

Neutral Citation Number: [2008] EWHC 661 (QB)

Case No: HQ06X01753

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th April 2008

Before :

THE HON MR. JUSTICE BLAKE

Between :

MOISHE MEISELS

Claimant

- and -

MENACHEM LICHTMAN

BERISH BERGER

SOLOMON WEISS

Defendants

Jonathan Crystal (instructed by **Kramer & Co**) for the Claimant.

Stuart Hornett (instructed by **Bude Nathan Iwanier**) for the First and Third Defendants.

Nicola Allsop (instructed by **Sandersons**) for the Second Defendant.

Hearing dates: 11th to 15th February 2008

Judgment

The Hon Mr. Justice Blake :

Introduction

1. On the 23rd December 2004 Mr. Lichtman (the First Defendant) visited the office of Rabbi Meisels (the Claimant) by prior invitation. Following a discussion, the Claimant telephoned the offices of the solicitor whom he employed for property dealings and instructed him to make immediate payment over by CHAPS transfer to the bank account of a registered charity Yetev Lev Jerusalem Trust (YLJT) of two sums of money namely £120,433.39 and £202,407.05. The question for determination in this court is what were the nature of those transactions?
2. On the 19th June 2006, after unsuccessful attempts had been made to arbitrate the matter in the rabbinical court, the Claimant issued proceedings for the return to him of these moneys. The First Defendant is and was a trustee of YLJT and its principal fundraiser and manager. The Claimant sues the First Defendant both in a personal capacity and a trustee of YLJT, and sues the Second and Third Defendants solely because they were trustees of the YLJT at the relevant time.
3. The Claimant alleges that the sums he transferred to the YLJT were personal loans made by him, and that this is reflected in an informal handwritten document prepared during the meeting on the 23rd December by the First Defendant at the Claimant's request. The Defendants contend that both the sums transmitted were voluntary donations or gifts to the YLJT whose essential purpose was the distribution of funds in Israel for charitable purposes there. They further contend that as the funds appear to have come from bank accounts connected with the Claimant's property companies, the Claimant has failed to show that he is the person entitled to repayment by the charity, even if the sums were not gifts.
4. It is common ground first, that as the Claimant brings these proceedings the burden is on him to satisfy the court he is entitled to the sums claimed; second, that in so far as the activities of the First Defendant in soliciting money from the Claimant were activities done in his capacity as fund raiser for the charity, his acts and any agreement to which he was party will bind the charity and its trustees, although the Second and Third Defendants were not party to the conversation on the 23rd December and the consequent arrangements.
5. With this brief introduction of the issues, this judgment will now turn to consider the wider background, the disputed evidence and the legal context, before reaching the conclusions on the outcome.

The Background to the Claim

6. All the parties to this claim are members of the extreme orthodox Hasidic Jewish community located in Stamford Hill London N 16. The Defendants are active supporters of the Satmar Hasidic movement. Of course, the religious identity of the parties is irrelevant to the application of the civil law. However, the cultural background to this case provides some explanation of the particular issues in these proceedings. What follows is taken from either the uncontested evidence of the Defendants or the broader history set out in the wikipedia online entry on Satmar at

en.wikipedia.org/wiki/Satmar (Hasidic_dynasty) that the parties were informed was accessed by the court on 14th February 2008.

