recover his donation, alleging breach of what he said was a binding contract providing for naming rights in perpetuity in return for the donation. Having first procured a letter before action in his wife's name, threatening that she would sue the school, Achilleas procured Michalis to bring the threatened proceedings in his (Michalis') name, having assigned the benefit of his claim to enable Michalis to do so. The proceedings were

settled on terms negotiated by Achilleas that led to a payment by the school to Michalis of £92,500.

164. The SFO claimed, and HHJ Baumgartner found, that the donation had been made by Achilleas out of the proceeds of his frauds, that any claim against the school was Achilleas', and not (as he and Michalis asserted) the HST's claim, and that Michalis had brought the proceedings against the school on Achilleas' behalf. The £92,500 paid to Michalis belonged to Achilleas so as to be available for confiscation, and confiscation was ordered.

The Claims Pursued

165. In closing argument, Mr Malins KC sought to pursue only the following claims, namely:

(i) a claim against AIB for damages, alleging that AIB misrepresented "*to [Achilleas] and/or to Withers (and to [Mr Williams] and [Mr Becker] directly or indirectly) that if [Achilleas] cooperated with AIB to repair or remedy the problem (which was understood to be a loan to value problem arising from the now absent SHKP leases/guarantees) then the loans and the property development programme would continue, whereas in truth AIB must have decided to foreclose and to unload the 14 properties to a connected party (Green/Kish)*". The assertion was that in reliance on that alleged misrepresentation as to AIB's intentions, Achilleas "*did not put the whole portfolio on the market or appoint a Receiver or Administrator, whilst … AIB were … organising matters to transfer the properties to Green/Kish*" (the 'Misrepresentation Claim');

(ii) a claim against AIB for failing, allegedly in breach of its equitable duty as a mortgagee exercising its security rights, to get better than the £653 million paid by Green/Kish for the Kallakis portfolio. The assertion in Mr Malins KC's written closing submissions was that the Green/Kish price so undervalued the portfolio as to cause AIB to fail to generate what could and should have been a surplus, over the debt owed to it by the Kallakis SPVs, of at least £20.683 million. He corrected that figure to £18.233 million in his oral closing remarks, accepting that for the written closing he had used a marginally inaccurate figure for the AIB loan balance outstanding prior to completion of the Kish Deal (the 'Undervalue Claim');

(iii) an unjust enrichment claim against AIB, contending that if the value of the Kallakis portfolio exceeded the debt owed to AIB by the Kallakis SPVs, then AIB was unjustly enriched at Michalis' expense to the tune of that difference (the 'Unjust Enrichment Claim');

(iv) a claim against Achilleas for damages, alleging that he negligently failed to "*work with [Mr Becker] to unload or … try to unload the portfolio at the best price they could have obtained in late September, October or November [2008] and failed to ensure that at no time did AIB have a financial shortfall (i.e. a shortfall on monthly moneys due) and therefore grounds to foreclose on that basis*". The assertion was

that as a result, "*the HST assets were taken by AIB and disposed of leaving the same shortfall in the assets of the HST as is claimed against AIB …*" (the 'Negligent Advisor Claim').

The Misrepresentation Claim

166. The claim put forward in closing argument (paragraph 165(i) above) was not pleaded. The pleaded misrepresentation claim against AIB was quite different, and it would have been far too late for it to be fair to allow an application to amend, not that any application was made. The claim fails *in limine*, therefore.

167. The claim was in any event totally without merit.

168. Firstly, and most simply, the representation alleged was never made. The issue was that Achilleas had procured all of the AIB loans by fraud, not (only) the fact that there was a loan to value problem if the SHKP rent covenant was absent, albeit of course the loan to value consequence of the absence of that covenant was in itself a major concern. At the meeting on 15 September 2008 to confront Achilleas with what AIB had been told by SHKP, Mr Aldred of CMS introduced matters by stating that there was "*a big problem with [the] property portfolio*", that AIB were "*going to deal with the situation*", and that if Achilleas dealt with AIB/CMS and cooperated with a view to rectifying the situation that would be in the best interests of all concerned. He then reported SHKP's disowning of any knowledge of the portfolio and the grounds AIB had, having met SHKP, for considering that the supposed SHKP guarantees were fake. Mr Ballaster of CLC immediately asked to have some time alone with Achilleas and Mr Williams, after which he (Ballaster) advised Achilleas and Mr Williams, in front of AIB/CMS, that if it were true that the supposed SHKP connection was unreal and they (Achilleas/Williams) knew about it, then "*we are dealing with a potential criminal situation, including fraud*".

169. Mr Aldred identified AIB's initial requirements as being:

(i) the immediate provision of £200 million, which would have to be done "*very quickly indeed*". This was said in the context of a comment by Mr Aldred that if there were no SHKP guarantees, the valuation of the Kallakis portfolio properties would fall significantly, but it was not suggested that £200 million was a measure of that drop. As I have said already (paragraph 81 above), AIB's contemporaneous assessment, not criticised at all at trial, was that the SHKP connection had enhanced the value of the portfolio by c.£340 million;

(ii) an accountant being put in place "*to manage the portfolio and disposals*", with disposals being "*managed in the context of the current market*". In response to a request by Achilleas for clarification, Mr Aldred made clear that disposals in this context could be through a refinancing or a realisation (meaning, in context, not necessarily by a forced sale).

170. It was identified and acknowledged that it was in both sides' best interests to get the most from the properties that was possible in the circumstances, but it

was made clear that for Achilleas to be any part of that, there had to be someone appointed by AIB sitting alongside Atlas to manage the portfolio.

171. Mr Aldred's email to Mr Ballaster following the meeting (quoted at paragraph 100 above) prefaced its list of AIB's immediate requirements with very plain statements to the effect that:

- AIB would take whatever steps it thought best to protect its interests, but
- AIB was willing to give Achilleas a brief opportunity to demonstrate, if he wished to do so, that he would "*cooperate completely to ensure that [AIB] will suffer no loss*"; and
- if AIB did not receive that cooperation, it would act as it saw fit;

and the third stated requirement was that Achilleas procure full cooperation "*to allow for the realisation of assets or refinancing of the relevant properties as is considered [i.e. by AIB] appropriate*".

172. Nothing was said by or on behalf of AIB at any later stage, prior to the conclusion and completion of the Kish Deal, to any different effect as regards its intentions.

173. Thus, contrary to Mr Malins KC's argument, (a) the problem was not only the LTV consequence of the SHKP connection being unreal, (b) there was no statement that if Achilleas cooperated to repair the LTV shortfall the Kallakis portfolio could continue to be funded by AIB, or any statement like that, and (c) to the contrary, it was made clear that AIB was looking for full cooperation from Achilleas for AIB to exit from the financing of the portfolio.

174. In any event, if what AIB said had conveyed, which it did not, some assurance as to its continuing with the Kallakis portfolio, it would have been conditional upon full compliance with AIB's requirements, but that was not forthcoming. There was no assurance of any kind as to what AIB would or would not do in that circumstance, except in the sense adverse to the claim that AIB made clear it would then do whatever it saw fit within its legal rights as lender and mortgagee, and without reference to Achilleas or anyone else acting for the Kallakis SPVs.

175. Secondly, and equally simply, Achilleas did not understand that any statement such as Mr Malins KC proposed had been made. On 17 September 2008, Withers wrote to CMS, as instructed by Achilleas, declining to accept that the purported SHKP documentation was in any way suspect, offering a new Oregon guarantee to match all of SHKP's purported obligations (an offer that was entirely worthless, as Achilleas but not Withers will have known), and nonetheless, i.e. in addition, confirming the Kallakis SPVs' (i.e., in reality, Achilleas') "*absolute and firm intention to progress with a disposal and refinancing programme to ensure that the lender/borrower relationship with AIB which has clearly broken down is ended smoothly, quickly and to AIB's full satisfaction.*"

176. Thirdly, there was no such reliance as was proposed by Mr Malins KC. It is fanciful to suppose that Achilleas was put off by anything said or done by AIB from putting the whole portfolio on the market, and ridiculous to suggest that he would have put the properties, or the Kallakis SPVs, in the hands of receivers or administrators. Achilleas knew as well as AIB did that any such open, forced sale process would not have realised net proceeds anywhere close to the loan balance owed to AIB.

177. Fourthly, there was no relevant loss. I shall not deal with that at any length here, since it naturally falls out of what I say, below, about the Undervalue Claim. In short, in the counterfactual proposed by Mr Malins KC, namely if Achilleas had procured that the whole portfolio be put up for sale on an urgent basis (whereby to avoid the Kish Deal, as it became), or had caused receivers or administrators to be called in, the best that might have been realised would have been a 'fire sale' value far below the sale price of £653 million achieved by AIB.

178. Fifthly, Michalis would have had no title to sue in respect of any loss caused by a misrepresentation by AIB of the kind alleged. The title to sue asserted by his pleading (given the abandonment for closing argument of any claim as assignee or any derivative claim) was as beneficiary of the HST, the allegation being that the Kallakis SPVs were owned by SPVs owned by Mr Becker (legal ownership of the shareholding), and that Mr Becker held that title as trustee of the HST. Even if all of that were true, it would not arguably mean that AIB owed a duty of care to Michalis in respect of statements made by it or on its behalf to those acting for the Kallakis SPVs in relation to the realisation or possible realisation of value from the portfolio following the discovery of what appeared to be (and we all now know was in fact) Achilleas' fraud.

179. Mr Malins KC submitted that the case was covered by *White v Jones* [1995] 2 AC 207, in which solicitors negligently failed to carry out the plaintiffs' father's instructions to prepare a new will that would have left them with legacies of £9,000 each before he died. They were left disinherited under what therefore stood as their father's last will. The plaintiffs' claim for damages for the solicitors' negligence failed at trial, *inter alia* on the basis that they had been owed no duty of care by the solicitors. The Court of Appeal allowed the plaintiffs' appeal, awarding the plaintiffs damages of £9,000 each; and the House of Lords dismissed the solicitors' further appeal.

