SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK

[2026] SC KIL 62

KIL-A11-22

JUDGMENT (NO 3) OF SHERIFF GEORGE JAMIESON

in the cause

CHIEF CONSTABLE OF THE POLICE SERVICE OF SCOTLAND

Pursuer and Real Raiser

against

GIANNI CALCHETTI

First Defender

and

IMAD ELIAS

Second Defender

Act: Crowther
Alt: The first defender: Party
The second defender: McFarlane, Solicitor, Glasgow

KILMARNOCK, 18 May 2026

The sheriff, having resumed consideration of the cause, Finds the following facts proved or admitted:

1. The pursuer was the Chief Constable of the Police Service of Scotland at the time these proceedings were raised.

2. The pursuer is the real raiser in this action of multiplepoinding, the object of which is to determine the ownership of a 1985 Ferrari Coupe 328 GTS, UK registered number B819 RLP and Italian motor registration MO663888 ("the Vehicle").

3. The first defender purchased the Vehicle in Italy on 17 July 2006 from the previous owner and became its registered owner in Italy on 19 July 2006.

4. On or around 7 April 2011, in the United Arab Emirates, the first defender agreed to sell the Vehicle to the second defender for a defined price of 150,000 UAD (United Arab Dirhams) (equating at that time to approximately £25,000 Sterling).

5. Pursuant to said agreement for sale, the second defender made two payments to the first defender in respect of the price of the Vehicle, a payment of 50,000 UAD made by cheque on or about 7 April 2011 and a few days later a further payment by cheque amounting to 100,000 UAD.

6. Pursuant to said agreement for sale and payment of the price, the first defender personally delivered the Vehicle to the second defender at his holiday home in Spain on 24 April 2011.

7. The first and second defenders agreed that the Vehicle would continue to be registered with the Italian authorities in the name of the first defender.

8. The Vehicle remained in the possession of the second defender until he agreed to sell the Vehicle to CC Cars Ltd in Manchester in October 2020.

9. On or around 21 August 2020, the first defender reported to the Italian Carabinieri that the Vehicle had been stolen.

10. On or around 14 September 2020, the first defender reported to Police Scotland that the vehicle had been stolen.

11. On or around 27 October 2020, the Vehicle was seized by an officer of the Greater Manchester Police for and on behalf of the pursuer as a result of the first defender's complaints that the Vehicle had been stolen.

12. The Vehicle has been in the possession of the pursuer since that date.

13. On or around 7 December 2020, the second defender and CC Cars Ltd agreed to cancel the sale of the Vehicle to CC Cars Ltd which has relinquished its claim on the Vehicle.

Finds in fact and law:

1. The court has jurisdiction.

2. Ownership of the Vehicle passed from the first defender to the second defender on the date the contract of sale was made, being 7 April 2011.

Finds in law:

1. The Vehicle constitutes the fund *in medio* in this action.

2. The second defender is the owner of the fund *in medio*.

3. The second defender is entitled to delivery of the fund *in medio* in terms of crave 2 of the initial writ or to the disbursement of any net funds in the event of a judicially ordered sale of the Vehicle.

4. The second defender's first plea in law is sufficient to cover the basis of his claim to the fund *in medio*.

5. The second defender's second plea in law cannot be given effect to and accordingly falls to be repelled.

THEREFORE

Sustains the second defender's first plea in law, Repels the first defender's first and second pleas in law and the second defender's second plea in law; Prefers the second defender to the whole fund *in medio* in respect he is the owner of the 1985 Ferrari Coupe 328 GTS, UK registered number B819 RLP and Italian motor registration MO663888; Grants decree in

terms of crave 2 of the initial writ for the delivery of the 1985 Ferrari Coupe 328 GTS, UK registered number B819 RLP and Italian motor registration MO663888, or the distribution of the sale proceeds thereof, in favour of the second defender as subsequently determined by the court after deduction of any costs incurred by the pursuer and real raiser in connection with the recovery and storage of said motor vehicle and any expenses of process to which the pursuer and real raiser might be found entitled; Defers consideration of consignation of any proceeds of sale of the fund *in medio* if so ordered; Supersedes extract of said decree until its precise terms are determined by the court; Fixes a hearing on consequential matters on a date to be hereafter assigned by way of webex to determine further orders in, and the expenses of the action of multiplepoinding, and to consider the pursuer's exoneration and discharge; Directs the sheriff clerk to intimate a copy of this judgment to the pursuer's successor as Chief Constable of the Police Service of Scotland or the solicitor acting therefor, and to Mr Forbes, commissioner; Directs parties intending to attend the hearing on consequential matters, once assigned, to email their email address, for the purpose of participation in said hearing, to the court's email address no later than seven days before the date of the hearing.

NOTE

Introduction

[1] This is an action of multiplepoinding at the instance of the pursuer and real raiser to determine ownership of the fund *in medio*, being a 1985 Ferrari Coupe 328 GTS, UK registered number B819 RLP and Italian motor registration MO663888 ("the Vehicle"). The defenders lodged competing claims to the fund *in medio,* and a record was eventually made up and adjusted in regard to their claims to the fund *in medio*. The adjusted record of the

competition in the fund *in medio* was lodged by the second defender's solicitor in process on 13 October 2023 pursuant to the court's interlocutor dated 29 September 2023 as number 39 of process.

[2] The court rejected a record of the competition in the fund *in medio* drafted by the first defender updated to 27 October 2023 by email to the defender in response to his email to the court dated 27 October 2023. The court's email reply to the first defender is found on ICMS, the court's electronic file, under the entry dated 27 October 2023 entitled "copy of email from 1st defender". The second defender's solicitor noticed this record at a later date and referred to it in his email to the court dated 29 January 2024.

[3] By interlocutor dated 31 January 2024, the court closed the record of the competition in the fund *in medio* pursuant to rule 35.17(2) of the Ordinary Cause Rules 1993 on the basis of the record of the claims prepared by the second defender's solicitor, lodged with the court on 13 October 2023, number 39 of process.

[4] A lot of difficulty, and delay, was caused by confusion over the format of the pleadings in respect of the competition in the fund *in medio* in this action. I intend to issue a supplementary note to discuss those issues in more detail. I hope the discussion therein may be of some assistance to practitioners and sheriffs in any future actions of multiplepoinding where similar problems might arise.

Procedural history

[5] This has been a "guid ganging process" with a significant procedural history, not all of which is necessary to recite in this judgment. However, it is necessary to record the previous stages in the action of multiplepoinding in order to understand the progress made in the action to date.

[6] The initial writ was warranted on 18 January 2022 and served on both defenders on 19 January 2022. Both defenders lodged a notice of appearance, the second defender on 4 February 2022 and the first defender on 7 February 2022, both advising they intended only to make a claim on the fund *in medio*. Neither defender intended to state a defence challenging the jurisdiction of the court or the competency of the action of multiplepoinding, or state objections to the condescendence on the fund *in medio*.

[7] A first hearing was fixed for 16 March 2022 on which date both defenders were ordered to lodge their Claims on the fund *in medio* no later than 13 April 2022. A second hearing was fixed for 27 April 2022 to determine further procedure in the cause. There then followed continuations of this hearing for further preparation and investigation to 22 June 2022, 31 August 2022, and 21 September 2022.

[8] At the hearing on 22 June 2022, the sheriff approved the pursuer's condescendence of the fund *in medio* and found the pursuer, as holder of the fund, liable only in once and single payment.

[9] At the hearing on 21 September 2022, the sheriff allowed parties a proof of their averments under reservation of the second defender's preliminary pleas on a date afterwards to be assigned. Procedure then fell into abeyance until the pursuer's solicitor emailed the court on 10 February 2023, as a result of which, by interlocutor dated 16 February 2023, the sheriff fixed a pre-proof hearing for 8 March 2023.

[10] On that date, the sheriff, in effect, reversed his earlier interlocutor for a proof, and fixed a diet of debate in respect of the second defender's preliminary pleas for 2 May 2023. I heard that debate and made *avizandum* thereon. My Judgment (No 1) in respect of the debate was issued on 5 July 2023.

[11] In that judgment, I identified a number of procedural issues with this case, not least the unsatisfactory nature of the pleadings, which on the first defender's part were extremely prolix and were filled with a lot of irrelevant material. I noted the record had never been closed and made detailed directions for preparation, first, of an open record by the second defender's solicitor.

[12] This record was duly lodged and by interlocutor dated 26 July 2023, I fixed a combined hearing (which I called a case management hearing) for 29 September 2023 consisting of a proof management hearing in terms of rule 29.17A of the Ordinary Cause Rules 1993, a procedural hearing in relation to further adjustment of pleadings and the closing of the record in terms of rule 35.17(2) of the Ordinary Cause Rules 1993, and a hearing on expenses.

[13] At the case management hearing on 29 September 2023, I identified further issues with the pleadings (see the supplementary note to follow this judgment) and directed the second defender to lodge a record in keeping with the rules on pleadings in actions of multiplepoinding. I fixed a further procedural hearing on 13 December 2023 (subsequently re-arranged for 31 January 2024) to allow time for the preparation of this open record, and the compliance of parties with other procedural directions made at the case management hearing.

[14] I closed the record at that hearing, made certain directions for the conduct of a proof, and continued the proof management hearing to 7 May 2024 to direct further procedure in the cause. At that further hearing, satisfied the case was ready to proceed to proof, I allowed parties a proof of their respective averments with the first day on 20 August 2024.

[15] The first day for the proof proved abortive, because although the second defender had booked a shorthand writer, none was available to attend court that day. The first day of

the proof was therefore rescheduled for 28 August 2024. Subsequent proof dates were 9 December 2024, 20 January 2025 and 28 March 2025.

[16] Having heard evidence over those four days, I ordered parties to lodge written submissions no later than 9 May 2025 and fixed a hearing to consider those submissions on 27 May 2025. Both parties were content at that hearing to rely on their written submissions without commenting in any detail on the other defender's written submissions. I made *avizandum* on that date.

[17] The second defender's solicitor submitted at the hearing on 27 May 2025 that the first defender's submissions should be ignored as having little worth, if any. He noted they contained no submissions at all on the evidence led at the proof and submitted they amounted to little more than a repetition of documents the first defender had sought to lodge in court.

The debate on 2 May 2023

[18] One of my main findings after the diet of debate was that Scots law, to the exclusion of the law of any other country or territory, applied to the determination of the issues in dispute between the defenders.

[19] This finding was confirmed in direction 1(l) in my interlocutor dated 28 March 2025 ordering written submissions from the parties on the evidence and the law. The second defender's written submissions are predicated on the basis that Scots law is to be applied by the court in determining the dispute between the parties.

Judgment No 2

[20] This is my third judgment in this case. Judgment No 1 was in respect of the debate. Judgment No 2, issued alongside the debate Judgment No 1 on 5 July 2023, sets out my reasons for refusing the defender's motion 7/1 of process for recovery of documents.

The Record

[21] The Record, number 39 of process, which was closed for the purposes of proof by interlocutor dated 31 January 2024, is headed "Fresh Revised Open Record of the First Defender's and Second Defender's Condescendences and Claims on the Fund *in Medio*, updated to 13 October 2023".

The Commission

[22] Mr Forbes, solicitor, Paisley, was appointed commissioner by interlocutor dated 29 July 2024 to recover the documents referred to in that interlocutor. His report, dated 13 August 2024, is number 45 of process. By interlocutor dated 9 January 2025, I granted the second defender's motion 7/4 of process, allowing the second defender to lead Mr Forbes as an additional witness in his capacity as commissioner appointed by the court on 29 July 2024, albeit Mr Forbes had not appeared on the second defender's list of witness.

The Proof on 28 August 2024, 9 December 2024, 20 January 2025 and 28 March 2025

[23] The first defender was ordained to lead at the proof, and the second defender to instruct a shorthand writer, by interlocutor dated 31 January 2024. Various other directions were made for the conduct of the proof, which are not necessary to discuss in this judgment, on 29 September 2023 (found under 4 October 2023 on ICMS), 31 January 2024, 7 May 2024,

28 August 2024, 19 November 2024, 9 December 2024, 24 December 2024, 9 January 2025, 20 January 2025 and 28 March 2025. Directions were made for written submissions on 28 March 2025. A transcript of the evidence was ordered and is available for each of the four days of evidence.

Submissions

[24] The first defender's written submissions ask that he be preferred to the fund *in medio* as owner of the vehicle for a variety of reasons which I consider later in this judgment.

[25] I do not agree with the second defender's solicitor that those submissions have no worth and should not be considered by the court. I shall summarise those submissions in due course in this judgment.

[26] The second defender's written submissions contain a detailed analysis of the evidence, submit for various reasons that I should prefer the evidence of the second defender and his witnesses to that of the first defender, whose evidence, where it contradicted that of the pursuer and his witnesses, and the documentary evidence in the case, should be rejected as neither credible and reliable. The submissions refer to the applicable legal principles of Scots law to be applied by the court in this case.

The defenders' pleas in law

[27] The first defender pleads that he should be preferred to the fund *in medio* as he owns the vehicle which is legally registered in Italy (pleas in law 1 and 2, being his only pleas in law).

[28] The second defender's preliminary pleas 3 - 8 were dealt with at the diet of debate on 2 May 2023, leaving for consideration at the proof his pleas in law 1 and 2.

[29] Plea in law 1 states:

> "In respect the second defender purchased the Vehicle from the first defender all as hereinbefore condescended upon and the property in the Vehicle having passed to the second defender in April 2011, his claim to the fund *in medio* ought to be preferred to that of the first defender."

[30] The second defender's second plea in law states:

> "*Esto* the second defender is found not to be the owner of the Vehicle, having for many years been in peaceable and lawful possession thereof, all as hereinbefore condescended upon, his claim to the fund *in medio* ought to be preferred to that of the first defender."

[31] In my opinion, the second defender's second plea in law is a mixture of averments and a legal proposition.

[32] This plea in law might more simply have stated the second defender should have been preferred to the fund *in medio* as he was the owner, or presumed owner, of the vehicle. However, the plea does not contain sufficient by way of legal proposition as to be properly sustained by the court.

