Neutral Citation Number: [2021] EWHC 1629 (QB)

Case No: QB-2020-002242

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/06/2021

Before :

THE HONOURABLE MR JUSTICE CALVER

- -

Between :

TATTERSALLS LIMITED	**Claimant**
- and -	
DOUGLAS McMAHON	**Defendant**

- -
- -

Mr. Stephen Schaw Miller (instructed by **Bracher Rawlins LLP**) for the **Claimant**
Mr. Jason Jamil (solicitor-advocate) for the **Defendant**

Hearing date: 9 June 2021

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APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Friday 18 June 2021 at 10:00 am

Mr Justice Calver:

The factual background and documentary evidence

1. In 2018 Ms. Sarah Whitney and the Defendant incorporated a company, Bluecrest Bloodstock Limited ("Bluecrest"), in order to purchase a selected portfolio of bloodstock assets consisting of broodmares, foals and yearlings with the objective, upon re-sale of the same, of making a healthy return for investors in the company under an Enterprise Investment Scheme ("EIS"). The Defendant and Ms. Whitney were the two directors of the company (with Ms. Whitney being Managing Director) ("the directors") and Mr. Jamie Railton was appointed the bloodstock agent. By Bluecrest's EIS proposal, the two directors were said to have full discretion as to the horses to be purchased. The proposal also referred to the fact that the Defendant had 20 years' experience of the bloodstock market.

2. Whilst the directors were still awaiting Bluecrest's EIS Advance Assurance approval and certificate, they nonetheless went ahead with contacting the Claimant with a view to Bluecrest being registered to purchase bloodstock at the Claimant's forthcoming auctions. To that end, Ms. Whitney emailed the Claimant in October 2018 and Mr. David Anderson, a sales accountant at the Defendant, entered into a correspondence with her.

3. On 13 November 2018 Ms. Whitney signed a New Buyer Form on behalf of Bluecrest in which she asked the Claimant for credit of "*£300,000 + VAT*". In that Form she ticked a box to confirm that she had read and accepted the Claimant's Conditions of Sale. She also sent Mr. Anderson a copy of Bluecrest's EIS Scheme proposal. In response to a question from Mr. Anderson about the credit, Ms. Whitney emailed him on 14 November 2018 to say that "*we would like to seek a credit limit of £300,000 plus VAT in order to purchase further foals and we propose settling these transactions within 60 days."*

4. On 20 November 2018 Mr. Anderson confirmed that the Claimant had:

> "approved your request for 60 days credit in the sum of £300,000 plus VAT. The last day of the Foal Sale is Saturday 1st December, although it is unlikely that we will raise our invoices until the week commencing 10th December, so perhaps we could look to you settling by the first week in February 2019."

5. Ms. Whitney replied that this was "*much appreciated*." Thus, in essence the Claimant was allowing extended time to pay for any purchases, and the Claimant has always been willing to proceed on the basis that payment for any purchases was not due for 60 days after the date of purchase and to that extent, condition of sale 5.1(a)(iii) was varied.

6. The Claimant's Conditions of Sale, which Ms. Whitney confirmed that she had read, were contained in the Claimant's catalogue for every auction, which Mr. Anderson confirmed in evidence she would have been sent for the December 2018 auction in this case. He also confirmed that at the start of any auction the Claimant's auctioneer always states that the sale is subject to the Claimant's Conditions of Sale and that these are readily available to bidders at the sale. In any event, by paragraph 4 of the Defence, the Defendant *admits* that the purchase of the Lots by him at auction was made subject to

the Claimant's printed Conditions of Sale and Mr. Jamil, who ably represented him at this trial, confirmed that he was not suggesting otherwise.

7. The relevant Conditions of Sale were as follows:

"**5. Payment by Purchasers**

5.1 The Purchaser of each Lot shall:

(a) immediately after the purchase of a Lot

(i) sign the form of Purchase Confirmation supplied by TATTERSALLS

(ii) give his name, address and proof of identity to TATTERSALLS if so required, and

(iii) pay the full amount of the price bid for the Lot together with VAT thereon if applicable ('the purchase price') by cash or acceptable banker's draft to TATTERSALLS

(b) take away at his own expense every Lot purchased by him, the day following the sale of that Lot or as directed in the catalogue.

