



Neutral Citation Number: [2026] EWHC 2570 (KB)

Case No: KB-2023-002527

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 October 2026

Before :

Master Šabić KC

Between :

OLIVER DÖSER

Claimant

- and -

MIGUEL ÁNGEL CAPRILES LÓPEZ

Defendant

Mr Peter Webster (instructed by **Wilmot & Co Solicitors LLP**) for the Claimant
Mr Daniel Fletcher (instructed by **Mishcon de Reya LLP**) for the Defendant

Hearing dates: 16 – 18 June 2026

Approved Judgment

This judgment was handed down remotely at 10:30 on 9 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Master Šabić KC:**Introduction**

1. This judgment follows a three day trial on 16 – 18 June 2026. It concerns competing claims to own a vintage car, namely a 1973 Porsche 911 2.7 RS Touring (the ‘Porsche’). The parties agree that the Porsche is worth approximately €750,000 at the date of trial. The Claimant, Mr Döser, seeks declaratory relief against Mr Capriles, the Defendant, that Mr Döser is and remains the owner of the Porsche. Mr Döser also seeks delivery of the Porsche or alternatively, damages.
2. The issues which arise for determination in this claim are as follows:
 - a. Did Mr Döser hold title to the Porsche prior to the transaction which gave rise to this claim?
 - b. Has Mr Capriles acquired title by operation of actual (express or implied) or apparent authority of an agent?
 - c. Has Mr Capriles acquired title by operation of ratification?
 - d. In the alternative, does Mr Capriles succeed in defending the claim by operation of section 2 of the Factors Act 1889?
3. I record at the outset my sincere gratitude to Mr Webster and Mr Fletcher for their exemplary conduct of the trial and their helpful submissions to the Court, both in writing and orally. Similarly, I record my thanks to both legal teams for their conduct, preparation and presentation of their respective cases.

Factual Background

4. It is necessary to set out in some detail the lengthy, and at times murky, chronology of events which give rise to this claim.
5. Mr Döser is a German national and a businessman with interests in a variety of companies. At the relevant time, Mr Höllbauer was an employee in Mr Döser’s company, OVB MEDIA, as well as a friend. Sometime in mid 2019 the two men discussed the possibility of buying some *oldtimer* (i.e. classic) cars. In October 2019, Mr Döser purchased the Porsche which was delivered to him in Germany.

6. That is also the time when a significant protagonist, Mr Richard Edwards, first appears. Mr Edwards is not a party to this claim, nor has he appeared as a witness, but his dealings have been the subject of close scrutiny and hotly contested arguments between the parties. It has been challenging to reach a clear assessment of the facts in his absence. The trial involved a close examination of thousands of WhatsApp messages and other communications to understand the relevant sequence of events and to construct a coherent narrative.
7. Mr Edwards was involved in Mr Döser's acquisition of the Porsche. Mr Edwards was also a critical character in how the Porsche came to be in possession of Mr Capriles, a Venezuelan businessman and collector of vintage cars. Mr Rosales is Mr Capriles' son-in law who negotiated the purported purchase of the Porsche with Mr Edwards on Mr Capriles' behalf.
8. In April 2022, the Porsche was transported to England with Mr Döser's express authority. As far as Mr Döser was concerned, the transfer was in connection with a potential sale to a purported client of Mr Edwards (introduced by Mr Edwards as 'Max Kay'). At this time, the sale was presented as part of a three car deal, namely the Porsche, a 1955 Lancia Spider America ('the Lancia') and an Aston Martin, apparently owned by Mr Edwards. The Lancia was acquired by Mr Döser in the summer of 2021, also as a result of Mr Edwards' introduction. It was transported from South Africa to England where storage was arranged by Mr Edwards. It is also relevant to note a separate but related transaction involving another car, a Ferrari Dino (the 'Dino'). Mr Döser agreed to purchase the Dino from Mr Edwards, for a price of €435,000, with Mr Edwards having the option to repurchase it by 6 February 2022 for €478,000.
9. Mr Döser's evidence was that the transport of the Porsche to the UK was pursuant to the potential 3 car sale and as part of an overall £2.2 million transaction with the price for the Lancia as £575,000 and the Price of the Porsche as £850,000.
10. At the same time, it is now clear that Mr Edwards was also in communication with Mr Rosales (on behalf of Mr Capriles) for the sale of the Porsche. Eventually, the Porsche

was invoiced to Mr Capriles for £516,750 on 23 May 2022. On 26 May 2022, Mr Capriles' bank confirmed that it executed a transfer from Mr Capriles to 'Max Kay Ltd' of £516,750. The Porsche was transferred from storage and arrived in Lisbon on 30 May 2022. This is the relevant transaction which gives rise to this claim.