180. There is no analogy between those solicitors' negligent failure to comply with instructions to create inheritance benefits for the plaintiffs, in circumstances where, reasonably foreseeably, their negligence might result in the loss of the intended legacies without either the testator or his estate having any remedy, and the allegation here of negligent misstatement by AIB causing the Kallakis SPVs to fail to realise full value from their properties, for which they would have had a remedy in damages against AIB, if the claim had worked on the facts. Michalis as (if he was) a beneficiary of a trust that owned the parent companies of the Kallakis SPVs was not in a position arguably akin to that of the plaintiffs in *White v Jones*.

181. The argument in favour of a duty of care owed to Michalis was not improved by Mr Malins KC's unpleaded alternative contention that if (as I find, below, in fact they were) the Kallakis SPVs were held (indirectly) by Mr Becker on behalf of Achilleas as beneficial owner, AIB owed Michalis a duty of care in respect of what it said in September-November 2008 to those acting for the Kallakis SPVs in relation to the realisation of value from their properties. The suggestion was that Michalis was owed such a duty of care because he was at the time the infant son of Achilleas for whom there might have been a hope of a future inheritance that might be more valuable if the Kallakis SPVs were worth something rather than being massively insolvent. Again, the decision in *White v Jones* was the only basis upon which the claim of a duty of care was advanced; again, the claim had no arguable merit.

182. For completeness, I should mention that Mr Malins KC said that s.104(2) of the Law of Property Act 1925 is "*particularly helpful*" as to whether a duty of care was owed to Michalis. That section provides that a conveyance of title by a mortgagee exercising a power of sale will give the purchaser good title even if that exercise of power was unauthorised, improper or irregular, "*but any person damnified by an unauthorised, improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power*". Mr Malins KC noted that the Act refers to "*any person damnified*" by the untoward passing of title, and not (only) to the mortgagor.

183. That of course is because the mortgagor might not be the only party with a proprietary interest in the property sold that is defeated by the mortgagee's purchaser's new, clean title. It does not mean that someone in Michalis' position would have a claim under the Act if the Kish Deal had involved an unauthorised, improper or irregular exercise of a power of sale by AIB. Neither on the pleaded case centred upon the HST (given the abandonment of other alleged bases of claim), nor on the alternative proposed in closing of a mere expectation of inheritance, would Michalis have had any proprietary interest in any of the Kallakis portfolio properties so as to be a person 'damnified' by an untoward passing of title to the Kish SPVs.

184. Therefore, contrary to Mr Malins KC's suggestion, s.104(2) of the 1925 Act is of no help whatever to Michalis.

185. Sixthly, and finally, even if, as alleged, some misrepresentation by AIB actionable by Michalis if he suffered loss because of it had caused the Kallakis SPVs to be left worthless, that would not arguably mean that Michalis could claim damages equal to the value the Kallakis SPVs should have had after the presumed achievement through Achilleas' efforts of some better outcome than resulted from the Kish Deal. The terms of the HST, as alleged, were those of a fully discretionary trust giving Michalis as one of a number of beneficiaries no more than a right to be considered as a possible recipient of benefit. Michalis' status as one of Achilleas' four children gives him nothing more than a hope of some measure of inheritance, such as Achilleas may appoint if he makes a will or such (if any) as he (Michalis) might obtain on an intestacy if Achilleas should die without a will. There was neither a pleaded case of loss on either basis, nor any attempt to establish any such loss by evidence. Mr Malins KC adduced evidence from Achilleas in cross-examination to the effect that he has

not made a will, but intends to do so and will make Michalis a beneficiary if he does. That does not come close to proof that Michalis has suffered loss, or to evidence allowing a quantification of loss.

186. Before turning to the Undervalue Claim, I deal briefly with the pleaded claim that was not pursued in closing argument, if only to confirm why Mr Malins KC was correct, in my judgment, not to pursue it. The representation alleged was that "*AIB looked to [Achilleas] and [Mr Becker] and [the Kallakis SPVs] to "repair" the situation and … that in view of the then current conditions in the commercial property market AIB did not require an immediate sale of the Assets at any price but wished to see written proposals as to how the "serious flaws in the security structure" might be addressed*". It was acknowledged in the pleading that AIB made clear that full cooperation as it might demand would be a condition for AIB "*holding open the opportunity for Withers' clients to resolve the matter themselves*".

187. Full cooperation as demanded by AIB was not provided, and that is an end of the pleaded claim. In any event, it was true that AIB was not looking for an immediate sale at any price, and that it was willing to give Achilleas a chance to secure a written proposal, if he could, to repair the flawed security structure. He was given that chance, AIB received no such proposal, and the Kallakis portfolio was lawfully sold via the Kish Deal. There was never any proper basis for a misrepresentation claim against AIB in this case.

188. As for falsity, the allegation was that AIB "*formed the undisclosed firm intention of selling the Assets as mortgagee to Green … for what it could get from that one party (and of itself funding in excess of 100% of the cost of that purchase) and had no genuine interest in proposals placed before it by Withers' clients or in pursuing other options*". AIB did form the firm intention to do what became the Kish Deal, if (as transpired) no serious option emerged from Achilleas, and it did not disclose that intention to Achilleas *et al*, but that was in early November 2008, not before. That does not falsify the pleaded representation, or anything that AIB in fact said about its intentions. At all times, AIB had a genuine interest in proposals that might be put up by Withers' clients, even if it was rightly doubtful whether any would be forthcoming that might be worthy of consideration; and AIB was willing to consider and did consider other options than the Kish Deal.

189. By the time AIB formed the firm (if strictly conditional) intention to go ahead with Green/Kish to which I have just referred, Achilleas had shown himself not to be serious about anything other than lying to try to get round his prior lies, and had caused all cooperation with AIB to cease.

<u>The Undervalue Claim</u>

190. The shortest answer to this claim, but it is a complete answer, is that AIB's relevant duty was not owed to Michalis, and he has no claim against AIB even if in breach of its duty AIB failed to take reasonable care to obtain the best price reasonably obtainable in late November 2008, that being when AIB in fact sold. That is the only relevant point in time, because a mortgagee may sell, where it has power to do so, "*whenever [it] chooses to do so. It matters*

not that the moment may be unpropitious and that by waiting a higher price could be obtained" (*Cuckmere Brick Co Ltd at al. v Mutual Finance Ltd* [1971] 1 Ch 949, *per* Salmon LJ (as he was then) at 965G).

191. As Cross LJ put it in the same case (at 969G-H), "*... the mortgagee, when the power has arisen, can sell when he likes, even though the market is likely to improve if he holds his hand and the result of an immediate sale may be that instead of yielding a surplus for the mortgagor the purchase price is only sufficient to discharge the mortgage debt and the interest owing on it*". The principle is no different if in fact the mortgagee's chosen timing means that the purchase price will not be sufficient even to discharge the mortgagor's indebtedness, or means that any remaining balance (i.e. shortfall after sale) is greater than if the mortgagee had waited and sold later.

192. The mortgagee's equitable duty to take reasonable care to obtain the best price reasonably obtainable when selling is owed to the mortgagor (including any co-mortgagor), any subsequent (inferior) mortgagee, and any guarantor of the mortgage debt. They have an interest in the equity of redemption, and the purpose of the equitable duty is to protect such an interest. The duty is not owed to those who have no such interest but who in some other way stand indirectly to gain, or suffer reduced loss, from a higher selling price.

193. Thus, the duty is not owed to a person having a beneficial interest under a trust, where the trustee, acting as such, owns and has mortgaged the property, even if the mortgagee knows of that interest (*Parker-Tweedale v Dunbar Bank plc* [1991] Ch 12); nor is it owed to a director, shareholder, or employee of a corporate mortgagor (*Burgess v Auger et al.; Burgess v Vanstock Ltd* [1998] 2 BCLC 478). *A fortiori*, AIB's duty was not owed to Michalis as either:

    (i) (the pleaded basis, as narrowed in closing) a beneficiary (if he was) of a trust upon which the shareholder of the corporate parents of the corporate mortgagors held his shares; or

    (ii) (the unpleaded alternative suggested in closing) a child of the person for whom the shareholder of the corporate parents of the corporate mortgagors held his shares as nominee.

194. Since it was explored in detail in the evidence, including expert evidence, I shall consider in any event whether there was any foundation for the claim that the Kish Deal involved a sale of the Kallakis portfolio for less than the best price reasonably obtainable for it in late November 2008. To be clear at the outset, the relevant enquiry indeed concerns the portfolio as a whole (whether a portfolio sale or a series of separate sales of one or more of the individual properties is posited). In this case, since all lending by AIB was cross-guaranteed by all of the Kallakis SPVs, it would not found a claim to show that some given property was undersold, and should have fetched more than the outstanding balance on the associated Kallakis SPV's individual loan, if in aggregate there would still have been a shortfall since that Kallakis SPV, jointly and severally with all of the others, would have been liable to pay that shortfall and unable to do so. All the Kallakis SPVs, therefore, would still have been left insolvent by an aggregate shortfall. Rightly, therefore, the claim

has only ever been advanced, and was pursued at trial, by reference to aggregate realisable values.

195. Permission was granted to Michalis and to AIB, by the main case management Order in the case, the Order of Moulder J dated 1 November 2021, for expert evidence "*in the field of real estate valuation*", confined to the issue of "*the best price reasonably obtainable for the [Kallakis] portfolio of properties at the time of their sale by [AIB] in November 2008.*" Subsequent Orders made changes to the deadlines for the exchange of expert reports (etc), but did not amend the required field of expertise or the issue to be addressed.

196. Pursuant to that permission, AIB adduced expert evidence from Jonathan Manley, currently of Lambert Smith Hampton. Mr Manley is a well-qualified expert in the field of real property valuation with substantial, relevant and useful experience causing him to be well placed to provide expert evidence as permitted by Moulder J's Order. His opinion was that the market value of the Kallakis portfolio on 21 November 2008, on a basis that I explain below, was no more than £535,615,000 if it did not benefit from any of the purported SHKP-backed rent covenants. He explained that in a sale by receivers or by AIB as mortgagee in possession, i.e. an openly 'forced sale', bidding was likely to be 15% to 20% below the values that, as he put it, "*prevailing technical calculations could sustain*"; and that there would not have been any premium available from the market, above the aggregate of the individual such values, by trying to sell the properties as a single portfolio.