5.2 If the Purchaser shall fail to comply with any of the Conditions set out in 5.1 (a) TATTERSALLS may retain possession of and resell the Lot and any progeny born after the Sale to a Lot described as "believed in foal" (hereafter "its Progeny") either immediately or otherwise by public or private sale.

5.3 If the Purchaser shall fail to pay to TATTERSALLS the Purchase Price and any interest due thereon pursuant to these Conditions then, save where TATTERSALLS shall have exercised its rights under sub-condition 5.2 or sub-condition 6.5, TATTERSALLS shall be entitled to sue for the full amount of the Purchase Price and interest thereon. As between TATTERSALLS and the Vendor TATTERSALLS shall be under no duty to sue and nothing which it does or does not shall affect the right of the Vendor to enforce any right he may have against the Purchaser.

5.4 Unless there is in force a Purchasers Authorisation accepted in writing by TATTERSALLS the highest bidder in the ring and any principal for whom he may be acting shall be jointly and severally liable under the contract of sale and under these Conditions of Sale.

6. Title and Possession

6.1 TATTERSALLS may at its absolute discretion permit the Purchaser to take away a Lot notwithstanding that the Purchaser has not complied with the obligation immediately to pay the Purchase Price pursuant to 5.1(a)(iii).
If TATTERSALLS so permits the Purchaser to take away a Lot it does so as a matter of grace and the Purchaser shall remain liable to pay the Purchase Price as aforesaid.

6.2 The property in a Lot and its Progeny (if any) shall not pass to the Purchaser or any principal for whom he is acting until the Purchase Price has been paid in full together with any interest due thereon pursuant to these Conditions. The Lot and its Progeny (if any) shall be at the Purchaser's risk in all respects from the fall of the hammer. Until the Purchase Price of a Lot has been paid in full together with any interest due thereon pursuant to these Conditions, the purchaser and/or his principal shall not whether acting by himself, his servants, agents or otherwise howsoever enter, or cause or permit the said Lot to be entered for or to run in or otherwise participate in a race recognised by any Racing Authority unless TATTERSALLS' prior written consent has been obtained.

6.3 At any time until property in a Lot and its Progeny (if any) has passed to the Purchaser or any principal for whom he is acting the Purchaser and/or his principal shall forthwith on demand by TATTERSALLS (a) deliver up possession of the Lot and its Progeny (if any) to TATTERSALLS or (b) inform TATTERSALLS of the name and address of any third party in possession of the Lot and its Progeny (if any) and irrevocably instruct that third party to hold the Lot and its Progeny (if any) to the exclusive order of TATTERSALLS and provide written evidence to TATTERSALLS satisfaction that such instruction has been given. Upon a demand being made by TATTERSALLS under this sub-condition, any licence which the Purchaser and/or his principal may have to sell the Lot and/or his Progeny shall forthwith determine.

6.4 If the Purchaser and/or his principal fail to comply with a demand for delivery up of a Lot and its Progeny (if any) made under sub-condition 6.3, TATTERSALLS may enter upon any premises owned, occupied or controlled by the Purchaser and/ or his principal where the Lot and/or its Progeny are situated to repossess the Lot and its Progeny (if any) at any time between 9am and 6pm on any day.

6.5 At any time after making a demand pursuant to sub-condition 6.3 above TATTERSALLS may resell any Lot and its Progeny (if any) and such sale may be held immediately or otherwise by public or private sale.

7. Purchaser's liability after resale

7.1 (a) Subject to paragraph (c) below, where TATTERSALLS resells a Lot and/or its Progeny pursuant to a power to resell it under any provision of these Conditions, the Purchaser shall be liable to pay the difference between (i) the unpaid balance of the Purchase Price together with interest due thereon pursuant to these Conditions up to the date of resale and (ii) the price agreed on the resale (if lower) after deduction of any expenses incurred in the sale. If a higher price is agreed on the resale, TATTERSALLS shall be entitled to keep the full amount paid.
(b) TATTERSALLS shall be entitled to sue in respect of that liability as soon as the contract for resale is made (whether or not payment has been made or is yet due under that contract).
(c) If the Purchaser under the contract of resale defaults, the Purchaser shall remain liable for (i) the unpaid balance of the Purchase Price together with interest due thereon pursuant to these Conditions less (ii) such sum, if any, as is paid under the contract of resale.