7. The Satmar movement refers to an extremely orthodox community of observant Jews connected with the rabbi of a synagogue in the town of Satmar in what was once Hungary but is now Romania. The language of this community was, as might be expected, Yiddish that is to say a mixture of ancient Hebrew and German. The first language of all the British based witnesses is Yiddish. The court was informed that Yiddish is primarily an oral rather than a written language. The theological persuasion of the Satmar community is strongly opposed to the secular state of Israel and the Zionist movement that gave rise to it, although many adherents live within its borders. So strong is this opposition that adherents of the movement resident in the state of Israel will not accept funds from the state; many adherents regard modern Hebrew as an aspect of that state and decline to speak it.
8. The founder of the movement is Rabbi Teitlebaum. He survived the holocaust in dramatic fashion, at first returned to Romania to rebuild the community there, and then relocated to the United States where the principal Satmar community is based in Brooklyn, New York. It seems that succession to Rabbi Teitlebaum's synagogue is now vigorously disputed between his descendants and has resulted in litigation in the US courts by one faction and allegations of sacrilege in using civil rather than the rabbinical courts by the other.
9. The cultural background touches upon the issues in this case in the following ways by way of explanation of -
 - i. Why the principal parties spoke Yiddish whilst the document drawn up to reflect their understanding is in Hebrew.
 - ii. The particular importance of charitable donation in the Satmar Hasidic community in the UK to promote the welfare of the poorer members of the community in Israel who decline all forms of state assistance for their material needs.
 - iii. The background to the disputed role of the rabbinical court of the US and Canada in this case.
 - iv. The heated emotions and divided loyalties this case appears to have aroused in the Hasidic community of Stamford Hill, with an under-current of accusation and counter accusation of unethical conduct referred to in the witness statements.

The parties

10. The First Defendant is a US national born in the USA who has lived in the UK for many years. He is not himself a wealthy man and has since 1999 devoted himself to fundraising for YLJT to raise funds for its activities in the UK. These activities are principally concerned with the regular transmission of funds to a linked charity in Israel, but include assistance to UK organisations or people sympathetic to the aims of the YLJT. He was a founding trustee of the charity and today he and his wife remain the only trustees of the charity. The First Defendant was a committee member and

later trustee of the Israeli charity and in general was the one to give the final approval for recommendations for expenditure.

11. He is clearly a committed and determined man and with considerable powers of persuasion. In the period September 2004 to March 2005 the ledgers of the charity indicate that it had received some £6 million by way of donation. In addition it received and made loans for purposes that the First Defendant deemed appropriate that are recorded in separate accounts.
12. The Third Defendant was the book keeper and records manager of the charity as well as a trustee until he resigned in June 2006. He essentially acted on the instructions of the First Defendant with respect to gathering in and allocating funds and distributing them. The Second Defendant is a successful and substantial businessman with a number of property companies, whose expertise and acumen was available to the First Defendant but who was not otherwise involved in the running of the charity of which he was a trustee until he also resigned in June 2006.
13. The Claimant is British born and based. He is a rabbi and his father is also a rabbi who had studied in the USA under Rabbi Teitelbaum. He is an orthodox rabbi and has some broad sympathy with the ideology of the Satmar movement. He attends a Satmar orientated synagogue and charitable functions. He points out that this is part of the social life of orthodox Stamford Hill and does not profess a deep understanding of Satmar doctrine. He is himself a substantial businessman and through a series of small companies, of which he and his wife are sole directors and or/shareholders, has a portfolio of some 50 properties in the UK. He has commercial interests in the USA but none in Israel.
14. YLJT is a UK registered charity that acts as the UK fundraising arm of an Israeli non registered charity Yet Lev Jerusalem. There are a number of similar bodies world wide whose ideology is that of the Satmar Hasidic movement. The overall purpose of the UK charity's existence is to support the aims of the charity in general and the programme of spending of the Israeli charity in particular. In 2005 after the principal events with which this case is concerned, the Israeli charity was registered and changed its name to Keren Yetev Lev. In June 2006 the UK charity wound down its fundraising activities.
15. At the material time, the UK charity kept separate ledgers for loans and donations. It is apparent that the trustees furthered the objects of the charity by borrowing money from individuals and using the same for whatever purposes it was needed: whether repaying commercial loans, passing urgently needed funds to Israel, or conducting such transactions in the UK as they considered promoted the aims of the charity.
16. One such transaction included helping the trustees of a different charity the Craven Walk Beth Hamedrash Trust to develop a property at 42 Craven Walk, London N16 from being a private house into a synagogue. The witness statement of the Second Defendant supplied the details of this transaction and was not substantially challenged as to these matters when he gave evidence. One of his commercial property companies agreed to purchase the property for the Craven Walk Trust in 2002. Finance was needed to develop the property as neither the Trust nor the property company had the necessary standing with the banks to raise such finance, the title of the property was transferred to the YLJT in about 2003, and a loan raised from a