[33] The second defender's claim to the fund *in medio*, as made plain in his written submissions, is ownership or presumed ownership of the vehicle. In my opinion, I can only prefer the second defender to the fund *in medio* on either of those bases. I am therefore of the view I cannot sustain the second defender's *esto* plea in law based on the second defender having for many years been in peaceable and lawful possession of the vehicle. This is tantamount to a plea of positive prescription in relation to corporeal moveable property, which I do not believe to be legally possible in Scots law.

The Evidence

Introduction

[34] The first defender gave evidence on 28 August 2024. He adopted his witness statement dated 16 April 2024 as his evidence in chief and was thereafter cross-examined by Mr McFarlane for the remainder of that court day. Mr McFarlane continued and completed his cross-examination of the first defender on 9 December 2024.

[35] After hearing the first defender and Mr McFarlane in relation to the first defender's re-examination at the end of the first defender's cross-examination, I allowed the first defender an opportunity to lodge a supplementary witness statement setting out his response by way of re-examination prior to the third day of the proof on 20 January 2025.

[36] The first defender did not, in the event, avail himself of this opportunity.

[37] I heard evidence on the third day of the proof on 20 January 2025 from Mr Forbes, commissioner, Mrs Susan Elias, and the second defender.

[38] On that date, I granted an oral motion made by Mr McFarlane under sections 3 and 4 of the Civil Evidence (Scotland) Act 1988 to recall the first defender as a witness to be examined on having potentially made statements otherwise in the course of the proof that contradicted his evidence to the court.

[39] The first defender was therefore recalled to give evidence on 20 January 2025 for the purpose of Mr McFarlane examining him on matters that tended to reflect unfavourably on his credibility (in the words of section 3 of the 1988 Act).

[40] As it was not possible to complete the evidence in the action on 20 January 2025, a fourth day of proof was fixed for 28 March 2025 at which the second defender continued and completed his evidence. I also heard the evidence of Oscar Abeti via webex and telephone link on that date, concluding the evidence led by both defenders.

Joint Minute of Admissions

[41] The defenders entered into a joint minute of admissions which was lodged with the court on 9 December 2024 and uploaded to ICMS on 10 December 2024 agreeing that all copy documents lodged in process were to be treated as equivalent to and deemed to be the originals. The court's interlocutor of 9 December 2024 allowed the joint minute of admissions to be lodged and received as number 49 of process.

Use made of Section 3 of the Civil Evidence (Scotland) Act 1988

[42] Section 3 of the 1988 Act is a re-enactment of section 3 of the Evidence (Scotland) Act 1852 and is to the same effect, namely a prior statement can be put to a witness during cross-examination of the witness to test the credibility or reliability of the witness.

[43] Such a statement does not need to be lodged in advance of the proof in terms of rule 29.11 of the Ordinary Cause Rules 1993 (*Paterson & Sons (Camp Coffee)* v *Kit Coffee Co* (1908) 16 SLT 180; *Robertson* v *Anderson* Outer House, 15 May 2001 (Lord Carloway), reported subsequently at 2014 SLT (Note) 709).

[44] Mr McFarlane was able to deploy this tactic during his cross-examination of the first defender. Documents used for this purpose, not being lodged in his inventories of productions, were given a separate process number and are referred to in this judgment by those numbers where necessary. I explained this rule to the first defender *inter alia* on the 4th day of the proof in response to his question for clarification about Mr McFarlane being allowed to cross-examine him on documents not lodged in the second defender's inventories of productions (transcript, page 6, lines 1 - 25 and page 7, lines 1 and 2).

Requirement to challenge evidence

[45] The general rule in civil cases is that a party requires to challenge by cross-examination the evidence of any witness on a material point which he or she wishes to submit to the court should not be accepted (*Griffiths* v *Tui (UK) Ltd* [2023] UKSC 48; [2025] AC 374). The rule is not to be applied inflexibly, however, and there are exceptions to the rule, the ultimate test being one of fairness (Lord Hodge, paragraphs 60 - 70).

[46] I explained the purposes of cross-examination to the first defender, including the requirement to challenge disputed evidence, at length, prior to his own cross-examination on 28 August 2024 (transcript, page 15, line 14 to page 19, line 25) and prior to his cross-examination of Mr Forbes on 20 January 2025 (transcript, page 44, lines 14 - 25 and page 45, lines 1 - 6).

[47] I do not, however, appear to have done this prior to his cross-examination of the second defender on 20 January 2025 (transcript, page 119, line 5 and page 148, lines 4 - 6) and 28 March 2025 (transcript, page 14, line 25).

The evidence of the first defender on 28 August 2024 and 9 December 2024

[48] I allowed the first defender to adopt his witness statement dated 16 April 2024 as his evidence-in-chief under reservation to its competence and relevance following upon concerns raised by Mr McFarlane (transcript, page 9, lines 1 -25 and 10, lines 1 -18).

[49] Mr McFarlane observed the witness statement contained multiple statements that were irrelevant or inadmissible. This problem can, however, best be addressed by the court accepting only those parts of the witness statement that, if given orally, would genuinely be characterised as evidence in chief (therefore excluding inadmissible evidence, submissions, irrelevant material etc).

[50] The judgment of the Privy Council in *The Proton* [1918] AC 578 (PC) at page 583 lends some support to this approach. Lord Sumner described the affidavit evidence in that case as "revelling in rumours, abounding in hearsay and containing many exaggerations and some extravagancies". However, the affidavits were considered by the trial judge, the Privy Council accepting the trial judge was "well qualified to appraise [the affidavits] at their true value".

[51] The main points to be taken from the first defender's witness statement are that he delivered the Vehicle to the second defender in Marbella in April 2011 from its location in Italy as the Vehicle was not being driven much due to his absence for work in Dubai. He had the Vehicle serviced at his local garage in Italy, drove it to Livorno, took a ferry to Barcelona, and drove the Vehicle from Barcelona to the second defender's apartment in Marbella.

[52] The purpose behind this arrangement was to allow the second defender to drive the Vehicle while in Marbella. The first defender retained the Italian certificate of ownership and continued to pay Italian road tax until 2021.

[53] The first defender became aware of attempts by the second defender to sell the Vehicle to a purchaser in Belgium in 2015 - 16 via a Luxembourg car dealer.

[54] He had not consented to the Vehicle being taken from Spain to Luxembourg. He did not consent to the sale, requested the return of the Vehicle, reported the attempted embezzlement of the Vehicle to the Italian Carabinieri, and obtained a new registration certificate under number CS0491693.

[55] On 20 October 2020, the first defender was informed by Ferrari Customer Service the Vehicle had been submitted for sale at a dealer in Edinburgh. He had previously, in September of that year, filed reports with police forces in England, Scotland, Luxembourg,

Spain, France, Switzerland and Belgium that the Vehicle had been stolen. The Italian Carabinieri had also issued a seizure warrant for the Vehicle on 21 August 2020.

[56] On 27 October 2020, the first defender became aware of the second defender attempting to sell the Vehicle to CC Cars Ltd in Manchester and the Vehicle being seized by the Greater Manchester Police.

[57] The first defender maintained he had never received any payment for the Vehicle from the second defender. He stated that the payment of 50,000 UAD he received from the second defender was issued "for working purposes". It was a payment "for illegal work … as were other cash and cheque payments made in the period March – November 2011".

[58] The first defender's witness statement refers to the registration of the vehicle in his name in Italy as being conclusive of ownership under Italian law.

[59] However, a statement of foreign law is a matter of fact which requires to be proved by reference to expert evidence. The court held in Judgment (No.1) issued on 5 July 2023 after the debate on 2 May 2023 that Scots law, to the exclusion of the law of any other country or territory, applied to the determination of the issues in dispute between the defenders.

[60] I have therefore disregarded the first defender's attempts to give evidence on matters of Italian law.

Cross-examination of the first defender by Mr McFarlane on 28 August 2024

[61] Mr McFarlane's cross-examination is at pages 23 - 215 of the transcript. I have read all of this to remind myself of the content of the cross-examination. I record here only the most significant parts that assist the court in determining the disputed issues in this case.

[62] The first defender confirmed he had had his registered address in Italy before moving to Dubai to accompany his then girlfriend in around 2009. He met the second defender in the context of the Ferrari Owner's club in Dubai. He had worked for the second defender in his businesses Olive and Oil and IWE Hospitality Consultants from May 2011 to 4 April 2016.

[63] He was given membership in the Ferrari Owners' Club in the UAE 2011 in recognition of assistance he had rendered to the club (see membership card at 8/12-8 in the defender's supplementary inventory of productions).

[64] He was not required to pay the membership fee of €3,000.

[65] He claimed membership of the club in other years until he left Dubai in 2016 but was somewhat evasive on whether he had paid membership fees or ever been a member other than in 2011.

[66] He claimed he had initially worked illegally for Olive & Oil and was not officially employed there (transcript, page 29, line 5; page 52, line 10). While he would comply with the laws in a western country, Dubai was an exception to this as nobody complied with the laws there (transcript, page 53, lines 7 - 15).

[67] He legally worked for the company after the date of his visa on 30 November 2011 (transcript, page 54, lines 1 – 8) until resigning on a date he was unable to identify.

[68] He was asked about borrowing €80,000 from Mario Fantin in 2009. He denied he did so. He denied even knowing Mr Fantin.

[69] He conceded however there had been a court case in Italy involving this loan. He claimed he had signed the acknowledgement of debt in 2013 or 2014 and therefore denied a loan in 2009.

[70] I asked the first defender to clarify his evidence on this matter. He confirmed having borrowed €80,000 from Mario Fantin, but in 2013, not 2009. He confirmed Mr Fantin had issued proceedings against him in Italy in connection with that loan.

[71] Mr McFarlane then sought permission from the court to examine the first defender on statements made by him in the Italian proceedings raised against him by Mario Fantin.

[72] I allowed Mr McFarlane to do this by producing and putting to the first defender a copy of the *Sentenza Tribunale di Arezzo* dated January 17, 2023 (lodged as item 47 of process).

[73] I was satisfied any line of cross-examination based on this document would come within the terms of section 3 of the Civil Evidence (Scotland) Act 1988 as the document was likely to contain statements made by the first defender in relation to the loan transaction involving Mario Fantin.

[74] It is useful therefore to summarise key provisions of the document at this stage. A certified English translation lodged in process on 7 October 2024 appears at item 49 of process on ICMS.

[75] The judgment of the Italian court concerned the case registered by the first defender raised against Mario Fantin under court reference No 1261/2019 for annulment of the "injunction" (in the English translation) 64/19 of January 17, 2019, issued by the Tribunal of Arezzo in the proceedings NRG 143/2019.

[76] The judgment in case No 1261/2019 was not issued until 17 January 2023.

[77] The first defender was therefore the claimant in case No 1261/2019 in which he was seeking to set aside an earlier order granted by the Italian court.

[78] No evidence was led on what this "injunction" related to, and it may be this was not an injunction as such but "a provisionally enforceable decree" in the later words of the

translation, in which the Italian court had issued judgment against the first defender, ordering him to pay €80,000 to Mr Fantin.

[79] There were two parts to the judgment in case No 1261/2019. The first, in which the first defender was successful, was in obtaining permission to make the application for annulment of the earlier order for payment of €80,000.

[80] The judge accepted the decree in favour of Mr Fantin had been incorrectly notified (intimated in Scots terminology) to the first defender.

[81] He accepted the judgment had been sent to the first defender at his father's address in Italy whereas the first defender had been residing in England at the material time (and permanently since 2017).

[82] The second part of the judgment considered the merits of the application. On this point, the judge rejected the first defender's opposition to the earlier payment order and consequently confirmed that order.

[83] The judge noted that the report from the graphology expert filed on 11 April 2022 confirmed the first defender had drafted and signed an acknowledgement of debt in favour of Mr Fantin in the sum of €80,000 dated 15 November 2016.

[84] The judge noted the first defender stated in this acknowledgement that the first defender:

> "Declares to have received in the year 2009 from Mr Mario Fantin … a loan of €80,000 (eighty thousand euros) for personal needs and commits to repay it by no later than December 31, 2017."

[85] Thus, this court has before it, by a somewhat circuitous route, a statement made by the first defender otherwise in the course of the proof. Mr McFarlane proceeded to cross-examine the first defender in relation to that statement in terms of section 3 of the Civil Evidence (Scotland) Act 1988.

[86] The first defender confirmed he had been a party to the Italian proceedings in case No 1261/2019 against Mario Fantin. He denied, however, that those proceedings proceeded upon a loan Mr Fantin had given him in 2009. He denied the judgment referred to an acknowledgement of a loan made in 2009. He denied having refused to pay the loan. He denied Mr Fantin had raised earlier proceedings against him for payment of the loan. He denied Mr Fantin required to obtain the earlier judgment to vindicate his loan.

[87] The first defender conceded he had been represented by a lawyer in case No 1261/2019 to set aside the earlier judgment obtained by Mr Fantin. He was unwilling to accept that the judgment recorded his earlier statement of having received a loan from Mr Fantin in 2009. He was asked many questions about that by McFarlane, yet his answers were lengthy and did not directly address this simple point.

[88] Section 3 of the 1988 Act allows a prior statement to be put to a witness "in so far as it tends to reflect favourably or unfavourably on that person's credibility". This line of cross-examination reflected unfavourably on the first defender's credibility.

[89] There can be little doubt as to the meaning of the Italian judgment in case No 1261/2019. In those proceedings, the first defender was disputing his signature on the acknowledgement of loan which he declared had been made to him in 2009. Expert evidence established his signature on the document, acknowledging the loan had been made to him in 2009.

[90] The first defender elected in cross-examination initially to deny any such loan, to knowing Mr Fantin, and to deny the date of the loan (2009), claiming a loan had been made in 2013 or 2014, presumably to deflect from the fact Mr Fantin had obtained a judgment against him for payment of €80,000.

