Case No: E01CL929

IN THE COUNTY COURT IN CENTRAL LONDON

Mayor's and City of London Court

Date: Monday 15th July 2019

Before :

Her Honour Judge Backhouse

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Between :

Opus Art Limited	**Claimant**
- and -	
(1) Rochay Productions Limited	**Defendants**
and	
(2) Nicholas Baker	

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Christopher Lloyd (instructed by **Howard Kennedy LLP**) for the **Claimant**
Darragh Connell (instructed by **Keystone Law**) for the **Defendants**

Hearing dates: 15th July 2019

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JUDGMENT

Judge Backhouse Monday, 15th July 2019

1. I will give you my judgment. I am afraid it may take a little while. I apologise but I am going to have to turn to various pages in the bundles from time to time.
2. The claimant, Opus Art Limited, is a company providing art consultancy services and sales of art, exhibiting at art fairs and other events. It was incorporated on 4 April 2016. The directors and shareholders are Nicole Barbezat and Philippe Ballet, who are also domestic partners. Mr Ballet takes a backseat role in the company as he works in finance; Ms Barbezat runs the company.
3. The first defendant, Rochay Productions Limited, is part of the Rochay Group. On the Rochay website at 2B/838, it describes itself as:

   "... an engaging, unique and exclusive group of companies that offer off-market assets, structured investments, high society soirees and the largest luxury event in the world, the London Luxury Expo, Rochay TV and our luxury publication, Rochay Elite Magazine, in hard copy and app."
4. The first defendant was incorporated on 31 October 2011. It is described on the Rochay website as:

   "... specialising in the design and creation of unique brand-enforcement mediums and produces the most luxurious tactile publications, celubrious [*sic*] events, shows, film productions and apps available in the world today."

   That is at 2B/834.
5. The second defendant, Nicholas Baker, is the sole director and company secretary of the first defendant. His description of his role and the first defendant's business is at paragraphs 8 and 9 of his witness statement:

   "I, as director of the first defendant, work with contemporary and established luxury brands and clients to improve their brand identity and social capital, enabling them to break through into

sectors or demographics usually reserved for more established brands and clients. I carry out an analysis of the brand or client to identify areas for improvement and formulate a strategy of refining a client's perceived values and goals in line with their sector expectations, to build trust, respect and significance and so improving garnered quality opportunities, and exposing a client's untapped revenue streams."

6. "The first defendant is involved in arranging events known as "soirees". The first defendant invites a variety of high net worth individuals and special guests to such soirees. The first defendant offers sponsorship packages to businesses who wish to promote their businesses to the attendees of the events. Such sponsorships offer an excellent opportunity to raise the sponsoring business' profile and can lead to profitable relationships. The cost of each soiree is in the region of £50,000."

7. The Rochay website shows that Kevin Rochay is the founder, group chairman and CEO. He is described as an "advisor to leaders around the world" and:

   "... actively involved in some of the largest global ventures with access to a liquidity in excess of $46 billion."

8. Mr Baker is the deputy chairman of the Rochay Group -- he says that is an honorary title -- and CEO of Rochay Elite, a trading name.

9. Mr Baker described the company structure as Rochay Elite Limited holding the shares of the first defendant. Mr Baker ceased to be a director of Rochay Elite Limited a few months ago. In turn, Rochay Group Holdings Limited holds the shares of Rochay Elite Limited, with Rochay Group Limited at the top of the structure.

10. Mr Baker has been a director of other Rochay companies which are now dissolved. He has no shares in any of the Rochay companies currently.

11. "Rochay Elite" is a trading name. On the Rochay Group website (2B/832), the Elite membership is said to provide:

"... luxury, intelligent and private off-market assets to the super-rich. Our member base consists of 84% of the UK Rich List, 52% of the Global Rich List, and C-level executives of the FTSE 100/250, and Fortune 500."

12. According to the membership application form at 2B/833, membership costs £50,000 a year.

13. **Background**

14. Ms Barbezat and Mr Ballet have lived and worked in Hong Kong or the Far East for many years. They are Swiss nationals who are French-speaking. Both have worked or work in finance. Nicole Barbezat worked for Macey & Sons auctioneers most recently, first in Hong Kong and then in London, where she and Mr Ballet relocated. She has a long-standing interest in art and connections with artists in Hong Kong, China and other Asian countries. She wished to set up her own company.

15. While working with Macey & Sons, Ms Barbezat curated an exhibition in London of a Chinese artist in February 2016. This was attended by Melanie Rochester, then working for the first defendant. Ms Barbezat followed up those who attended the exhibition and Ms Rochester invited Ms Barbezat and Mr Ballet to an event at the Aston Martin showroom on Park Lane on 14 April 2016. This was the catalyst for a chain of events, whereby the claimant entered into a number of contracts with the first defendant as exhibitor or sponsor of various events, and also for the first defendant to set up and maintain the claimant's website and social media accounts.

16. **The contracts and claim**

17. The claim is in respect of four events for which the claimant paid and which did not take place. The claim is pleaded in fraudulent misrepresentation and breach of contract. There is also a claim for damages for breach of contract in respect of the website and social media accounts contracts.

18. The specifics of the contracts are as follows:

a. for the London Luxury Expo to take place between 8 and 10 June 2017. The contract signed by Ms Barbezat on 12 May 2016 is at 2A/318. She paid £25,000 and VAT, totalling £30,000.

b. The second contract was for a soiree at Holland & Holland in November 2016. The contract at 2A/442 was signed on 21/10/16 for £6,000 plus VAT. The invoice dated 20 October 2016 says the event will take place on 17 November 2016.

c. Thirdly, there was an upgrade to lead sponsor of the Holland & Holland soiree. There is only an invoice for this dated 25 November 2016 for £12,750 plus VAT. The invoice states it is for a date in March 2017 TBC.

d. Fourthly, for a soiree at Kensington Palace in December 2017, a contract at 2A/512 was signed on 24 December 2016 for a sum of £67,500 plus VAT. The invoice of the same date says it will take place on 1 December 2017.

19. The total of those contracts including VAT is £133,500. The claim in fraudulent misrepresentation for the first LLX contract is against the first defendant only; the other three are against both defendants.

20. The website contract was entered into on 3 June 2016. There is an invoice only. The price was £5,000 plus VAT.

21. Lastly, the social media contract was entered into on 8 December 2016, for an initial fee of £3,500 and then a maintenance fee of £2,500 per month for 12 months. Ms Barbezat paid £33,200 under this contract before taking back control of her social media accounts in about June 2017. The total claimed in breach of contract against the first defendant only is £39,200.

22. The defence of both defendants denies any fraudulent misrepresentation or breach of contract. I will go through later the pleaded case on each alleged misrepresentation. Some are denied but many are admitted. The defendants say the representations were true and/or they had an honest belief in them.

23. The claimant also entered into three other contracts with the first defendant. On 3 August 2016 there was a contract for what was described on the contract as the "launch soiree" for the claimant in November 2016. In fact, it took place on 28 October 2016, styled as the "Trafalgar soiree". The price of this was £25,000 plus VAT.

24. On 21 October 2016 the claimant entered into a contract for a private jet soiree to take place at the Private Jet Centre at London City Airport on 1 December 2017, for which it paid £6,000 plus VAT. On 25 November 2016 it upgraded its sponsorship to lead sponsor for £15,300. That event was postponed to the 26 January 2017 and again to 11 February 2017 when it took place.

25. **Chronology**

26. There is an agreed chronology prepared by the parties, which should be read into this judgment, but the salient dates for ease of understanding are as follows.

27. There was a meeting on 22 April 2016 between Ms Barbezat and Melanie Rochester at which the LLX event was discussed amongst other things. On 28 April, Mr Richard Sussex, then working for the first defendant, emailed Ms Barbezat with the sponsor package for the LLX. On 10 May 2016, Mr Sussex discussed various terms of the LLX contract with Ms Barbezat on the phone, and on 12 May 2016 she signed the contract, as I have said.

28. On 18 May 2016, Ms Barbezat met Mr Baker for the first time and there were three further meetings between May and August 2016. Also, in that time period, there were email discussions between the two of them about Ms Barbezat selling various art works through her contacts.

29. Following a further meeting between Mr Baker and Ms Barbezat on 2 August 2016, Ms Barbezat entered into the contract for the "launch party", as I will call it, the next day.

30. On 19 October 2016, Mr Baker sent Ms Barbezat presentations for the Holland & Holland and Jet Centre soirees and she entered into the contracts for those soirees on 21 October. The launch party was on 28 October, and on 6 November 2016 she emailed Mr Baker with feedback on that

party, and also chasing him about the arrangements for the Holland & Holland soiree due to take place eleven days later.

31. On 13 November, Mr Baker emailed her, postponing the Holland & Holland event. On 23 November Mr Baker and Ms Barbezat met and patched up their relationship, and Mr Baker then sent her the emails about upgrading her sponsorship for both the Holland & Holland and Private Jet Centre soirees. On 25 November she agreed to those upgrades.
32. On 22 December 2016, Mr Baker visited Ms Barbezat at home with Mr Ballet joining them later, and he discussed the first defendant's plans for a soiree at Kensington Palace. He emailed her the next day about that soiree and, on 24 December, she signed a contract for the Kensington Palace event.
33. On 19 January 2017, Mr Baker informed Ms Barbezat that the private jet soiree was again postponed. On 5 March 2017, she emailed Mr Baker chasing details of the Holland & Holland event, or "Mayfair event" as it was then known, due to take place on 17 March.
34. On 6 March 2017, the Jet Centre sent an email to Mr Baker cancelling the LLX event scheduled for 8 and 9 June that year.
35. On 9 March 2017, Mr Baker and Ms Barbezat visited Kensington Palace, at which Mr Baker said that the claimant had been allocated the smallest room and offered an upgrade for £128,000.
36. On 12 March, Mr Baker informed Ms Barbezat that the Holland & Holland soiree had again been postponed.
37. Ms Barbezat then chased for a new date for the Holland & Holland, and also details of guests and sponsors for both the LLX and Kensington Palace events. On 27 March 2017, Mr Baker informed her that the LLX had been postponed to 2018.
38. From 12 May 2017 and onwards into June, there were complaints from the claimant about the defendants' failure to honour the arrangements. The relationship broke down and there were

various negotiations, culminating in the best offer from the defendants, which was to refund the money for the LLX but at some point in the future.