11. Mr Döser and Mr Höllbauer remained entirely in the dark about this purported sale and transfer to Mr Capriles. They were growing increasingly suspicious about the delays with the Max Kay deal. By August 2022, with the three car deal still not complete, Mr Döser attempted to retrieve the Porsche, the Lancia and the Dino from storage. Mr Höllbauer asked Mr Edwards for the address where they were stored. By that time, of course, the Porsche had already been transported to Mr Capriles. Mr Edwards eventually admitted that the Porsche had been released. On 30 September 2022, Mr Döser reported the Porsche, the Ferrari Dino and the Lancia as stolen. The Met Police located the Lancia which was recovered by Mr Döser as part of a confidential deal with Lawbrook Classics (a car dealer based in Cranleigh). In relation to the Dino, Mr Döser reached an agreement with Mr Regis who also claimed title to it. In relation to the Porsche, Mr Döser learned that it was insured by Mr Capriles at an address in London on a date well before it was reported stolen.
12. It is unclear who Max Kay is and how they are connected to Mr Edwards. There is publicly available information that a person by that name is a declared bankrupt and a convicted arsonist.
13. Mr Edwards is an undischarged bankrupt whose fraudulent dealing in classic cars have been the subject of previous judgments. In *Carl v Hawkins* [2024] EWHC 2186 (Ch), Mr Simon Gleeson (sitting as a Deputy High Court Judge) described Mr Edwards in the following way [2]:

“[T]his action was conducted on the common basis amongst all those who did appear that Mr Edwards was, as Mr Justice Cooke described him in Gray v Smith [2013] EWHC 4136 (Comm), a ‘rogue’, and observed that ‘Mr Gray has been duped and swindled by Mr Edwards and has lost a substantial amount of money’ (at [155]). Mr Edwards’ modus operandi appears to have been to offer to purchase cars for clients, to take money from them for that purpose, and to divert the money received into transactions entered into in his own name, (I

think) in the hope that the profits received from those transactions would enable him to make good the defalcations.”

Competing Arguments and Assessment of Evidence at Trial

14. Mr Döser’s case was that he held title to the Porsche prior to the events which led to this claim. He further asserted that Mr Edwards had no authority, express or implied, to sell for the eventual price agreed by Mr Edwards and Mr Rosales and that Mr Edwards was not authorised to release the Porsche to any third party without Mr Döser being paid.
15. Mr Capriles’ case was that he acquired title to the Porsche in May 2022 by agreeing a sale with Mr Edwards. Mr Fletcher submitted that Mr Döser’s real priority was simply to be paid for the cars (including the Porsche) which Mr Edwards was authorised to sell and that the limits to Mr Edwards’ authority were afterthoughts which did not exist at the time. In the alternative, Mr Capriles argued his case on the basis of apparent authority and ratification. In further alternative, Mr Capriles invoked Section 2 of the Factors Act 1889 as a complete defence to the claim.
16. At trial, I heard evidence from Mr Döser, Mr Höllbauer, Mr Capriles and Mr Rosales, all of whom were subjected to robust cross examination. I set out here my summary assessment of their evidence with further reasons provided in the relevant section of my judgment, as necessary, below.
17. I found Mr Döser to be an anxious but ultimately truthful witness on the key factual issues in dispute. He was, at times, overly reluctant to agree with propositions which he considered unfavourable to his case (most notably his knowledge of the commission paid to Mr Höllbauer). Nonetheless, I accept that his evidence was truthful on the material parts of this claim, as set out below.
18. Mr Höllbauer was an entirely honest witness. It was clear that he felt a great deal of responsibility for the introduction he made between Mr Döser and Mr Edwards and he assisted the Court as best he could.