7.2 The Purchaser shall also be liable to pay TATTERSALLS any expenses (including legal costs) incurred in recovering any Lot and/or its Progeny (if any) pursuant to these Conditions and any expense incurred for a reasonable period thereafter in connection with the Lot and/or its Progeny including the cost of keeping, training, transporting and/or insuring the Lot and/or its Progeny and/or engaging any veterinarian, farrier or other person for the purpose of treating the Lot and/or its Progeny.

7.3 The Purchaser shall be liable to pay interest on all sums due under this Condition at the rate provided for in these Conditions.

7.4 TATTERSALLS shall be entitled to sue for any sum due under this Condition. As between TATTERSALLS and the Vendor TATTERSALLS shall be under no duty to sue and nothing which it does or does not do shall affect the right of the Vendor to enforce any right he may have against the Purchaser.

…

9. Vendors

> **9.1** The Vendor shall be entitled to receive the proceeds of sale of each Lot old (less commission and fees due) on but not before the 35th day following the last day of each Sale provided that:
>
> (a) TATTERSALLS shall have received the full amount of the purchase price or released the Lot from the premises and
>
> (b) TATTERSALLS shall not have been notified that a dispute has arisen in respect of or in connection with payment for the Lot and/or the proceeds of sale thereof whether under these Conditions of Sale or otherwise howsoever…
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> …
>
> **28. Interest**
>
> TATTERSALLS reserves the right to charge interest at the rate of 1.5% per month or part thereof on:
>
> (a) the Purchase Price or any part thereof if unpaid from the date of sale and
>
> (b) any other sum due and owing to TATTERSALLS under these Conditions of Sale from the date the liability was incurred or, if different, from the date provided for in these Conditions of Sale. The rate may be varied by notice posted at TATTERSALLS' Office in Park Paddocks during these Sales. Interest will not be charged on accounts cleared within 28 days of the last day of each Sale."

8. The catalogue also attached a Notice to Purchasers, which contained a warning that "*Before bidding, all prospective Purchasers should read carefully the Conditions of Sale printed immediately before this section*." The Notice to Purchasers also stated at paragraph 24 as follows:

> "**Purchasers Authorisation**
>
> This scheme is available for Purchasers who wish to appoint an agent to act for them. Forms can be obtained by personal application only to Accounts. This scheme is subject to:
>
> 1. The Authorisation together with a payment reference, both completed and signed by the Principal, being lodged with [the Claimant] by way of application at least 7 days before the sale.
>
> 2. No Authorisation is effective unless it has been approved in writing by [the Claimant] who reserve the right to withhold acceptance without giving any reason. An agent may not bid under this Authorisation until such written acceptance has been received.
>
> 3. Agents must notify Accounts in the Main Sales Office of any purchases under an Authorisation immediately following purchase."

9. On 29 and 30 November 2018 the Defendant attended the Claimant's December Sale and he successfully bid for two foals, being lots 742 (in the sum of £176,400) and 1087 (in the sum of £144,375). He did so before Bluecrest had received its EIS Advance Assurance approval and certificate. Unfortunately, that approval was never forthcoming and as a result Bluecrest failed to attract any investors' funds as the directors had intended.

10. A purchase confirmation document for each purchase was filled out at the time of the purchases by the defendant. On the purchase confirmation for Lot 742 against "*Name*", he wrote "*Douglas McMahon – Bluecrest Bloodstock (press)*" and signed the document (without printing his name) under the words "*I confirm that I am the Purchaser of the above Lot which was purchased subject to conditions of sale.*" In his oral evidence, the Defendant stated that he did this to make clear that the true purchaser was the company and not him, and that was what should be represented to the Press.

11. On the purchase confirmation for Lot 1087 against "*Name*", he wrote "*Bluecrest Bloodstock*" and signed the document and printed his name under the words "*I confirm that I am the Purchaser of the above Lot which was purchased subject to conditions of sale*."