39. During those negotiations, there was a lunch on 1 June 2017 with Mr Baker, Ms Barbezat and Mr Ballet, and Mr Baker alleges that at that lunch, Mr Ballet made threats to him.

40. In mid-June 2017, Ms Barbezat took control of the claimant's website and social media accounts.

41. The letter before claim was sent by the claimant's solicitors on 15 September 2017. On 2 November 2017, Mr Baker alleges that he was threatened by two men with a claw hammer intimating that he should make payment to the claimant. Following this, he says he cancelled the Kensington Palace contract. This claim was issued on 21 December 2017.

42. **The contractual documentation**

43. The contracts bear the logos of the first defendant and Rochay High Society. They are said to be contracts for event production with the first defendant "in conjunction with Rochay High Society". All contracts are one side only.

44. Clause 8 binds the claimant: "... to all its terms and conditions as set forth on both sides herein in addition to the full terms and conditions of Rochay Productions Limited (attached)."

45. Ms Barbezat's evidence, which was not challenged by the defendants, is that none of the contracts had anything on the reverse. She says that the contracts and invoices were only sent to her by email, and only the LLX contract had the terms and conditions attached to the email. The claimant put the defendants to proof that Ms Barbezat did receive the LLX terms and conditions. The defendants only provided the original email showing the attachment on the first morning of the trial, following which Ms Barbezat accepted she must have received them. I accept her evidence as to the form in which the contracts and emails came to her and that she did not receive any terms and conditions except for the LLX.

46. None of the emails from the defendants show that terms and conditions were attached for any other contracts, and the defendants have only produced terms and conditions for the LLX event and for Kensington Palace.

47. In his evidence, Mr Baker said that it was their practice to send the contract by email and also a hard copy of the contract plus the terms and conditions by post, and then a further copy of the terms and conditions with the signed copy of the contracts. There is no documentary evidence of this having taken place in relation to any of the contracts I am dealing with.

48. Ms Barbezat said that no hard copies were received, and I accept that. In any event, there was no time in which she could have received the terms and conditions in the post as she returned her signed contract by return email within a day or two of receiving it. I find that the terms and conditions were only incorporated into the LLX contract.

49. There was an insufficient volume of contracts for the first defendant's standard terms and conditions, if indeed there is such a thing, to be incorporated into all the contracts by a course of dealing. In any event, she was contracting for different types of events: a large exhibition and various soirees of different sizes.

50. All the contracts only refer to the contracting party as an exhibitor, even though for at least the last three contracts the claimant was to be the lead sponsor or sponsor. It appears that there were to be different prices and privileges for these different statuses: 2A/415.

51. **The evidence**

52. I had five ring binders of evidence plus one binder from each party of authorities. There are lengthy particulars of claim, defence, a Reply and Part 18 responses from both parties. Ms Barbezat, Mr Ballet and Mr Baker produced witness statements. Mr Baker's is particularly long: 257 paragraphs over 32 closely-typed pages.

53. I also had a witness statement on behalf of the defendants from Mr Frickars, an artist who showed his Trafalgar paintings at the launch/Trafalgar soiree on 28 October 2016. In it, he

complains about Ms Barbezat's behaviour at the soiree, complaining that she ignored him. He thought she was there to promote his art. He was not required for cross-examination.

54. In my judgment, his evidence does not assist me. It appears that he and Ms Barbezat had been given conflicting ideas by the second defendant as to the focus of the event: both thought that their work was to be the main focus.

55. I heard at length from Ms Barbezat, also from Mr Ballet, although it was limited as to the matters he could speak to, and at length from Mr Baker. Ms Barbezat was in the box for one day; Mr Baker one and a half days.

56. **Ms Barbezat's evidence**

57. I will deal with the specifics of her evidence as to the contracts later. In my judgment, she was a patently honest witness. Mr Connell, who represents the defendants, accepted she was not lying, but challenged the degree of recollection she had of the conversations in which she says the misrepresentations were made.

58. She accepted when she could not remember the exact words used or the whole conversation, especially the meeting in April 2016 with Melanie Rochester. She said that certain things had struck her at the time and had stuck in her mind, for example, the high price of the tickets for the LLX, £700.

59. She made appropriate concessions, for example that she must have received the LLX terms and conditions. She also agreed that one of the pleaded representations about Kensington Palace had been said at a later meeting. I do not accept Mr Connell's criticisms of her for failing to accept she had received the LLX terms and conditions earlier.

60. It is clear from her oral evidence and emails that she is a polite person who does not relish confrontation. She raised concerns with Mr Baker in a measured way and tried to keep things cordial.

61. Her explanations for her dealings with these defendants were entirely plausible. She was a foreigner who was new in London. She did not know the art scene here and had a new company which she wanted to promote with the sort of wealthy people who would be interested in and have the money to purchase the art she was selling.
62. The Aston Martin event had impressed her because she had met The Honourable Richard Evans, an acquaintance, and a friend of his there, and it seemed that Rochay were, in her words, "good people". In other words, the event, apparently organised by the first defendant, seemed a high-end event which attracted the right sort of people. She felt ‘blessed’, in her words, at having met the second defendant, and did not do any due diligence on the first defendant or Rochay in general.
63. She felt that the defendants could provide her with a complete package of events, website and social media accounts to launch her company. The purpose of the Holland & Holland and Private Jet Centre events was to build on the momentum of the launch party.
64. It might be said she was too trusting, perhaps naive. She is not a native English speaker, and it was evident in cross-examination that she does not understand everything said to her. She may have missed or misunderstood some nuances, and I take this into account.
65. She did not spot various spelling and grammatical errors on Rochay's website and in the material produced by the defendants. So, for example, salubrious spelt "C-E-L-U-B-R-I-O-U-S", the use of "it's" for "its" throughout, the repeated reference to "world renown" and not "renowned" champagne, and so forth -- errors repeated in the presentations for the Holland & Holland and Private Jet Centre soirees. A native English speaker may have been given pause for thought by those.
66. She did have misgivings after the launch party, when she felt misled -- it was not a launch for her company but a Rochay High Society event -- but she swallowed those misgivings and committed herself further.

67. Mr Baker suggests that Ms Barbezat misled him about her experience as an art dealer, and says that she claimed she had 20 years' experience as such, which she denies. It is clear from her LinkedIn profile, which Mr Baker read, that she in fact has limited experience. She denied that commission on the sales of the art works was a main factor in her entering into the contracts.
68. Her evidence was that some paintings, for example by Caravaggio, are difficult to sell because of the high number of fakes in circulation. She said that selling art takes time and work. She felt that she was the first defendant's client; it was not her working for the first defendant. She wanted to put her energies into her company, and I accept that evidence.
69. **Mr Baker's evidence**
70. I make allowances for the time Mr Baker spent giving evidence, especially in cross-examination, which was undoubtedly very tiring. However, for the following reasons, I found his evidence to be profoundly unsatisfactory.
71. Mr Connell accepts that his evidence was not impressive. Mr Baker started off thinking very carefully about each answer, and asked repeatedly to be taken to underlying documents before answering. The impression he gave was of a witness trying not to be caught out. At other times, especially on the second day of his evidence, he reverted to "I don't recall" in relation to most questions. When challenged on the absence of any documentary evidence backing up his evidence, he would say, "I haven't seen anything in the bundle".
72. Despite his detailed witness statement, he claimed to have no recall of conversations or meetings with Ms Barbezat, saying, "I have so many meetings," but seemed to be able to remember details of meetings and conversations with venue providers.
73. Some of his denials of knowledge were wholly implausible. For example, when challenged on the first defendant having filed dormant accounts for all the years since incorporation up to 2016, which paragraph 3.3 on the defence admits was an error, Mr Baker claimed that the

accounts for 2016 had been submitted by a temporary bookkeeper in his absence and without his authority or knowledge.

74. He also claimed not to have any knowledge of the first defendant's financial position at the relevant times, when challenged on whether the first defendant had the financial ability to mount on event on the scale of the LLX or Kensington Palace soirees. As a sole director, I found that those denials were inherently unlikely.

75. In my judgment, he was trying to distance himself from events, in the same way as the defence tries to distance the Rochay Group from the actions of the first defendant. He claimed that Ellora Harper, another employee of the first defendant, was dealing with the Kensington Palace event. It is unlikely that he had no knowledge of certain events, given that there were only a few people working for Rochay Productions and they have only held three events in London, as to which more below.

76. It is a fundamental part of the defendants' case that the representations on the Rochay website and on the presentations which Mr Baker sent to Ms Barbezat about the various soirees are true, namely that the Rochay Elite Club of high net worth individuals and ultra-high net worth individuals, (or ‘millionaires and billionaires’, as Mr Baker styled it), does exist, and that there is a membership list. Mr Baker was adamant this is the case. However, neither defendant has provided any documentary evidence of such a club, by way of a membership list or any other document.

77. Mr Baker attempted to explain this by saying that neither he nor the first defendant holds the membership list, and that he does not in fact know who the members are. He said that invitations to events are sent out by Rochay Elite, which maintains the database of members. No evidence has been provided of the first or second defendant requesting Rochay Elite to send out any invitations, and indeed it is unclear who would do this task, as Rochay Elite, according to

the second defendant, has no employees, only contractors or ‘brand ambassadors’, such as Melanie Rochester.