197. On the latter point, Mr Manley explained that between 2004 and 2007, portfolios of properties often commanded "*a premium for quantum, as many banks found it easier to tie together portfolios of property and advance a larger, single loan over the whole. This was … more cost effective … and … also suited securitisation through a commercial mortgage-backed securities (CMBS) structure, or syndication.*" However, the credit crunch and subsequent crash changed the picture, and Mr Manley, without claiming to be a banking expert, was able to say from his experience of the commercial property sector at the time, that vendors seeking to sell full portfolios rather than individual properties had to trade at a discount. In his view, if the Kallakis portfolio properties had been offered to the market in November 2008, as a package, "*a discount of 5% to 10% would have been applied by any purchaser in the market*".

198. Mr Manley also made clear that his £535,615,000 valuation without the supposed SHKP connection was a valuation that strictly ignored that side of things entirely, that is to say a valuation assuming no such connection, actual or supposed. He was able to opine also, however, on how the market would approach things if aware of the purported valuable head leases but also aware that they were thought to be fraudulent. In that regard, his well-reasoned view was that "*having no headleases at all [i.e. the basis on which he had approached his main valuation] would have been seen as … preferable to a buyer, [rather] than having a defective structure that required dismantling. I would anticipate a discount of 10% – 15% of total value being sought to deal with this issue.*"

199. I accept that view, which was not challenged at trial. Mr Manley's opinion, therefore, amounted to this, namely that the realisable market value of the Kallakis portfolio, when sold by AIB, was less than £500 million.

200. Purportedly pursuant to the permission for property valuation expert evidence, Michalis adduced evidence from David Griffiths, now of Expert Evidence International Ltd. Mr Griffiths' primary career was in banking, initially with a focus on recovery work in relation to property lending. Between 2000 and 2013, he was Head of Property Finance at Leumi Bank, responsible for that bank's property loan portfolio. As an adjunct to his banking career, Mr Griffiths qualified as a chartered surveyor, becoming a Member of the RICS in 1999. However, he is not and has never been an expert in the field of real property valuation.

201. I regret to say that Mr Griffiths' evidence was entirely unsatisfactory. He was not competent to give, and did not give, expert property valuation evidence such as had been permitted by Moulder J's Order. He was identified as a possible expert witness for the case by Achilleas, with whom he had initial discussions prior to the case management conference before Moulder J.

202. Achilleas was not given permission for expert valuation evidence under Moulder J's Order. Over a year later, by Application Notice dated 4 January 2023, he sought instead permission to submit "*an expert report relating to [AIB's] banking misconduct*", arguing that such a report should be allowed to assist him in showing, as he would contend, that AIB's conduct, not any mismanagement by him, caused any loss that might be proved. I refused that application at a hearing on 17 February 2023, at which I also made an unless order debarring Michalis from adducing expert evidence under Moulder J's Order unless he served a compliant expert report or (if he wished to rely on Mr Makins as his expert) a supplemental statement from Mr Makins responding to Mr Manley's report, by 5 April 2023. I gave Michalis liberty to apply at the pre-trial review, if he chose the latter option, for permission under CPR 35.5 to rely on Mr Makins' opinion evidence as his expert evidence for trial although it would not have been in an expert report that conformed to the requirements of CPR 35 and Practice Direction 35.

203. Mr Griffiths gave evidence that he was in contact with Michalis at the back end of 2022, i.e. shortly before the January 2023 application by Achilleas was issued (although he said he was not told about that application), but that he was only asked to prepare the report in fact served shortly before it had to be served in early April ("*… I didn't have a great deal of notice at all. We are talking weeks*").

204. I infer that Mr Griffiths was the expert from whom Achilleas hoped to submit a report; and that following my refusal of Achilleas' application in that regard, Mr Griffiths was asked instead to prepare what became the report served by Michalis under the unless order. It was served on the unless order deadline of 5 April 2023.

205. Mr Griffiths should not have been asked to give expert evidence pursuant to Moulder J's Order. He was not competent to do so. Having been asked, he

should have declined to assist, recognising that he was not an expert in the field of expertise from which expert evidence had been permitted. In a rare moment of concession, Mr Griffiths said in answer to my direct question that had he been told that Michalis had been given permission to provide expert evidence in the field of real estate valuation and had Mr Manley been available, "*I would say go for a – go for a working chartered surveyor*".

206. Having thus failed in his most basic duty to the court to ascertain whether he was competent to provide the kind of expert evidence for which the court had granted permission, in my judgment Mr Griffiths presented an ill-reasoned and for the most part obviously unsustainable or irrelevant argument about the case that had very little to do with the issue on which expert evidence had been allowed. His opinions did not withstand serious scrutiny, he declined to make obviously appropriate, reasonable concessions, and I regret to say that on a number of occasions, I was left in no real doubt that Mr Griffiths was making his evidence up as he went along, which involved him not telling the truth to the court about how he had derived some of the opinions he had expressed in writing.

207. When asked squarely to address the relevant question, something Mr Griffiths had failed to do in writing, that is to say to opine on the price the Kallakis portfolio might realistically have fetched if the buyer was committing so as to be bound only on or about 21 November 2008, so that whatever the period or extent of any prior marketing there had been no binding commitment to purchase until then, Mr Griffiths had no evidence that could assist Michalis:

"*MR JUSTICE ANDREW BAKER: But the assumption remains the same, that you don't achieve a binding commitment until the third week of November [2008]?*

A. If -- if you are looking at a binding commitment to strike a deal in the middle of November, then the market had -- was falling at such a rate that I do not believe that any valuation figure that I could come up [with] would be particularly reliable. I -- I would really hesitate to provide something. And so that puts me in a position where I really would struggle to argue with -- with 650 [million] under those circumstances.

MR JUSTICE ANDREW BAKER: What about Mr Manley's figure under those circumstances of 535 [million] even?

A. No, I can't -- HNG, Hargreaves Newberry Gyngell, came up with a very similar figure and they were writing their opinion in 2010 and by 2010, we had all been through an enormous trauma, and so I can understand that somebody would take an excessively negative view of the market in hindsight. And I wouldn't go as far as to say I could agree with Mr Manley -- in fact, I don't -- but I would struggle to argue with 652 [million].

…

MR KITCHENER: Now, on the same basis that my Lord has been putting to you, so a contract with exchange and completion on the same day, on 20

November [2008], you wouldn't feel yourself able to take issue … with HNG's valuation as at November 2008 of 587 million, would you?

A. I would, simply on the basis that somebody paid more than that in reality or at least they struck a price which was higher than that [i.e. the Kish Deal itself]. But my -- my earlier comment was that the margins of error would be so great because the market was so uncertain at that time, that I would -- I would hesitate to argue too much.

Q. Right. So certainly within the realms of within a reasonable range, that valuation [i.e. 587 million]?

A. Yes.

Q. And that shows, doesn't it, also that Mr Manley's valuation was within a reasonable range?

A. I think it's outside the reasonable range, but we will disagree on that."

208. Therefore, even if I were to put aside my grave concerns about relying on any valuation opinion Mr Griffiths might offer, the high water mark of his view was that:

(i) at £535 million (or, in truth, somewhat less), Mr Manley's opinion was unreasonably low, and wide of the mark even for the very uncertain times of November 2008 and a market then in rapid decline;

(ii) the Kish Deal price of £653 million could not sensibly be argued to be too low; and

(iii) HNG's assessment (given to AIB in 2010, but valuing as at November 2008) of £587 million was certainly within the range.

209. Even that high water mark was not free of obvious difficulty. Mr Griffiths' only reason for saying he would take any issue at all with the HNG figure was that the Kish Deal was struck at £653 million. But that was to compare apples and pears. The Kish Deal price was for a transaction under which the entire purchase cost would be funded by the vendor on a non-recourse basis; and the main thesis of Mr Griffiths' primary report had been that such a funding package was a game changing feature the availability of which, in his view, should have been advertised widely whereby to attract an even higher bid than Green/Kish's £675 million (inclusive of stamp duty), which became £685 million as final price. That price (£653 million before stamp duty) is only 11% above the HNG valuation, and 22% above Mr Manley's £535 million.

210. The non-recourse funding, according to Mr Griffiths, "*was a game-changer in the context of the markets in late 2008 and completely altered the dynamics of what might otherwise have been a forced sale in the face of immense market disruption.*" The plain logic of that, though Mr Griffiths unreasonably refused to accept as much in cross-examination, was that any price agreed by a buyer, with AIB non-recourse funding as provided under the Kish Deal, would be

likely to be very substantially higher than a price the same buyer (or any buyer) would be willing to pay for a purchase on normal market terms, funded otherwise than by non-recourse funding from the vendor.

211. Inconsistently, however, Mr Griffiths had also said, in his primary report, that "*There is no hint from the documents, notably the [AIB] Credit Application, that, in arriving at its figure of £653 million, Green was taking the Funding Package into account. Indeed, all the indications are that the price agreed with Green was based on their perception of the market at the time, also taking into account information contained in the Apple Report. That must, in my opinion, be the base point for the assessment of the best price obtainable, taking into account that there was no competitive pressure of any kind on Green.*" In cross-examination, this became Mr Griffiths' big point, relied on by him repeatedly – not that the funding package had been a game-changer, but rather that the funding package had been irrelevant to the price agreed in the Kish Deal.

212. That posits, for no reason, that Green/Kish was behaving irrationally, failing to bid up substantially because of the funding package. It was a false point as made by Mr Griffiths in writing, because any AIB credit paper he may have had in mind will have been a paper for a possible or proposed deal with non-recourse funding from AIB, and it is an obvious truth that any price proposed for a deal on that basis is a price for such a deal, the commercial dynamics and therefore rational pricing of which were radically different from those of a purchase without such funding. In adhering to the false point in cross-examination, Mr Griffiths repeatedly prayed in aid what he claimed to be evidence showing Green/Kish calculating their bid in such a way as to demonstrate that it was *not* influenced by the AIB non-recourse funding. He did not identify that supposed evidence; nor did Mr Malins KC, either through re-examination or in argument.