[91] Mr McFarlane moved on to a further line of cross-examination concerning the first defender's obligation to keep the commune of Arezzo informed of his residential whereabouts from time to time. The first defender accepted that Italian citizens who went to live abroad required to complete a declaration to inform the commune of their place of residence.

[92] On that basis, Mr McFarlane asked the first defender to look at the copy document from the Commune di Arezzo (lodged as item 46 of process) setting out the dates and places of residence of the first defender from 1 July 1968 (when he was born, transcript, page 12, line 19) to 2 February 2020.

[93] This document, which is in Italian, but easy to understand, records the first defender as having lived in Dubai from 18 August 2010 to 29 March 2017, Italy from 30 March 2017 to 25 April 2019, and England from 26 April 2019 to 2 February 2020.

[94] Mr McFarlane asked the first defender why he had claimed to have lived in Dubai from 2008 and the United Kingdom from 2017 contrary to this information.

[95] The first defender's broad answer was these were the dates his residence had become fixed as Italian law required a minimum of six months residence for the purposes of recording changes in dates of residence.

[96] Mr McFarlane then took the first defender to the initial writ in this cause it which it was averred the first defender had claimed to Police Scotland that he had been a business partner of the second defender in Dubai. The first defender eventually conceded that had been a mistake. He initially claimed Police Scotland had made the mistake as he was only an employee of the second defender, changed this to having probably made the mistake himself, and then conceded this was an "innocent mistake" on his part (transcript, page 109, line 109).

[97] Mr McFarlane then took the first defender to 10/14 of process, which the first defender identified as a copy of the complaint he made to the Italian Carabinieri on 21 August 2020.

[98] This document contains statements made by the first defender in connection with the Vehicle and therefore Mr McFarlane's questions on this document fell within the scope of section 3 of the 1988 Act. As the original document was in Italian, the copy at 10/14 of process is an (uncertified) translation into English.

[99] The first defender claimed in this document to be the owner of the Vehicle. He loaned the Vehicle to the second defender in Marbella on 24 April 2011. The second defender was his business partner in Olive and Oil at the time. He took the Vehicle on a Ferrari gathering in Hamburg in 2012. His friendship with the second defender terminated in 2015. He was contacted by Mr Reubens in March 2016 to sign documents for the sale of the Vehicle in favour of Stefaan Moens. By email dated 29 March 2016, he informed Mr Reubens and the second defender that he had no intention to sell the Vehicle, he had not been informed of initiatives to sell the Vehicle, and he demanded its immediate return. He reserved his right to take legal action for the return of the Vehicle to his possession.

[100] The original registration certificate was in his possession. He continued to pay car tax each year. He had been a victim of misappropriation on an unknown date. This happened in Spain. The stolen goods included the Vehicle, registration plate, and car radio. He was filing a criminal complaint against those accountable for the crimes described in the aforementioned facts.

[101] Mr McFarlane questioned the first defender about this document. The first defender stated he had made a mistake by referring to the second defender as his business partner. He denied he deliberately lied to the Italian police about the second defender being his

business partner. He again denied the mistake came about because he deliberately told a lie to the Italian police.

[102] He gave different explanations for this mistake, one that he had told the Italian police he had a business relationship with the second defender, and the other that the second defender was to be his future business partner.

[103] Mr McFarlane then questioned the first defender about the "loan" of the Vehicle to the second defender as set out in the complaint to the Italian Carabinieri. The first defender accepted the word "lent" appeared in inverted commas both in the English translation and the Italian original ("*prestare*"). He stated this had come about because he had made a symbol of inverted commas when making his complaint to the Italian police because "*prestare*" had a number of different meanings in Italian and it was very strange for a car to be prestare.

[104] Mr McFarlane then pressed the first defender in a long passage of the cross-examination to explain why he would lend the Vehicle to the second defender, why there was no written evidence confirming such an agreement, and the first mention of a loan had only been made in the first defender's complaint to the Italian Carabinieri on 21 August 2020 in the context of inverted commas 9 years after the delivery of the Vehicle to the second defender in Marbella in 2011.

[105] Thereafter, Mr McFarlane moved on to question the first defender about the "circulation card" at 10/2 of process showing transfer of ownership of the Vehicle to the first defender on 19 July 2006. The first defender claimed this document had been "voided" in 2016 after he had realised the second defender was attempting to sell the Vehicle and he also claimed it was voided because he thought he had lost the original document.

[106] The first defender was not sure if he had handed over the original of this document to the second defender along with the Vehicle in April 2011. He said he had made a complaint to the Italian Carabinieri on 16 September 2016 of the Vehicle having been stolen by the person who had possession of the Vehicle, but also that he did not report it stolen, only that the Vehicle was lost.

[107] Mr McFarlane then asked the first defender to consider the new registration certificate for the Vehicle in the first defender's name dated 19 December 2016 at 6/12-8 of process with accompanying English translation.

[108] The first defender explained he had obtained this document to stop what had just happened in Spain. He confirmed he wanted to stop anyone in the future from selling the Vehicle.

[109] Mr McFarlane then referred the first defender to the certificate of ownership in the first defender's name dated 1 September 2016, also at 6/12-8 of process. The first defender said he lost the original certificate and had applied for this new certificate.

[110] Mr McFarlane then returned to the original registration certificate in the first defender's name from 2006 at 10/2 of process and asked the first defender if he had delivered that document to the second defender with the Vehicle in April 2011.

[111] The first defender replied probably, it must have been, and finally that it was handed over for sure in April 2011.

[112] Mr McFarlane asked the first defender why he declared the Vehicle had been stolen 5 years on, in September 2016, to the Italian police by whoever had stolen the Vehicle. He replied he had declared it lost, not stolen.

[113] Mr McFarlane then referred the first defender to the other items delivered along with the Vehicle in April 2011 at 10/6, 10/7, 10/8 and 10/9 of process: the Vehicle's warranty card,

the 1984/85 Ferrari Annual, the "Original Ferrari V8" book and the "Welcome to Ferrari" book.

[114] The first defender confirmed he had handed over the warranty card with the Vehicle. He confirmed he had handed over the 1984/85 Ferrari Annual and that the photographs kept within this book were of the Vehicle. He was not sure he had handed over "the Original Ferrari V8" book. He did not recognise the "Welcome to Ferrari" book. The second defender interjected to advise this book could have been mixed up with his collection.

[115] He then said he was not sure any of the first three of these items had been handed over with the Vehicle. He could have given them to the second defender on a later occasion in Dubai.

[116] Mr McFarlane then moved on to the Facebook posts. The first defender confirmed that Mr McFarlane had for some time been referring to these as "fresh screenshots". Mr McFarlane put it to the first defender that the screenshots were no longer available on Facebook, but the first defender maintained that they were in fact available.

[117] Mr McFarlane referred the first defender to the commissioner's report, a copy of which Mr McFarlane had lodged at 10/10 of process. The first defender stated he had never received a copy of this report as he would have answered with a fresh screenshot to be sure. A copy was then put to him, and he was given an opportunity to read the report.

[118] Before proceeding with questions about the report, Mr McFarlane asked the first defender to confirm that the first defender had not complied with Mr McFarlane's request for fresh screenshots but had instead sent him copies of the same screenshots. The first defender confirmed the screenshots he sent Mr McFarlane were exactly the same as the ones originally in Mr McFarlane's possession.

[119] Mr McFarlane then referred the first defender to 10/11 of process, photographs of the Vehicle included in the first defender's document "Appendix 14" he had previously lodged with the court. The first defender confirmed having posted those photographs to Facebook on 30 April 2011 and that these were the same photographs he sent to Mr McFarlane when Mr McFarlane had requested fresh screenshots.

[120] Mr McFarlane then referred the first defender to various attempts to recover fresh screenshots, initially by motion, then by way of commission in which the commissioner, Mr Forbes, took full access to the first defender's Facebook page. He referred the first defender to Mr Forbes report in which Mr Forbes noted the three photographs posted on 30 April 2011 were not present on the first defender's Facebook page on 9 August 2024 when Mr Forbes examined the first defender's Facebook page.

[121] The first defender disagreed with Mr Forbes' conclusion in his report. He said he would be crazy to delete Facebook posts. He wanted an opportunity to produce the posts and to have a new commission.

Cross-examination of the first defender by Mr McFarlane on 9 December 2024

[122] Mr McFarlane resumed his cross-examination of the first defender on this date. The cross-examination is recorded at pages 22 - 203 of the transcript.

[123] Mr McFarlane firstly returned to the commission in relation to the first defender's Facebook posts. The first defender confirmed he was in complete control of those posts.

[124] The first defender agreed that 10/11 of process contained three photographs of the Vehicle taken by the first defender that he posted to his Facebook page on delivering the Vehicle to the second defender in Marbella, posted on 30 April 2011 after delivering the Vehicle to the second defender around 24 April 2011.

[125] The first defender confirmed that those documents had originally been lodged in process by him as his "Appendix 14" and there were no comments posted about the photographs. He acknowledged he used Facebook to communicate with friends. However, he was very hesitant to confirm he had made comments in connection with these photographs. He said he was trying to remember the purpose of posting the photographs and said it was for "memories".

[126] Mr McFarlane then referred the first defender to the date at the top of the productions in number 10/11 of process. The first defender accepted they were dated 12 April 2022 at 18:42, the date he had prepared his Appendix.

[127] This was the date he had screenshotted the photographs from his Facebook page. He accepted Mr McFarlane had subsequently requested screenshots bearing later dates.

[128] He was asked whether he had said during a court hearing in this case that the pictures were not there, to which he eventually answered the pictures were, and had always been there. He was plainly reluctant to answer this question. When pressed to answer whether he had said the opposite at the court hearing, he finally denied having made that remark. He went on to claim that he had eventually sent fresh screenshots to Mr McFarlane.

[129] Mr McFarlane asked the first defender about the commission arranged by Mr Forbes. The first defender said he co-operated with Mr Forbes in allowing him to gain access to his Facebook page. Mr McFarlane reminded the first defender he had had a copy of Mr Forbes' report in his possession since at least the first hearing on 28 August 2024.

[130] The first defender was reminded that Mr Forbes could not locate the posts reproduced within Appendix 14 on 9 August 2024. The first defender had no explanation for this finding other than the photographs were still there, or that Mr Forbes had made a

mistake or had been deliberately deceitful in making this comment. His main opinion was Mr Forbes was incapable of doing his job. He denied having deleted the posts.

[131] Mr McFarlane then referred the first defender to the photographs at 10/12 of process. The first defender confirmed that he written information on each photograph to explain what they were (they explain the first defender delivered the Vehicle to the second defender in Marbella on 24 April 2011). He denied having edited these photographs before producing them to the court or having deleted them from Facebook.

[132] Mr McFarlane then referred the first defender to his email to the court on 29 August 2024 claiming the photographs were still on his Facebook page and could be found within one of his albums. The defender did not accept this was obfuscation or sleight of hand.

[133] Mr McFarlane then went over some matters raised at the previous hearing on 28 August 2024. He went through the judgment from the Italian court referencing the €80,000 loan to Mr Fantin in 2009 in considerable detail.

[134] He referred the first defender to the ground for the judge allowing him to challenge the earlier judgment, namely the first defender residing in England at the time he was notified of the earlier judgment. He cross-referenced this with the certificate of residence from Arezzo Commune showing the first defender as residing in Arezzo on the date the of notification of the earlier judgment.

[135] Mr McFarlane referred to the judge's comments in the first defender's annulment application that the first defender's change of residence had not been declared in accordance with Italian law.

[136] This line of cross-examination proved somewhat ineffective at first as the first defender was being argumentative and trying to justify any discrepancies in his evidence by

explanations about residence and domicile, which were the domain of a witness skilled in such matters.

[137] Mr McFarlane moved on to consider the Italian judge's decision on the merits of the first defender's annulment application. Having explained this in detail to the first defender, the first defender denied the judgment proved he had borrowed €80,000 from Mr Fantin in 2009. He said the Italian court had got that wrong.

[138] Mr McFarlane put it again to the first defender that it was apparent from the Italian judgment he had also lied to Arezzo Commune about where he was living from 30 March 2017 to 25 April 2019. He denied this and that he had lied to the Italian court about his residence.

[139] Mr McFarlane then reminded the first defender of putting to him at the hearing on 28 August 2024 that he only first mooted having loaned the Vehicle to the second defender in his complaint to the Italian Carabinieri on 21 August 2020 and the first defender had claimed to have made such a claim in 2016.

[140] Mr McFarlane took the first defender to 10/13 of process, the first defender's email to the Luxembourg Police on 30 March 2016, claiming the Vehicle had been illegally sold to Mr Reubens and claiming ownership of the Vehicle. The first defender admitted that he had not referred to the second defender by name, or to having loaned the Vehicle to him. He had merely referred to the Vehicle being in the possession of a person in Marbella.

[141] Mr McFarlane then questioned the first defender about the What's App exchanges between the first defender and Mr Reubens in March 2016 at the end of 10/15 of process.

[142] In these exchanges, the first defender protested against the sale of the Vehicle as illegal and demanding the Vehicle be delivered to him. I did not find this a particularly fruitful line of cross-examination.

[143] Mr McFarlane then moved on to discuss the first defender's email to Mr Abeti on 11 July 2019 at the beginning of 10/15 of process. This was a long email the first defender sent to Mr Reubens and Mr Abeti to which various emails (and the What's App exchanges at the end of 10/15 of process) were attached. These included emails to Mr Reubens on 5 March 2016 responding to his request for documents for the Vehicle and on 29 March 2016 asking for the return of the Vehicle. He said he was not willing to participate in the sale of the Vehicle. He was just curious to see what was going on around 4 March 2016.

[144] He was asked to compare the email dated 5 March 2016 he presented as having been sent to Mr Reubens with the copy received by Mr Abeti from Mr Reubens on 8 March 2016 at item 50 of process. He denied having produced an edited version of this email.

[145] He claimed he had sent this email twice because he did not want Mr Reubens to understand he was willing to sell anything. That was a mistake on his part. He denied the two emails were different. He must have sent both at the same time. He then said he had only sent one, the shorter version. He agreed one could not have two emails which were materially different and sent at the same time. However, he had sent both.