78. He then said that the Rochay Elite members were looked after by an offshore company called "Octavia" based in the Seychelles, of which Kevin Rochay is the ultimate beneficiary. None of this information was in his witness statement and was not mentioned by either defendant when they were ordered to conduct a disclosure search for the membership list.

79. As for the figures in the various Rochay materials about the proportion of members who feature in the various rich lists, etc, as I have quoted above, he said that Rochay Elite offshore advises him by email approximately annually of those figures. This is done by a person called "Victoria Bent", based in the Seychelles. No such emails have been disclosed.

80. I asked Mr Baker why wealthy people would pay £50,000 a year to be invited to events and to receive a magazine. He said that historically the membership fee has not been so high, and not all members pay it, but £50,000 is not a lot of money for high net worth individuals and the figure filters out people who are not sufficiently wealthy.

81. I also suggested that if 84% of the UK Rich List, ie 840 people, paid £50,000 a year, Mr Rochay or Rochay Group is receiving £43 million a year. He said that Octavia has other investors and Mr Rochay only receives a percentage. Given that Rochay Elite has not, on Mr Baker's own evidence, put on any events since February 2017, one might wonder what the members are paying their membership fee for.

82. Despite it being the defendants' case that Mr Rochay effectively controls the membership club, which is a central part of this case, Mr Rochay has not given evidence, apparently because "the claim does not affect his business". This is a troubling and unexplained feature.

83. There were parts of Mr Baker's evidence when he contradicted himself, saying one thing and then changing his evidence entirely. So, for example, he initially agreed that he had told Ms Barbezat at one of their meetings that: "Sponsorship by the claimant of Rochay Group events

would give the claimant access to Rochay Group's members, including high net worth individuals" as per paragraph 15.2 of the particulars of claim. He then denied he had said that, but then agreed he had done so. Later on, he was asked whether the first defendant still has the money which the claimant paid for the events which have not happened. His first answer was that the funds were in the first defendant's bank account, but then he began to flounder: "It's being held. I'm not sure. They may have gone out or been used for running costs. I don't know. I can't really say for sure where those funds are. I think it's actually been used."

84. It is striking that much of the contents of Mr Baker's witness statement is at odds with the documents, including his own contemporaneous emails, even though it appears his statement was prepared by reference to those documents. In particular, he repeatedly suggests in the witness statement that it was Ms Barbezat who came to him for help, for example with her website, and that she asked to be included in the first defendant's next soiree. He suggests he agreed she could be lead sponsor, but not the only sponsor, for the Trafalgar soiree on 28 October 2016, along with Mr Frickars. This is completely at odds with the contract which Ms Barbezat signed, which specifically says, "launch party for Opus Arts in November 2016". It is also at odds with Mr Baker's own email to Ms Barbezat of 14 July 2016 at 2A/369.

85. Similarly, the Kensington Palace event was sold to Ms Barbezat as a reception for 420 guests, whereas the hire agreement with Kensington Palace was for a dinner for 190. In his evidence, Mr Baker suggested this was a mistake on the booking form which did not matter. But the presentation sent out with the purported invitations to the event refer to a dinner: 2B/652.

86. The narrative that Ms Barbezat kept asking him for assistance is at odds with the documentary evidence in terms of the "hard sell", to use a colloquialism, displayed in Mr Baker's emails of 23 and 25 November 2016 to Ms Barbezat, trying to persuade her to upgrade her sponsorship for the Holland and Holland soiree, 2A/481, and also his email trying to sell her the Kensington

Palace event on 23 December 2016, 2A/506, and after the visit to Kensington Palace on 9 March 2017 trying to sell her an upgrade.

87. Mr Baker also used evasive and imprecise language. When pressed on whether the first defendant had actually made a firm contractual booking for the venues for the prospective events, he would say, "We were arranging it", or, "The date was pencilled in".

88. Of concern are his allegations that he has been threatened by or on behalf of the claimant. Firstly, he alleges that Mr Ballet threatened, "I would hate to have your legs broken or harm your family", with a "disconcerting smile on his face", at lunch on 1 June 2017. Mr Ballet vehemently denied this and was indignant, seeing it as an attack on his integrity. Interestingly, Mr Baker did not report this threat to the police at the time.

89. Ms Barbezat and Mr Ballet also strenuously denied having arranged for men to threaten Mr Baker in November 2017 with a claw hammer. Mr Baker did apparently report this to the police, but has not disclosed any material from the police, and there are no further details in his witness statement.

90. In assessing his evidence on these alleged threats, I note his tendency to put the worst possible interpretation on communications, purporting to see the threat of court proceedings in Ms Barbezat's email in May 2017 as a threat of harm, and calling it "blackmail" and "a criminal offence".

91. In my judgment, his reaction to the letter of claim was entirely unreasonable. He reported it to the police as "blackmail", and reported the claimant's solicitors to the Solicitors Regulation Authority. He threatened a counterclaim for £300 million, which has not materialised. It is all of a piece with his aggressive tirade in his email of 15 November 2016, 2A/458, in response to the mild criticism and suggestions made by Ms Barbezat after the launch party.

92. In my judgment, these actions were an attempt to bully his way out of a difficult situation. In the light of the untrustworthiness of Mr Baker's evidence in general, and the lack of any

supporting evidence, I find that those threats were not made. In my judgment Mr Baker has invented the incident in November 2017 to provide an excuse for the cancellation of the Kensington Palace contract. It is true that Mr Ballet phoned Kensington Palace, or in fact Historic Royal Palaces, twice to confirm whether a booking had indeed been made, which he was entitled to do. But there was, in my judgment, no "security risk" which justified the cancellation of the event.

93. I also note that in his written evidence, Mr Baker has attacked Ms Barbezat's credibility, competence and experience, claiming that she misled him about her experience as an art dealer, that she was too inept to make the most of opportunities he gave her to represent various artists, and that she behaved inappropriately at the launch party. None of this is relevant to the claims I have to decide, and indeed Mr Baker continued to put propositions to Ms Barbezat and take her money despite these alleged failings.

94. Shortly after meeting Ms Barbezat, he began to offer her the chance to find private buyers for a number of paintings by famous artists, including Caravaggio, Mark Rothko and Picasso and other pieces of art, with the possibility of earning millions of pounds in commission. He said that the first defendant had been asked to find buyers by "contacts" of the Rochay Group. He said he did this because she misrepresented that she had 20 years' experience as an art dealer. She denies saying such a thing, and as I have already said, her LinkedIn profile makes clear her limited experience as a dealer.

95. This is strange behaviour by the defendants from a number of perspectives. If the first defendant or the Rochay Group have so many contacts, why not sell the pieces themselves? Mr Baker said it was because the art world was opaque; they wanted someone they could trust. If that was the case, why choose Ms Barbezat, a stranger with limited experience?

96. Despite professing to know little about the art world, Mr Baker produced presentations for some of the artworks, and spoke at length in oral evidence about the need to establish their

provenance. However, the defendants did not provide Ms Barbezat with any letters of authority from the owners or agents of any of the artworks offered to her. There is no indication in the accounts of any of the Rochay companies of having received income of the order they might get in commission for arranging sales of paintings as suggested by Mr Baker.

97. Mr Baker claims in paragraph 118 of his witness statement that as late as March 2017, the first defendant was "instructing" Ms Barbezat to sell further artworks including a Dalí sculpture, which she failed to do, alleged causing "serious jeopardy to the first defendant's relationship with its artist and art collector contacts". Given that Nicole Barbezat had failed to sell any of the pieces offered to her, it is a mystery why Mr Baker persisted in offering them to her. Further, if Rochay Productions has such contacts, why was it not selling the pieces itself?

98. In my judgment, it is more likely that these so-called "offers" were to bolster the impression which Mr Baker wished to create as to the global reach and impressive contact network available to the Rochay Group. It adds to the overall implausibility of his evidence.

99. Finally, but of great concern to the court, is the issue of the disclosure which the defendants have and have not made. In a case where much of the correspondence was by email, disclosure is crucial. The directions order of 29 June 2018 provided for the defendants to make an electronic document search for a certain date range and for certain key words, and the defendants certified they had complied in their list of documents. It was apparent from the beginning of the trial that certain documents were missing, for example, the email from Melanie Rochester to Mr Baker after her first meeting with Ms Barbezat, to which Mr Baker replied. His reply is in the bundle but not Ms Rochester's email.

100. After an intervention from me on the first day of the trial, pointing out that the LLX contract was due to take place at more than just the Private Jet Centre, Mr Baker produced the next day some documents showing preliminary negotiations with another of the venues, the ExCel Centre, in 2015. He said that he had found them on an old laptop which had not been searched

because he thought it only contained documents before January 2016, which was the beginning of the date range. He said he had only searched this laptop for Excel documents, not using all the search terms. He later said that staff not only used the company server for emails, as stated on the list of documents, but also hard drives, backups and laptops in different locations, not just at the company offices. None of these have been searched.

101. It is apparent that the defendants' disclosure is woefully deficient. In my judgment, the defendants have not conducted a proper search and/or have not disclosed all the documents located. I am entitled to infer that the reason for those failings is that such documents would undermine the defendants' case and/ or support the claimant's case.

102. I have given myself the usual Lucas direction, but nonetheless I have concluded that Mr Baker's evidence is thoroughly unreliable and indeed dishonest. Where it conflicts with the evidence of Ms Barbezat and/or the documents, I have preferred her evidence or the documentary evidence.