19. I found Mr Capriles to be an evasive witness. Whilst making allowance for the passage of time and its inevitable effect of eroding memory, I was unimpressed by Mr Capriles' explanations of why and how important documents were missing from his possession.
20. I found Mr Rosales to be less than frank in his evidence. His answers were often unclear and, at times, argumentative on key aspects of the claim, including his opinion of Mr Edwards, his understanding of the different entities that were invoicing and in respect of his communication with Mr Carvalhosa. Overall, I approached both Mr Capriles' and Mr Rosales' evidence with a significant degree of caution and I reached the conclusion that specific parts of their evidence were not truthful.

Legal Framework

21. The legal framework was not in dispute between the parties and for that reason it is set out briefly here.

Authority of an Agent

22. An agent will have actual authority (whether express or implied) where it results from a manifestation of assent that the agent should represent or act for the principal, such manifestation being expressly or impliedly made by the principal to the agent: Bowstead & Reynolds on Agency (23rd Ed) [3-001].
23. The conferral of authority is judged objectively from relevant acts, communications and their context, and is not determined by whether the principal subjectively believed that they had authorised the agent.
24. Authority to act as an agent includes only authority to act honestly in pursuit of the interests of the principal: Bowstead & Reynolds [3-011] and *Philipp v Barclays Bank UK Plc* [2024] AC 346 per Lord Leggatt: “ [it] goes without saying that authority conferred on an agent does not encompass acting dishonestly to further the agent's own interests in opposition to the interests of the principal”.

25. An agent will have apparent authority (sometimes known as ostensible authority) where it results from such a manifestation made by the principal to third parties: Bowstead & Reynolds at [3-001] .
26. In order that a person may be held to have ratified an act done without his authority, it is necessary that, at the time of the ratification, he should have full knowledge of all the material circumstances in which the act was done (Bowstead & Reynolds art. 16).

Factors Act 1889

27. The Factors Act, section 2(1) provides:

“Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.”

28. The Defendant bears the burden of showing that the disposition is made “*when acting in the ordinary course of business of a mercantile agent*”: Benjamin Sale of Goods [7-043] – [7-044], construed in *Oppenheimer v Attenborough & Sons* [1908] 1 KB 221, as:

- a. The person “*must act in the transaction as a mercantile agent would act if he were carrying out a transaction which he was authorized by his master to carry out*” [227].
- b. acting “*within business hours, at a proper place of business, and in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make*” [230–231].

29. Although not an absolute rule, “[a] sale of a second-hand vehicle without its registration document will normally not be a sale in the ordinary course of business”: Benjamin’s Sale of Goods at [7-044].

30. As to ‘good faith’ and ‘notice’ under section 2 of the FA:

- a. “If two or more persons together deal with the agent, bad faith or notice on the part of any one of them will deprive all of the protection of the Act”: Benjamin [7-045].
- b. Section 61(3) Sale of Goods Act provides that a thing is “done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not”. It is appropriate to interpret ‘good faith’ under the FA consistently (Benjamin [7-046]).
- c. Deliberately refraining from making inquiries may provide evidence that a person is not acting in good faith as required by s 2(1) FA: *Summers v Havard* [2011] EWCA Civ 764 [17]. This is consistent with the reasoning in *Jones v Gordon* (1877) 2 App Cas 616, affirming the decision in *Re Gomersall* (1875) 1 Ch D 137:
 - i. Mere negligence or carelessness will not in and of itself be sufficient to disentitle the third-party purchaser (*Jones v Gordon* (1877) 2 App Cas 616; *Re Gomersall* (1875) 1 Ch D 137).
 - ii. However, negligence or carelessness may provide evidence of bad faith and, in connection with the surrounding circumstances, may support an inference that the third-party purchaser has deliberately refrained from making inquiries.
 - iii. Relevant surrounding circumstances may include matters such as the lack of any explanation for unusual or extraordinary aspects of the transaction and an undervalued price for the goods.
 - iv. Where it is established that the third-party purchaser has wilfully ‘shut their eyes’ and abstained from making inquiries, and there were such facts as would have led any honest person to make inquiries, then the purchaser will be unable to prove that they acted in good faith and without notice.

- d. ‘Notice’ is not defined in the Factors Act. However, it is well established that, whilst mere suspicion will not constitute notice for the purposes of s 2(1) FA, a court should apply an objective test to the circumstances surrounding the transaction, “*to determine from those circumstances whether the buyer as a reasonable man must have known of the agent’s want of authority or must have suspected that authority and wilfully shut his eyes to the means of knowledge available to him*”: Benjamin [7-047].