213. An allied point urged by Mr Griffiths was that yields used by Mr Manley in appraising property values for the Kallakis portfolio in November 2008 were too high, because Green/Kish had priced the Kish Deal on the basis of lower yields. Mr Manley used yields derived impartially and robustly from relevant, contemporaneous comparators for an ordinary purchase without non-recourse funding from the vendor. Mr Griffiths did not identify the supposed evidence of Green/Kish pricing using different yields, nor did Mr Malins KC. As I judge it, Mr Griffiths was in fact basing his argument on the entirely circular point that since the Kish Deal was 20-30% higher than an open market price suggested by Mr Manley's valuation opinion, the Kish Deal price implied a buyer willing to trade on a significantly lower anticipated yield than that by reference to which Mr Manley had calculated his values. But that is exactly what would be expected of a buyer purchasing *inter alia* non-recourse funding from the seller to cover the property purchase itself, the stamp duty and all other costs of the transaction, and ongoing working capital, so that the buyer would have no investment capital at risk. For Mr Griffiths to insist that the Kish Deal price was reason to dispute Mr Manley's valuation was illogical and unreasonable. I regret to say it served only to confirm his lack of competence, intransigence and partiality.

214. Mr Malins KC manfully led Mr Griffiths in re-examination to put forward for the first time an opinion which became the sole basis upon which any claim was then pursued in closing argument. Mr Griffiths had said in a supplemental report prepared at my instigation during trial, because his primary report had failed to offer any view on prices reasonably obtainable in November 2008 without a non-recourse funding package from AIB, that without the AIB funding package, prices for the Kallakis portfolio properties should have been obtainable in November 2008 that would have totalled £770 million. In his oral evidence, prior to re-examination, he clarified that for that opinion he had assumed exchange of contracts prior to the collapse of Lehman Brothers in mid-September 2008.

215. In re-examination, in response to an obviously loaded series of questions from Mr Malins KC hoping for this result, Mr Griffiths invented the thesis that if exchange of contracts had been in November 2008, after agreement on price, subject to contract, before mid-September 2008, the contract price would be subject to "*some degree of renegotiation and discount, but probably not absolutely substantial*". Mr Griffiths offered an approximate quantification of this new theses, *viz.* that if the buyer remained "*heavily committed to a deal because they [had] spent an awful lot of money on due diligence so far, unquantifiable but we could be talking £1 million here, … my feeling is that from my 770 figure we would be coming down by somewhere between 5 and 10%*".

216. This was about as far removed from serious, credible expert evidence as I find it possible to imagine. However, even were I to accept it uncritically, and were it founded upon relevant assumptions, it would not have supported the claim made against AIB. The Kallakis SPVs' total indebtedness to AIB was £709.75 million, just over 92% of £770 million. I could not have found that there was a surplus over that indebtedness available to be realised from a notional price subject to contract of £770 million, discounted by 5-10%, less vendors' costs of sale. I do not accept this evidence anyway, and it was not founded upon any assumptions that are relevant, because:

    (i) there is and could be no claim against AIB that it was a breach of duty not to have achieved agreement, subject to contract, for the sale of the Kallakis portfolio properties prior to mid-September 2008. The issue of the best price obtainable by AIB for the Kallakis portfolio arises upon the facts as they were, in which AIB properly and reasonably first confronted Achilleas with its concerns only on 15 September 2008, and contracted to sell the portfolio (and completed the sale) only on 21 November 2008;

    (ii) the notion that an investment of (say) £1 million in pre-contract work would induce a rational buyer to pay £80 million or so (at least) above market is, with respect, pie in the sky. (Mr Griffiths suggested a renegotiation discount of 5-10% on £770 million, but with the market by late November 2008 already heavily down on the late summer of 2008 and seemingly in freefall, as Mr Griffiths himself acknowledged, I am clear that any price negotiated entirely afresh would have been at

least 20% below anything that might have been available to a seller before the crash began);

(iii) Mr Griffiths was not competent to proffer, and had no sensible basis for, the pre-crash prices obtainable that he gave in his supplemental report to get to his £770 million in the first place.

217. In truth, the evidence was overwhelming that the Kallakis portfolio properties offered no realistic prospect whatever of an aggregate net sales price in November 2008 capable of generating a surplus for the Kallakis SPVs. The mortgagors' equity in the portfolio then had a very substantial negative value.

218. I start with Mr Manley's expert evidence. Mr Manley appreciated that the expert task set by the court was to provide an expert property valuation opinion as to the best price reasonably obtainable for the Kallakis portfolio on 21 November 2008. He explained that the opinion he provided in response represented his "*assessment of the true Market Value of the portfolio and the properties comprising it*". For that purpose, Mr Manley used the definition of 'Market Value' in the RICS's Valuation – Global Standards (often referred to as the 'Red Book'), namely:

"*The estimated amount for which an asset or liability should exchange on the Valuation Date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*"

219. The Red Book asks the property valuer to assume a transaction with exchange of contracts and completion on the valuation date, following (as the primary definition states) proper marketing. The assumption of proper marketing means that a Red Book valuation figure will be derived from a posited arm's length sale achieved after a marketing effort that should have been sufficient, given the nature and location of the property or properties in question, to test the market's appetite for a purchase and draw out any interested buyers.

220. Mr Griffiths' view was that for a planned (not 'forced'), open market sale of the Kallakis portfolio, a vendor would expect to engage in marketing and sales efforts for at least six months. I did not understand Mr Manley to disagree with that. That means the arm's length sale that a Red Book valuer valuing the Kallakis portfolio as at 21 November 2008 should be positing is one that would represent the culmination of that sort of effort. However, as Mr Manley explained, that does not mean the valuation opinion would differ if, instead, the valuer's view was that three months would be sufficient to market the portfolio. The objective parameters by reference to which the knowledgeable and prudent buyer and seller, acting at arm's length, would be expected to strike a deal on the valuation date would be the same either way.

221. Mr Manley carefully examined those objective parameters, property by property. Where relevant, he used weighted average rental yield calculations he generated with well-known specialist software used in the industry, and contemporaneous market data on the yields at which transactions were being concluded at the time. Where relevant, he used a development valuation

approach, estimating a gross development value and cost of development from which to assess an 'as is' value for the development properties in the Kallakis portfolio at the valuation date. For the two vacant residential properties in the portfolio, Mr Manley adopted a direct comparable sales approach, valuing the apartments by reference to other, similar properties sold in the market around that time for which price information is available.

222. Mr Manley also set his individual valuation opinions in the context of, and assessed their realism against, an informative expert overview he gave of the development of the commercial property market, with a particular focus on the geographic areas relevant to the Kallakis portfolio, through the period during which the portfolio was being built up, and then the 12-month period from late 2007 to the valuation date, as the credit crunch developed and progressed, until finally the market crash was triggered and began to take hold.

223. For example, as Mr Manley reported, the MSCI Index tracked 1,100 commercial properties in Central London with an asset value of over £24 billion. It is a well-known Index in the commercial property market, often used as the benchmark against which property funds and owners will compare their properties' performance, as an equity fund or investor might benchmark against a standard equities index like the FTSE 100. The MSCI Asset Growth Index rose steadily from around 175 in the spring of 2004 to its peak at about 325 in the summer of 2007, and during that period yields correspondingly dropped steadily from nearly 8% to 5%. The Asset Growth Index fell sharply for a few months as the credit crunch first emerged, then steadily throughout late 2007 and 2008, prior to the collapse of Lehman Brothers, after which it headed into freefall, eventually bottoming out in the late spring of 2009 around 40% below its summer 2007 peak. Yields inversely followed suit, rapidly rising to 6%, then steadily rising somewhat further through 2008 until September, then rising sharply again to above 7.5% where they remained until the late summer of 2009.

224. Mr Manley made clear that the valuations he thus derived could be described as 'technical valuations', meaning (in substance) that they represented prices at which, *if there was demand and available funding for a purchase*, he would expect a buyer to be willing to pay and a seller to accept. For cogent reasons he gave, that is a major assumption for several of the properties; and in reality, with no purchase commitment prior to the collapse of Lehman Brothers, the probability is that the Kallakis portfolio, whether sold as a whole or through separate sales of each property, could not have realised in late November 2008 the value indicated by aggregating Mr Manley's individual technical valuation figures, i.e. the £535 million odd to which I have referred.

225. King Sturge's contemporaneous assessment, as I noted in the main narrative, was that as Lehman Brothers collapsed, and AIB first confronted Achilleas, in mid-September 2008, the Kallakis portfolio was worth c.£630 million. £535 million as at 21 November 2008 is c.15% below that, which on the expert evidence I consider to be entirely realistic.

226. Likewise, as I also noted in the main narrative, AIB's contemporaneous assessment, uninfluenced by any awareness of the possibility that Achilleas

had been fraudulent, was that the Kallakis portfolio was in 'negative equity', were it not for the (supposed) SHKP covenants, from well before the collapse of property values. The ex-SHKP value of the portfolio in November 2007 was assessed by AIB at the time to be c.£680 million. A fall of 20-25% over the 12 months to November 2008 could not sensibly be thought to overstate the impact by then of the credit crunch and the start of the market crash; and marking a £680 million value down by 20-25% would bring it to £510-545 million.

227. Stepping back, the Kallakis portfolio as it stood in November 2008 had been acquired for just over £633 million (see the Appendix, below), over 90% of it (by value) in and after the summer of 2005, and over half of it (by value) at or a little after the peak of the property market in the summer of 2007 (£331 million between them for 111 Buckingham Palace Road (July 2007) and 7 & 8 St James's (November 2007)). The idea that in November 2008 it would have been worth substantially less than that cost of acquisition is entirely plausible. The idea that it was then worth substantially more, to the extent that Achilleas was then sitting on an unrealised profit (versus acquisition cost) of more than £75 million that AIB unreasonably failed to realise, so as to leave the Kallakis SPVs in debt after the Kish Deal completed, is and always was fanciful.