103. **The defendant's operations and capabilities**

104. The defendants' publicity is of a group of companies with global access to and membership of very wealthy people, with Kevin Rochay operating on the world stage. He is pictured with Bill Gates, Bill Clinton, Richard Branson, Donald Trump and other such figures. This picture is vastly at odds with the actual operations of the first defendant, which seems to be the only active Rochay company. The first defendant filed dormant accounts up to 2017, i.e. that during the period in question and for all the years the company has been in existence, it has had no significant accounting transactions.

105. The defendants now say that the first defendant should have and has filed micro-accounts for 2016 and 2017, because the first defendant meets all three criteria for doing so: an annual turnover of not more than £632,000, a balance sheet of not more than £316,000, and not more than 10 employees. There is no evidence such micro-accounts have been filed.

106. Further, the evidence does not suggest that the first defendant had commercial activity of anything even approaching the level of micro-accounts. Mr Baker admitted that the first defendant has put on only three London events since January 2016, i.e. the Aston Martin event, the launch party/Trafalgar soiree and the Private Jet Centre soiree in February 2017. He says there was a small event at Claridge's before the Aston Martin event, but this is not in his witness statement and there is no other evidence of it. He also says that Rochay Productions has put on some events in Monaco, but again there is no evidence of those.

107. The launch party was meant to be at Berry Brothers' premises, but in fact took place at the Army & Navy Club, which was a venue sourced by Mr Ballet. It is unclear if there was any charge for using the club or the Aston Martin premises. Holland & Holland was offering a free venue, as was the Private Jet Centre.

108. The documents indicate that the first defendant had a preference for using free venues. There were some exploratory heads of agreement with ExCel for an LLX event in 2016 but not for 2017, for which the claimant contracted, but no evidence that these went any further or that any payment was made to hire that venue.

109. After Holland & Holland indicated it could not host a Rochay event in 2017, the first defendant did not hire a further replacement venue. In my judgment, a company with any financial or organisational capability could easily have found a venue to replace Holland & Holland.

110. Mr Baker told Holland & Holland that the first defendant was cancelling the November 2016 event because it was "recovering from the launch party", but in my judgment two events in three weeks should easily have been within the first defendant's capacity, had it been a company with the resources which it purports to have. The only venue where there is a signed hire agreement is for Kensington Palace, signed on 20 February 2017, indicating a hire fee of £22,800. There is no evidence this sum was paid, and I will discuss this further below.

111. In my judgment, taken all together, the evidence indicates that the first defendant's operation was run on a shoe string. There are only three employees currently: Mr Baker, Ellora Harper, who is apparently the fiancée of Mr Rochay, and Louise Baxter. There may have been two others in the past: Mr Sussex and Ms Rochester.

112. The first defendant has no actual office premises. It uses serviced offices at 100 Pall Mall for correspondence and meetings. Mr Baker and the others work from home. He said they used to rent an office in a farm in Kent and now rent storage space at an address in Tunbridge Wells. I appreciate, as Mr Connell said, that many small businesses do not have actual offices, but the small-scale nature of the first defendant's operations do not sit easily with the claims about the extensive membership and the fees paid by those members.

113. The consequence of using free venues is that the Private Jet Centre and others could cancel at any time, and did. I note that Mr Chris Clayton of the Private Jet Centre used exactly the same letter to cancel both the soiree on 1 December 2016 and the LLX event in June 2017, the latter being cancelled on 6 March 2017. The email accompanying the letter to Mr Baker says: "See attached requested letter. I hope this will suffice."

114. Written confirmation of cancellation had been requested by Ms Barbezat as Mr Clayton had apparently initially cancelled just by phone. Mr Baker forwarded the letter to Ms Harper, saying: "Copy of Jet Centre new letter from Chris attached. Had to chase him over the weekend."

115. I am sceptical about the bona fides of these cancellations. It seems to me possible that the cancellations were at the defendants' request and that Mr Clayton helped them out with a generic excuse, namely "operational and health and safety reasons". But even if those reasons are true, it demonstrates just how flimsy the arrangements for the LLX were: a huge, three-day event could be cancelled at short notice because the Private Jet Centre got bookings from other customers to use their airfield.

116. Although there were some exploratory discussions about the LLX and Kensington Palace, as discussed below, and dates were "pencilled in", I find that for none of the events for which the claimant contracted did the first defendant have, at the time of entering into the contracts, any firm contractual or other arrangements with any of the venues which entitled -- that being the key word -- the first defendant to use the venue on the dates stated in the contract or represented to the claimant. This meant that venue providers could and did cancel events at the last minute and that Rochay Productions could and did postpone events to another date at the last minute.

117. Further, there is no evidence that beyond the initial loose arrangements with the venues, the defendants had taken any steps to arrange the events or invite any guests. I will come to the so-called "invitations" in a minute. Had they done so, there would have been considerable repercussions in cancelling the events at the last minute. There is no evidence of guests being contacted, or caterers or other sponsors being cancelled.

118. As for the invitations to the various events, there are four specimen invitations for the Kensington Palace soiree which have been disclosed at 2A/577 to 580, together with a list of purported invitees. There is one specimen invitation for the Holland & Holland soiree at 2A/407, possibly to someone at Deutsche Bank.

119. The spreadsheets of purported invitees for the Kensington Palace event are just lists of the CEOs of FTSE 250 companies, banks and insurance firms, together with a miscellaneous list of famous people, including Donald Trump, Warren Buffet, et cetera. These lists are made up of publicly-available information. There was no explanation why such lists were compiled, if the Rochay Group has the membership list alleged.

120. Further, the wording of both emails indicates that these are speculative invitations. I will read both out.

121. This is to a Ms Blunden at DB.com about the Rochay High Society Trafalgar soiree invitation:

"I would like to extend a personal invitation to our exclusive High Society Soiree on 28 October 2016. Please see attached. I would be grateful if you could RSVP swiftly to avoid disappointment. Our soiree attendees consist of royals, dignitaries, pioneers and exceptional leaders from around the world. A recent soiree with Aston Martin can be found here" – there is a link to the gallery of photos. The email then gives the dress code. "I look forward to hearing from you". And then there is a presentation attached with more hyperbole about the soiree.

122. The Kensington Palace invitation -- just taking one at random -- to a Ms Garrett-Cox at Alliance Trust reads as follows:

"Dear Ms Garrett-Cox,

"I do hope you are well. We would like to personally invite you to our exclusive Kensington Palace soiree on 1 December 2017" (this is dated 5 April 2017). "As you know, our guests for our soirees consist of royals, dignitaries, industry pioneers and exceptional leaders from around the world, and so security will be very high. Your digital invitation is attached. You will of course receive a written invitation before the event once you RSVP. This will be used for security purposes on the night, too. However, there is a fixed number of places available, so please RSVP as soon as possible. I look forward to hearing from you."

123. These emails are not written as one would if to a member of a club. If it were to a member, there would be no need to puff up the types of people who might attend, as these emails do. And indeed there is no reference to "members" at all. I reject the suggestion that just using the words "as you know" suggests that the recipient of this email, if indeed it was sent, had any prior knowledge of Rochay High Society.

124. Mr Baker says that at all three events there were wealthy people who Ms Barbezat met, and he named two who were at the launch party, but refused to say if they were members or not. It may be that some wealthy people respond to speculative emails. It may be that Kevin Rochay, as he says in his short speech on the video of the launch party, invites his friends to these events.

But, in my judgment, there is no evidence of any membership club or any extensive access to high net worth individuals, and I find that this is a fabrication.

125. Mr Baker said that he had a handful of other sponsors for LLX, naming two, and about "ten watch brands", but provided no documentary evidence. There is no evidence of any other sponsors for Kensington Palace apart from the claimant. In my judgment, the evidence points to Rochay Productions not having the financial capacity or the contacts to be able to mount events on the scale of LLX or Kensington Palace.

126. I will now go on to an analysis of the contracts and the pleaded misrepresentations.

127. **The law on deceit and fraudulent misrepresentation**

128. Counsel for both parties agree on the law, and I am going to quote the extracts from Mr Lloyd's skeleton argument just for ease.

129. Counsel agree that the Claimant must prove the alleged misrepresentations and that the standard of proof is the ordinary balance of probabilities as confirmed by the Supreme Court In Re B and Re SB.

130. "The tort of deceit requires the claimant to show that: (1) the defendants made false representations to the claimants; (2) the defendants knew the representations to be false or had no belief in their truth, or were reckless as to whether they were true or false; (3) the defendants intended the claimant to rely on the representations; (4) the claimant did rely on the representations and; (5) as a result, the claimant has suffered loss and damage." **Hayward v Zurich** [2017] AC 142.

131. An individual is personally liable for fraudulent misrepresentation even if he purports to make relevant representations in his capacity as a director. **Standard Chartered Bank v Pakistan Shipping** [2002] 1 AC 959.

132. The test of dishonesty is in **Derry v Peek** (1889) 14 App Cas 337:

"Fraud is proved when it is shown that a false representation has been made (1) knowingly, (2) without belief in its truth, or (3) recklessly careless whether it be true or false". The test is subjective. If the defendant generally believes his statement is true, even if objectively construed it was false, he will not be liable in deceit. **Cassa di Risparmio v Barclays Bank** [2011] CLC 701.

133. **Cassa di Risparmio** is also authority for the proposition that a statement must be understood in the context in which it was made and by construing it objectively according to the impact it might be expected to have on a reasonable representee in the position and with the known characteristics of the actual representee.

134. Where a defendant makes representations relating to future performance, the representations may amount to fraud. Such a representation contains an implied representation that the person making the statement has reasonable grounds for its belief and that he honestly believes the statement to be true (Clerk & Lindsell at 18-13). This is particularly so where there is an imbalance between the information available to and knowledge of the representee against that of the representor. **Barings Plc v Coopers & Lybrand** [2002] EWHC 461.