bank to carry out development work. The work began in early 2005 and on its completion in June 2006 the property was transferred back to the Craven Walk trustees. The Defendants say that all this was a charitable purpose within the powers of the YLJT Trustees to promote and that although there were some issues as to whether that charity's accounts had correctly recorded these events, the charity itself suffered no loss as the cost of the loan it raised for others was repaid by Craven Walk Trust. This particular transaction has relevance to the core events in dispute as the Claimant says he was solicited by the First Defendant to make a payment in December 2004 in order to repay a bank loan and overdraft related to this expenditure. The Claimant further alleges that the YLJT improperly divested itself of this asset in breach of the freezing order granted by the rabbinical court.

17. YLJT maintained bank accounts in the UK in sterling and dollars. In Israel the Israel charity maintained bank accounts in US dollars, UK sterling and Israeli shekels. The undisputed evidence suggested that US dollars was at the material time considered a more stable currency than Israeli shekels, and that a better rate of exchange from sterling into US dollars could be obtained by the transfer mechanisms the charity had established in the UK.
18. At the hearing of this action the court heard from the Claimant, his assistant Mr. Hochausser, the translator Mr. Greenblatt, and the Trust's business agent in Israel Mr. Fisher. I received a late statement of Rabbi Wosner and admitted it under the Civil Evidence Act 1968 as he was reluctant to appear before a civil court. There was a substantial conflict of evidence between the Claimant and the First Defendant about the nature of the transactions, the meaning of the agreement and the subsequent history. In this judgment references to the UK charity or the Trust are references to the YLJT.

The earlier transaction

19. In the course of pre-trial disclosure the Defendants provided pages from their loans and donations register. The YLJT Quick Report Accounts for donations for the period from 1st September to 1st March 2005 revealed that on the 4th October 2004, the sum of £200,000 was transferred to YLJT by one David Wineman.

20. Mr. Weiss's witness statement of the 2nd January 2008 explains the background (*vol 1/316/22*):

“The UK Charity was overdrawn. Some months earlier, an individual had given the UK Charity a loan for £100,000 as the UK Charity was in desperate need of funds to send to the Israel Charity”.

This money was assigned by Mr. Weiss to the donations ledger of the charity with the name of the donor recorded as “david weinman”. The underlying bank statement showed that the money had come from David Wineman Client's Account. Mr. Weiss had slightly inaccurately transcribed the name to “Weinman”.

21. David Wineman was a solicitor instructed by the Claimant in connection with his property transactions and those of the businesses with which the Claimant was associated. It should thus have been apparent to the Claimant from the disclosure documents that the Defendants were effectively asserting that the Claimant had

donated £200,000 to YLJT in October 2004 through the client account of his solicitor David Wineman. Apart from a general assertion in his trial witness statement that he had previously loaned monies to the charities including YLJT the Claimant's witness statements and disclosure did not deal with this earlier transaction at all.

22. In oral evidence the Claimant asserted that this £200,000 was a loan and had been repaid. No documents were produced to support this assertion, although it appears that bank statements did at one stage exist the Claimant states support his claim that repayments of the loan were made. They were not available to the court.
23. From the Defendant's side the full ledger of the loan account throughout the relevant period and the underlying bank statements had not been produced at trial. The Defendants had not understood that the nature of this first transfer as a gift was disputed. They were adamant that this was a gift and had not been repaid and invited an adverse inference to be drawn against the Claimant for disputing this without supporting his contentions with documents. In the absence of all the relevant documents from each side, and given the contrasting accounts of the Claimant and First Defendant, it is not possible for the court to reach any definite conclusions on the nature of this first transaction before determining the disputed contentions as to the second one.
24. The Defendants have addressed the matter in much greater detail in their witness statements. The First Defendant states:

"The UK Charity was always in need of benefactors to make donations for charitable purposes. I took the opportunity to tell the Claimant what the UK Charity was doing at the time and said that the UK Charity had great need for donations. I asked the Claimant if he would donate money to the UK Charity. He said that he would be prepared to make a sizeable donation.