Decision and Reasons

I. Mr Döser’s title to the Porsche

31. I am entirely satisfied that Mr Döser established his case that he purchased the Porsche in 2019 for €482,000 and that he used it for many months. Prior to the events which are the subject to this claim, there had not been any competing claim to its title. It follows that Mr Döser succeeds in this part of his case. Mr Fletcher drew my attention to various oddities in Mr Döser’s purchase of the Porsche (with Mr Edwards’ involvement) but I do not consider these affect Mr Döser’s entitlement to title prior to the relevant transaction. Rather, the oddities were supportive of Mr Capriles’ case that there were no ‘red flags’ in his own purchase through Mr Edwards, a point to which I will return.

II. Actual (express or implied) and apparent authority

32. The next issue is whether Mr Döser’s title passed to Mr Capriles by operation of actual authority of Mr Edwards, as Mr Döser’s agent. The burden of proof rests on Mr Capriles.

33. After careful consideration of all the available evidence, I am not persuaded that Mr Edwards had the authority to sell the Porsche for the price agreed with Mr Rosales or transfer it in the manner that he did and certainly not without Mr Döser being paid. The principal reasons for this conclusion are as follows.

34. First, an important feature of the evidence from Mr Capriles and Mr Rosales is the lack of clarity as to who they individually and collectively understood to be the owner of the Porsche. Mr Rosales said that his understanding was that it was Mr Edwards who owned it and that ‘Max Kay’ was a company used by Mr Edwards. Mr Capriles said that he considered that Mr Edwards was acting as an intermediary with authority to sell on behalf of the owner and his understanding was that ‘Max Henry Kay’ was a company associated with Mr Edwards. These are two different accounts on an important part of the transaction. I consider that Mr Capriles’ case is significantly undermined by the absence of clear and consistent evidence from Mr Capriles and Mr Rosales explaining from whom and how they understood that Mr Capriles had acquired the rights in the Porsche.
35. Second, I accept that the price to be paid for the Porsche was subject to Mr Döser’s agreement. An important piece of evidence which supports this conclusion is the spreadsheet that Mr Döser maintained as an internal record keeping tool in respect of planned transactions, which he updated following discussions. Mr Döser was not cross examined on this document and I accept that it represented an accurate illustration of what Mr Döser was prepared to or expected to recover for (inter alia) the sale of the Porsche.
36. Moreover, the evidence of chronology of discussions and agreement for potential sale of the Porsche through Mr Edwards to Max Kay as part of the 3 car deal was for a total price of £2.2 million with the price for the Porsche of £850,000 in March 2022. The price ultimately agreed by Mr Edwards with Mr Rosales was considerably less, namely £516,750. I find no contemporaneous evidence that Mr Edwards was authorised to sell to any third party at this price.
37. Mr Webster highlighted additional evidence on this point in support of Mr Döser, in particular, the exchange of messages between Mr Edwards and Mr Höllbauer of 29 November 2022 where Mr Höllbauer makes it clear that Mr Edwards did not have the authority to sell the Porsche, or the right to release the Porsche without Mr Döser being paid. Mr Edwards replied ‘*I know*’. While this is supportive of Mr Döser’s case, I give limited weight to this evidence, principally because in my judgment, Mr Edwards is not

a character whose words are reliable – he was clearly prepared to say whatever he considered was in his best interest.