228. During the trial, reliance was placed on some isolated pieces of evidence to try to make some case of sale at an undervalue, and I deal with those, finally, now, although I do so for completeness only given that in closing argument, Mr Malins KC put the case squarely and solely upon the basis of the new thesis that Mr Griffiths was led to put forward in re-examination that I do not find credible. Thus:

(i) Reliance was placed on the fact that in July 2008, credible buyers had offered £185 million, subject to contract, for 7 & 8 St James's Square. The evidence showed, however, that this offer was dead in the water by November 2008. There was no hard evidence of any progress at all towards a possible contract following that offer (although Achilleas at the time did give some predictions of imminent success that came to nothing). The offer was conditional upon receipt of a planning consent that was granted on 13 November 2008, but that was not even communicated to the buyers. I infer that they had by then withdrawn their interest.

(ii) Reliance was placed on some internal AIB documents indicating portfolio values in the summer of 2008. Some are influenced by the £185 million offer for 7 & 8 St James's that came to nothing. None gives support to the idea that in November 2008, without the supposed SHKP covenants, the Kallakis portfolio was worth more than the AIB debt upon it.

(iii) AIB was criticised for not obtaining a formal valuation, but in the market conditions of Q4 2008 any valuation would have been heavily *caveated*, subject to a huge margin for error, and of no real utility to AIB in deciding what to do with the Kallakis portfolio.

(iv) It was suggested to Mr Muldowney that he was not informed of the Kish Deal in advance because he would have protested the sales prices built into it. Mr Muldowney rejected the suggestion out of hand; and in any event, his own contemporaneous valuation update (via the Kallakis Spreadsheet) would have supported the view that the Kish aggregate price of £653 million *overstated* the value of the portfolio (see paragraph 117 above).

(v) Reliance was placed on an email dated 18 November 2008, in the context of the Kish Deal then in prospect, noting a need to manage a risk of PWC as AIB's auditors taking a different view on the value of the properties on the basis of a "*jones la salle desktop process*". As the AIB witnesses explained, the potential audit concern would be that after the Kish Deal completed, AIB would have to justify valuing their security, i.e. the portfolio properties, at the levels against which they had lent to the Kish SPVs. The email therefore in truth corroborates Mr Manley's valuation opinion, and AIB's view at the time, that the Kallakis portfolio was worth *substantially less* in November 2008 than the £653 million at which AIB had funded the Kish SPVs to buy it. What might not be immediately evident to PWC as auditors, so as to require explanation or justification, was the writing down (to crystallise a loss in the books) only of the balance of the Kallakis SPVs' debt and not also the immediate writing down of some of the new debt granted to the Kish SPVs.

229. On the evidence as a whole, and in the light of my analysis, above, I find that open market sales of the properties in the Kallakis portfolio, contracted on 21 November 2008, would probably have generated aggregate sale proceeds of between £500 million and £550 million. There would have been a real risk of not achieving even £500 million; there may have been some chance of doing better than £550 million, but, I think, no prospect of beating £600 million. The Kish Deal, at £653 million, was a better outcome for the Kallakis SPVs than an open market sale or series of sales at the time when AIB chose to sell (and, therefore, ultimately a better outcome for Michalis if, as was alleged, he had some indirect interest in that outcome), probably by between £100 million and £150 million. Measured against ordinary, open market sales, if sought, in the very poor market of late November 2008, the Kallakis portfolio had negative equity, on my finding, of £160-210 million.

The Unjust Enrichment Claim

230. I do not consider that this claim requires or merits more said about it than the summary dismissal in paragraphs 21-22 above.

The Negligent Advisor Claim

231. Much of Achilleas' effort in his written closing submissions was directed towards an argument, contrary to his interests as (supposed) defendant to this claim, that in November 2008 the Kallakis portfolio was worth, and could have been sold by AIB for, much more than the Kish Deal price realised (at the cost of the non-recourse funding package), and related arguments that the

Kish Deal was an underhanded transaction at an undervalue. That is relevant to AIB's submission that these were Achilleas' proceedings masquerading as Michalis' litigation, and I return to it in that context, below. If one takes the Negligent Advisor Claim at face value, however, Achilleas' approach gave rise to the possibility that conclusions favourable to AIB, if I reached them, about the value of the portfolio, or on other issues such as the reality or otherwise of the HST, could be 'trumped' as against Achilleas by his admissions.

232. It seemed initially that Mr Malins KC indeed was seeking to play such a trump card, but his final instructions were to withdraw the attempt, and he confirmed that he was instructed not to pursue any way of putting the claim that took advantage of admissions against interest made by Achilleas that would create a different factual situation from that which I might find in the context of the claims against AIB.

233. It follows that the Negligent Advisor Claim also fails. The Kallakis portfolio was not arguably worth more than was paid for it under the Kish Deal, let alone so much more that there was a prospect of the Kallakis SPVs being worth something that might have been to Michalis' benefit (if other necessary elements were made out).

234. The pleaded claim, lacking in any proper particulars of fault, causation or loss, was that Achilleas "*as advisor to the HST … negligently allowed AIB to deplete the HST of all of its assets and value, depriving the Beneficiaries of the same*". That implicitly asserted that the SPV parents of the Kallakis SPVs, if they were owned by Mr Becker as trustee of the HST, were the HST's only assets, which I am not at all sure is Michalis' (or Achilleas') position. That does not matter for present purposes, however, as the intent of that pleading taken at face value, but in context, was plainly to allege that Achilleas caused the Kallakis SPVs to become worthless by negligently allowing AIB to sell the Kallakis portfolio properties for a price that left the Kallakis SPVs valueless, insolvent shells. There was no such negligence, however.

235. The claim, as put against Achilleas in closing by Mr Malins KC, was that Achilleas surely "*knew as a fact on and from 15th September 2008, that his fraud had been revealed to AIB*", and so "*he should immediately have used his many contacts and experts and his own expertise in the world of commercial property investment, immediately to get an independent valuation of the portfolio and to release the value of the portfolio*". But in fact Achilleas did immediately get an independent valuation, from King Sturge, that the portfolio had negative equity of £75 million or so; and if Achilleas had "*immediately put the whole portfolio onto the worldwide market for sale whether as a whole, individually or in groups*" (as it was said by Mr Malins KC he should have done), at least that negative equity value (in fact, as I have found, a much larger negative value) would have been realised.

236. If in Mr Malins KC's suggestion that Achilleas negligently did not work with Mr Becker "*to unload or even try to unload the portfolio at the best price they could have obtained <u>in late September, October</u> or November*" (my emphasis), there was an idea of fixing Achilleas with a liability by reference to, for

example, late September market values, even if late November values would not allow any claim, the idea was unsound. Whatever room there might be to argue in detail over when, following the collapse of Lehman Brothers, the market went from steady decline, then uncertainty and turmoil, into freefall, that would not hold out any prospect of a viable claim that the portfolio could have been sold, after 15 September 2008 but before AIB sold it, for a price that would have left the Kallakis SPVs with a surplus.

237. Finally, the formulation of the claim against Achilleas means that the novel thesis led from Mr Griffiths in re-examination (paragraph 215 above) is as irrelevant here as it was in the Undervalue Claim against AIB. The allegation was that Achilleas was negligent after 15 September 2008, not that he should have achieved some prior agreement subject to contract that might somehow have been matured thereafter into a binding above-market commitment. In any event, as I held, above, Mr Griffiths' novel thesis was not credible.

The HST

238. What I have said so far means that it makes no difference whether the Kallakis portfolio was held, indirectly, on trust by the HST, as alleged. That claim, as disputed by AIB, formed a substantial portion of the trial, though, so I shall set out my findings and conclusions on it nonetheless. It will be recalled that the Kallakis portfolio properties were owned by the Kallakis SPVs (one property per SPV), the Kallakis SPVs were in turn owned by SPV parent companies (more than one Kallakis SPV per parent company), and Mr Becker was the sole shareholder and director of the parent companies. Therefore, the trust allegation was that Mr Becker's shares making him the sole legal owner of the parent companies were held on trust under the HST.

239. As regards the creation of the HST, the claim was that:

(i) in early 1992, Achilleas' mother, Erinoula Kollakis, set up a trust known as the "*Yellow Orchid Trust*", for the benefit of Achilleas and any children he might have "*and as a vehicle for managing the family's financial affairs*";

(ii) Mrs Kollakis "*injected the [Yellow Orchid Trust] with a small amount of funding*";

(iii) Mr Becker was the sole trustee of the Yellow Orchid Trust, and Achilleas was "*the manager of the trust and [of] the business assets owned by the trust*"; and

(iv) it was later decided that the Yellow Orchid Trust "*would be re-incorporated to remove [Achilleas] as beneficiary*";

(v) Mr Becker was retained as sole trustee for the new trust, which was declared in 1997 and known as the 'Hermitage Syndicated Trust', and of which Achilleas' four children were the sole beneficiaries during the life of Achilleas' mortgage fraud and the Kallakis portfolio it begat.

240. The Yellow Orchid Trust backstory was a work of fiction created during the life of the mortgage fraud. Through the criminal investigation into Achilleas' and Mr Williams' activities, documents were recovered showing that the idea of claiming that some family trust existed, supposedly deriving from a trust set up by Mrs Kollakis, originated with the fraudsters in about October 2004. For example:

    (i) "*AK Trust Mother*" was an item listed for discussion at a meeting in a list created on 5 October 2004;

    (ii) a "*List of points as discussed*", created on 13 October 2004, which from its content and location when found I consider to be a document created by Mr Williams, noted that Mr Becker was "*still batting on our side. He also mentioned that the best person to have set up the trust would have been your mother, which makes sense to me. I don't know what you think but I think she'd have been happy with the thought if it helped you out. (anyway it's the sort of thing she would have done) …*";

    (iii) documents and invoices recovered from the law office of André Zolty indicate that purported trust documents were created for the first time, by Mr Zolty's firm on Mr Becker's instructions, in 2005;

    (iv) when Achilleas defrauded Bank of Scotland in April 2008, he gave that bank documents purporting to show that the settlor of the HST was Achilleas' mother, with no reference being made to the Yellow Orchid Trust, and the forged documents to which I have already referred pretending that Achilleas' mother was a 'Kallakis' who settled a trust in favour of the children of 'Achilleas M. Kallakis' even though no person of that name existed until 1995, three years after Achilleas' mother's death.