The Claimant; then reverted to me on or around 4 October 2004 and informed me that he would give the UK Charity £200,000. I cannot recall whether he told me this in person or on the telephone. The Claimant did say however that the monies would be coming from an account at his solicitors, David Wineman. He did not say whether the money would be from one of his companies or from his personal funds. Either way, as a fundraiser it made no difference to me whether the money was given in his personal capacity or given from a company.

The Claimant or one of his companies gave a donation to the UK Charity of £200,000 by way of a chaps transfer from David Wineman's client account on 4 October 2004 (see Bank statement at page 20 of ML.3). I am unsure whether the money was from the Claimant or one of his companies as there is no reference on the bank statement other than that it came from David Wineman's client account".

25. The circumstances were further explored in cross examination of the First Defendant. On the 4th October the Trusts' bank would not honour a cheque for £100,000 drawn

on its account. This was probably a cheque in favour of a company called UK Isles Limited who had loaned money to the Trust. That company's loan was repaid the same day by CHAPS transfer and the ability to repay the loan was the result of the £200,000 received from Rabbi Meisels.

26. It is clear that the £200,000 was given as a result of an approach by the First Defendant to the Claimant personally. There is no suggestion that the Defendant had solicited the directors of one of the Claimant's property companies for a corporate donation or that the Defendant had ever said that one of his companies was making a donation. There was no agreement drawn up to reflect this transfer or a receipt given afterwards to reflect it. It was recorded by Mr. Weiss in the Trust's ledgers as a donation.
27. Mr. Weiss had no direct dealings with the Claimant about this transaction. He told the court in evidence that he assumed the transferred sum was a donation until he heard to the contrary from the First Defendant who was solely responsible for raising funds of whatever form. In his witness statement he says he was told by First Defendant that the money in fact came from one of the Claimant's companies but he did not know which one.
28. If this recollection is accurate it is difficult to see why the First Defendant should have concluded that this was a corporate donation rather than a personal one. The mere fact that the money came from David Wineman would not have led to a conclusion either way. In particular there is no record to suggest that the money came from a particular corporate account held by David Wineman.
29. Many of the problems and disputes relating to the second transaction are pre-figured in the disputes that emerged at trial about this first one. There is substance in the Defendants' complaints that the Claimant has failed to make clear in his witness statements his case as to the first transactions, and has failed to disclose documents which exist or once existed that he should have realised were relevant to the trial of the present issues. This is one reason, why I was invited to treat the Claimant's unsupported oral testimony about disputed events with particular care.
30. Undoubtedly, the first transaction is a significant part of the background to the second one. There are similarities between the dispute about the first transaction and the second, there are also differences. It does not follow that both transactions should be treated the same. It is notable that this first transaction:-
 - i. involved no written agreement signed by the parties;
 - ii. was made at a time when the YLJT sterling account at the National Westminster bank was overdrawn to the sum of £154,903.70; and
 - iii. whatever the nature of the transaction, it did not result in any proceedings between the parties either in the rabbinical court or the civil courts.

The disputed transaction

31. On 17th December 2004 the bank account of the YLJT at the National Westminster Bank showed an overdraft of £106,171.38. The First Defendant recalls that the

overdraft limit at the time was £150,000. Following transactions on the 20th December involving withdrawals to the loan account and an urgent transfer of £50,015 to the Israeli Account, the overdraft stood at £136,291.27. This was then paid off by a payment in to the account of £250,000 from the bank by way of a loan. There was a further payment out of the account that day of the further sum of £110,000 by way of inter account transfer to the Israeli account. After further payments out by way of a standing order, at the end of the 22nd December the account showed a modest overdraft of £10,342.77 but in addition a bank loan was repayable in the sum of £250,000.