38. On the other hand and as argued by Mr Fletcher, Mr Döser's case that Mr Edwards was not allowed to release the Porsche to a third party before Mr Döser had been paid is somewhat undermined by messages between Mr Höllbauer and Mr Edwards contemplating payment in respect of the potential sale to Max Kay being received '*by end of April*' (i.e. after the completion of the potential transaction, including the delivery of cars to Max Kay no later than 22 April). On balance, I do not find this contradiction to be an illuminating aspect of the key factual issues that arise. Rather, the communications between Mr Döser, Mr Höllbauer and Mr Edwards show that the exact terms of engagement between them were spectacularly ill defined. What is, however, clear is that the potential sale to Max Kay proceeded on the basis of a price that was agreed and authorised by Mr Döser. The same cannot be said in respect of the transaction the subject of this claim which was concealed from Mr Döser and at a price that he was highly unlikely to have authorised. In these circumstances, I am not satisfied that Mr Edwards had the authority to sell the Porsche to a third party for the price of £516,750. Nor was he authorised to release the car on receipt of payment of that price.
39. Third, I am satisfied that Mr Döser has established that he was never paid anything for the sale of the Porsche. There is compelling, numerous and contemporaneous evidence of Mr Döser and Mr Höllbauer repeatedly demanding payment from Mr Edwards and I entirely accept their evidence on this point. Further, I find it unlikely in the extreme to suggest that Mr Döser would have embarked on this challenging litigation if he had been paid. As to Mr Döser's failure to produce bank statements to make good this point, I do not regard that as fatal or even suspicious.
40. Fourth and in any event, it is overwhelmingly obvious that Mr Edwards did not act honestly and in pursuit of Mr Döser's interests. Mr Edwards' messages to Mr Döser and Mr Höllbauer as to the reasons for the delay in the Max Kay transaction are a smorgasbord of obfuscation, delay, concealment and deceit – an example of which are photographs of a lavish property said by Mr Edwards to be the home of Max Kay when in reality, they were lifted from a random property listing website. Crucially, Mr

Edwards did not disclose to Mr Döser any of his extensive negotiations or the eventual agreement for sale to Mr Capriles. He did not tell Mr Döser nor Mr Höllbauer about the release of the Porsche to Lisbon. Mr Edwards did not tell Mr Döser what price was agreed or that Mr Capriles had paid. Indeed, from around August 2022, Mr Edwards' messages with Mr Höllbauer reveal his (increasingly desperate) lies about the location of the Porsche when he knew or must have known that it had already been transferred to Lisbon. At their lowest, Mr Edwards' conduct and his actions cannot, in my judgment, sensibly be construed as anything other than contrary to the interests of Mr Döser.

41. Mr Fletcher argued that the categorisation of Mr Edwards as '*the rogue*' was too simplistic and that it was clear that Mr Döser and Mr Höllbauer trusted Mr Edwards prior to the transaction with Mr Capriles. It is right to note that Mr Edwards was not available to present his side of the story. That is unfortunate but it is not surprising given what this litigation has revealed about his actions. My task is to do the best on the evidence that is available and to judge the conferral of authority objectively from the acts, communications and their context. Standing back and taking account of the extensive context, which was only revealed during the evolution of this claim, I cannot accept that it was reasonably and objectively in Mr Döser's interests to: i. conceal the existence and all or any detail of the extensive negotiations for the proposed sale of the Porsche with Mr Rosales, ii. negotiate a final sale price significantly below that which had been agreed with Mr Döser, iii. transfer the Porsche to any third party without informing Mr Döser; iv. continue to encourage Mr Döser and Mr Höllbauer's hopes of completing the sale with Max Kay in the knowledge that the Porsche was already in possession of Mr Capriles. In my judgment this is clear evidence of Mr Edwards acting contrary to Mr Döser's interests and in respect of the relevant transaction.
42. Mr Capriles' further argument was that in the absence of actual authority to sell the Porsche as he did, Mr Edwards had apparent authority to do so. There was a disagreement between Mr Webster and Mr Fletcher as to whether apparent authority was properly pleaded for the Defendant but having heard argument on the point, I am prepared to decide it on the assumption that the Defendant was entitled to so argue. In my judgment, there are a number of fatal flaws with the argument on apparent authority. First, it is well established that apparent authority must result from such a manifestation

made by the principal to third parties. Here, that is Mr Döser and there is simply no evidence that he made any such representation to Mr Capriles, Mr Rosales or any other agent or intermediary. It is therefore a wholly unrealistic case to establish on the evidence. The indicia relied on by Mr Capriles to establish apparent authority (such as Mr Döser's consent to replacing German number plates, to inspection of the Porsche, to preparation of an inspection report) amount to no more than entrusting of the Porsche to Mr Edwards and as such, they cannot confer apparent authority to make a disposition and in particular agree to a sale for whatever price Mr Edwards thought acceptable: Bowstead & Reynolds at [8-126]. For the avoidance of doubt, I also do not consider that Mr Döser regularly acquiesced in transfers or proposed transfers by Mr Edwards: there is clear documentary evidence which shows that Mr Döser was involved in the terms of the proposed sale to Max Kay and in particular, the price to be paid.