12. The purchasers' invoice – sent after the sale - was made out in the name of Bluecrest.

13. On 24 January 2019 Ms. Whitney emailed Mr. Anderson to tell him that Bluecrest had failed to obtain EIS Advance Assurance because of "*seriously bad professional service and advice*" of its accountant. She asked for more time to pay for the two purchases. In February 2019 Ms. Whitney further informed Mr. Anderson that Bluecrest was consulting an insolvency practitioner and she had resigned as director. The Defendant spoke separately to Mr. Anderson and was told that the Claimant expected payment in line with what had been agreed, namely payment by 13 February 2019. The Defendant asked Mr. Anderson what his liabilities were as a director for the purchases, and Mr. Anderson suggested that the Defendant should consult a solicitor.

14. This then led the Claimant's solicitors, Bracher Rawlins LLP, to write to Bluecrest and the Defendant on 7 February 2019. By those letters the Claimant sought to exercise its right to recover the Lots for the purpose of re-selling them. In its letter to the Defendant, Bracher Rawlins LLP referred to condition 5.4 of the Claimant's Conditions of Sale and stated as follows:

> "We are instructed that you were the highest bidder in the ring for the Lots. Further, we understand that there was no Purchasers Authorisation accepted in writing by our client in relation to the Lots or at all. Accordingly, you, personally, are jointly and severally liable with your principal, Bluecrest Bloodstock Limited, for the purchase price of the Lots, together with accruing interest thereon, pursuant to our client's Conditions of Sale."

The oral evidence

15. Lots 742 and 1087 were re-sold at the Claimant's public October 2019 Yearling Sale, as Mr. Anderson describes in paragraphs 21-22 of his witness statement. The price paid for them was considerably less than the Defendant had paid for them. However, that was, by definition, the price that the market was prepared to pay. I also heard oral evidence about this from Mr. Bell, the Head of Bloodstock at the Claimant, who confirmed the evidence in his witness statement on this topic. In summary, he explained that the foals became yearlings in 2019 and were of good pedigree and breeding. The October sale, being a prestigious yearling sale, was the sale at which they were most likely to realise their value. Selling them at a mixed sale (in for example July) would have likely resulted in a lower sale price. Sale at Deauville in mid to late August would

have involved more expense (and would not have been much earlier than the October sale). He explained that sale by auction is generally better than private sale.

16. In his oral evidence Mr. Bell reiterated his evidence in his witness statement and again explained how selling at the October yearling sale was the best course of action in all of the circumstances. The Lots could have been sold in a mixed sale before that time but that was not likely to be as successful as a more specialised sale. An attempted private sale would be expensive and time-consuming and would not reach as wide a market as the October yearling sale. Keeping the Lots beyond the October yearling sale was a risky course of action. They would have to be turned into horses in training with a dedicated trainer which was expensive, with no guarantee as to how they would perform (which would affect their value).

17. I am fully satisfied on the evidence that the sale of the two Lots in the October yearling sale was a reasonable attempt by the Claimant to mitigate its losses.

18. Keeping the lots and preparing them for re-sale inevitably involved the Claimant incurring further expenses. Mr. Anderson and Mr. Bell explain these in their witness statements at paragraphs 25 and 13 respectively, and the invoices to support the incurring of those expenses were before the court. I accept this evidence.

Submissions and discussion concerning condition 5.4

19. Mr. Jamil submitted on behalf of the Defendant that the purchases by the Defendant in the ring of the two Lots were in fact made solely on behalf of the company, Bluecrest. As mentioned above, he did not suggest that the Conditions of Sale were not incorporated into the purchases. He argued that clause 5.4 should be read such that the highest bidder in the ring was Bluecrest and that was an end to the claim. He submitted that the company could not bid itself, and that the Defendant was therefore bidding as the company. He referred me to sections 40 and 43 of the Companies Act 2006:

> "**40. Power of directors to bind the company**
>
> (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
>
> (2) For this purpose—
>
> (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,
>
> (b) a person dealing with a company—
>
> (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
>
> (ii) is presumed to have acted in good faith unless the contrary is proved, and
>
> (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.
>
> **43. Company contracts**

> (1) Under the law of England and Wales or Northern Ireland a contract may be made—
>
> (a) by a company, by writing under its common seal, or
>
> (b) on behalf of a company, by a person acting under its authority, express or implied."

20. Mr. Jamil argued that these sections of the Act demonstrate that the Defendant was able to and did bind the company alone to the contract to purchase the two Lots in this case. The Defendant had authority to bind the company in this way, which it was said was made clear in its EIS Scheme Proposal where it referred to the directors having full discretion as to which horses were to be purchased by the company.