32. The Claimant submits that in December just as in October 2004, the charity had a desperate need for funds and this was the context of a second approach by the First Defendant to the Claimant for assistance within two and a half months.
33. The Defendants state that this was just a common state of affairs. The charity conducted its transactions raising money by loans and gifts to promote its purposes and there was no particular financial crisis calling for extraordinary measures. In particular no urgent payments were due to be made in respect of the building works on the converted synagogue 42 Craven Park Walk. There is a letter in the documents disclosed from the trustees of the Craven Park synagogue stating that building works were started in February 2005 but the costs of these was born by them.
34. It is common ground that there had been contact between the First Defendant and the Claimant as to the possibility of some further money being made available before the meeting on the 23rd December. The First Defendant says he was led to believe that a similar sum as previously would be forthcoming. The Claimant says the context was the need to pay for building works on the synagogue and specific sum requested.
35. On the Thursday 23rd December there was the meeting described above at [1] of this judgment. It is clear that the outcome of the meeting was that the Claimant telephoned his solicitor David Wineman and instructed him to make a CHAP's payment to the Trust's National Westminster bank account of the sums £120,433.39 and £202,407.05. The Trust's bank statement shows these sums as paid in from David Wineman client account on that date. The first sum has no reference other than the source of the payment, the second has the reference Gilda Estates.
36. During the meeting a manuscript text was written in Hebrew recording the outcome of the discussions. The preamble giving the names of the parties was written by the Claimant. The bulk of the text was written by First Defendant. There was some amendments of the sums of money described initialled by him. The note was then signed by the Claimant and the First Defendant.
37. Following a dispute as to the true meaning of the Hebrew text, in which the agreement was drawn up, Mr. Jared Greenblatt was jointly appointed as expert translator who has experience in rendering documents including commercial documents from Hebrew into English. He says that translation is not an exact science, and it is sometimes necessary to choose the most appropriate English word according to the context and apparent intention of the authors of the document reflected in the Hebrew word. He rendered the text in English thus:

Heading:

“Agreement Rabbi (Mr) Moshe Meisels and Rabbi (Mr) Menachem Lichtman”

Substance:

“Rabbi Moshe Meisels has transferred to the bank account of Yitav Lev the sum of £120,443.39 to be given over in the land of Israel in United States dollars in accordance with the rate of exchange received by me, immediately and without delay.

Rabbi Meisels has transferred to the Yitav Lev another amount of £202,000 which he is to receive back from the accountant as a loan.

Agreed and signed on the 5th day of the week of Vayechi in the year 5765”

38. Certain of the choices of words made by Mr. Greenblatt can be clarified and corrected by the subsequent agreement of the parties and in the light of his examination and cross examination by the First Defendant via video link from Jerusalem. The Claimant refers to himself as a rabbi while the First Defendant does not and the English “Mr” is an acceptable alternative meaning in context of the Hebrew word. The Hebrew date can be rendered as 23rd December 2004. Whereas the word loan is clearly used in respect of this second part of the agreement, “matana” the Hebrew word for gift is never used in any part of it,
39. Mr Gleenblatt agreed that were certain difficulties in translating this document that looked as if it had been written in a hurry and certain matters are not ideally phrased for rendering the intended sense. He said that whilst he preferred to insert the comma before the phrase “immediately and without delay” an alternative sense could be to delete the comma so “without delay” qualifies the exchange rate rather than the giving over. The literal meaning of the Hebrew words that he renders as “to be given over” is “to give” but the passive voice seemed more appropriate in context. The literal rendering of the words preceding loan are “in the form of” but “as a” equally captures the sense of the text. The author could have used another word for a loan if the parties had been intending that the payment should be returned on demand. The language used is of the sort that might be found in a legal document.
40. Both parties submit that the meaning of the document is to be construed in the light of the intentions of the parties as revealed in their discussions contemporaneous with the writing of this document. Both submit that properly construed the agreement assists their contentions. There were significant divergences however in the central evidence of the Claimant and the First Defendant as to what was agreed, in what order and for what purpose.
41. Summarising the rival contentions of the parties on this central issue, the following emerges. The Claimant says:
 - i. Having been approached again by the First Defendant shortly before the 23rd December he agreed to offer the charity further assistance in approximately the same sum as previously. Again this sum was to be by way of a loan to the charity.