III. Ratification

43. In further alternative, Mr Fletcher argued that the sale of the Porsche to Mr Capriles had been ratified. Mr Höllbauer gave evidence in his statement that he '*was forwarded a payment for commission due to me for the three cars*' and it is this revelation which gave rise to the argument on ratification. I accept that Mr Döser must have known about the payment of this commission relatively shortly after it was made. However, I do not regard it as ratification for the underlying transaction for the following reasons:

- a. There were 3 cars in the proposed deal and Mr Höllbauer's clear evidence is that the commission was due to him '*for the three cars*'.
- b. It is clear as day that neither Mr Höllbauer nor Mr Döser had any, let alone full knowledge of the circumstances of the transaction (namely the purported sale to Mr Capriles). For example, they did not know of Mr Capriles, the price agreed, or that the Porsche had been transferred to Mr Capriles' possession. Therefore the critical necessary ingredient - knowledge of the circumstances of the contract - is absent. It is in these premises that I reject the argument that Mr Döser had, through Mr Höllbauer, ratified the transaction which was done without his authority.

IV. Factors Act 1889

44. I turn next to the defence asserting that even if Mr Edwards exceeded his authority, Mr Capriles nonetheless acquired good title to the Porsche pursuant to section 2(1) of the Factors Act. Again, it was uncontentioned that the burden of proof rested on Mr Capriles to make out each element of the defence.

A. Ordinary Course of Business

45. I start with the accepted fact that the Porsche was purportedly sold without its registration documents. Whilst I do not consider this a determinative factor, it is one that powerfully undermines Mr Capriles' case. Mr Fletcher submitted that the absence of a valid registration document does not automatically make the transaction outside the ordinary course of business because there would be difficulties in the law requiring delivery of documents that simply do not exist, like the unusual situation with this Porsche which was not registered for use on public roads. I entirely accept that there may be situations where the sale of a car may be considered to be in the ordinary course of business even without its registration document, but that is not this case. The following additional features of this transaction lead me to conclude that Mr Capriles did not purchase the car in the ordinary course of business.

46. First, it is clear that Mr Edwards was not truthful about the registration documents. After agreement had been reached but before the car was delivered, he said that the Porsche came with a '*clean V5*' and a '*history file*' and that these had been given to the transporter of the Porsche to Lisbon. It is now not in dispute that no clean V5 registration document was ever provided. Further, with regard to the history file, there was only a photograph of it in the bundle. When Mr Capriles was cross-examined about its whereabouts and content, he said that he had moved from Lisbon around the relevant time and that he must have lost it. He said it was '*a pity*' he could not find it. I did not find Mr Capriles' evidence on this point convincing and I do not accept it as truthful. He was surprisingly relaxed and remarkably incurious about the vanishing of an entire folder, moreover a folder which was likely to have been seen and retained by his lawyer and which was likely to contain important information about the history of ownership of the Porsche.

47. Second, the different interpretation of Mr Rosales and Mr Capriles as to who they were buying the car from is a cogent indicator that this transaction did not occur in the ordinary course of business. Mr Rosales and Mr Capriles were in close contact and the information given to them by Mr Edwards was contradictory and unclear: Mr Edwards said that *‘it cost me seriously a fortune I have to return the client €750,000 he pays me a commission included in that price but he is a German billionaire and won’t negotiate’*, which could suggest that the car was his or that he was acting for a German billionaire (presumably Mr Döser). Then, the invoice was issued in the name of ‘Max Henry Kay’, providing for payment to an account in the name of Max Kay. Neither Mr Rosales nor Mr Capriles queried this. In a further contradiction, bank correspondence refers to a payment to another entity, the company, ‘Max Kay Ltd’, without any explanation. There is, in my judgment, nothing ordinary in proceeding to transact with demands for payment to unexplained entities and without a clear or consistent understanding of who is the recipient of the monies.

48. Third, the evidential trail shows that Mr Edwards sought to conceal the origin of the funds received for the Porsche from UK banks and was willing to produce a bogus invoice to present to banks in order to circumvent compliance regulation (a point to which I return later). This plainly demonstrates conduct which falls outside the ordinary course of business of a mercantile agent.