135. I have taken into account Mr Connell's general submissions that I should treat Ms Barbezat's evidence as to what was said very carefully, especially as to implied representations in a case where the claimant has chosen to plead its case just in fraud and not other kinds of misrepresentation. I accept, as he submitted, that in marketing and public relations, a great deal of hyperbole is common, and indeed one can see that from the defendants' materials, and mere puffing is not misrepresentation.

136. On the other hand, it is the defendants' case that most of the representations were true. They have not, for example, attempted to argue that the proposed events were speculative ventures and that they were entitled to seek sponsors before finally committing to the cost of the venue, although Mr Connell came close to suggesting this in his closing submissions. The defendants

represented impliedly that the events would go ahead on the relevant date, and took the full contract price from the claimant for each event, rather than, say, a holding deposit.

137. **THE LLX CONTRACT**

138. **Fraudulent misrepresentation**

139. This is probably the most complex contract to analyse. Paragraph 9.1 of the particulars of claim sets out various representations allegedly made by Ms Rochester when she met Ms Barbezat on 22 April 2016. These included that the LLX would take place at the Jet Centre in June 2017, there had been a similar Luxury Expo event in 2015, and implied that it had been run and organised by Rochay Group companies and that tickets to the event would cost around £700 per person.

140. Those representations are denied but it is not clear on what basis. Mr Baker has not spoken to Ms Rochester about this issue and she has not been called to give evidence. No good reason has been advanced for her absence, save that she is, as described by Mr Baker, a 'socialite', and allegedly left the first defendant's employment because she made a pass at Mr Baker. Her email to him reporting on that crucial meeting with Ms Barbezat has not been disclosed.

141. Mr Lloyd invites me to draw adverse inferences from the fact that the defendants have not compelled either Ms Rochester or Mr Sussex to attend. Mr Connell resists this.

142. Brooke LJ in **Wisniewski v Central Manchester Health Authority** [1998] PIQR p340 held that the court may draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action provided there is a case to answer. The inference goes to strengthen the evidence adduced on that issue by the other party or weaken the evidence of the party who might have called the witness.

143. Mr Connell refers to dicta in **Property Alliance Group v Royal Bank of Scotland** [2018] EWCA Civ 355 quoted at paragraph 272 in **Marme Inversiones 2007 SL v NatWest Markets PLC** [2019] EWHC 366 (Comm): "No litigant is obliged to call a witness to satisfy the curiosity

or enthusiasm of his opponent. It is open to the opponent to subpoena any witness it thought would be helpful to the court. The fact that a party who might be expected to produce a witness does not do so may sometimes speak volumes, but it is a matter for the judge to decide in any particular case."

144. Here, Ms Rochester and Mr Sussex had crucial evidence. Paragraph 12(a) of the defence admits "... communications between Melanie Rochester and Opus Art, the true content of which will be relied on by Rochay Productions in due course" but nothing has been produced. I am satisfied that Ms Barbezat's evidence does raise a case to answer as to the representations made by Ms Rochester, and I am entitled to infer from Ms Rochester's absence that her evidence would support the claimant's case.

145. I have taken into account that Ms Barbezat cannot remember all the conversation or precise words used in that meeting with Ms Rochester. Alcohol was consumed during lunch and in the afternoon. The meeting was, as she says, "half business, half social; we discussed many things -- Rochay, Opus Art, the LLX".

146. Mr Connell drew the court's attention to comments by Leggatt J in **Gestmin SGPS SAv Credit Suisse (UK) Ltd** [2013] EWHC 3560 (Comm) on the unreliability of memory and the interference with memory caused by the process of litigation, especially the preparation of witness statements, and drew particular attention to the fact that Ms Barbezat was asked to confirm the alleged representations in the subparagraphs of paragraph 15 in the particulars of claim as an example of that process of interference.

147. In paragraph 22 of Gestmin, Mr Justice Leggatt gives his view: "The best approach for a judge to adopt at the trial of a commercial case is to place little reliance at all on witnesses' recollections of what was said in meetings and conversations and to base factual findings on inferences from the documentary evidence and known probable facts. This does not mean that oral testimony serves no useful purpose, but its value lies largely, as I see it, in the opportunity

which cross-examination affords to submit the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of the witness."

148. Of course, in this case, the court has not had the opportunity to gauge those matters in relation to Ms Rochester or Mr Sussex. I have evaluated the evidence by reference to all the circumstances, including, as per Mr Justice Goff in **Armagas Ltd v Mundogas SA (The Ocean Frost**) [1985] 1 LL Rep 1, the objective facts and documents, or as here, the lack on them, witnesses' motives and the overall probabilities.

149. The defence pleads that Melanie Rochester thought she was dealing with Ms Barbezat on behalf of Macey & Sons. Ms Barbezat was still working for that company and using her Macey email at the time of the meeting on 22.4.16. That does not amount in my judgment to "holding herself out" as acting on behalf of Macey. The representations were made to her personally. She was the director of Opus Art, which was already incorporated, and the contract was subsequently made with Opus Art. I cannot see what effect any misunderstanding in Ms Rochester's mind has on the central issue, which is what representations were made.

150. I consider that Ms Barbezat gave compelling reasons for remembering the ticket price -- it was very high; extraordinary people would be there, she thought -- and for remembering reference to a similar event in 2015 which she understood Rochay to have organised.

151. As Mr Baker agreed, it is important for an exhibitor to know the dates, venue and target audience of an event and the expertise of the organiser and I accept her evidence as to those two matters. In her witness statement she remembers a discussion that the event would be at three different locations.

152. I do not accept the defendants' submission that these were just pre-contractual exploratory sales discussions. Ms Rochester seems to have reported back sufficiently for the second defendant to ask whether to "create the contract or do we need to finalise it with her?" Things moved swiftly thereafter with an email from Mr Sussex with the contractual documentation on

28 April. There was then a telephone call with him and Ms Barbezat on 10 May, with the contract being signed on 12 May 2016.

153. I also accept Ms Barbezat's evidence as to what was discussed in that telephone conversation with Mr Sussex. She was concerned as to whether she could get her money back if she was not in a position to exhibit in 2017. She says he assured her she would not be penalised. This is in fact not what the first defendant's terms and conditions say, as I will come to.

154. She says there was no discussion about clause 16 in the terms and conditions, which again I will come to later, which effectively gives the first defendant the ability to cancel or postpone an event for reasons reasonably beyond their control.

155. For the reasons given above in relation to Ms Rochester, I draw inferences from Mr Sussex's non-attendance. No documentary evidence has been disclosed as to how he came to be asked to send the contract to Ms Barbezat.

156. Paragraphs 9.2, 9.3 and 9.4 are admitted. 9.2, in summary, is the conversation with Mr Sussex on 10 May 2016, when he represented that the LLX would take place on 8 to 10 June 2017. That is admitted.

157. It is admitted, 9.3, that he emailed her with a list of exhibitor and sponsor options, setting out the services she would receive. As to 9.4, it is admitted that in the conversations between Ms Barbezat and Ms Rochester and Mr Sussex that Rochay Productions impliedly represented that the Rochay Group had a contractual or other arrangement with the owners of the London Jet Centre whereby Rochay Productions would be entitled to use the Jet Centre for the LLX on 8 to 10 June 2017.

158. I turn to the second limb, as to whether these representations were false. The defendants admit that they had not run any previous LLX in 2015 or at any other time. They admit that the ticket price was not correct.

159. As to the venue, this is an implied representation, but it is very clear as to what is being said, namely that the first defendant has a firm venue for the event on the given dates. The contract specified three venues: ExCel, Royal Docks and the Private Jet Centre. The terms and conditions refer only to ExCel. As I have already said, I find that there was no contractual or other arrangement entitling the first defendant to use any of those venues on the dates given.

160. In terms of the Jet Centre, draft heads of agreement dated 29 January 2016 for an event in 2016 have been disclosed by the defendants at 2A/323, but no heads of agreement or licence were entered into, and there are no other negotiations disclosed before the claimant entered into the contract.

161. After she did so on 16 May 2016, Mr Baker emailed the Jet Centre asking to book the dates in 2017, but events post-contract do not make false pre-contract statements true.

162. In my judgment, the documents which Mr Baker disclosed on the second day of the trial are illuminating. There is an email trail -- it appears only part of it has been disclosed -- which starts with Mr Ian Senior, accounts manager for exhibitions at ExCel, emailing Mr Baker on 22 September 2015 after an initial meeting with Mr Baker, Mr Rochay and Ms Harper. At the time, a six-day event in July 2016 was being discussed, using space of 4,000 square metres at a cost of £88,800. Mr Senior says: "Hopefully we should be able to move quickly to issue a licence if you are happy with the above commercial proposal. This way we can be comfortable that any clients contacting us to confirm the event's legitimacy will be above board. I am happy for you to share my contact details in the meantime or assist in providing information to your potential exhibitors."

163. In my judgment, this gives the answer to Mr Connell's rhetorical question: if this is all a fraud, why go to the bother of contacting venues? The answer is that the first defendant did enough to reassure customers who checked with the venue that the event was legitimate. In other words, to give a veneer of truth.

164. There was then no further communication with ExCel until 27 November 2015, when Mr Senior emailed Mr Baker with a revised offer for a slightly smaller space at a slightly reduced cost. In it, he says that he needs a commitment from the first defendant soon because of the pressure on space. There is a further chasing email on 11 January 2016 from Mr Senior. On 20 January 2016, Mr Baker asked ExCel to provide dates in 2017 in case they could not get enough brands interested by the end of February for a 2016 event.