- ii. A meeting was arranged at the Claimant's office to progress the matter. Agreement was reached in respect of two different sums with different purposes.
- iii. The first of the two sums was a loan in the sum of approximately £200,000 that was crystallised during the meeting first as £212,000 then as £202,000, and after the agreement had been drawn up further amended by the First Defendant during the course of the conversation with the solicitor to £202,407.95. This was the sum that was actually transferred. The Claimant understood that the reason that this sum was needed was to do with monies YLJT had borrowed in respect of works on the converted synagogue. This was because he had been told this by the First Defendant in a conversation a few days before the agreement was finalised.
- iv. This sum was a loan. It was to be repaid to the Claimant's accountant so the repayment could be recorded. No set date for repayment was specified but the First Defendant had indicated that only short term use was needed possibly for as little as 14 days.
- v. In addition to this loan, there was discussed another transaction, whereby the Claimant would provide a sum of sterling that would be exchanged by the charity for US dollars and a sum of US dollars would be available for the Claimant in Jerusalem very shortly at a favourable exchange rate the charity could obtain. The Claimant understood that this transaction assisted the charity in enabling its assets in Jerusalem to be made available in the UK. It also provided a benefit for him as he had a need for dollars in Jerusalem at that time for an investment in a property transaction his family was undertaking.
- vi. This part of the agreement was reached in the following way. A sum was agreed in dollars to be collected by the Claimant. The First Defendant had a calculator with him. He knew the rates at which the charity could transfer sterling and convert it into dollars. The precise sum written down was reached by this calculation. This sum was £120,443.39.
- vii. At the First Defendant's suggestion Mr Fisher was called in Jerusalem. The Claimant did not know or know of Mr. Fisher before this meeting. Mr. Fisher was the First Defendant's business agent in Jerusalem. The purpose of phoning him was for the First Defendant to satisfy the Claimant that the Trust had dollars ready for transfer in its Israel bank account. He was also told that Mr. Fisher was a businessman of substance in Israel who could be of assistance to the Claimant. The First Defendant used a mobile phone to call Mr. Fisher and broadcast the conversation on his speaker facility.
- viii. The meeting proceeded by way of the following sequence: first, discussion; second, the telephone call to Mr Fisher; third the agreement was concluded and was written down; fourth execution when there was a call to the Claimant's solicitor requesting him to make a CHAPS transfer into the Trust's bank account.

- ix. Following the agreement, the Claimant booked a flight to Israel for that night. It left at 10.00pm. He departed for the airport at about 6.00pm. He flew out to Jerusalem that night, arriving the next day (24th) and expected to receive the dollars at the first banking day after the holiday period. He expected to receive the money from the First Defendant who he understood was travelling out to Jerusalem personally in a few days.