[146] Mr McFarlane asked the first defender why he had edited the email of 5 March 2016 when emailing Mr Reubens and Mr Abeti on 11 July 2019. This longer version included paragraphs in which the first defender had suggested getting a precise list of documents "to proceed correctly". The first defender agreed this looked like a willingness on his part to proceed with the sale of the Vehicle. However, he denied having edited the email to Mr Reubens on 5 March 2016.

[147] In a long line of cross-examination, Mr McFarlane suggested to the first defender he had initially been willing to participate in the sale of the Vehicle but changed his mind after his disagreement with the second defender and looking at the sale price of €65,000 for the

Vehicle on the bill of sale. The first defender denied this suggestion, stating he had never intended to sell the Vehicle.

[148] The first defender admitted he took no steps to recover the Vehicle after becoming aware of the sale of the Vehicle to Mr Reubens in March 2016. He gave no satisfactory or coherent explanation why he could not have instructed proceedings in Spain to recover the Vehicle which had nearly been sold for €65,000, other than suggesting he was "travelling" or "working".

[149] Mr McFarlane asked the first defender to describe his role in the Ferrari Owners' Club in the UAE tour in Europe in 2011.

[150] The first defender sought to present himself as an active participant in the tour, driving the Vehicle from Spain to Hamburg and from there to Austria. He was unable to answer which car he drove on this tour. He was unaware that the tour had not proceeded directly to Vienna, but had travelled through additional cities such as Hanover, Dusseldorf, Frankfurt, and Prague. He did not know where Frankfurt was located and had to ask the court to explain. He finally accepted the second defender had driven with his wife on the tour. He was unable to tell the court that the Vehicle had broken down near Frankfurt. Having been referred to the repair invoice at 10/16 of process, he accepted the Vehicle had been repaired on the instructions of the second defender after it broke down. He was unable to give a satisfactory answer why the second defender paid for those repairs if he only had the Vehicle on loan from the first defender.

[151] Mr McFarlane referred the first defender to his CV in terms of section 3 of the Civil Evidence (Scotland) 1988 which was lodged as item 51 of process. He explained this had originally been drafted by his previous (Iranian) girlfriend in Dubai in 2009 and updated by his Lebanese girlfriend Carlin in Dubai after 2011. Mr McFarlane, amongst other matters,

asked the first defender to explain the statement in his CV that the first defender had been a member of the Ferrari Owners' Club in the UAE from 2011 to "present" when he had only been a member in 2011 according to his evidence at the hearing on 28 August 2024. He answered this was an "error".

[152] Mr McFarlane asked the first defender about the transaction in April 2011 regarding the Vehicle. The first defender had earlier explained he had a Lebanese girlfriend named Carlin who defrauded him of €30,000. He denied telling the second defender she had an urgent need for money because she had made a bad property deal and proposing to sell the Vehicle to the second defender for the equivalent of €30,000 to help her out.

[153] The first defender denied agreeing to sell the Vehicle to the second defender for 150,000 UAD at a meeting with the second defender on 7 April 2011. He accepted the meeting took place but stated there was no agreement to sell the Vehicle to the second defender. He accepted delivering the Vehicle to the second defender in Marbella on 24 April 2011.

[154] He accepted having received a cheque from the second defender for 50,000 UAD which he cashed. He stated that was to buy out his employment with a previous company he had worked for in Dubai. He denied having received the further cheque for 100,000 UAD from the second defender before delivering the Vehicle to the second defender in Marbella.

[155] When pressed on this, he conceded he had probably received a cheque for 100,000 UAD from the second defender, after which he was evasive about what he meant by this, repeating he had probably received this cheque.

[156] He eventually admitted having received a total of 150,000 UAD from the second defender, stating this was because the second defender employed him at that time (transcript, page 202, lines 16 and 17; page 233, lines 14 and 15).

[157] There were additional lines of cross-examination. I have read the full transcript to remind myself of all those lines of questioning. However, I do not find it necessary to summarise the remaining lines of cross-examination here

The first defender's productions

[158] The first defender lodged a supplementary inventory of productions on 16 August 2024 which was uploaded to ICMS on 20 August 2024 with a covering letter he intended to use these at the proof. His witness statement refers to a list of documents excluded from probation after the diet of debate on 2 May 2023. It also refers to documents that are not within his supplementary inventory of productions. I have therefore confined myself to a study only of the documents produced by the second defender in his supplementary inventory of productions.

[159] Most of these productions were not spoken to in evidence, though the first defender indicated he wished to rely on them, so I record at this stage:

- 1/12-8 is the first defender's email to the Italian Carabinieri dated 22 September 2020 reporting the embezzlement of the Vehicle;
- 2/12-8 is his report to the Metropolitan Police in London dated 14 September 2020 reporting the embezzlement of the Vehicle;
- 3-12-8 is his complaint to Police Scotland dated 22 September 2020 reporting the embezzlement of the Vehicle;
- 4/12-8 is his complaint to the Luxembourg Police dated 30 March 2016 reporting the Vehicle having been sold illegally, without his permission;
- 5/12-8 was confirmation the Italian Carabinieri had cancelled the original Italian registration for the Vehicle in 2016;

- 6/12-8 was a bundle of documents including the new circulation card in the first defender's name dated 19 December 2016 and the Italian certificate of ownership in the first defender's name dated 1 September 2016;
- 7/12-8 was a copy of his "Appendix 14";
- 8/12-8 was his copy membership card for the Ferrari Owners' Club in the UAE for the year 2011;
- 9/12-8 was a copy of Mr Abeti's email to the second defender dated 29 December 2015 containing a copy of the bill of sale for the Vehicle with the first defender shown as the seller;
- 10/12-8 were photographs of the second defender's Ferrari Scaglietti at the first defender's country house in Arezzo in or around July 2009;
- 11/12-8 was a typed list of participants in the Ferrari Owners' Club in the UAE European trip in 2010, showing both defenders as participants, with the first defender as the driver of the Vehicle;
- 12/12-8 was a copy of the first defender's UAE visa valid from 14 April 2014 to 12 June 2014, and a business card showing the first defender as operation manager for Olive & Oil.

The evidence of David Forbes, Commissioner on 20 January 2025

[160] Mr Forbes' evidence is recorded at pages 31 - 70 of the transcript. His report is dated 13 August 2024 and forms number 45 of process. Mr Forbes confirms in his report that the first defender gave him access to his Facebook account. He examined all posts on the first defender's Facebook page between 1 April 2011 and 30 June 2011 on 9 August 2024 in terms of the specification. The documents within the first defender's "Appendix 14" were not

present on his Facebook account on that date. He considered the posts dated 23 April 2011 and 25 June 2011 to be relevant to the scope of his commission.

[161] The posts dated 23 April 2011 consist of five photographs, and various comments, mostly in Italian, showing a ferry and a further 12 photographs showing a Ferrari being driven on a road trip.

[162] The posts dated 25 June 2011 relate to the "UAE Euro Tour 2011 & Marbella – Hamburg in 48 hours" the significance of which will occur later in this judgment.

[163] A copy of the first defender's "Appendix 14" appears in the fist defender's supplementary inventory of productions. These are copies of photographs, but not any commentary, posted to Facebook. They are accompanied by the first defender's annotations. Broadly speaking, the first ten photographs in item 7/12 confirm the first defender's account of having travelled by ferry from Italy to Spain on 23 and 24 April 2011 to deliver the Vehicle to the second defender. A further copy of "Appendix 14" appears in the second defender's supplementary inventory of productions as 10/11 of process.

[164] The first defender questioned Mr Forbes on his knowledge of Facebook, suggesting photographs could be taken on an earlier date and posted on a later date, thus all that Mr Forbes could obtain were copies of posts made within the period set out in the specification of documents. He appeared to be suggesting Mr Forbes had overlooked 80 photographs of "Summer in Marbella" consisting of 80 pictures, last updated on 30 June 2011. However, those photographs were not included in the specification of documents.

[165] I am not sure this part of the cross-examination established anything of evidential value. The posts identified by Mr Forbes, and reproduced in his report, all appear to be contemporaneous with the events recorded in them.

[166] For example, the posts showing the ferry journey and the delivery of the Vehicle to the second defender are dated 23 and 24 April 2011 on the first defender's annotations in 7/12 of process and this is in conformity with the first defender's witness statement.

[167] The first defender then asked Mr Forbes if he had missed the photographs of the Vehicle within "Appendix 14". Mr Forbes explained he had scrolled through the first defender's Facebook page as instructed by the court and had not found those photographs.

[168] Mr Forbes replied to a lengthy passage of cross-examination to the effect that he had not been instructed to search in the "Summer in Marbella" album as that was not within the terms of the specification authorised by the court. He clarified this in re-examination. He had understood the first defender was suggesting he should have looked else in his Facebook page and, if he had done so, he would have found the photographs of the Vehicle in that album. However, that did not fall within the terms of the specification.

[169] As Mr Forbes observed in cross-examination, it was open to the first defender to lodge the "Summer in Marbella" album if he wished to show that the photographs of the Vehicle remained on his Facebook account. All that Mr Forbes could comment on was they were not present as posts in the first defender's Facebook page in the period 1 April 2011 and 30 June 2011 when he examined the Facebook page on 9 August 2024.

[170] I will discuss the significance of the "missing" photographs when analysing the facts in this case. A careful reading of the transcript will confirm my impression that Mr Forbes was a credible and reliable witness. He is a senior solicitor within the profession, with no disciplinary record against him, and he has been entrusted by the court with the preparation of child welfare reports since 2000.

[171] Although Mr Forbes did not use Facebook personally and had not previously been familiar with its operations, it was, as he said, a straightforward matter to scroll through the

first defender's Facebook page for the period authorised by the specification and extract the information ordered by the court.

[172] I am accordingly entirely satisfied Mr Forbes discharged his responsibilities as commissioner in a professional and competent manner and the information obtained by him, which was put in evidence by Mr McFarlane, can be relied upon by the court in analysing the facts of this case.

The evidence of the first defender on 20 January 2025

[173] The first defender's evidence is recorded at pages 71 - 109 of the transcript. As previously pointed out in this judgment, the first defender was recalled to be examined on statements made otherwise in the course of the proof in terms of section 3 of the Civil Evidence (Scotland) Act 1988.

[174] In terms of paragraph 2 of the court's interlocutor dated 7 May 2024, the court ordered the first defender to lodge with the court "the three screenshots at appendix 14 of his documents previously tendered to the court on 21 April 2022, no later than 21 May 2024".

[175] By email dated 21 May 2024 to the first defender (see 10/7 of process), Mr McFarlane pointed out to the first defender that he had not lodged fresh screenshots from his Facebook page in pursuance of this order. He had lodged the same screen shots again dated April 2022 (see 10/18 of process). He had sought fresh screenshots bearing a date after 7 May 2024.

[176] The first defender accepted that he had received Mr McFarlane's email at 10/17 of process and had produced copies of the screenshots at 10/18 of process. He said this had

been a mistake on his part and he had sent another email with new attachments that Mr McFarlane did not like.

[177] The first defender had elected to email the sheriff clerk on 29 August 2024 (see 10/19 of process), after the first day of the proof on 28 August 2024, in response to cross-examination that day by Mr McFarlane about Mr Forbe's report.

[178] Having been referred to the "missing" photographs in cross-examination, the first defender questioned in this email the conclusion in Mr Forbes' report that these photographs had been removed from his Facebook page. He stated they were clearly visible on his Facebook page. Had he seen Mr Forbes' report earlier, he would have addressed this discrepancy in his cross-examination. The report was incorrect as it referred to a different Facebook album. The photos were still present in the correct Facebook album containing 80 photographs, last updated on 30 June 2011.

[179] The first defender attached a copy of a screenshot from the "Summer in Marbella" album to this email, which appear to show photographs of a Ferrari motor vehicle.

[180] The first defender's answers about this email were very hard to fathom. The transcript on this point runs from page 81, line 9 to page 95, line 25. It was only on page 88, line 4 that the first defender was prepared to accept his position was the photographs of the car in "Appendix 14" also appeared in the "Summer in Marbella" album of 80 photographs. I agree with Mr McFarlane's assessment of this behaviour by the first defender as "obfuscation" (transcript, page 88, line 8). The remainder of the cross-examination on this point continues in this difficult manner.

[181] The only purpose of this behaviour by the first defender appeared to me to be a desire on his part to characterise Mr Forbes as "incompetent" (transcript, page 89,

lines 13 - 17) and to insist on a new commission being carried out, for which he would pay (page 95, lines 19 and 20).

[182] The first defender went so far as to email Mr McFarlane and Mr Forbes on 26 December 2024 (see 10/20 of process), referring to Mr Forbes' "appalling work" as commissioner, and stating that the photographs in "Appendix 14" Mr Forbes claimed to be missing were still present since 2011 in a different photo album.

[183] The first defender stated in cross-examination that he had wanted Mr Forbes to know he was incompetent. He accused Mr Forbes of omitting to publish the three photos that were the object of appendix 14 (transcript, page 98, lines 7 and 14, page 99, lines 10 - 18). Those photos were only in the "Summer in Marbella" album (page 101, lines 9 – 11). He denied having deleted the posts from April 2011 containing those photos (page 101, lines 12 – 17).

[184] I do not share the first defender's views of Mr Forbes as commissioner. As previously stated, I believe Mr Forbes discharged his duties to the court in a professional and competent manner.

[185] The only conclusion I can draw from the first defender's assertions is he may well have deleted the posts Mr Forbes could not identify on 9 August 2024, and all of this obfuscatory behaviour was an attempt by him to conceal this.

[186] He did not, despite my explanation to him about the functions of cross-examination prior to Mr Forbes giving evidence, challenge Mr Forbes' evidence on grounds of Mr Forbes being incompetent, concealing evidence and the like. These are very serious allegations, and ought to have been put to Mr Forbes in accordance with *Griffiths* v *Tui (UK) Ltd*, as discussed above. I accordingly reject these assertions by the first defender.