241. In these proceedings, the HST was alleged to have been a trust created by a Declaration of Trust Deed dated 5 August 1997 made by FTS and Mr Becker as joint trustees. No original Trust Deed or other reliable evidence of its existence was adduced. A copy of a document purporting to be such a Deed was provided by Achilleas, or at his direction, to Bank of Scotland, and Bank of Scotland later gave AIB copies of what it had received. (I understand that CMS inspected a document said to be the original HST Trust Deed, at Mr Malins KC's chambers, on 6 June 2023 (a few days before the strat of the trial); but the authenticity of that document was in issue and it was not put in evidence at trial.)

242. Recital (A) in that document states that the "*property specified in the First Schedule*" had been "*transferred or delivered to the Trustees or otherwise placed under their control*" and that "*from time to time further moneys, investments or other property may be paid or transferred to the Trustees by way of addition*". The First Schedule stated that, "*The initial Trust Fund is USD 1'000.- in cash.*"

243. Clause 1(1)(c) of that document defined the beneficiaries of the purported trust as "*the objects or persons described in the Second Schedule hereto … other than any object or person being an Excluded Person*" and "*such other objects or persons as are added under Clause 2*". An 'Excluded Person' was defined, via Clause 1(1)(d) and Clause 2(2), as any beneficiary the trustees determined at any time in their absolute discretion to exclude. Clause 2(1) stated a power in the trustees at any time and in their absolute discretion to add beneficiaries, but added that, "*Mr. Achilleas M. KALLAKIS may not be added as Beneficiaries [sic.]*". The Second Schedule stated that, "*The initial Beneficiaries are the children of Mr. Achilleas M. KALLAKIS, the latter being specifically excluded as Beneficiary under the terms of this Trust.*"

244. AIB challenged root and branch the proposition that the HST had any relevant function. It contended, in summary:

(i) first, that the HST did not exist – there was no credible evidence of its existence, and the available evidence indicated that it did not exist;

(ii) second, that there was no credible evidence that the shares held by Mr Becker in the parent companies of the Kallakis SPVs were settled into the HST, if it existed as a trust;

(iii) third, even if the HST had existed and Mr Becker held those shares purportedly as HST trust property, that was a sham arrangement as the true beneficiary of Mr Becker's (indirect) ownership of the Kallakis SPVs was Achilleas, who was excluded from the HST – in that case, the HST was no more than a dishonest device to support a pretence, if Achilleas wished to advance it, that he had no (indirect) beneficial interest in assets. AIB cited *JSC Mezhdunarodniy Promyshlenniy et al. v Pugachev et al.* [2017] EWHC 2426 (Ch), *per* Birss J (as he was then) at [143] to [154] for the principles applicable.

245. It was accepted by Michalis that this court must proceed on the basis that Achilleas and Mr Williams, conspiring with Mr Becker, committed the fraud against AIB for which they were convicted. As to that:

(i) Michalis' case went beyond mere acceptance of his father's conviction. A key building block of the misrepresentation claim – as put to AIB witnesses – was that Achilleas had been revealed as a crook and a fraudster whom AIB wanted to *"dump"* as soon as it discovered the fraud. Or again, as it was put succinctly in Mr Malins KC's closing submissions for Michalis, "*AK and AW and MB were fraudsters and forgers*".

(ii) Accepting and relying on the fraud also entailed, however, accepting that large amounts of AIB loan funds were received into the Banca Coop Account, held in the name of the HST but of which Achilleas was the beneficial owner and which was used by Achilleas as his personal offshore piggy bank.

(iii) Yet Mr Malins KC submitted that the court should accept Achilleas' evidence that the HST was genuine and that the SPVs were (indirectly) HST's property. In the circumstances, that submission was wholly unrealistic.

246. For the first transaction between AIB and Achilleas, in October 2003 AIB asked about the beneficial ownership of the SPV and SPV parent to be used, and was told that Achilleas was the beneficial owner, as Achilleas also confirmed to his own solicitors for that transaction (see paragraphs 51 to 53 above). This was a year before the idea of a family trust deriving indirectly from a trust supposedly set up by Achilleas' mother was first concocted, and so it did not occur to Achilleas to dissemble at that stage about his beneficial ownership.

247. AIB sought further details later in the relationship with Achilleas. Limited further information was provided, but the Bank was not told that the SPVs were the property of the HST, and there was never a hint that Achilleas might in fact have been excluded from having any beneficial interest. The HST was never mentioned at all to AIB until after Achilleas' fraud was discovered, nor did Achilleas (or anyone on his behalf) ever provide AIB with any HST documentation.

248. There are some contemporaneous references to an understanding within AIB that some 'family trust' might have an involvement, either as Achilleas' supposed underlying source of funds (enabling him to make the mortgagor's equity contributions he was supposedly making), or possibly as a vehicle by which he would hold his beneficial interest in the Kallakis portfolio. None of that purportedly evidences the existence at any material time of the HST, or of any other trust excluding Achilleas as beneficiary, or the HST's ownership (if it existed) of the SPV parents whereby to own (indirectly) the Kallakis portfolio. In any event, any understanding at AIB that there might be some 'family trust' would have been derived from Achilleas. Absent credible documentary corroboration independent of Achilleas, there is no reason to think it will have been more than an element of the elaborate, fictional life history Achilleas was wrapping around himself at the time.

249. In October 2008, Achilleas and Mr Becker asserted to AIB, personally and via Withers, that Becker was the sole legal and beneficial owner of the SPVs. This was a contrived attempt, lacking any credibility at the time or since, to distance Achilleas from the transactions. No such contrivance would have been required if the HST was real and Mr Becker held the shares in the SPV parents as its trustee. If Mr Becker had been the trustee of a genuine trust in favour of Achilleas' children, and excluding Achilleas, all he had to do to distance Achilleas from the Kallakis portfolio was say so and show AIB the documents he would inevitably have had that would back up the claim.

250. In his evidence at trial, Achilleas sought to explain this problem away by claiming that "*we always understood that the beneficial owner [of] the shares was the trustee simply because he owned the shares on behalf of the ultimate beneficial owners*", and said that he found the subject "*all very confusing*" and that "*the whole aspect of beneficial owner, legal owner and ultimate beneficial*

owner has evolved over those 10 years". I do not accept that evidence. There is no contemporaneous hint that he was ever confused about the concept of beneficial ownership; and it would have been a surprising sort of ignorance for the supposed chief advisor to a trust. Nor has there been any evolution of the concept of beneficial ownership. A trustee is perfectly obviously not the beneficial owner of the trust property. That is the essence of a trust, and I am confident Achilleas understood that at all times.

251. For completeness, I should mention that there was one series of emails relating to the West Eaton Place apartment that could be read as indicating that Mr Becker was at some stage intended to be the beneficial owner. The short point there is that those emails concerned a proposal specific to West Eaton Place that the apartment indeed might be for Mr Becker rather than for Achilleas, a proposal that was not adopted in the event.

252. There were significant forged documents in evidence at trial, the existence or terms of which corroborate the notion that the HST was itself a fabrication or a sham. The most significant were:

(i) A forged purported letter of wishes relating to the supposed Yellow Orchid Trust. It purports to come from June 1992 and to set out the wishes of Mrs Kollakis as regards that supposed Trust. But metadata show it to have been created by Mr Williams in January 2007. Mr Williams' fanciful explanation for that in cross-examination was that he created it as a template to use because he was thinking of creating his own family trust. In my judgment, that was a lie.

(ii) The forged 'legal confirmation' of the HST Trust Deed, addressed and provided to Bank of Scotland (see paragraph 159(ii) above). Mr Harden's evidence to the Crown Court was that he did not sign or stamp the document. Mr Williams blamed the forgery on an individual called 'Frank Merchie', a false narrative he also deployed in the Crown Court. As was submitted on behalf of AIB, there was no need for anyone to be creating forged and false evidence about the origins of the HST if it was real and not a sham.

(iii) A document purporting to exclude Achilleas and his wife as HST beneficiaries. This was created by André Zolty's firm at Mr Williams' request in February 2007, backdated to 5 August 1997. The document is a sham. It is backdated by ten years. It is also inexplicable if the HST Trust Deed is genuine, since then Achilleas was excluded as a beneficiary from the outset. Mr Williams' only attempt to explain this was to assert that it had something to do with BVI law, which plainly it does not.

(iv) The purported deed to replace FTS with Suisse Custodians as sole trustee of the HST (see paragraph 159(iii) above). It was provided to Bank of Scotland and is another sham document organised by Mr Williams. The copy provided to Bank of Scotland bore another forged signature and stamp of Mr Harden. It appears to have been procured by Mr Williams because of an idea that some banks were becoming

nervous about Panamanian companies being used in corporate or trust structures.

(v) Perhaps most tellingly of all, a series of mocked up faxes and file notes created by Mr Williams supposedly evidencing Mr Becker acting in relation to the HST as he might have acted if it had been a real trust. The SFO found both individual purported faxes and file notes and a master document with draft text for all of them set out in one place, ready for 'cutting and pasting' to create the individual fake documents. This evidence extends even to what are, in effect, forger's notes (Mr Williams to himself, I infer) on the target to be achieved, e.g. to replicate for the supposed faxes "*how AK would send*" such things. Mr Williams suggested that this was merely a compilation by him of a record of real events "*to try and be more professional*". That was another piece of dishonest nonsense.

253. There is also a substantial set of indications that the HST does not exist, or is a sham, in the conduct of interested individuals. For example:

(i) Michalis' siblings, and his mother, all ought to know of the HST and its supposedly important role as a source of the family's wealth, if it was a real family trust for the benefit of Achilleas' children. Yet none provided evidence to support the claim that the HST existed as a real trust rather than (if it had any existence at all) as a store for Achilleas' assets.