21. Mr. Jamil also referred to the fact that the Defendant never signed a New Buyer Form, and that only Ms. Whitney did so on behalf of the company. He submitted that the Claimant therefore knew that the buyer was Bluecrest and not the Defendant. That is why the invoice was sent to Bluecrest.

22. Furthermore, he submitted that Bluecrest's bloodstock agent was Mr. Railton, as the EIS Scheme Proposal makes clear, whereas the Defendant was a director of Bluecrest, not its agent. It followed, he submitted, that the bids in the ring must have been those of Bluecrest and not the Defendant. Since no Purchaser's Authorisation was lodged by Bluecrest, no agent was appointed and it must therefore have been Bluecrest who bid for and purchased the Lots (through the Defendant). In his oral evidence, the Defendant confirmed that he believed at all times that he was bidding as the Company and not in his personal capacity. He knew that the sale was subject to the Claimant's Conditions of Sale but he left that side of matters to Ms. Whitney and so he did not read them.

23. Finally, Mr. Jamil maintained the submission (which appears in paragraph 5 of the Defence) that the Claimant's agreement to extend 60 days' credit caused condition 5.1(a)(iii) of the Claimant's Conditions of Sale to be varied such that liability to pay the purchase price of any lots won would be pursuant to the Credit Agreement with Bluecrest and to which the Defendant was not a party. It follows, it is said, that the Claimant's sole remedy is against Bluecrest under that Credit Agreement. Alternatively, it is argued, by extending credit to Bluecrest the Claimant impliedly represented to the Defendant that liability to pay the purchase price of any lots won would be that of Bluecrest, upon which representation the Defendant relied when bidding for the lots on Bluecrest's behalf. It is fair to say, however, that Mr. Jimil did not press either of these points very hard.

24. In my judgment, the Claimant's interpretation of condition 5.4, which was first recorded in its solicitors' letter (set out in paragraph 14 above) and which was urged upon the court by Mr. Schaw Miller for the Claimant, is undoubtedly correct. If a bidder, as agent for a principal, wishes to avoid any personal liability for his bid made in the ring, he must complete and have the Claimant approve a Purchaser's Authorisation. Upon doing so, no doubt the Claimant will then satisfy itself that the principal is good for the money. However, if, as here, no such Purchaser's Authorisation is sought and obtained, then the highest bidder in the ring is *personally liable* for the purchase, as well as any principal (outside of the ring) for whom he may be acting. The words "*in the ring*" emphasise that the individual who physically bids for the lot in the ring is personally liable for the bid. Moreover, this was a public auction: anyone can turn up and bid, and

it would be impossible for the auction to function if someone could turn up and bid and then when called upon to pay the price simply assert that he/she was acting on behalf of an undisclosed principal. That is why a Purchaser's Authorisation is required if an agent is bidding on behalf of a principal.

25. Sections 40 and 43 of the Companies Act do not assist the Defendant. Section 40 is concerned, as Mr. Schaw Miller submitted, with protecting persons dealing with a company in good faith: the company cannot rely upon internal restrictions on its powers as against a person dealing with it in good faith. This section of the Act reverses the previous position whereby a person dealing with the company was deemed to have notice of the company's registered constitutional documents.

26. Section 43 makes clear that a company can contract in two ways: (i) by writing under its common seal or (ii) by a person acting under its authority, express or implied. In this case, the Company acted in the second of these two ways, via the Defendant. It is undoubtedly the case that, and indeed Mr. Schaw Miller accepted that, the Defendant acted as agent for Bluecrest in bidding for the two Lots. Indeed, Bluecrest clearly accepted that he had so acted. The fact that he is also a director of the company does not change that analysis.