[187] Mr McFarlane cross-examined the first defender on other statements he made in his email dated 26 December 2024 at 10/20 of process, but I do not consider it necessary to discuss that chapter of the evidence as it related to discussions between Mr McFarlane and the first defender about attempting to get a report from Meta on the Facebook posts, which proved abortive, and this does not assist the court in determining the disputed issues in this case.

The evidence of Susan Elias on 20 January 2025

[188] Susan Elias is the wife of the second defender. Her evidence appears at pages 113 - 118 of the transcript. She adopted her witness statement dated 12 April 2024 as her evidence in chief and gave some supplementary oral evidence in chief.

[189] She describes having lived with her husband in Dubai for 42 years. They got to know the first defender through the Ferrari club in Dubai when her husband was still involved in the hotel management business. They became personal friends with the first defender.

[190] A key passage in her witness statement (speaking of the first defender) (but which does not demonstrate her personal knowledge of the transaction in question) is as follows:

> "He had a Ferrari garaged in Italy at his parents' home and because of his need for money my husband, having been shown photographs of the car, paid him a total of 150,000 UAD of which 50,000 UAD was paid initially with another 100,000 UAD transferred later."

[191] She describes an annual cavalcade to Europe commencing in Hamburg and terminating in Vienna, in 2011, after her husband had purchased the Vehicle from the first defender.

[192] They had been at the family home in Marbella when the first defender delivered the Vehicle to the second defender there. Her husband had the Vehicle transferred to Hamburg to participate in the cavalcade.

[193] She recollected the Vehicle being delivered to Marbella. Photographs were taken of the Vehicle. Her husband paid the expenses of the first defender bringing the Vehicle from Italy to Spain. She states the defender handed over the keys of the car, the technical manual, and the registration documents, but does not explain how she knew these things.

[194] She explained the first defender was at the cavalcade in Germany but did not have a car of his own. He helped out with arrangements and would occasionally drive someone else's car. The Vehicle broke down in the course of the cavalcade. Her husband had it repaired at his expense. She and her husband continued the cavalcade in a hired car while the first defender returned the Vehicle to their apartment in Spain.

[195] She thought it preposterous that the first defender had merely loaned the Vehicle to her husband to use in Spain. He had no need to borrow a car. He had lots of Ferraris and other cars in Dubai and elsewhere.

[196] She explained that she and her husband "pulled out" of Dubai and Marbella to relocate to Largs in 2020. There was no problem in getting the Vehicle into the United Kingdom and it remained at their property in Largs until her husband decided to sell the Vehicle. She then described the chain of events by which the Vehicle came into the possession of the pursuer.

[197] In her supplementary oral examination-in-chief, she confirmed she had accompanied her husband on the European cavalcade in 2011. She was in his car taking part in the cavalcade.

[198] The tour did not go without incident. The car broke down in Germany, and they went to a garage to have it repaired. They were offered the hire of a replacement Ferrari to complete the tour. In the event they did not complete the tour. She was unclear as to the reasons for this. She said the car they were to use had broken down.

[199] The first defender did not challenge this evidence. He asked the witness if both she and her husband left the tour. She confirmed they both left together. As far as she was aware, her husband never received the Vehicle back in Austria.

[200] Given the first defender did not challenge the witness' evidence in accordance with *Griffiths* v *Tui (UK) Ltd*, and I found her to be a straightforward witness, doing her best to tell the truth, I accept she was a credible witness.

[201] I therefore accept she accompanied her husband on the cavalcade in 2011, that the Vehicle broke down in Germany and was put in for repair in Germany while she and her husband continued as far as Vienna until the replacement hired car also broke down. The first defender was present during the cavalcade until the Vehicle broke down. He took it back to their apartment in Spain for them after it had been repaired.

[202] The witness did not state the basis on which she knew of the transaction between the defenders for the sale of the vehicle. Her evidence in that regard cannot therefore be regarded as reliable, and I discount it for that reason only.

[203] However, her evidence about her husband's wealth, and having no need to borrow the Vehicle from the first defender, is a relevant adminicle of evidence which I shall consider when analysing the facts of the case.

The evidence of the second defender on 20 January 2025 and 28 March 2025

[204] The second defender's evidence is recorded at pages 119 - 199 of the transcript of 20 January 2025 and at pages 12 - 74 of the transcript of 28 March 2025. He adopted his witness statement dated 12 April 2024 as his evidence-in-chief and gave supplementary oral evidence-in-chief. He was then cross-examined by the first defender over the course of these two days.

[205] The second defender originates from Lebanon of Syrian parents. He is a US citizen who resides with his wife (a British citizen) in Scotland. He resided in Dubai when the events this case is concerned with began. He met the first defender through the Ferrari club of Dubai in 2008. He remained friendly with the first defender until their relationship broke down in 2015.

[206] The second defender had substantial business interests in the hotel industry in Dubai until his retirement in 2019. He retains his interest in Olive & Oil Trading Food Company. He continues with consultancy work in the hotel industry in Dubai in his retirement.

[207] The second defender employed the first defender as a sales representative in Olive & Oil Trading Food Company between 29 November 2011 and 28 November 2013 on a monthly salary of 5,000 UAD, which assisted the first defender in obtaining a resident permit (visa) to reside and work in Dubai.

[208] The second defender founded a hotel consultancy business in Dubai called IWE Hospitality Consultants which operated between 2013 and 2015. The first defender was not employed by that company, contrary to the first defender's claim to have been employed by that company.

[209] The second defender first became aware that the first defender owned a Ferrari at the beginning of April 2011 during discussions with him at the Beach Hotel Rotana in Abu Dhabi.

[210] The first defender proposed selling the Ferrari to the second defender as he wished to financially assist his girlfriend who had an urgent need for money at that time. The second defender agreed to this proposal to assist the first defender with whom he was on friendly terms at the time.

[211] The first defender explained the Vehicle was registered in Italy and the registration could not be transferred to the second defender as he did not reside in Italy. The second defender agreed to the Vehicle remaining registered in Italy as he wanted the Vehicle at that time to retain its original Modena registration plates.

[212] The defenders agreed a purchase price of 150,000 UAD (equivalent to £25,000), payable in two instalments. The second defender paid the first instalment of 50,000 UAD to the first defender by cheque on 7 April 2011, which the first defender later cashed.

[213] The second defender paid the first defender the additional 100,000 UAD after the first defender had given him more information about, including photographs, of the Vehicle. He originally believed this sum was paid in cash but stated it was in fact paid by cheque. He believes he must have made the cheque payable to "Cash" because his bank has not been able to trace this cheque.

[214] The first defender delivered the Vehicle to the second defender at the second defender's home in Marbella. The first defender handed the Vehicle's keys, original car registration document, service book, warranty book, and a number of Ferrari catalogues to the second defender.

[215] The second defender did not accept delivery of the Vehicle as a loan until the first defender asked for its return. He had no need to borrow the Vehicle when he had plenty of other cars in Dubai and in Spain.

[216] The second defender used the Vehicle for the purpose of the Dubai Ferrari owners' club annual European tour between 24 June and 9 July 2011, starting in Hamburg. The Vehicle broke down near Frankfurt, necessitating the hire of a replacement Ferrari for the remainder of the tour.

[217] The second defender owned a black Ferrari 458 Spider which he kept in the garage of his Spanish apartment along with the Vehicle. He intended to sell the black Ferrari to Michael Reubens, a motor car dealer. Mr Reubens also offered to purchase the Vehicle for €65,000, which the second defender considered an attractive price. He agreed to sell both cars to Mr Reubens.

[218] He then instructed his Spanish lawyer Oscar Abeti to draw up bills of sale for both cars. He eventually spoke on the phone with the first defender, who was extremely rude with him, regarding the first defender's signature on the bill of sale which was required to complete the sale of the Vehicle to Mr Reubens.

[219] However, the first defender refused to co-operate with the sale of the Vehicle to Mr Reubens. The Vehicle therefore remained in the second defender's possession until 2020 at which time the second defender imported the Vehicle into the United Kingdom.

[220] The second defender expanded on his witness statement in his supplementary oral examination-in-chief. He referred to a copy of the cheque he issued in favour of the first defender, and confirmation from the Bank of Sharjah the first defender had cashed the cheque in the sum of 50,000 UAD on 13 April 2011 (10/3 and 10/4 of process).

[221] He had very little knowledge of the Vehicle when he paid this money to the first defender. He therefore met with the first defender on a second occasion to view photographs and documentation relating to the Vehicle. At that point, he was satisfied with the Vehicle, and he gave the first defender a second cheque for 100,000 UAD.

[222] He had been unable to produce a copy of this second cheque as he was unsuccessful in his attempts to get a copy from the bank. The Vehicle was thereafter delivered to him in Spain by the first defender.

[223] He identified the United Kingdom registration certificate for the Vehicle at 10/1 of process and the Italian registration document at 10/2 of process.

[224] He identified the Vehicle's warranty card at 10/6 of process which the first defender delivered to him along with the Vehicle. This was necessary to have the Vehicle serviced.

[225] He identified the books and manuals the first defender had delivered to him along with the Vehicle. These are listed as items 10/7, 10/8 and 10/9 of process. 10/7 of process is the Ferrari Yearbook for 1984/85 and includes a few loose photographs of the Vehicle in the inside cover.

[226] The second defender identified 10/8 of process as a glossy book about the Ferrari V8 published by Bay View Books in 1997 and 10/9 of process as a book entitled "Welcome to Ferrari" bound in a red cover.

[227] He referred to the European tour in June and July 2011 and confirmed the Vehicle had broken down in Frankfurt. He referred to the repair bill from Ulrich Frankfurt dated 1 July 2011 issued to him in the sum of €1,012.00 for parts and labour at 10/16 of process. He confirmed he left the Vehicle in Frankfurt for repair and hired a Ferrari from another Ferrari owner to continue the tour.

[228] He used the hired Ferrari to continue in the European tour but cut short his participation in the tour in Austria. The person from whom he hired the replacement Ferrari brought the Vehicle back to him in Austria. The first defender thereafter drove the Vehicle to the second defender's apartment in Spain.

[229] He referred to his attempt to sell the Vehicle to Mr Reubens. He refunded the sale price to Mr Reubens as the first defender refused to sign the sales agreement.

[230] I turn now to consider the first defender's cross-examination of the second defender. I have read the complete transcripts of the cross-examination. I deal only with those chapters I consider to be the most important and relevant to determining the second defender's credibility and reliability. Unfortunately, much of the cross-examination was not effective at dealing with those issues appropriately. No purpose is to be served by narrating those parts of the cross-examination.

[231] The first chapter of the cross-examination on 20 January 2025 was important. It concerns the question whether the second defender ever employed the first defender in his business IWE Hospitality Consulting.

[232] The first defender wished to rely on his visa/employment documents which he produced to the court on 20 January 2025 and which appear as item 54 of process.

[233] I allowed these to be produced and referred to in cross-examination under reservation as to their competence and relevance. Mr McFarlane objected that none of the documents came within the terms of section 3 of the Civil Evidence (Scotland) Act 1988 as none was a statement made by the second defender. However, they are all made by or behalf of his business IWE Hospitality Consulting ("IWE"). I think they are therefore statements made by him. They are relevant as they tend to reflect on the second defender's credibility.

[234] The second defender stated in his supplementary oral examination-in-chief that the first defender had never been employed in this business. IWE emailed the first defender on 23 April 2014 attaching a copy of the employment contract template he had singed the previous day. However, the email explained that form "was just a requirement from DMCC to finish the processing of your visa which contains information of both parties".

[235] The contract template produced by the first defender does not contain the name of the employee or employer and is not signed or dated. It is therefore only a "template" as referred to in said email.

[236] These documents also include an invoice from IWE to the first defender for processing his visa, and associated charges dated 28 April 2014. An accompanying email to the first defender refers to the invoice and informs him his "employment card and passport" were ready for collection.

[237] The second defender explained in cross-examination that he did this as a favour for the first defender – he "got him a resident visa on IWE and for that he had to sign a labour contract" (transcript page 154, lines 12 - 14).

[238] He referred to the first defender paying for the visa application and explained that had the first defender been an employee of IWE this expense would have been absorbed by the company (transcript, page 155, lines 7 - 9).

[239] The first defender started his cross-examination of the second defender on 28 March 2025 by attempting to show he had never been excluded or suspended from membership of the Dubai Ferrari Club and had always paid his subscriptions.

[240] He attempted to produce and found upon an email from Clint Wilfred dated 26 March 2025, President of the Ferrari Owners' Club UAE from 2019 - 2023 guaranteeing the first defender's "honesty and loyalty to the Club and to the members".

[241] I ruled this line of evidence to be inadmissible as it was a collateral matter, a character reference, and was not a statement made by the second defender for the purposes of section 3 of the Civil Evidence (Scotland) Act 1988.

[242] He then attempted to produce and found upon documents from WikiLeaks and the "Panama Papers" showing IWE was registered in the Seychelles, and his wife was a shareholder ion the company.

[243] I also ruled this line of cross-examination irrelevant and not within the scope of section 3 of the Civil Evidence (Scotland) Act 1988.

[244] The first defender next attempted to question the second defender on whether the second defender still had a business interest in Olive and Oil Food Trading Company and whether he, the first defender, had left employment with that company in 2013. He attempted to produce an email sent by the second defender to him dated 16 September 2024 sending him a copy of the profit and loss statement for the company.

[245] I also ruled this line of cross-examination to be irrelevant, as dealing with peripheral matters which were of no assistance to the court in determining ownership of the Vehicle.

[246] The first defender cross-examined the second defender on the date the parties' relationship broke down, highlighting the second defender's evidence this was in 2015 whereas the attempt to sell the Vehicle to Mr Reubens, the occasion of the defenders falling out with each other was in March 2016. He established, which was not in dispute, that he had refused to co-operate in the sale of the Vehicle.

[247] The first defender attempted to lodge and refer to a DVSA letter showing the Vehicle had failed its MOT on 15 June 2020. I ruled this line of questioning admissible as it had been excluded at the diet of debate.