(ii) Michalis and his siblings are supposed to be the sole beneficiaries of the HST. All of them have now been adults for a number of years, yet not a single item of correspondence was in evidence from Mr Becker, supposedly sole trustee of the HST, to any of them, about the HST or about its purported activities and assets (supposedly not limited to the Kallakis portfolio). At no point in the supposed 25-year history of the HST has Mr Becker produced any trust accounts or reports to the beneficiaries. Neither has Michalis ever asked for any (nor is there any evidence that any of his siblings has done so either).

(iii) Indeed, there has been no independently verifiable involvement by Mr Becker in the supposed HST since September and October 2008, when he attended the meetings with AIB after the discovery of the fraud. (Achilleas claimed in evidence that Mr Becker approved an agreement in the confiscation proceedings to which I refer, below, but there is no evidence of that beyond Achilleas' assertion, and anyway the alleged approval given by Mr Becker is inconsistent with the HST being real.) Mr Becker did not provide Michalis with any documents in connection with these proceedings, and (I find) was never asked to do so, although Michalis and Achilleas both maintained that he remains the trustee of the HST and that he is still practising in Switzerland. Michalis claimed in evidence to find it very hard to contact Mr Becker, but Achilleas admitted that when Mr Becker is in Lugano he (Achilleas) is able to reach him several times a week if required; and the professional trustee

of a family trust would of course maintain himself readily contactable by the beneficiaries.

(iv) Achilleas has given various inconsistent accounts concerning supposed HST documents held by Becker. In cross-examination, he first said that Mr Becker had no documents because (so he claimed) the Swiss police or other authorities had taken all of them. But he later claimed that files relating to the Yellow Orchid Trust and the HST sent to him (Achilleas) by Mr Zolty in 2010 had gone to Mr Becker. In the Crown Court, moreover, Achilleas' evidence was that Mr Becker had retained documents but refused to provide them in case he (Becker) also had to stand trial.

(v) Michalis professed ignorance as to the HST's assets (other than, supposedly, the Kallakis portfolio), and a lack of interest in finding out, notwithstanding that, on his account, he currently has no income and suffered from serious poverty when his father went to prison. His evidence was that he has never spoken to Mr Becker or his father about HST assets or whether he would receive a distribution from the HST. That evidence included the following revelation – pertinent here, but also (perhaps even more so) in relation to AIB's abuse of process argument, considered below – namely that for Michalis, "*this issue of the trust only came to my attention in the past years, and the whole purpose of me knowing about the trust and not necessarily understanding what it owns now but what it owned in relation to the properties that it had bought with the loans from AIB*". That is to say, Michalis was told of or about the HST only what Achilleas wanted Michalis to assert concerning it so as to pursue these proceedings.

(vi) Michalis has made no attempt to find, follow, or recover supposed HST assets used by his parents for their own benefit, again despite his claimed lack of other means. Nor was there any evidence of any of his siblings batting an eyelid at their parents' gross abuse of the HST (as it would have been, if the HST was real). The mask of pretence slipped again here:

> *Q. So you are suing your father for his alleged mismanagement. Why aren't you suing your mother for receiving what on your account is very valuable trust property?*
>
> *A. But my mother has nothing to do with my father's actions towards or -- towards AIB or my mother's actions don't relate to AIB.*
>
> *Q. But they relate to this, this trust, don't they? On the face of it, isn't it the case that she has received very substantial trust assets. Why have you shown no interest in that?*

> *A. Because I wasn't around at the time. I -- I -- I had no dealings with the trust at that time. There was nothing -- I have nothing further to say in that respect.*

I consider that for Michalis, there is no reality to the HST. His claim that it exists, and that he is a beneficiary of it, is just a script he has been given to parrot for the pursuit of these proceedings against AIB in his name.

(vii) Achilleas treated supposed HST assets as his own throughout the duration of the fraud, and continues to do so now, in relation to assets such as the family villa in Mykonos, jewellery and other valuable items that disappeared from 2 Brompton Square, and indeed the proceeds of the fraud against AIB more generally (for which he has never provided a proper account). In cross-examination about the jewellery, Achilleas invented the idea that they were investment assets acquired for the children. I am confident that was a lie, concocted in the witness box in an attempt to get round what would have been theft from the HST if the HST were real. Achilleas' own case before the Crown Court, in the confiscation proceedings, was that all the items of jewellery had been gifts from him to his wife. How 2 Brompton Square, the family home in London, was dealt with also revealed how Achilleas (and his wife, and Mr Becker) used or treated supposed HST assets as Achilleas' own property:

(a) Achilleas' trial evidence before me was that 2 Brompton Square was an HST asset.

(b) He initially adopted the same position in the confiscation proceedings, in which the house was valued at over £4 million, but later agreed that the house was his own asset (strictly, that it was his and his wife's joint asset). This resulted in an agreed confiscation of one half of the value, around £2.1 million, and a release of the other half to Achilleas' wife.

(c) Achilleas claimed that his changed stance in the confiscation proceedings was just a "*horse-trade*" he was prepared to accept to avoid what he said was a risk of further prison time, but that makes no sense. If 2 Brompton Square was an HST asset, and the HST was real, then Achilleas could not be subject to any penal sanction for maintaining that position and giving evidence to support it in the confiscation proceedings; and Mr Becker was in gross breach of his duties as trustee by permitting Achilleas to deal with the property like this for his own and his wife's benefit if, as Achilleas said, he (Becker) approved the agreement.

(d) The reality is that maintaining the claim that 2 Brompton Square was an HST asset was only liable to lead to one result, namely confiscation of the entire value of the house on the basis that the HST was a sham creature of Achilleas' (so that 'its'

> assets were in truth his and his alone). To be clear, I do not by that mean to undermine the Crown Court's acceptance, in relation to the family home, that it was owned jointly by Achilleas and his wife. That may have been the true position; but if so, that is because indeed it was never an HST asset, the HST being either fictional or sham.

254. The only third party document relating to the HST of which there was any evidence at trial is the account opening document referred to in paragraph 62(v) above. The document itself is not in evidence and cannot be admitted into evidence absent consent from the Swiss authorities or Mr Becker (even though Achilleas, Michalis and the SFO have copies of it), because of the means by which the SFO obtained it from Switzerland for the purpose of the confiscation proceedings. HHJ Baumgartner's account of its contents, in the judgment to which I referred in paragraph 162 above, is therefore the best evidence I have. According to that account of the document, the Banca Coop account (with account number ending 895-3) with which HHJ Baumgartner was directly concerned was one of a number of accounts at Banca Coop all of which were in the name of the HST but in respect of all of which Achilleas was declared to be the beneficial owner of the account.

255. In cross-examination, Achilleas claimed that the document contains check boxes that somehow affect what it evidences as regards beneficial ownership. This was a dishonest attempt to capitalise on the unavailability of the document. It was not an argument Achilleas put forward, or that was put forward by leading counsel on his behalf (he was represented by Martin Evans KC), before HHJ Baumgartner. Instead, his evidence then was to the effect that the document indeed declared that he was the beneficial owner of the 'HST' accounts at Banca Coop, but that Mr Becker had told him this was required because the children were still minors at the time. That version of events was itself highly implausible. There is no reason for a trust account declaration not to identify accurately that the beneficiaries are minors. In fact, there is every reason why the bank in question would wish and expect to have that accurate record.

256. In any event, as I have mentioned already, the plain fact is that to the extent there is evidence of how the Banca Coop account was used, it is that it was used by and for Achilleas, exactly as if (as declared to the bank by Mr Becker) it was beneficially his (Achilleas') account, and exactly as it could not properly have been if the HST was a real trust from which Achilleas was excluded and the use of the HST's name as account-holder was not nominal or fictitious.

257. In all the circumstances, I am unable to accept that the HST has ever existed, except as an idea and name behind which, if it suited him to do so at any given time, Achilleas might dishonestly try to conceal his beneficial ownership of assets. It was said to be plausible that a very wealthy individual, such as Achilleas dishonestly became, might set up a family trust like the HST. That may be right, stated in the abstract. The assertion of a potentially plausible falsehood as fact, hoping that the assertion would not be questioned due to its seeming plausibility, was one of Achilleas' dishonest techniques. In this case,

whatever might be the abstract plausibility of wealth management and inheritance planning via family trusts, the assertion that the HST was the (indirect) beneficial owner of the Kallakis portfolio was reasonably questioned by AIB, and was found upon the resulting examination to be without honest substance of any kind.

Abuse of Process

258. I have come to the clear view that, as AIB submitted, these proceedings have been Achilleas' proceedings throughout. They were his brainchild, brought at his instigation and prosecuted by him through Michalis, with a view, if by any chance there had been merit in the claims made against AIB, to damages being awarded to Michalis that he and Achilleas would say were not for Achilleas' benefit, as they attempted with the settlement sum recovered from the school that led to HHJ Baumgartner's judgment in the confiscation proceedings.

259. That is the conclusion Mr Kitchener KC for AIB submitted that I should reach. He submitted that if I did so, the claims made in the proceedings all could and should be dismissed as having been an abuse of process, even if I also concluded, having had the benefit of conducting a full trial, that at least one of them was well founded, in fact and law, on its substantive merits. Since none of the claims was well founded on the merits, I do not need to deal with that submission. I have indicated nonetheless that I accept its premise, and will now set out briefly my reasons for doing so, because an exploration of the relevant facts was a significant element of the trial and because I imagine that my conclusion may be relevant to questions that may now arise as to costs.

260. The explanation given in Michalis' trial witness statement, and therefore sworn to by him in his evidence in chief, was, to my mind, quite implausible. It had him launching litigation against AIB essentially on the say so, as regards the facts, of Achilleas, without making any attempt to investigate the facts for himself or to assess the credibility of what Achilleas was claiming about what AIB had done. He supposedly talked also to Mr Williams and possibly to Mr Becker, but they are hardly credible or independent sources. Michalis' love for and loyalty to his father might have made him more disposed to hope that what Achilleas was saying might prove to be correct than most prospective claimants would be; but it would be stupid to take at face value, as a basis for litigating, the word of a fraudster concerning the actions of the victim of his fraud, and I do not think Michalis is stupid. Rather, I judge him to be an intelligent young man, capable of independent thought.