42. By contrast the First Defendant says:

- i. In December as in October the assistance to be offered to the Trust by the Claimant was by way of outright donation and not a loan.
- ii. The funds he was soliciting for, were for the general charitable purposes of the charity in Israel, were unconnected with the purchase or refurbishment of Craven Park Road, and were not solicited because of urgent financial crisis or short term credit difficulty. There was no mention of Craven Park Road at the meeting on the 23rd December.
- iii. The sums to be given were identified by the Claimant and not by the First Defendant. He merely wrote them down as requested.
- iv. It is not necessarily unusual for donors to give to the charity sums of money that are expressed otherwise than in round sums.
- v. The idea of a separate donation in dollars was the Claimant's and his interest in the exchange rates was probably because he wanted to make his donation as valuable as possible.
- vi. The £202,407.95 sum was identified during the call to the solicitors and the Defendant understood that it represented the whole of the balance in certain business accounts controlled by Claimant. He understood that both sums came from the accounts of companies although he could not ascertain which at the meeting as this was broken up when the Claimant's assistant and driver arrived to say that he needed to travel.
- vii. The reference in the agreement to a loan, was an associated transaction where the Claimant had indicated that if he donated to the charity he might well need a loan at a favourable rate and the First Defendant undertook to assist him in securing one, particularly using Mr. Fisher.
- viii. The order of events according to the First Defendant was; a discussion, the call to Mr. Fisher, a telephone call to David Wineman and a confirmatory fax also sent to Mr. Wineman and then the written agreement was drawn up and signed.
- ix. The First Defendant stated that the reason why the money in the written agreement was changed was that the Claimant confirmed to him while the agreement was being drawn up the precise sums that the solicitor had transferred.
- x. After the meeting in the office the First Defendant spoke to Mr. Weiss the Third Defendant, and instructed him to make transfers to Israel.

43. The essential issue in this case requires the resolution of this conflict of accounts between the Claimant Rabbi Meisels and the First Defendant Mr. Lichtman. The Claimant seeks to support his account of the meeting with the First Defendant by calling his personal assistant, driver and property manager Mr. Hochauser. Mr. Hochauser claims to have been present throughout the whole of the meeting and heard the full conversation with Mr. Fisher. The First Defendant says that Mr. Hochauser only arrived at the end of the meeting and could not have heard the full discussion leading to the agreement.
44. I accept the Defendant's submission that I should be cautious about relying on Mr. Hochauser's evidence. There is a real risk that he is giving evidence tailored to support that of the Claimant in the light of a number of inconsistencies in his account and his professed strong personal loyalty to the Claimant who he regards as a father figure. The inconsistencies include:-
- i) The Claimant and the First Defendant are agreed that the call to Mr. Fisher was made on a mobile phone. Mr. Hochauser was not present in court when the Claimant gave this evidence. When he gave evidence he said the call was made on the office phone.
 - ii) Mr. Hochauser seemed to remember greater details of the conversation with Mr. Fisher than did the Claimant. If he was present in the room at the time of the conversation, he was not a participant in the discussion, and his grasp of what Mr. Fisher saying at the other end of a phone would have been limited, even if the phone was on speaker mode which is a disputed issue.
 - iii) Mr. Hochauser has a third version of the sequence of the events leading to the transaction. I would not expect him to remember this degree of detail and the differences with the Claimant's version are surprising.
45. I can accept Mr Hochauser's evidence that this meeting took place in the morning of the 23rd December as that accords with Mr. Weiss's recollection of when the first transfer was made following the First Defendant's return to the Trust's office. Whilst I can broadly accept the evidence of the Second and Third Defendants, that was not substantially challenged, they can give no direct assistance on the nature of the arrangements made between the two principal parties. I further accept the evidence of Mr. Fisher that will be considered separately below. He was a forceful and emphatic witness.
46. Clearly the Trust was in the habit of making and receiving loans and also making and receiving gifts. It is the First Defendant who sought out and persuaded donors to give or lend, and he ultimately decided the fate of the monies in the UK Charity, where they were to be sent and for what purpose. In my judgment the central question is with what intentions were the two sums transferred to YLJT that day?

The subsequent events

47. Before resolving the conflict in the evidence the subsequent history can be recounted. Later in the day, following the meeting the Claimant was driven to the airport to catch a plane to Jerusalem leaving at 10.00pm and arriving the following morning Friday 24th December. There were contested issues as to when the ticket for this journey was

purchased; why he went to Jerusalem, and whether he contacted the First Defendant whilst there.