[248] The first defender attempted to cross-examine the second defender about whether the Vehicle had ever been in an accident in Spain. I ruled this line of questioning inadmissible for lack of record.

[249] The first defender established from the second defender that he had not been able to register the Vehicle in Spain. The second defender explained he tried to register the Vehicle in Spain, but this was not possible because he was not resident in Spain.

[250] Mr McFarlane then re-examined the second defender on the documents I allowed the first defender to lodge on 20 January 2025. A further such document was IWE's Service Licence. This has not been uploaded to the court's electronic file (ICMS) with the employment/visa documents at item 54 of process. I have, however, retained a copy of this document.

[251] The second defender confirmed in re-examination that IWE had never employed the first defender in any official capacity.

[252] He stated the last line of the Service Licence read Dubai Multi Commodities Centre, one of the free zone entities of Dubai where companies could be established and visas obtained for employees.

[253] He explained the employment contract template sent with the email correspondence to the first defender's Hotmail account was a requirement from DMCC to finish the processing of the first defender's visa. This requirement was just a "formality". None of these documents established the first defender had ever formally been employed by IWE.

The evidence of Oscar Abeti on 28 March 2025

[254] Mr Abeti's evidence is recorded at pages 76 - 131 of the transcript. He adopted his (undated) witness statement as his evidence-in-chief and gave supplementary oral evidence-in-chief. He was then cross-examined by the first defender.

[255] He practices law in Spain as an Abogado and is qualified as a solicitor in England and Wales. He is the senior partner of BCP International Law Firm.

[256] He has expertise in property law. He is qualified in Customs Clearance. He is the Secretary of the Customs Clearance Agents Bar in Algeciras (Spain) where he deals mainly with export, import, taxes and sales of cars and yachts.

[257] He acted for the second defender in Spain since 2007 in relation to several property transactions including vehicle sales. He received instructions from the second defender in December 2015 to sell the Vehicle and a black Ferrari Spider to Michael Reubens, a car dealer in Luxembourg. Stefaan Moens, a Belgian citizen, was interested in purchasing the Vehicle.

[258] Mr Abeti was in contact with both Mr Reubens and Mr Moens. Mr Moens provided him with a draft sample for a bill of sale for the Vehicle, but Mr Abeti drafted the bill of sale himself.

[259] This was the usual method whereby international sales of motor cars and yachts are documented. For each car there was a bill of sale as well as a protocol of delivery to confirm the car was delivered to the buyer and acknowledgment of full payment. A bill of sale records a transaction and transfers ownership from the seller to the buyer.

[260] He observed the car documents were in the first defender's name and advised the second defender the bill of sale had to be in the first defender's name. He told him he and the first defender were good friends, he had found it difficult to register the Vehicle in his

own name in Spain, and he had decided to keep it registered in the first defender's name in Italy.

[261] He did not contact the first defender directly in relation to the documentation for the sale and delivery of the Vehicle, once those were completed. He sent the second defender an email on 29 December 2015 attaching bills of sale for both cars. The bill of sale for the Vehicle named the first defender as seller as the first defender remained the registered owner of the Vehicle in Italy. He left it to the second defender to contact the first defender to arrange for the first defender to sign the documents in relation to the Vehicle.

[262] In Mr Abeti's experience, it is not unusual that cars or yachts remain in someone else's name due to residency status and registration or because of complex customs regulations. The second defender informed him that he could not register the Vehicle in Italy as he had no address there.

[263] The protocols of delivery for both cars were given to Mr Reubens for his own and his client's (Mr Moens') signature as that was needed for transportation of the cars to Luxembourg. Mr Reubens signed the protocols. Both cars were transported to Luxembourg. The agreed asking price for both cars of €200,000 had been paid and received by Mr Abeti on behalf of the second defender. Mr Abeti informed the second defender in his email dated 29 December 2015 that Mr Reubens had signed the protocols.

[264] Mr Abeti later became aware of an issue with registration of the Vehicle in Luxembourg by the buyer. The second defender agreed to repurchase the Vehicle from the buyer and refund the price to him. The logistics of this were arranged by Mr Reubens.

[265] The money was refunded and the Vehicle was eventually returned to the second defender on 28 May 2016.

[266] Mr Abeti also got involved in helping Mr Reubens contact the first defender about the sale of the Vehicle to Mr Moens. On 8 March 2016, he was resent an email by Mr Reubens from the first defender to Mr Reubens dated 5 March 2016 confirming the first defender had documents in his possession in Italy relating to the Vehicle.

[267] He also received an email from the first defender dated 29 March 2016 advising he had decided not to sell the Vehicle to Mr Reubens. Later, on 11 July 2019 (3 years later), he received an email addressed to him and Mr Reubens from the first defender containing a large number of emails and text messages. He did not reply to that email as it was very long and garbled. He did not see fit to send a copy to the second defender.

[268] Mr Abeti was asked in his supplementary oral examination-in-chief about the email dated 5 March 2016 referred to in his witness statement. He was taken to item 50 of process in relation to the email from the first defender to Mr Reubens on 5 March 2016 at 07:56:32, in which the first defender stated he had all the remaining documents of the car, apart from the ones already in Mr Reuben's possession in Italy, not Dubai, as he was not aware of the transaction between Mr Reubens and the second defender. He had also tried to contact the first defender but without success.

[269] Mr Abeti confirmed this email dated 5 March 2016 at 07:56:32 (item 50 of process) contained two paragraphs in the middle of the email referring to the Certificate of Property as the Italian registration and the Italian Fiscal Code.

[270] The first defender referred in these middle paragraphs to "the fiscality" and the Italian procedures "being different and precise" with the documentation having a different and specific terminology.

[271] As he was not used to such (sic) procedures, he strongly suggested that Mr Reuben's colleague prepare a precise list "of the document (sic) needed for us to be able to proceed correctly".

[272] This email responded to Mr Reuben's email to the first defender dated 4 March 2016 (also at item 50 of process) informing the first defender of the need for a "signature on the PRA" and to prepare a sales agreement. Mr Reubens asked the first defender in this email if he had an Italian registration ID and Fiscal Number.

[273] Mr McFarlane asked Mr Abeti for his understanding of what the first defender meant in the email of 5 March 2016 by being able to "proceed correctly". Mr Abeti answered: "I think he means to get documents completed with all the information needed for the transfer of the paperwork to the buyer, that's what I think" (transcript, page 88, lines 16 - 19).

[274] In Mr Abeti's opinion, the content of the first defender's email to Mr Reubens on 5 March 2016 was indicative of an intention on the first defender's part to proceed with the sale of the Vehicle.

[275] Mr Abeti explained that Mr Reubens had sent him a copy of the first defender's email dated 5 March 2016 by email on 8 March 2016. Mr Abeti did not think it likely the first defender had sent two different versions of that email to Mr Reubens on 5 March 2016.

[276] In reference to the first defender's email addressed to Mr Abeti and Mr Reubens dated 11 July 2019 (a copy appears at 10/15 of process), Mr Abeti confirmed the first defender had included in that email only an abbreviated version of the email to Mr Reubens dated 5 March 2016 which omitted the middle paragraphs indicating the first defender had been prepared to proceed with the sale of the Vehicle and which omitted the reference to the 32 seconds after 07:56 (ie it was timed 07:56 not 07:56:32).

[277] Mr Abeti opined that this abbreviated email had been manipulated to remove the passage from which it might be inferred the first defender had been prepared to proceed with the sale of the Vehicle in 2016. He confirmed it was not the forwarded email he had received from Mr Reubens on 8 March 2016. The version in the email he received from the first defender on 11 July 2019 deleted reference to paragraphs referring to the procedures and documents needed to "proceed correctly".

[278] The first defender cross-examined Mr Abeti on whether the longer version of the email the first defender sent to Mr Reubens on 5 March 2016 really meant he was sure to sell the car. Mr Abeti replied that he understood from that email the first defender was going to help with the documents. He had seen the longer version when Mr Reubens forwarded it to him by email on 8 March 2026.

[279] Mr Abeti confirmed he was aware the second defender was a US citizen. He acknowledged he had prepared the bills of sale for both cars the second defender was selling. He acknowledged he had become aware of the first defender not signing the bill of sale for the Vehicle, and no payment of €65,000 having been made to the first defender. There then followed a series of questions designed to suggest Mr Abeti had been involved in a money laundering transaction. I sustained Mr McFarlane's objection to this line of questioning as there was no evidential basis for accusing Mr Abeti of criminal conduct.

[280] Mr Abeti confirmed, in response to my direct question to him, that he was telling the truth to the court. He explained that his witness statement referred to a very simple transaction of selling two cars to a person in Belgium with the help of a broker. His role had been to prepare the legal documents for the second defender to transfer the cars to the broker in exchange for €200,000. Everything had been done in accordance with banks' protocols and procedures to send monies from one country to another.

[281] Mr Abeti also confirmed to me that he had been satisfied he was entitled to proceed on a professional basis to take instructions from the second defender for the sale of the Vehicle as the second defender had been an established client of his firm for many years. He had been entitled to believe his client when he told him he had two cars to sell.

[282] He had asked for documentation as that was needed to identify the car and to comply with the legal requirements for transfer of cars from one country to another within the European Union. He never doubted the second defender owned both cars. He warned the second defender needed the first defender's name on the bill of sale for the Vehicle as it was registered in the first defender's name.

[283] The first defender resumed his cross-examination of Mr Abeti after these interventions on my part. Mr Abeti confirmed the signature on the protocol of delivery was not the signature of the first defender. He confirmed he had advised the second defender to obtain the first defender's signature on the bill of sale for the Vehicle and that the registered owner was not always changed after a sale.

[284] The first defender returned to his theme that Mr Abeti was under investigation from Interpol and Spanish authorities in penal courts in Spain, and guilty of money laundering. I again sustained Mr McFarlane's objection to this line of questioning.

[285] Mr Abeti confirmed the €200,000 had exchanged hands in return for delivery of the two cars but this money had been refunded by the second defender after the buyer had encountered difficulties registering the Vehicle consequent upon the first defender's refusal to co-operate with the transfer of title for the Vehicle.

Analysis

Facts admitted or impliedly admitted

[286] Findings in fact 8 - 13 are drawn from averments in the initial writ which were either admitted by the second defender in his Answers or impliedly admitted by the first defender as being within his knowledge and not denied by him in his Answers (rule 9.7, Ordinary Cause Rules 1993).

Credibility and reliability, burden of proof, standard of proof and documentary evidence

[287] In general, a party who asserts something as fact bears the burden of proving that fact. The standard of proof in civil cases such as this is on the balance of probabilities. This means the court must be satisfied the fact in issue in the case is more likely to have happened than not. In assessing the evidence of witnesses of fact, the court must be satisfied the witness has given credible and reliable evidence. The witness must not only be doing his or her best to tell the truth to the court, but the witness' evidence must be such that the court can rely on that evidence as helping to establish the facts in the case.

[288] This explains why I was unable to accept a key passage in Mrs Elias' witness statement that the first defender:

> "… because of his need for money my husband, having been shown photographs of the car, paid him a total of 150,000 UAD of which 50,000 UAD was paid initially with another 100,000 UAD transferred later."

[289] While it is permissible for the court to accept hearsay evidence, Mrs Elias did not give any explanation of how she came to be aware of these facts, or the sources of this information. She was not present at the meeting between the defenders on 7 April 2011 and therefore could not speak directly to these facts. Presumably, she obtained this information

from her husband. Thus, while I found her to be a credible witness, I did not find this passage of her evidence to be reliable, and I discounted it for that reason only.

[290] The rules about the standard of proof apply to the evidence given by both defenders in this case, as claimants in the multiplepoinding. The defenders are witnesses of fact in the same way as other witness in the case. Their evidence must be accepted as credible and reliable by the court, in the same way as any other witness of fact.

[291] There is no requirement for corroboration or proof of either defender's case by means of documentary evidence. However, the court may test a witness' assertions against contemporaneous documents, and other productions in the case, in assessing the credibility and reliability of the witness, and may also proceed to accept evidence for which there is no contemporaneous record (*Phipson on Evidence* 21st edition, paragraphs 45.9 - 45.11).

Reasons for judgment

[292] The court must give reasons for its decisions but is not obliged to deal in its judgments with every single point that is argued, or every piece of evidence tendered in the case.

[293] It is sufficient that the court expresses the main points, to enable the parties to ascertain how and why the court reached its decisions. Which points need to be dealt with in the court's judgment, and which can be omitted, itself requires an exercise of judgment (*Simetra Global Assets Ltd* v *Ikon Finance Ltd* [2019] EWCA Civ 1413 at [46] (Males LJ)).

Cross-examination of the first defender

[294] I have summarised most of Mr McFarlane's cross-examination of the first defender from which the reader of this judgment can gather for him or herself just how awkward and

difficult the first defender was as a witness. He rarely gave a straightforward answer to questions asked of him, he often engaged in long, rambling answers, and on occasions gave absurd if not impossible answers, such as sending two versions of the email to Mr Reubens on 5 March 2016 at the same time, something even the first defender conceded was impossible.

[295] The first defender did not present as a person whose evidence could be believed. He was not doing his best to tell the truth to the court. He was not a reliable witness. I shall now highlight some of his most egregious falsifications.

The Italian judgment

[296] The first defender's answers in cross-examination about the Italian judgment, though not central to the issues in this case, reflected unfavourably on his credibility as a witness. On the first day of cross-examination on 28 August 2024, the first defender went as far as denying he even knew Mario Fantin, before conceding there had been a court case in Italy involving the loan of €80,000. On the second day of cross-examination on 9 December 2024, he denied, contrary to the plain meaning of the judgment, that the judgment proved he had borrowed €80,000 from Mr Fantin in 2009. He said the Italian court had got that wrong.

[297] There was no reason for the first defender to go to such extremes. The judgment was not central to the issues in this case, yet the first defender was prepared to deny the Italian court had found he signed an acknowledgement of a loan of €80,000 from Mr Fantin in 2009, based on expert testimony from a graphologist.