49. Fourth, the manner and the result of the negotiations on price between Mr Edwards and Mr Rosales does not demonstrate usual behaviour of a mercantile agent. In particular, the initial price of €750,000 was reduced without an explanation to €668,000 (above the price that Mr Edwards said he was able to get from a dealer) and then further to £530,000 having revealed that this involved him selling at a loss. Still further, Mr Edwards accepted a reduction of £13,250 to allow Mr Capriles to pay for Mr Acevedo, who was Mr Capriles’ own broker.

B: Good Faith and Notice

50. Having heard the evidence from Mr Capriles and Mr Rosales and having carefully reviewed the documentary evidence, it is clear to me that Mr Capriles had notice that Mr Edwards had no authority to sell the car in the way he did.

51. It is important to record that it was accepted by Mr Rosales in cross examination that there was a concern on Mr Capriles' side about the title of the Porsche. Yet there is no evidence of any investigation of the title such as a reasonable buyer would make. Moreover, there is contemporaneous documentary evidence referencing a lengthy report from Mr Carvalhosa (an experienced mechanic engaged by Mr Capriles) which I conclude is likely to have been produced by Mr Carvalhosa and shown to either Mr Rosales or Mr Capriles or both. It was an important document and one which has not been shown to the Court. I place significant weight on the written contemporaneous evidence of the report's existence and in particular:

- a. the messages dated 18 May 2022 from Mr Carvalhosa which reference and alert Mr Capriles to '*the inspection report*' and '*page 29*'.
- b. The message from Mr Rosales to Mr Acevedo (a broker who acted on Mr Capriles' behalf) dated 3 May 2022 stating that '*the report says that the right price is 600*'.

52. Mr Rosales' evidence was that there was no such report and that the reference to the report citing '600' as '*the right price*' was probably '*phone call feedback*'. The evidence from Mr Capriles was that he did not recall seeing any such written report. In closing submissions, Mr Fletcher sought to explain the messages by suggesting that a reference to '*page 29*' may have been a typo. I do not agree. I do not consider that the evidence given by Mr Rosales or Mr Capriles on this point was honest and truthful. It is wholly implausible that this report did not exist when it is explicitly referred to in the messages between Mr Capriles and Mr Carvalhosa, who was advising on the transaction and who was an experienced and trusted mechanic with knowledge of classic cars, working for Mr Capriles, following a physical inspection of the Porsche. There is no evidential support for suggesting that the numbers '29' are a typo. The existence of the report is not only supported by the plain and ordinary reading of the contemporaneous messages but it also makes sense as a coherent narrative of the messages between Mr Carvalhosa, Mr Capriles, Mr Rosales and Mr Acevedo. In all the circumstances, I am satisfied that a report, recorded in the messages as comprising at least 29 pages, was indeed produced by Mr Carvalhosa. This was, in all likelihood, an important document and in the face of a bare denial of its existence, I infer that it contained information which was unfavourable to Mr Capriles' case.

53. Further, I consider it material that the Porsche was described by Mr Carvalhosa as ‘*scary for most of the buyers*’ in his messages to Mr Capriles, yet there is no evidence of any steps taken by Mr Capriles to assure himself of clean title. In my judgment a reasonable buyer would have done so.
54. Further still, the manner and detail of invoicing the Porsche would have been a series of clear red flags to a reasonable buyer and especially so in light of the reduction in price, the lack of clarity on who owned it and in the absence of a valid registration document. There are at least 4 different characters or entities linked with invoicing the Porsche. First, an invoice in the name Max Henry Kay asked for payment to a ‘Currency Cloud’ account’ in the name of Max Kay and sent from classicsinternational@aol.com to (among others) Mr Mayorca (an in house lawyer acting for Mr Capriles). Then, a revised invoice was provided from a ‘Richard Haywood’ from an email address of ecdglobaltd66@aol.com. The eventual bank transfer appears to have been made to ‘Max Kay Ltd’. In my judgment, any reasonable buyer would have, at the very least, queried these entities and how they were connected with Mr Edwards. However, upon receipt of a revised invoice from Richard Haywood, Mr Capriles immediately agreed to pay. At the same time he asked his lawyer, Mr Mayorca, if any other documents were needed. There is no evidence of a reply from Mr Mayorca to this query or any other. Mr Fletcher argued that the communications between Mr Capriles and Mr Mayorca are covered by legal privilege. Whilst that may be so, I must determine the factual issues in accordance with the evidence which is available, making appropriate inferences from the gaps in the evidence. I find that all evidence supports (and none undermines) a finding that Mr Mayorca would have advised Mr Capriles about the safety and propriety of the proposed transaction and that he would have noticed and raised concerns about the shifting and unexplained identities of the invoice senders and beneficiaries. I am further satisfied that either Mr Mayorca raised concerns about the invoicing in a manner that a reasonably competent lawyer would, or Mr Capriles made no attempt to obtain a response from his lawyer because he wilfully shut his eyes to a probable and unfavourable response. This conclusion is further supported by Mr Capriles’ evidence in cross examination, when he accepted that his lawyer would have investigated who owned the car but that he ‘*does not recall*’ a response from his lawyer.