261. I mentioned at the outset (paragraph 15 above) Michalis' evidence that he was told he needed to join Achilleas as a defendant for procedural reasons. That is not advice he could have been given, in my view, unless the procedural concern was that Achilleas wanted to participate in the proceedings but did not want to be the claimant. That might be the truth of it; or it might be that, as Mr Kitchener KC submitted, the story of advice being given to join Achilleas was a novelistic flourish of the kind appearing in dishonest documents generated by Achilleas or at his direction, such as the forged Bristol & West letter and the forged Credit Suisse and Lord Harris references.

262. Achilleas was permitted to leave prison for short periods of home release in and after October 2017. He was released on licence in July 2018, and these proceedings were then promptly commenced. That and the implausibility of Michalis' evidence make it at least a real possibility that Achilleas may have been behind the litigation throughout, pulling Michalis' strings.

263. That possibility is reinforced by some of Michalis' evidence concerning the HST, as appears from paragraphs 253(v) and 253(vi) above, and by the fact that the proceedings were commenced and initially conducted with the assistance of Achilleas' dishonest friend, Darren Stapleford, at that time not yet disbarrred.

264. The notion that Achilleas might be the real claimant, using Michalis as means, is further supported by the proceedings to recover Achilleas' donation to his daughter's school. Neither Michalis nor Achilleas addressed those proceedings in his trial witness statement, in Michalis' case even though he was given specific permission at the PTR to file a supplementary statement addressing only that topic. Michalis filed a statement purportedly pursuant to that permission, but in defiance of Dias J's Order, the statement was not confined to the issue of the school proceedings, indeed it did not address them at all.

265. In the school proceedings, to recap, there was a letter before action purportedly from Achilleas' wife, but (I have no doubt) in fact sent by Achilleas or at his direction. In the event, proceedings were brought nominally by Michalis, but relying on an assignment from Achilleas, the donation to the school having been Achilleas' donation. Achilleas attended the without prejudice discussions that led to the settlement and, I am confident, made the decision to settle. When the SFO sought to confiscate the settlement sum, Achilleas asserted that it was the HST's money, and Michalis intervened in the Crown Court to support the assertion, which was dismissed on compelling grounds by HHJ Baumgartner.

266. In addition, a reality that Achilleas was and is the true claimant here is indicated by the following specific matters from within the litigation:

    (i) The instruction of Mr Griffiths by Michalis to provide an expert report though he was evidently not the kind of expert from whom Michalis had permission to rely on expert evidence, following and in response to Achilleas' failure to persuade the court to give him permission to rely on expert evidence that would have come from Mr Griffiths criticising AIB's conduct.

    (ii) Achilleas' slip in sending from his own email account what he had wanted to appear to be, and had drafted so it would purport to be, an email from Michalis to AIB's solicitors. I do not accept Achilleas' evidence that the email was sent by "*one of the kids*" using his (Achilleas') mobile 'phone. (The idea that one of Michalis' siblings might have had something to do with it is ridiculous, but Achilleas was forced into putting it that way because Michalis had given evidence that he had never made any use of his father's mobile 'phone.)

(iii) Messages between Achilleas and Mr Cooke in the context of the strike-out application dealt with by Moulder J in which Achilleas explicitly treated himself as the litigating claimant and the proceedings as his proceedings. In evidence, Michalis initially insisted that he kept his father at arm's length, that his father did not want to be involved in the proceedings prior to the strike out, and that his father would not draft documents or emails on his behalf. When shown the documents telling the lie to all of that, Michalis variously denied that he had ever seen them or asserted that he did not remember them. Achilleas sought to explain away his messages with Mr Cooke on the basis that he was assisting Michalis to get in touch with Mr Cooke. That was obviously false. The messages describe and treat the proceedings as Achilleas' own, and no true defendant would assist a claimant to resist a strike out application by a co-defendant which, if granted, would have terminated the proceedings against him as well.

(iv) In other respects also, Achilleas has not behaved like any true defendant would; and Michalis has not behaved as would any true claimant against Achilleas. Examples of the latter include Michalis' failure to make any proper attempt to pursue his supposed claims against Mr Becker, his failure to plead any sensible particulars of the Negligent Advisor Claim, his failure to plead at all the claims for abuse of the HST that cried out to be pursued, if Michalis had any actual interest in pursuing claims against Achilleas or Mr Becker, and his instructions at the last not to rely on concessions by Achilleas so as to improve the prospects of success against him. Those concessions are the most significant example of the former – Achilleas should have been throwing his weight behind AIB's case that better net value than AIB achieved under the Kish Deal was not realistically available at the time. His insistence instead upon supporting Michalis' case against AIB, even though in principle that increased Michalis' chances of success against him is sensibly explicable only if Achilleas was confident that the claim against him was a charade that Michalis would never seek to enforce. (I do not think Achilleas is clever enough or had the knowledge to see that because of the Civil Liability (Contribution) Act 1978, had there been judgment against AIB but also against him, AIB effectively could have taken steps to enforce against him even though Michalis would never have sought to do so.)

267. Finally, there is Achilleas' character. Mr Kitchener KC submitted that he has been shown to be "*mendacious, manipulative, unscrupulous and controlling*", and I agree. Regrettably, I am quite certain that he is capable of manipulating his son into bringing these proceedings, as AIB submitted was the truth of the matter.

268. For those reasons, as I stated at the outset of this section of this judgment, I do find, as claimed by AIB, that these proceedings were brought and prosecuted, in substance, by Achilleas. Suing in Michalis' name, and being named as a defendant, was a device to enable Achilleas to participate without being the named claimant, and in due course, if by any chance some recovery were

made, to support an attempt that would be made to claim that the recovered proceeds were not beneficially Achilleas' if (more likely, when) the SFO sought to confiscate them.

Conclusion

269. Achilleas Kallakis strove for financial greatness, and for a time achieved a measure of it, but he did so using the dishonest means of a conman and forger. He was brought low by the depth of his dishonesty, acting in combination as it did with fate in the occurrence, and timing, of the global financial crisis.

270. The consequences of Achilleas' dishonesty have been substantial and far-reaching. It cost AIB over £150 million (there being no distinction to be drawn between AIB itself and insurers who may have carried part of that loss). It had the deserved but nonetheless serious human cost of criminal convictions and lengthy prison sentences for Achilleas himself and for Mr Williams, who now presents as a rather lost soul for whom the experience of the Crown Court trials and subsequent imprisonment seems to have been the breaking of a weak and somewhat vulnerable man. It has now resulted in the abusive manipulation of Michalis and his misplaced loyalty.

271. The impudence of Achilleas' claim to have been more sinned against than sinning was brazen. The extent of his dishonesty is astonishing, and some of the individual charades in which he engaged are almost comical. However, his dishonesty indeed did cost AIB over £150 million, and there is nothing funny about his attempt, using his son, to sue AIB rather than make some reparation, if he can, for the harm he has caused, and nothing funny about his consequent abuse of the court by and through these proceedings.

272. All the claims asserted in these proceedings fail on multiple grounds and will be dismissed.

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Appendix to Judgment

SPV	Property	Purchase Date	Purchase Price	AIB Loan
Charleston Acquisitions S.A.	India Buildings, Liverpool	12 January 2004	£43m	£47.5m
Andromeda Alliance Inc	Hanover House, Reading	7 July 2005	£6.768m	£8.6m
Diamond Valley Acquisitions Corp	Astral Towers, Crawley	24 October 2005	£22.1m	£26.5m
Paxertis Holdings S.A.	The White House, Pegasus Court, Crawley	11 January 2006	£4.76m	£5.25m
Krixor Holdings Ltd	Flat 3, 3 West Eaton Place, London	5 April 2006	£1.95m[1]	£2m
Madison Bay Holdings S.A.	35 Berkely Square, London	11 April 2006	£7m	£8.7m
Glacier Bay Holdings Ltd	King's and Queen's House, Harrow	1 June 2006	£26.75m	£30.5m
Norvista Acquisitions Corp	Apollo and Lunar House, Croydon	20 July 2006	£97m	£102m

[1] I was not shown any document speaking directly to the purchase price, but an AIB Credit Committee paper from March 2006 mentions a "*current valuation*" of £1.95m, total expected acquisition costs of £2.062m, an additional £150k apparently to be spent on refurbishment, and an anticipated post-renovation valuation of £2.5m. I have inferred that the current valuation was taken from the purchase price.

SPV	Property	Purchase Date	Purchase Price	AIB Loan
Meadow Ridge Acquisitions S.A.	32 St James's Square, London	8 December 2006	£11.5m	£12m
Central Caspian Holdings Ltd	Market Towers, Nine Elms Lane, London	16 January 2007	£74m	£80m
Red River Group Ltd	8 Carlos Place, London	30 May 2007	£6m[2]	£9m
San Trelinato Holdings Corp	Flat 4, Kingston House South, Ennismore Gardens, London	30 May 2007	£1m[3]	£1.2m
Vortex Mountain Group Corp	111 Buckingham Palace Road, London	26 July 2007	£205m	£224m
Labarre Trading Ltd	7 & 8 St James's Square, London	5 November 2007	£126.4m	£152m
Totals			**£633.278m**	**£709.25m**

[2] Strictly, this is not a purchase price, as this was a refinancing transaction not an acquisition. The AIB Credit Committee paper for the lending records that the outgoing debt was £6m, on borrowing from Bristol & West, and the £9m facility granted by AIB was for refinancing that debt and "*general corporate purposes*".

[3] Again, this was refinancing, not acquisition. The same AIB Credit Committee paper records outgoing Bristol & West debt of £1m. The £1.2m facility granted by AIB was to refinance that debt and for "*general corporate purposes*".