[298] This is a very serious indication that the first defender was not a trustworthy witness, and that care must be taken in assessing the truthfulness of any evidence given by him about the current ownership of the Vehicle in this case.

The European Tour in 2011

[299] The first defender sought to present himself as an active participant in the tour, driving the Vehicle from Spain to Hamburg and from there to Austria. He was unable to answer which car he drove on this tour. He was unaware that the tour had not proceeded directly to Vienna, but had travelled through additional cities such as Hanover, Dusseldorf, Frankfurt, and Prague.

[300] He did not know where Frankfurt was located and had to ask the court to explain. He finally accepted the second defender had driven with his wife on the tour.

[301] He did not challenge Mrs Elias's evidence about this tour. Having accepted her as a credible witness, I accepted she accompanied her husband on the cavalcade in 2011, that the Vehicle broke down in Germany and was put in for repair in Germany while she and her husband continued as far as Vienna until the replacement hired car also broke down.

[302] According to Mrs Elias's evidence, the first defender was present during the cavalcade until the Vehicle broke down in Frankfurt. He took it back to their apartment in Spain for them from Vienna after it had been repaired.

[303] The first defender's evidence about being an active participant in the 2011 tour was contradicted by Mrs Elias' credible testimony and was not credible or reliable as he gave false information about the route taken by the tour.

The Facebook posts

[304] Mr McFarlane cross-examined the first defender about the Facebook posts on both 28 August 2024 and 9 December 2024. He set up the background to the issue on 28 August 2024. In summary, the first defender had lodged his "Appendix 14" with the court in 2022

showing photographs of the Vehicle after he delivered it to the second defender in Marbella in 2011. There were no comments accompanying those photographs.

[305] Mr McFarlane was interested in pursuing this but was unsuccessful in obtaining fresh screenshots from the first defender. This eventually resulted in Mr Forbes being appointed as commissioner to examine the first defender's Facebook page. The first defender co-operated with Mr Forbes by giving him access to his Facebook page.

[306] Mr McFarlane referred the first defender to Mr Forbes report in which Mr Forbes noted the three photographs posted on 30 April 2011 were not present on the first defender's Facebook page on 9 August 2024 when Mr Forbes examined the first defender's Facebook page.

[307] The first defender disagreed with Mr Forbes' conclusion in his report. He said he would be crazy to delete Facebook posts. He wanted an opportunity to produce the posts and to have a new commission.

[308] Mr McFarlane continued with his cross-examination of the first defender about the Facebook posts on 9 December 2024. He reminded the first defender that Mr Forbes could not locate the posts reproduced within Appendix 14 on 9 August 2024. The first defender had no explanation for this finding other than the photographs were still there, or that Mr Forbes had made a mistake or had been deliberately deceitful in making this comment. His main opinion was Mr Forbes was incapable of doing his job. He denied having deleted the posts.

[309] Mr Forbes' gave evidence in relation to his commission on 20 January 2025. The key part of his evidence was the documents within the first defender's "Appendix 14" were not present on the first defender's Facebook account on that date.

[310] Mr Forbes replied to a lengthy passage of cross-examination to the effect that he had not been instructed to search in the "Summer in Marbella" album as that was not within the terms of the specification authorised by the court. He clarified this in re-examination. He had understood the first defender was suggesting he should have looked else in his Facebook page and, if he had done so, he would have found the photographs of the Vehicle in that album. However, that did not fall within the terms of the specification.

[311] As Mr Forbes observed in cross-examination, it was open to the first defender to lodge the "Summer in Marbella" album if he wished to show that the photographs of the Vehicle remained on his Facebook account.

[312] All that Mr Forbes could comment on was they were not present as posts in the first defender's Facebook page in the period 1 April 2011 and 30 June 2011 when he examined the Facebook page on 9 August 2024.

[313] I am satisfied Mr Forbes gave credible and reliable testimony to the court on this matter. I do not accept the first defender's accusations of incompetence, or worse, on the part of Mr Forbes.

[314] The evidence I accept is that of Mr Forbes, and not the first defender, namely the photographs in Appendix 14 were no longer present when examined by Mr Forbes on 9 August 2024. As only the first defender had control over his Facebook page, the inference is he deleted those pages at some point after lodging "Appendix 14" with the court in April 2022 as they might have contained comments (omitted from "Appendix 14") unfavourable to his case. He was not telling the truth when he claimed the posts were still available on his Facebook page.

The first defender's email to Mr Reubens Dated 5 March 2016

[315] The first defender emailed Mr Reubens and Mr Abeti on 11 July 2019. He attached various documents, including a version of his email to Mr Reubens on 5 March 2016. A comparison of the two versions of the email of 5 March 2016 at item 50 of process and the version attached to the first defender's email to Mr Reubens and Mr Abeti on 11 July 2019 shows some striking differences.

[316] First, as spoken to by Mr Abeti in his evidence, the version he received from Mr Reubens on 8 March 2016 contained additional paragraphs in which the first defender had made enquiries of Mr Reubens of the documents required "to proceed correctly".

[317] Mr Abeti was of the opinion the first defender's original email dated 5 March 2016 indicated the first defender wished to get the documents needed to proceed correctly with the sale, but the first defender had manipulated the email of 5 March 2016 in his email dated 11 July 2019 in order to remove the paragraphs from which it might be inferred the first defender had been prepared to proceed with the sale of the Vehicle in 2016.

[318] The first defender himself conceded the omitted paragraphs looked like a willingness on his part to proceed with the sale of the Vehicle. He denied, however, having produced an edited version of the email.

[319] Secondly, it is more likely than not that Mr Abeti received the correct version of the email from the first defender to Mr Reubens dated 5 March 2016 on 8 March 2016. The version he received from him looks like an email. It forwards the first defender's email. Mr Reubens wrote in Dutch:

- FYI
- Verstuurd vanaf mijn iPhone
- Begin doorgestuurd bericht:

[320] This roughly translates as "sent from my iPhone, beginning forwarded message". There then followed the defender's email sent to him on 5 March 2016 in English containing the full version including the paragraphs referring to Italian documentation and suggesting a precise list of documents was needed "for us to be able to proceed correctly".

[321] This forwarded email is headed:

- Van: Gianni Calchetti (email address added)
- Datum: 5 maart 2016 07:56:32 CET
- Aan: Michel Reubens (email address added)
- Onderwerp: Antw.: Ferrari 328 GTS

[322] "Onderwerp" refers to the subject of the email. "Ant." is likely to be an abbreviation of "antwoord" (answer or reply), similar to the use of "re" in English. The date of the email is 5 March 2016, and the time is very precisely given as 07:56:32 CET (Central European Time).

[323] The version attached to the first defender's email to Mr Reubens and Mr Abeti on 11 July 2019 does not look like an actual email at all. It omits the crucial middle paragraphs regarding obtaining documentation to proceed correctly. It omits the heading altogether. The message reproduced is introduced by the words in Dutch: "Op 5 mrt, om 07:56 heeft Gianni Calchetti (email address added) het volgende geschreven:"

[324] This roughly translates to: "Gianni Calchetti has written the following on 5 March 2016 at 07:56". No reference is made to the 32 seconds which appears in the original email, nor to CET. This is plainly a description of what the first defender claimed to have written in his email to Mr Reubens. This is a false description as it omits the middle paragraphs regarding obtaining documentation to proceed correctly.

[325] I infer from this body of evidence that the first defender deliberately mispresented the content of his email of 5 March 2016 to Mr Reubens and Mr Abeti when sending them his email dated 11 July 2019, and to the court when he lodged that later email in his "Appendix 26" on 12 April 2022.

Other aspects of the evidence

[326] I move on to consider other aspects of the evidence that are not tainted by falsifications on the part of the first defender.

The first defender's claim that he loaned the vehicle to the second defender

[327] The first defender made this claim in his complaint to the Italian Carabinieri on 21 August 2020 and in his pleadings. Mr McFarlane brought out in his cross-examination of the first defender that this appeared to be the first mention of a loan, 9 years after the delivery of the Vehicle to the second defender in Marbella in 2011.

[328] The first defender had not mentioned having loaned the Vehicle to the second defender in his report to the Luxembourg police on 30 March 2016. Mrs Elias said in her evidence that her husband had no need to borrow the Vehicle, having regard to her husband's wealth. The second defender made the same point in his own evidence.

[329] Having regard to the generally unsatisfactory nature of the first defender's evidence, which adversely affects his credibility as a witness in the absence of contemporaneous documents confirming his assertions, and the foregoing considerations, I do not consider it more likely than not that the first defender only loaned the Vehicle to the second defender. I do not consider his evidence on this point to be credible and reliable.

The first defender's submissions and evidence in support of his claim

[330] The first defender referred in his written submissions to various items of written evidence that tended to support his claim to ownership of the Vehicle.

[331] Ownership never changed. He remained the registered owner of the Vehicle in Italy, as verified by the certificate of ownership and the circulation card in his name at 10/2 of process showing transfer of ownership of the Vehicle to the first defender on 19 July 2006. This document had been "voided" in 2016 after the first defender realised the second defender was attempting to sell the Vehicle. The document was updated on 19 December 2016, following his complaint to the Italian Carabinieri on 16 September 2016.

[332] He referred to there being road tax receipts showing he had paid the road tax from 2007 to 2025. These were not included in his supplementary inventory of productions for the proof, and I make no finding on this one way or another.

[333] He submitted the second defender had imported the Vehicle to the United Kingdom to utilise the different laws there and gain ownership of the Vehicle. He accused him of criminal conduct in this regard.

[334] He referred to an important change in the second defender's evidence; the second defender had originally claimed to Police Scotland he had paid the 100,000 UAD to the first defender in cash, but the second defender was now maintaining this payment had been made by cheque. He had sought to deny the first defender's employment relationship with IWE.

[335] He concluded his submissions by referring to the title of the Vehicle being in his name, his reports of embezzlement to various police forces, the attempted sale of the Vehicle in 2015 - 2016 which had required his consent as registered owner of the Vehicle, payments being made to him by the second defender because of their business relationship, the

absence of any written agreement, such as a bill of sale, establishing the second defender's ownership of the Vehicle, and the absence of any receipts for the alleged cash or cheque payments.

[336] I now consider the first defender's productions lodged in connection with the proof. Productions 1/12-8, 2/12-8, and 3/12-8. are his complaints to various police forces in September 2022 that the Vehicle had been embezzled.

[337] Production 4/12-8 is his complaint to the Luxembourg Police dated 30 March 2016 reporting the Vehicle having been sold illegally, without his permission.

[338] These reports and complaints to police forces are of limited evidential value. The making of such complaints does not imply the contents of those complaints are true. The making of the reports does however show the first defender having insisted on ownership of the Vehicle from 2016 onwards.

[339] Production 5/12-8 was confirmation the Italian Carabinieri had cancelled the original Italian registration for the Vehicle in 2016; and 6/12-18 was a bundle of documents including the new circulation card in the first defender's name dated 19 December 2016 and the Italian certificate of ownership in the first defender's name dated 1 September 2016; these facts are not in contention.

[340] However, the re-registration was a unilateral act initiated by the first defender. This is not evidence of ownership under Scots law if the title passed to the second defender by virtue of a contract for the sale of goods entered into by the defenders in Dubai on 7 April 2011.

[341] Production 7/12-8 was a copy of the first defender's "Appendix 14" which has been much discussed in this judgment in connection with the "missing" Facebook posts; further commentary is therefore not required.

[342] Production 8/12-8 was the first defender's copy membership card for the Ferrari Owners' Club in the UAE for the year 2011.

[343] This is of limited, if any evidential value, regarding ownership of the Vehicle.

[344] Mr McFarlane established in cross-examination of the first defender that it was more likely than not this was the only year the first defender may have been a full member of the club; the entry to the contrary on his CV was likely to have been false.

[345] Production 9/12-8 was a copy of Mr Abeti's email to the second defender dated 29 December 2015 containing a copy of the bill of sale for the Vehicle with the first defender shown as the seller. The reasons for this were, however, fully explained by Mr Abeti in his evidence.

[346] I found Mr Abeti to be a credible and reliable witness; I rejected the first defender's allegations he was involved in money laundering, as an attempt to discredit the witness. Mr Abeti was an experienced lawyer, with extensive knowledge of international sales of cars and yachts and confirmed ownership did not always follow legal title.

[347] Production 10/12-8 contained photographs of the second defender's Ferrari Scaglietti at the first defender's county house in Arezzo in or around July 2009; this was of no evidential value beyond showing the defenders were former friends.

[348] Production 11/12-8 was a typed list of participants in the Ferrari Owners' Club in the UAE European trip in 2010, showing both defenders as participants, with the first as the driver of the Vehicle; this has no bearing on the events of 2011 and what happened during the European tour in 2011.

[349] Production 12/12-8 was a copy of the first defender's UAE visa valid from 14 April 2014 to 12 June 2014, and a business card showing the first defender as operation manager for Olive & Oil.

[350] This was of limited evidential value as it did not contradict the second defender's evidence about securing a UAE visa for the first defender and employing him in Olive &Oil in Dubai.

Evidence in support of a sale of the vehicle by the first defender to the second defender

[351] Mr McFarlane established in cross-examination of the first defender that the first defender had delivered the Vehicle's warranty card along with the Vehicle in April 2011 (10/6 of process). The first defender confirmed he had handed over the warranty card with the Vehicle. This evidence supports, in my view, a sale because it was an important document associated with the Vehicle; any purchaser would have wanted the warranty card.

[352] The first defender confirmed he had handed over the 1984/85 Ferrari Annual (10/7 of process) and that the photographs kept within this book were of the Vehicle. He was not sure he had handed over "the Original Ferrari V8" book (10/8 of process) at the time of delivery. He could have given them to the second defender on a later occasion in Dubai.

[353] This concession by the first defender shows that two important books were handed over by him to the second defender on delivery of the Vehicle. Although little weight can be attached to this, this is not indicative of an intention to retain ownership by the first defender.