55. Further, the requests by Mr Edwards to Mr Rosales to circumvent the UK banking regulations would have constituted red flags to any reasonable buyer. In communications with Mr Edwards on 24 and 25 May 2022, both Mr Rosales and Mr Capriles provided a Spanish address in response to Mr Edwards’ requests “*just for the invoice to the bank*” because “*UK banks and compliance have become a nightmare*”. In my judgment, this is a clear factor indicating a lack of good faith and/or notice – any reasonable buyer must have, at this point, if not before, known of Mr Edwards’ lack of authority or in the alternative must have suspected the authority and wilfully shut their eyes to the means of knowledge available.
56. Mr Fletcher urged me to attach significant weight on the comparative analysis between Mr Capriles’ purchase of the Porsche (through Mr Edwards) and Mr Döser’s prior purchase (also through Mr Edwards). The details of Mr Döser’s purchase of the Porsche were closely analysed in cross-examination and it was submitted that there were significant similarities such as to make Mr Capriles’ purchase entirely ordinary in the world of classic cars and that the various potential concerns would not have constituted ‘red flags’ to a reasonable buyer. I did not find this evidence persuasive and I do not accept Mr Fletcher’s submissions. I accept that there were echoes of the same oddities in Mr Döser’s purchase of the Porsche (such as the shifting nature of the identities of the invoice providers and beneficiaries), but I do not agree that those oddities were of sufficient weight to render the relevant transaction in the ordinary course of business and I am not persuaded that red flags identified in the relevant transaction would likely have been ignored by a reasonable buyer of classic cars.
57. Finally, Mr Capriles’ approach to disclosure has troubled me and is further support for my overall conclusion. Less than two weeks before trial, Mr Capriles’ solicitors, Mishcon de Reya, disclosed a very large number of WhatsApp exchanges between Mr Capriles and Mr Carvalhosa, a person who was clearly advising about the purchase of the Porsche. I am unclear as to the reason why these messages, which are plainly highly material, were not disclosed earlier. Mishcon de Reya stated in their correspondence that the ‘*additional documents are being disclosed and produced as soon as reasonably practicable upon our firm becoming aware of their existence*’. When Mr Capriles was questioned about this in cross-examination, he stated that disclosure was a ‘*technical matter*’ with which he was not concerned and that he gave MdR ‘*everything I had*’. Mr

Capriles had previously asserted that all relevant documents had been searched, a statement which he had to withdraw in light of the recent disclosure. All of which left me with the distinct impression that there were serious failures to comply with disclosure obligations. In particular, I am mindful of the complete absence of:

- a. Any communication between Mr Capriles and Mr Rosales (other than a limited number where both were copied on an email). Although Mr Capriles' and Mr Rosales' evidence was that they communicated primarily in person or by telephone, I find it extraordinary to believe that there are no such messages at all.
- b. Any communication between Mr Acevedo and Mr Edwards, in circumstances where there is clear documentary evidence of Mr Acevedo forwarding messages to Mr Rosales, messages which were sent by Mr Edwards and received by Mr Acevedo.

Conclusion and Relief

58. It is in these premises and for the reasons set out above that I conclude that Mr Döser succeeds in this claim and remains the owner of the Porsche. I propose to make a declaration to that effect.

59. Mr Döser's primary contention was for damages rather than delivery of the Porsche. It was accepted by Mr Döser that some repair works were funded and completed on the Porsche by Mr Capriles. I will invite the parties to agree on the appropriate sum for the value of those works and further to agree the terms of the Order which flows from this judgment.