165. On 22 February 2016, Mr Baker emailed again, saying: "We've pencilled in 8, 9 and 10 June 2017."

166. On 26 February, Mr Senior replied with the new dates and the same costings. Again, he said: "Look forward to speaking with you soon to progress the events to contract to secure the dates."

167. On 28 April 2016, ExCel sent a draft licence to Mr Baker for the five-day event in 2017. Mr Senior asked for a response plus the deposit of the full £88,800 in five days because of the pressure for those dates and the space. ExCel's terms and conditions make it clear that the offer is non-binding until a payment is made. There was no response or payment by the defendants, and the next communication was not until October 2016.

168. An event profile was prepared by Mr Baker for ExCel for the 2016 event and apparently updated for 2017. This suggests 250 to 500 exhibitors, 50,000 visitors, and 4,500 to 9,000 square metres of space for the exhibition. His proposed top-ten exhibitors included Rolls-Royce, Holland & Holland, Bentley, Graff Diamonds and other well known brands. There is no evidence that any of them agreed to take part in the event.

169. In my judgment, this evidence shows that the statements were pure fantasy, and I find that when it entered into the contract with the claimant for the LLX, or at any time thereafter, the first defendant did not have the logistical or the financial capacity to organise and run an event as large and complex as the LLX.

170. As a result of all those matters, namely the lack of venue, lack of capacity, etc, the claimant would not receive any benefits under the contract, and I find that the pleaded representations were false.

171. I turn now to the state of mind of Melanie Rochester and Richard Sussex. I have been referred to a long discussion in the judgment of Mr Justice Picken in **Marme v NatWest Markets** as to the ingredients necessary for a finding of fraud, in paragraphs 251 to 277, and in particular whether the requisite knowledge that the representation is false and the requisite intention that the representor should rely on the representation should be found in one person in the case of a company.

172. Mr Lloyd says that Ms Rochester and Mr Sussex must have known they were making false statements. I do not think the evidence establishes this, or even that they were reckless as to whether they were true or not. They would not necessarily be privy to information about the negotiations with the venues or have any knowledge about the (lack of) trading history of the first defendant and other Rochay companies. We do not know when they started to work for the first defendant. The only possible evidence to the contrary is that Mr Sussex gave Ms Barbezat the wrong information about the ability to cancel her contract for the LLX without penalty; in fact, clause 5 of the first defendant's terms and conditions says that she will only get her money back if the space is resold, and in addition she must pay the first defendant's costs of doing so.

173. At some point, Mr Baker tried to suggest that Melanie Rochester's representations were unauthorised, but she was employed as a brand ambassador to sell spaces at the LLX. In my judgment, it is unlikely she would have made up details which must have come from somewhere or someone, and in that respect, I note that the documents themselves give the false information about the venues and the dates, and indeed the terms and conditions refer to the LLX being an event which the first defendant hosts "usually annually".

174. I am satisfied that the first defendant, through Mr Baker, knew the information was false and I am further satisfied on the balance of probabilities that Ms Rochester and Mr Sussex received this false information from Mr Baker on behalf of Rochay Productions to use in their work marketing the LLX to potential customers and in contract discussions. This case falls, in my judgment, within proposition (a) in Bowstead and Reynolds on Agency, paragraph 8-815, citing **Armstrong v Strain**, namely a false representation which Mr Baker authorised his employees or agents to make which he knew to be untrue whether or not they knew the truth.

175. If I am wrong in that and Ms Rochester and Mr Sussex did make false representations without authority, then the case falls within proposition (c) of the same case, as referred to in Cartwright on Misrepresentation, paragraph 5.21. Even if the first defendant did not know that the representations were false, it would be vicariously liable for misrepresentations by its employees in the course of their employment.

176. The first defendant clearly intended the claimant to rely on the representations to induce her to enter into the contract. Mr Baker accepted, as I have said, that the representations went to matters of importance for someone looking to enter into such a contract.

177. **Goose v Wilson Sandford & Co (No 2)** [2001] Lloyd's Rep PN 189 is authority that if a fraudulent misrepresentation has been made, there will be a rebuttable presumption that the defendant intended to claimant to act in reliance upon it. I find that the claimant did rely on the representations. I accept Ms Barbezat's evidence at paragraph 19 of her witness statement that this was a good opportunity for her new company: "I hoped I would be able to build up Opus Art's reputation and standing, so that by June 2017, I would be in a good position to exhibit successfully."

178. In paragraph 21 she refers to Rochay, or the defendants, being "people who knew a lot of rich people", "would open doors for me" and "give me exposure to a market of high net worth individuals".

179. The fact, in my judgment, that the LLX event was to be part of building her brand does not prevent her relying on the misrepresentations. The case of **Hayward** is authority for the proposition that fraudulent misrepresentations need only play a minor part in a decision to enter into the contract. I reject the suggestion that the sale of artworks played any part in the claimant's decision.

180. For all those reasons, I find that fraudulent misrepresentation by the first defendant is proved. The claimant is entitled to recission and/or damages for deceit in the sum of the contract price. The exact amount depends on whether she has been able to reclaim the VAT on the contract. The whole agreement clause in the defendant's terms and contracts does not apply to fraudulent misrepresentation.

181. **Breach of contract**

182. If I am wrong about the fraudulent misrepresentation, the claim falls to be considered in breach of contract and as a total failure of consideration. The claimant now accepts that the LLX terms and conditions were incorporated into the contract. The claimant contracted for a space at an event in June 2017 which did not happen. The defendants rely on clause 16, which says: "Postponement, Abandonment, Strikes, Force majeure.

"The organiser shall not be liable to exhibitors or be deemed to be in breach of this agreement by reason of times of opening to visitors and build-up and breakdown being changed or varied, or all or part of the event being cancelled, postponed or abandoned, or being held wholly or partly in premises other than as published and/or any third party intervening and preventing or restricting access to the event or any part of it, non-attendance or reduced attendance by visitors at the event, or the failure or curtailment of any supplies, services or facilities afforded to the exhibitors for the purpose of the event, or otherwise being unable to perform any obligations under the agreement, where such event is due to fire, explosion, riot, theft, strike, lock-out, epidemic, act of God, or other circumstances beyond the organiser's reasonable control."

183. Tt is the last seven words on which the defendants rely.

184. To that, the claimant has three arguments. Firstly, that this is an onerous and unusual clause which was not properly brought to the claimant's attention and so is not incorporated in the contract. I agree it is onerous and unusual. It allows the first defendant to cancel, alter or postpone the event indefinitely, with no recompense to the exhibitor. The first defendant has in my judgment not established on the balance of probabilities that Richard Sussex drew this to Ms Barbezat's attention. In fact, as I have said, he gave her false assurances as to her ability to cancel. I find that it is therefore not incorporated.

185. But if I am wrong on that, the second argument is that the clause falls foul of Section 3 of the Unfair Contract Terms Act 1977. These are the first defendant's standard written terms, which allow the first defendant to offer no performance at all or substantially different performance. They are enforceable only so far as they are fair and reasonable under Section 11, taking into account the circumstances known at the time of the contract.

186. This clause excludes all liability in circumstances when the contract was made over one year in advance of the event, and ostensibly allows the first defendant, as here, to postpone for another year. I find it to be unreasonable and not enforceable.

187. But if I am wrong on that, the third argument is that the clause does not assist the first defendant because the cancellation/ postponement was not beyond its reasonable control, and I find that that is the case. If it is true that the Private Jet Centre did cancel/postpone as alleged, this is the result of the first defendant having failed to enter into a binding agreement to hire that venue for the dates given, thereby preventing such an ad hoc cancellation.

188. I am therefore satisfied that clause 16 does not assist the defendant in defending the claim for breach of contract.

189. The first defendant further suggests that it is entitled to cancel the event because of a breach by the claimant of clause 3.1 of the contract, which reads: "All exhibitors, sponsors and media

partners who enter into contractual arrangement with the organiser agree that any discount, special offers, good will gestures, agreed pricing not included in the event rate card or special conditions as set out in the agreement shall remain strictly confidential between the parties of the agreement."

190. It is said that Ms Barbezat breached this confidentiality clause by disclosing the price of the stand -- £30,000 -- to a friend. That friend apparently posted a Facebook message to a third party, warning that third party that Mr Baker, or possibly Mr Rochester, is a 'crook', and that someone he knows -- Ms Barbezat is not named -- has lost £30,000. Ms Barbezat agrees she told this friend about her dispute with the defendants, as she was entitled to do in my view, but she is not responsible for what he subsequently posted or the words used.

191. Mr Baker suggested that the recipient of the message had been put off considering taking space at the LLX, but there is no evidence of this. This is all hearsay and I do not accept it as true. In any event, in my judgment this does not come within the wording of 3.1, as there is no evidence that the £30,000 was confidential information as to discounts or the other matters mentioned in the clause.

192. In any event, to allow the defendant to cancel, the defendant would need to show, under clause 4.2.8, "that it may be proven that any loss of business or detrimental damage by way of reputation to the organiser or associated companies, whether directly or indirectly, caused by the exhibitor breaching the confidentiality agreement". There is no evidence at all of any loss of business or damage to reputation or business.

193. Lastly, the defendant claims to be entitled to terminate under 4.2.4, which reads: "If any of the exhibitor's principals or officers do anything which, in our reasonable opinion, directly or indirectly, adversely affects our interest or the wider interest of the Rochay group of companies and/or the public or visitors."

194. Again, in my judgment this does not apply, since the Facebook message was not something done by Ms Barbezat, and there is no evidence of adverse effect on the first defendant's interests.

195. I am therefore satisfied that there has been a breach of contract and total failure of consideration, and the claimant is entitled under this head to damages of £25,000 plus VAT, unless reclaimed, against the first defendant.