27. The true position is accurately summarised in *Bowstead & Reynolds on Agency* (19th Edn), paragraph 1-028:

> "A company (as with other corporations) can operate only through individuals, but in relation to the rules of the common law (including equity) the rules of agency and vicarious liability suffice to enable a company to be held liable and entitled in respect of acts performed, and the states of mind held, by its agents and employees in the same way as a human principal. No special rules are needed. The position was well stated by Lord Diplock in *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 at 198-199:
>
> > "A corporation is an abstraction. It is incapable itself of doing any physical act or being in any state of mind. Yet in law it is a person capable of exercising legal rights and of being subject to legal liabilities which may involve ascribing to it not only physical acts which are in reality done by a natural person on its behalf but also the mental state in which that person did them. In civil law, apart from certain statutory duties, this presents no conceptual difficulties. Under the law of agency the physical acts and state of mind of the agent are in law ascribed to the principal, and if the agent is a natural person it matters not whether the principal is also a natural person or a mere legal abstraction. Qui facit per alium facit per se: qui cogitat per alium cogitat per se."
>
> …
>
> *In Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 506, Lord Hoffmann drew a distinction between the primary rules for attributing the acts of humans to a company, such as the rule that decisions of the board bind the company, and the general rules for attributing conduct to another that apply both to corporations and individuals, namely the principles of the law of agency. However, Lord Hoffmann did not go so far as to state that the bodies of persons who engage the primary rules are not agents, and Lord Diplock's dictum, above, together with the weight of authority, clearly takes the view that they are."

28. It follows that, pursuant to condition 5.4 to which the purchase of the two lots was undoubtedly subject, the Defendant as highest bidder in the ring and his principal, Bluecrest, are jointly and severally liable for the purchase price of the two Lots.

29. That conclusion is not affected by any of the following factors:

    i) The fact that the Defendant never signed a New Buyer Form, and only Ms. Whitney did so on behalf of the company. It is indeed the case that Bluecrest is liable under condition 5.4. But that does not affect the conclusion that the Defendant is also jointly and severally liable.

    ii) The fact that Bluecrest had a bloodstock agent (Mr. Railton). There is no evidence that this was known to the Claimant, although it is true to say that it was sent a copy of the EIS Scheme Proposal. But in any event, this fact does not affect the Defendant's liability under condition 5.4. It was the *Defendant* who bid in the ring on the relevant dates and in doing so he incurred personal liability under condition 5.1(a)(iii). The fact that no Purchaser's Authorisation was lodged by Bluecrest does not lead to the conclusion that the Defendant was not bidding on behalf of the company; rather, it simply means that in doing so he could not avoid *personal* liability under condition 5.4.

    iii) The fact that there was an agreement between the Claimant and Bluecrest to extend 60 days' credit did not cause condition 5.4 of the Claimant's Conditions of Sale to be varied such that liability to pay the purchase price of any lots won would be pursuant to the Credit Agreement with Bluecrest and to which the Defendant was not a party. There is no logical or legal reason why the Defendant's personal liability under that condition, by bidding in the ring, should be affected by a Credit Agreement with Bluecrest.

    iv) By the same reasoning, the fact that credit was afforded to Bluecrest by the Claimant cannot amount to an implied representation to the Defendant that liability to pay the purchase price of any lots won would be that of Bluecrest. Moreover, there was no clear or unequivocal promise or representation by the Claimant that it would not rely on its contractual rights under condition 5.4, and the Defendant was unable to point to any such promise or representation on the evidence.

30. I have already explained that there was no failure to mitigate its loss on the part of the Claimant in this case. In the circumstances, it is entitled to recover its losses on the sale of the two Lots, together with interest.

31. The Claimant is accordingly entitled to judgment in this action for the following:

    i) The original price payable less the price agreed on the re-sale after deduction of sale expenses pursuant to condition 7.1(a);

    ii) Recovery and keep costs pursuant to condition 7.2 – for the reasons given by Mr. Bell, I find that it was reasonable to incur these until the October 2019 sale; and

iii) Interest pursuant to conditions 7.3 and 28. Pursuant to condition 28(a) the Claimant was entitled to charge interest from the date of sale.

32. Finally, it is possible to feel a significant degree of sympathy for the Defendant who, I accept, believed that he was bidding solely on behalf of Bluecrest in ignorance of condition 5.4, but that does not give him a defence to this claim. The risky strategy of purchasing these Lots before EIS Scheme Approval was obtained for Bluecrest was agreed upon by both Ms. Whitney and the Defendant, and it would seem only fair that both the Defendant and Ms. Whitney should share in these losses as it would appear that it could just have easily been Ms. Whitney bidding on behalf of Bluecrest. It may be that the Defendant has a legal remedy against Ms. Whitney to bring about that result (assuming that she is not willing to share the losses), but that is not an issue that I was called upon to determine in these proceedings, as Ms. Whitney is not a party to them.