[354] The second defender interjected to confirm the first defender's evidence that he did not recognise the "Welcome to Ferrari" book. This book appears to have been a book in the second defender's possession for other reasons. It therefore has no relevance to the transaction between the defenders.

[355] The first defender admitted he took no steps to recover the Vehicle after becoming aware of the sale of the Vehicle to Mr Reubens in March 2016. He gave no satisfactory or coherent explanation why he could not have instructed proceedings in Spain to recover the Vehicle which had nearly been sold for €65,000, other than suggesting he was "travelling" or "working". I did not find these explanations convincing, and this inaction is not consistent with the first defender's ownership of the Vehicle.

Strengths and weaknesses of the second defender's evidence

[356] The second defender presented as a straightforward witness, doing his best to tell the truth to the court. The only potential reservation was using IWE to facilitate the first defender's visa application, when, in fact, the first defender was not employed by that business. However, I found his explanation satisfactory. I reject the first defender's conflicting testimony on this matter, given the lack of an actual employment contract (rather than the template) with IWE, the generally unsatisfactory nature of the first defender's evidence, his acceptance he obtained a visa, and his readiness not to comply with UAE law.

[357] The first defender cross-examined the second defender on the date the parties' relationship broke down, highlighting the second defender's evidence this was in 2015 whereas the attempt to sell the Vehicle to Mr Reubens, the occasion of the defenders falling out with each other was in March 2016. He established, which was not in dispute, that he had refused to co-operate in the sale of the Vehicle.

[358] The first defender established from the second defender that he had not been able to register the Vehicle in Spain. The second defender explained he tried to register the Vehicle in Spain, but this was not possible because he was not resident in Spain.

[359] Most of the cross-examination was ruled inadmissible on various grounds. The first defender did not cross-examine the second defender on three crucial parts of his own evidence – (i) he had not received 150,000 UAD from the second defender in exchange for the vehicle; (ii) there was no written record of a sales transaction, such as a bill of sale; and (iii) there was no receipt for payment of the full price of 150,000 UAD.

[360] The first defender therefore failed to challenge the second defender on these crucial matters in terms of *Griffiths* v *Tui (UK) Ltd* [2023] UKSC 48; [2025] AC 374), which seriously undermines the first defender's case on these matters (to put it mildly).

The meeting on 7 April 2011

[361] The burden of proving ownership lies on the second defender. It is not in dispute the first defender purchased the Vehicle in 2006 and remains its registered owner in Italy. The question is whether the contract of sale referred to by the second defender in his evidence was made between the defenders.

[362] In this connection, Mr McFarlane asked the first defender about the transaction in April 2011 regarding the Vehicle. The first defender had earlier explained he had a Lebanese girlfriend named Carlin who defrauded him of €30,000. He denied telling the second defender she had an urgent need for money because she had made a bad property deal and proposing to sell the Vehicle to the second defender for the equivalent of €30,000 to help her out.

[363] The first defender denied agreeing to sell the Vehicle to the second defender for 150,000 UAD at a meeting with the second defender on 7 April 2011. He accepted the meeting took place but stated there was no agreement to sell the Vehicle to the second

defender. He accepted delivering the Vehicle to the second defender in Marbella on 24 April 2011.

[364] He accepted having received a cheque from the second defender for 50,000 UAD which he cashed. He stated that was to buy out his employment with a previous company he had worked for in Dubai. He denied having received the further cheque for 100,000 UAD from the second defender before delivering the Vehicle to Marbella.

[365] When pressed on this, he conceded he had probably received a cheque for 100,000 UAD from the second defender, after which he was evasive about what he meant by this, repeating he had probably received this cheque. He eventually admitted having received a total of 150,000 UAD from the second defender, stating this was because the second defender employed him at that time (transcript, page 202, lines 16 and 17; page 233, lines 14 and 15).

[366] The second defender produced evidence of the first defender cashing the cheque for 50,000 UAD, but he was unable to produce any contemporaneous written evidence confirming he paid the first defender the remaining 100,000 UAD.

[367] While this is a weakness in the second defender's case, I am entitled to accept his oral testimony on this matter, and I do so for the following reasons.

[368] First, the first defender accepted he received both payments. He tried to explain them away as concerning his business relationships with the second defender, both in relation to Olive & Oil and IWE.

[369] I did not accept the first defender was employed by IWE for reasons previously stated. I gained the impression the first defender was embellishing matters to conceal the fact he had received the money in exchange for the Vehicle.

[370] There was no valid business reason for the second defender to pay the additional 100,000 UAD to the first defender for the alleged business reasons vaguely referred to in the first defender's witness statement.

[371] Secondly, the second defender's evidence about the transaction is plausible - he made an initial payment of 50,000 UAD, then paid the balance after seeing the photographs etc of the car. This was a commercially astute decision to make. In addition, the reasons given for the sale (the first defender's wish to help out his girlfriend) fit with the first defender's own evidence his girlfriend had been in financial difficulties/had defrauded him of €30,000.

[372] Thirdly, the Vehicle was delivered by the first defender to the second defender on 24 April 2011, after full payment had been made, with the first defender taking the steps of taking the Vehicle by ferry from Italy to Spain and delivering the Vehicle to the second Defender in Marbella, along with the warranty card and two books of interest to a Ferrari owner.

[373] The first defender meticulously recorded that journey by making Facebook posts.

[374] His subsequent deletion of contemporary Facebook posts undermines his claim he was only delivering the Vehicle on loan as the court has been deprived of examining evidence supporting this claim.

[375] Fourthly, the first defender emailed Mr Reubens on 5 March 2016 in terms which Mr Abeti (and even the first defender) accepted were indicative of him being willing to co-operate in the sale of the Vehicle to Mr Moens via Mr Reubens, the broker. The first defender, as I have already shown, mispresented the terms of that email in the further email sent to Mr Reubens and Mr Abeti on 11 July 2019. He could only have done this because he

was aware that he had, in fact, been willing to facilitate the sale of the Vehicle in early March 2016.

[376] This is consistent with the second defender's evidence the Vehicle was sold to him in 2011, with a further agreement the Vehicle would remain registered in the first defender's name in Italy.

[377] Fifthly, there is no evidence of the first defender seeking the return of the Vehicle before 2016, when he would have realised the car was being sold for €65,000. Only after that date did he complain to the Luxembourg and Italian police forces in 2016, and the various police forces in 2020 that the Vehicle belonged to him.

[378] Sixthly, the first defender was only too willing to complain the second defender had embezzled the Vehicle. This is not consistent with the second defender's character who has been a trusted and respected businessman in the UAE for over 50 years. His honesty is demonstrated by the fact he refunded Mr Moens the sum of €200,000 when the sales transactions fell through in 2016.

[379] Seventhly, the first defender's credibility has been severely undermined by his attempts to deny he had borrowed €80,000 from Mr Fantin in 2009, and his manipulation of evidence in this case (the Facebook posts and the email of 5 March 2016).

[380] Although the first defender relies on documentary evidence from Italy regarding ownership of the Vehicle, none of that evidence is conclusive evidence of ownership of the Vehicle in Scots law.

Relevant law

[381] A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price

(section 2, Sale of Goods Act 1979). "Goods" means corporeal moveables except money (section 61(1), 1979 Act).

[382] Subject to the Sale of Goods Act 1979 and any other Act, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties (section 4(1), 1979 Act).

[383] Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred (section 17(1), 1979 Act). For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case (section 17(2), 1979 Act).

[384] Unless a different intention appears, section 18 of the 1979 Act sets out rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Rule 1 provides:

> "Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed."

[385] The reference to "specific goods" in rule 1 means "goods identified and agreed on at the time a contract of sale is made" (section 61(1), 1979 Act).

Decision on ownership of the vehicle

[386] Applying the law to the facts in this case, I find the second defender has been the owner of the Vehicle since 7 April 2011. At a meeting with the first defender in Abu Dhabi on that date, the second defender agreed to purchase the Vehicle from the first defender.

The first defender stated to the second defender he wished to raise €30,000 to assist his girlfriend.

[387] The defenders agreed on a purchase price of 150,000 UAD for the Vehicle, payable in instalments of 50,000 UAD and 100,000 UAD, both of which were subsequently paid by the second defender to the first defender. The first defender thereafter personally delivered the Vehicle to the second defender in Spain.

[388] This agreement constituted an unconditional contract of sale of goods as the first defender (seller) unconditionally agreed to transfer the property in goods (the Vehicle) to the second defender (buyer) for a price of 150,000 UAD (section 2, Sale of Goods Act 1979).

[389] The Vehicle was a corporeal moveable and therefore "goods" for the purpose of the contract (section 61(1), 1979 Act). It was also specified goods for the purpose of rule 1 in section 18 of the Sale of Goods Act 1979 (section 61(1), 1979 Act) such that the property in the Vehicle passed to the second defender when the contract was made.

[390] There was no requirement for the contract to be in writing as section 4(1) of the Sale of Goods Act 1979 permits a contract for the sale of a vehicle to be made "by word of mouth, or partly in writing and partly by word of mouth" (section 4(1), 1979 Act).

The second defender's esto case

[391] The second defender relied on the rebuttable presumption of ownership arising from possession. Presumptions such as this place a burden on the other party (the first defender) to rebut that presumption such as by showing possession was lost by theft, or other causes such as under a contract of loan, deposit, or pledge.

[392] The law on this presumption is well established and is referred to in Mr McFarlane's written submissions (Walker &Walker, *The Law of Evidence in Scotland*, paragraph 3.10.1; Gloag & Henderson, *An Introduction to the Law of Scotland*, 15th edition, paragraph 31.02).

[393] Failure to rebut the presumption, or doubtful cases, will lead to success by the claimant having been in possession of the property in an action of multiplepoinding (*Chief Constable, Strathclyde Police* v *Sharp* 2002 SLT (Sh Ct) 95; *Prangell-O'Neil* v *Lady Skiffington* 1984 SLT 282; *MacLeod* v *Kerr* 1965 SC 253)).

[394] The presumption does not apply in this case as I have found the second defender to be the current owner of the Vehicle. This was not a doubtful case, where ownership could not be established one way or another. I would find it difficult to speculate on alternate hypotheses of fact whether the first defender would have rebutted the presumption had I not found the second defender to own the Vehicle. The first defender has, in the circumstances of this case, failed to prove causes for loss of possession such as theft, embezzlement or loan.

Further procedure

[395] By interlocutor dated 22 June 2022, I reserved consideration of the pursuer's exoneration and discharge *sine die*. The pursuer effectively took a back seat in this litigation at that point. Now I have preferred the second defender to the fund *in medio*, the pursuer will be invited to participate in the proceedings again in order that I may in terms of rule 35.15(3) of the Ordinary Cause Rules 1993 consider the pursuer's exoneration and discharge and whether, on the pursuer's exoneration and discharge, the pursuer's expenses should be allowed out of the fund *in medio* as a first charge on the fund.

[396] The vehicle has remained in the custody of the pursuer (and his successor) since October 2020. For obvious reasons, it has not been possible to consign the fund *in medio* with the sheriff clerk. The court possesses the power to order the sale of the fund *in medio* in terms of rule 35.15(1) OCR 1993, for example, to allow recovery of the pursuer's expenses. That might, however, be an unfortunate result of this protracted litigation.

[397] I will therefore hear parties on these matters. To that end, I have left open, for consideration at that hearing, whether the Vehicle is to be delivered to the second defender, or whether I require to order the sale of the Vehicle.

[398] In that latter event, I would require to hear from the parties on various consequential matters.

[399] Those would include the consignation of the sale proceeds, and the ultimate distribution of the sale proceeds, in favour of the second defender, after deduction of any costs incurred by the pursuer and real raiser in connection with the recovery and storage of said motor vehicle and any expenses of process to which the pursuer might be found entitled.

Mr Forbes

[400] I have directed the sheriff clerk to intimate a copy of this judgment to Mr Forbes, commissioner, for his information only.

Uplifting productions

[401] Mr McFarlane may wish to ensure the second defender's productions are uplifted from the court in accordance with rule 11.8 of the Ordinary Cause Rules 1993 to prevent their disposal by the sheriff clerk in accordance with that rule. These productions include

the Vehicle's warranty card and its United Kingdom registration certificate, which will be of some importance to the second defender.

[402] I have retained these documents in my possession meantime and will deliver them up to the sheriff clerk when requested to do so for their onward transmission to Mr McFarlane on behalf of the second defender.

Appeal

[403] My interlocutor to which this Note is attached does not constitute a final judgment as defined by section 136(1) of the Courts Reform (Scotland) Act 2014 as it does not yet dispose fully of the subject matter of the dispute (further orders being required) and no final decision has been made on liability for expenses.

[404] It follows that if either party wishes to appeal my interlocutor to the Sheriff Appeal Court, then they must obtain my permission for any such appeal in terms of section 110 of the 2014 Act.

[405] Such an application requires to be made by way of written motion to this court within seven days after the date of my interlocutor (Ordinary Cause Rules 1993, rule 31.2(1)).

Expenses

[406] I will consider the expenses of the action at the hearing on consequential matters to be hereafter assigned, or any continuation thereof.

Conclusion

[407] I regret this judgment has taken so long to prepare. As recommended by Lawton LJ in the Court of Appeal in *Rolled Steel Ltd* v *British Steel Corporation and Others* [1986] AC 246 at 310 C - E, I briefly state my reasons for this delay.

[408] I became free of writing judgments in other cases around August 2025. I identified 3 days in September 2025 which could be utilised for writing this judgment if I were released from routine criminal law duties. This was not accepted. I accumulated ten judgments to write thereafter (including this one) and have been on medical leave of absence for the past 5 months.

[409] I have accordingly endeavoured to prepare this judgment with the care and attention required in these somewhat difficult circumstances.

[410] This judgment has taken me 63 hours to write, equivalent to 9 working days of 7 hours each (excluding the one-hour lunch break in an 8-hour working day).

[411] I am grateful to the defenders and Mr McFarlane for their forbearance. I will arrange for the hearing on consequential matters to be assigned by the court as soon as possible after my return to work.

[412] This concludes my Judgment No 3 in this case.