196. THE HOLLAND & HOLLAND SOIREE

197. Fraudulent misrepresentation

198. Paragraphs 15.1 to 15.4 of the particulars of claim set out the alleged representations made by Mr Baker to Ms Barbezat at various meetings between May and August 2016. Somewhat bizarrely, the defence denies that the representations were made, but that those in 15.1, 15.2 and 15.4 are true.

199. 15.1 is that the Rochay Group had a deep membership of and access to high net worth individuals supported by the Rochay Group's website, which stated its membership included 50% of the Global Rich List and 84% of the UK Rich List.

200. 15.2. Sponsorship by Opus Art of Rochay Group events would give Opus Art access to Rochay Group members, including high net worth individuals.

201. 15.4. Rochay Group could help Opus Art establish its business profile and presence in London and the Rochay Group could assist in every step of the process. It then goes on to give an example.

202. 15.3 is denied save that it is true that other companies had benefited from exposure to Rochay Group's high net worth members.

203. In fact, Mr Baker in evidence said that he could not remember the meetings at all. I am satisfied that he did make those representations. At at least some of those meetings, he and Ms Barbezat were discussing the first defendant designing the claimant's website, leading to the website contract in May 2016 and then the launch party contract in August 2016. Contrary to

his evidence, I find that Mr Baker was keen to promote the first defendant's services to the claimant and get Ms Barbezat to commit to contracts.

204. Further, the representations are made expressly in the presentations for the Holland & Holland and Private Jet Centre soirees sent in October 2016, and indeed those pleaded express representations, as set out in paragraphs 25.1 to 25.6 of the particulars of claim, and the pleaded implied representations at paragraphs 26.1 and 26.2, are admitted.

205. The only dispute is the implied representation at 26.3, that the Rochay Group had already sent out invitations and made other arrangements for these events.

206. I note that the sample invitation sent by Ellora Harper, which I have already read out, for the Holland & Holland soiree is dated 17 October 2016, which is before the contract was entered into, and Jo Smith of the accounts department, when emailing the invoice to Ms Barbezat for that soiree on 20 October 2016, 2A/440, asks her "to pay immediately to allocate the space to you and begin marketing your presence to our members and special guests", both of which in my judgment undermine that denial. I find that there was an implied representation that the invitations had already been sent and other arrangements made.

207. Paragraph 24 pleads express representations about these two soirees in meetings between Mr Baker and Ms Barbezat in September and October 2016.

208. 24.1 is admitted, that is as to the two further events planned at the relevant venues.

209. 24.2 is denied, that is that Opus Art should sponsor these events in order to maintain the momentum and brand awareness generated by the Opus Art launch soiree then planned for November 2016.

210. Despite that denial, Mr Baker's email of 19 October 2016 sending the presentations for the two soirees says precisely this about momentum, at 2A/409 and I find that that representation was made.

211. 24.3 is admitted, namely that events run and hosted by the Rochay Group are and would be attended by Rochay Group's membership, including many high net worth individuals.

212. It is admitted that “invitees for the events organised by the first defendant are exclusively to be made up of high net worth individuals and VIP guests” but there is a caveat in the defence, namely that at no time has the first defendant guaranteed that such individuals would in fact attend at their soirees. It is not suggested by the claimant that there was any guarantee of attendance, but it is clearly implied, in my judgment, that with such an extensive membership of high net worth individuals, there was a good chance of such people attending and that they do attend.

213. 24.4 is denied. This is that the events would take place in the run-up to Christmas, which would be an optimal time for Opus Art to be gaining exposure to Rochay Group's high net worth members. However, again, Mr Baker's own email of 19 October 2016 gives the dates of 17 November and 1 December, and I find that representation proved.

214. 24.5 is that the highlight of the Private Jet soiree would be that it would feature private jets. I do not see a reference to this representation in Ms Barbezat's witness statement, and in any event it is clear from her answer to my question that she put no store on the presence of private jets at the soiree or otherwise, and this representation is not proved.

215. I find that all the representations which are admitted or proved were false for the following reasons:

216. (a) For the reasons given above, I find that the Rochay Group did not have a deep membership of and access to high net worth individuals. The use of the word "deep" in the pleadings has been criticised by the defendants, but in my judgment that word or similar, such as "extensive" or "wide", is an accurate characterisation of the representations made, as set out above. As a result of that lack of membership and access, sponsorship of this, or indeed any,

Rochay Productions event would not give the claimant access to high net worth individuals, and the Rochay Group could not help the claimant establish its business and profile in London.

217. (b) The first defendant had no contractual or other arrangement entitling the use of the Private Jet Centre as discussed above, so that that soiree could be and was repeatedly cancelled. The representation that the event would take place on 1 December 2016 was false because the first defendant could not guarantee the venue. There was also no similar contractual arrangement with Holland & Holland, although it seems they were willing to host the event at that point.

218. (c) In my judgment, it is apparent that no invitations were sent or arrangements made at any point before the Holland & Holland event on 17 November was postponed. I note that Holland & Holland were chasing Mr Baker to send out invitations from 6 October 2016 onwards (2A/428). There is nothing in the following exchanges showing that the first defendant had sent any out. On 20 October, Holland & Holland emailed with suggestions for arranging champagne and canapes. Again, there is no evidence that anything was done.

219. It seems to me that there was a familiar pattern of Mr Baker, using a colloquialism, stringing venues along until postponing at the last minute. The representation that the event would take place on 17 November 2016 was therefore false because the first defendant had done nothing to prepare for it, and in my judgment neither defendant had any present or genuine intention of putting on the event.

220. I am satisfied that Mr Baker simply latched on to Ms Barbezat's email of 2 November 2016 (2A/455) as an excuse to postpone the event, which he did the next day without asking her. In that email she notes she has had no reply to a previous email of 6 November asking what was happening about the Holland & Holland event, and says, quite justifiably, she would prefer the event not to go ahead than for it to go ahead in an unorganised way.

221. (d) In the light of the above, the representation that the two events would keep up the momentum generated by the launch was false.

222. Mr Connell argues that as the Private Jet Centre soiree did happen and that both contracts for the two events were sold in the same way, this indicates that there was no fraud. He points out that the claimant has not brought a claim in relation to the Private Jet Centre soiree. The claimant says this was a pragmatic decision to avoid elongating the trial with arguments about the measure of damages.

223. In my judgment, the Holland & Holland contracts were separate contracts. The fact that the defendants managed to put on two events does not make the representations they made about others true or show that Mr Baker had an honest belief in the representations when he made them. I am satisfied that he knew that all the representations were false. I am further satisfied that the defendants intended the claimant to rely on the representations, and she did so rely.

224. Mr Connell tried to argue that Ms Barbezat just wanted access to high net worth individuals rather than relying on the representation about the membership. It seems to me that that is a distinction without a difference. As I have said above, the representation about the extensive membership suggested special access to such people and led her to believe that high net worth individuals would attend the events.

225. I find fraudulent misrepresentation by both the first and second defendants proved. The claimant is entitled to recission and/or damages for deceit against the first defendant and damages for deceit against the second defendant in the sum of the contract price, and the whole agreement clause again does not apply to such fraudulent misrepresentation.

226. **Breach of contract**

227. The express and implied terms pleaded for the Holland & Holland contract in 30.1 to 30.3 of the particulars of claim are admitted subject to the caveat about the attendance of invited guests.

I will deal with this head of claim under the Holland & Holland upgrade contract, to which I now come.

228. **HOLLAND AND HOLLAND UPGRADE CONTRACT**

229. **Fraudulent misrepresentation**

230. At a meeting on 23 November 2016 and in an email of the same date, Mr Baker made representations to Ms Barbezat about the benefits of upgrading her sponsorship of both the Holland & Holland and Private Jet Centre soirees. The representations pleaded at 34.1 to 34.3 of the particulars of claim are admitted. The pleaded express and implied terms of the contract are admitted, but with the same caveats as to attendance.

231. No contracts were issued for the upgrades, just invoices. The Holland & Holland invoice states "March 17 TBC". It is not disputed that the event was subsequently fixed for 17 March 2017.

232. Mr Baker says that on 9 December 2016, Holland & Holland indicated they could not hold events in 2017. In fact, the Holland & Holland's email at 2A/490 says that they will only be holding a limited number of what they call "Holland & Holland client drinks parties" in 2017, and "we can't host drinks for Rochay next year".

233. Mr Baker says that he told Ms Barbezat about this on 13 December 2016, but she says that she was not told about this until 12 March 2017 and I accept her evidence on this point. As before, by 5 March 2017, she was emailing Mr Baker asking what was happening about the event (2A/557), and on 12 March 2017 Mr Baker informed her the event had been postponed.

234. There is no evidence that, by then, the defendants had done anything to secure a venue or make any arrangements for an event on 17 March 2017. Mr Baker just said: "I can't remember what arrangements had been made or if any invitations were sent out."

235. Another date in May 2017 was suggested, but again, nothing done to arrange it.

236. Mr Baker blames the subsequent failure for the event to take place on Ms Barbezat's lack of availability. The defence claims that the first defendant remains willing and able to hold the event. I consider that to be an unsustainable assertion in the light of the defendants' singular failure to put on the event at any point in those six months. Ms Barbezat says, understandably, that by May 2017, six months after her launch, all momentum was gone.

237. I find that the representations about the upgrade were false, given the findings above as to the underlying event contract and I find that Mr Baker knew they were false. I find he intended Ms Barbezat to rely on the representations to induce her to pay further money to sponsor the event. Again, he admitted those matters were important to her, and I find that the claimant did rely on the representations.

238. As before, I find that the claimant is entitled to recission and damages for deceit against the first defendant and damages for deceit against the second defendant for the contract price. As with the other contracts, the amount depends on whether VAT has been recovered.

239. **Breach of contract**

240. The claimant has paid for an event which has never taken place. She has not received any of the benefits of the two Holland & Holland contracts, and in my judgment there has been a total failure of consideration.

241. There is no evidence that any terms and conditions were sent to her in relation to either Holland & Holland contract, and I have already found that there was no course of dealing such that the defendants' standard terms and conditions would be incorporated into these contracts. Therefore, the entire agreement clause does not apply, nor the clause excluding liability.

242. While Ms Barbezat was prepared to see the event rescheduled, rather than go ahead in an unprepared way, this was with reluctance, as each postponement reduced the planned momentum. In my judgment, she gave the defendants three opportunities to put on the event, and on each occasion, it did not happen due to the defendants' default.

243. I do not accept that the upgrade contract operated as an affirmation of the original contract or as a waiver of the breach as contended by the defendants, who suggest that by agreeing to the event being held on a new date in March 2017, the claimant has lost the right to damages. Even if the claimant had affirmed the contract, it retained the right to seek damages later. It was a term of the upgrade that the event would be held in March 2017. It did not take place, and so the claimant can claim damages. In my judgment that must mean damages for both the original contract and the upgrade. I find that the claimant is entitled to damages in the sum of the contract prices for both contracts against the first defendant.

244. **KENSINGTON PALACE CONTRACT**

245. **Fraudulent misrepresentation**

246. On 22 December 2016 Mr Baker visited Ms Barbezat at her home. It is not in dispute that he told her that Rochay Productions had booked Kensington Palace for 1 December 2017 for a soiree, with a capacity of 420 guests (paragraph 42.1 of the particulars of claim). It is also admitted at paragraph 42.2 that Mr Baker said this would be Rochay Elite's and Rochay High Society's most prestigious event, with an elite group of guests from around the world attending, including royalty, well known personalities and ultra-high net worth individuals.

247. The defence denies that Mr Baker suggested that the claimant should sponsor this event, but that is contradicted in my judgment by the follow-up email he sent the next day, saying: "I gave you first refusal on being the executive lead sponsor."

248. In her oral evidence, Ms Barbezat corrected paragraph 42.3, namely the representation that it had only been possible to hire the palace because of Mr Rochay's contacts. This was made by Mr Baker on 9 March 2017 when he and Ms Barbezat had a tour of the rooms. Ms Barbezat did not appreciate at the time that Kensington Palace is available for hire by anyone through Historic Royal Palaces.

249. 42.4 pleads that the second defendant also represented on 22 December 2016 that invitations would go out early in the new year. That is denied.

250. In fact, by 22 December 2016, Rochay Productions was only holding an option on hiring rooms in Kensington Palace on either 1 or 8 December 2017. Clearly, the representation as to the rooms being booked was false, since that implies a contractual arrangement entitling the first defendant to host the event on 1 December 2017.

251. In my judgment, the representation as to the attendance was also false, since it impliedly referenced the Rochay Elite membership and special access to high net worth individuals and other guests, which I have found to be untrue.

252. The claimant's case is that Ms Barbezat relied on the representations to enter into a contract as lead sponsor for Kensington Palace at a cost of £67,500 plus VAT, £81,000 in total, purportedly at a 25% existing client discount. She signed the contract on 24.12.2016.

253. It is the case that on 20 February 2017, Ms Harper, on behalf of the first defendant, and an employee of Historic Royal Palaces signed a hire agreement summary form for a reception and dinner on 1 December 2017 at the palace for 190 guests at a cost of £22,800. Beyond that document, there is no other documentary evidence which one would expect to see in relation to this contract. In particular, no terms and conditions said to be attached to the form have been disclosed, nor other communications between the first defendant and Kensington Palace. As I have said above, there is no evidence of any arrangements being made for the event, save for the sample invitations which I have discussed above.

254. There is no independent evidence that the hire fee was actually paid, and nothing to clarify when it became payable. Mr Connell suggests that the fact that Ms Barbezat and Mr Baker had a tour of the rooms on 9 March 2017 was only possible if the fee had been paid, but that does not seem to me to be necessarily true.

255. As to the invitations, I accept Ms Barbezat's evidence that Mr Baker represented they would be sent out early in the new year, which she assumed to be January or February 2017. This accords with his email to her of 23 December 2016, where he says: "We are keeping it under wraps until the New Year." I find that that representation was made. If the invitations were sent out, they were only done in April 2017.

256. What does seem to me obvious is that if the first defendant had indeed made all the necessary arrangements for the Kensington Palace soiree, there would have been very considerable logistical and financial repercussions of cancelling it at such short notice, namely less that one month before it was due to take place. However, the defendants have produced no documentary evidence at all of the steps they took post-cancellation.

257. I consider that Mr Baker's behaviour at the tour on 9 March 2017 and his email thereafter to be a very good indication as to the genuineness or otherwise of his representations. Despite the claimant having paid a substantial sum to be lead sponsor, he indicated that it had been allocated the worst room in the palace, and then proceeded to try to persuade Ms Barbezat to pay a further £128,000 for a better one. It was at this point that she finally began to lose faith in the defendants. Mr Lloyd calls it "naked profiteering", and I agree.

258. I conclude that when the representations were made, the second defendant had no genuine present belief either that the event would take place as stated, or that it would be attended by the clientele described. The defendants clearly intended that the claimant would rely on the representations, and I find that it did so.

259. I find that both defendants were guilty of fraudulent misrepresentation in respect of this contract, and that the claimant is entitled to recission and damages for deceit against the first defendant, and damages for deceit against the second defendant, again for the contract price, subject to the VAT point.

260. **Breach of contract**

261. If I am wrong on that, the claimant's solicitors sent a letter before action on 15 September 2017 "accepting the defendants' breach as terminating the Kensington Palace contract". Mr Lloyd argues that in the light of the cancellation or postponement of the LLX, the non-happening of the Holland & Holland soiree and the failure by the second defendant to give Ms Barbezat any details of guests invited to Kensington Palace, that she was entitled to conclude that the first defendant did not intend to fulfil its obligations under the Kensington Palace contract.

262. This constituted an anticipatory breach, allowing the claimant to accept the renunciation and sue for damages immediately or wait until the time for performance arrived and then sue. He references Chitty at 24022. In any event, the defendants cancelled the event and I have already found that there was no security reason entitling them to do so.

263. The defendants suggest that the terms and conditions for the event dated 2017 were incorporated into the contract, but there is no evidence they were sent to Ms Barbezat before she signed the contract. She says they were not sent, and I accept that evidence. Therefore clause 16 was not incorporated, nor can the defendants rely on clauses 3.1, 4.2.4 or 4.2.8.

264. I find that the claimant is entitled to damages for anticipatory breach and/or for total failure of consideration in the sum of the contract price against the first defendant.

265. **THE WEBSITE CONTRACT**

266. In May 2016, the claimant agreed to pay the first defendant £5,000 plus VAT to build its website and for one year's maintenance. There was no contract, only an email from Mr Baker to Ms Barbezat of 26 May 2016, 2A/331, and the invoice at 2A/332. Ms Barbezat says that there were further terms agreed, as pleaded in 19.1 to 19.4 of the particulars of claim, namely that the website would be live within a month, there would be monthly updates as to the visits made to the website, Rochay Productions would regularly update the website with news about the

claimant, and would act on any request to update or change the website within 24 hours. These are all denied by the defendants.

267. She says the terms were important to her, as they were part of an alternative deal she had explored with another company. However, she did not write back to Mr Baker reminding him of these additional terms, and there is nothing in the subsequent documentary evidence which suggests that they were part of the contract. I am not satisfied that these terms formed part of the contract.

268. However, the defendants admit that there was an implied term that the first defendant would use reasonable care and skill in designing and maintaining the website.

269. The claimant complains that the website was not ready for the launch, which Mr Baker in his email of 14 July 2016 suggests should be the case (2A/369) and that it needed further modifications even by May 2017. She also complains that Mr Sussex, who was mainly charged with the website work, did not respond in a reasonable time to requests to add things to or make changes to the website, and in my judgment the evidence of the emails between Ms Barbezat and the first defendant bears out those complaints.

270. She became aware some time after the start of the website contract that Mr Sussex had been off ill with throat cancer, which had, he said, an effect on his voice so that he could not speak to her on the phone. Of course, this is not Mr Sussex's fault, but in my judgment, the first defendant should have dedicated other staff to doing the work promptly and in accordance with the claimant's requests. I find that there were breaches in those regards of the duty to take reasonable care and skill.

271. The claimant did get a website for one year, although it could not access it when the relationship broke down because of lack of passwords. I find that the appropriate measure of damages for those breaches was 50% of the contract price, namely £2,500 plus VAT, unless reclaimed, against the first defendant.

272. **THE SOCIAL MEDIA CONTRACT**

273. On 25 November 2016, the claimant agreed to instruct the first defendant to set up various social media accounts and manage them. Paragraph 39 of the particulars of claim in this respect is admitted, together with the terms in 34.3. The claimant alleges various breaches of that contract.

274. In my judgment, the social media accounts were set up, and so there is no claim for the setup fee of £3,500. Ms Barbezat alleges a breach of contract in that 10,000 Twitter followers were either not genuine or not genuinely interested in the claimant's work. This is at paragraph 66.3, which sets out other failings under paragraph 66.

275. It is apparent from her evidence that Ms Barbezat is not very knowledgeable about social media and does not use it much. There is no expert evidence. I am not persuaded that the alleged breaches are proved. It is not for the court to save her from a bad bargain. She has not paid for the remaining term of the one year maintenance contract, but there is no counterclaim for this. The claim under this head fails.

276. I think the last thing on which I have to make a determination is the rate of interest on the sums I have found to be due, which is claimed at 8%. Given the very low interest rates which have been prevailing, I conclude the appropriate rate is 3%.