48. The Claimant says that he expected to meet First Defendant in Jerusalem in person to hand over the dollars. Despite an arrangement made by mobile phone on one or more occasions to meet at a bank he failed to appear. The First Defendant states he was never in Israel at this time and produces his US passport to substantiate this. The passport shows no stamps for entry or exit to Israel at this period. As someone who is subject to UK immigration control his passport should also disclose exits from and entry to the United Kingdom. There is an entry stamp on the 19th January imposed by the Immigration Officer on duty at the Channel Tunnel immigration post but no corresponding exit stamp before that date. The position from the passports therefore is although the First Defendant might have been absent from the United Kingdom at the end of December or early January, it is highly unlikely that he was in Israel. He is emphatic that he was never supposed to meet the Claimant there to hand over dollars or otherwise and was never contacted by the Claimant whilst the Claimant was in Israel.
49. The Claimant has disclosed his mobile phone records for his phone 07973 144183 for the period for late December 2004 and January 2005. They do not show calls made to a telephone number connected to the First Defendant after the 23rd December and before the 4th January. They do show use of the mobile phone whilst the Claimant was in Israel. When the Claimant was challenged about this in the witness box he suggested that he had made a mistake and was using a different Pay as You Go mobile phone when calling the First Defendant in Israel. It seems unlikely that he had not realised this before now. In the light of the evidence of the mobile phone records and those of the First Defendant's passport I reject the Claimant's account as to communication with the First Defendant in Israel between the 26th December 2004 and 4th January 2005. This gives further serious grounds for caution in accepting the unsupported evidence of the Claimant on the disputed issues in the case. As with the evidence of Mr. Hochauser, there is a real risk that the Claimant has embellished his account to support it with unreliable testimony.
50. The Claimant returned to the UK on the 4th January 2005, empty handed and unable to participate in the contemplated property transaction. There then followed a lengthy period until November 2005 when the Claimant claims he was chasing for the return of his monies, and the First Defendant supported by the Second Defendant and the Third Defendant say the Claimant was doing no such thing. The First Defendant states that any mention of financial matters by the Claimant was confined to his pursuit of the loan that he wanted from the First Defendant and not repayment of the money he had donated to the charity. There were communications between them whilst they were both in Israel but this related to the loan discussions and not repayment of the December sums. The Claimant attended dinners of the Satmar movement in North London, but he was not asked to make any further donation in 2005 or after.
51. There are no documents in existence during this period from which the court can draw any independent conclusions. The Defendants submit that this is significant as if the Claimant had been denied repayment of the currency transaction and loan as he claimed he is likely to have been justifiably angry and this would have led to a documentary statement of his claim much earlier than was the case.

52. The picture changes towards the end of the year. On the 16th November 2005 two text messages were sent by First Defendant to the Claimant on his mobile phone that are referred to in the pleadings and on which considerable reliance has been placed by Mr. Crystal for the Claimant at the trial. No record now exists of them but following inspection of a copy of the mobile phone records the First Defendant accepts that the following is an accurate statement of what he sent.
53. The first text sent at 8.24am reads:
- “Fax me your bank details I will send you the money as I am very busy. The int is 4.”
- At 10.01am the second text reads “interest a year”
54. The Claimant submits that this is a clear reference to the First Defendant agreeing to pay back the loans of the previous December and that in the light of the delay in repayment the First Defendant had agreed to pay interest on the loan at 4% per annum.
55. By contrast the First Defendant states that the text refers to his willingness to endeavour to supply the Claimant with a loan through Mr. Fisher at 4% interest pursuant to the side agreement to the December donation. The matter did not progress because no bank details or further activity by the Claimant in respect of the loan were supplied. The Defendants submit that the mention of interest in the text could not be a reference to interest on the December transaction because, as observant Jews, such interest was prohibited unless approved in advance by a rabbi and reflected in a document “hettar iskar” that the parties were content to have translated as “approved transaction”.
56. In December 2005 the Claimant approached the rabbinical court in the USA, the Beis Din Zedek (BDZ) in Brooklyn. Observant Jews feel an obligation to attempt first to resolve differences inside their community by reference to arbitration by the religious authority that binds them in matters of faith. There is no difficulty in the civil courts permitting and indeed encouraging the parties to resolve their differences by alternative dispute resolution, before embarking on litigation in the civil courts. Alternative proceedings will have to be agreed on and pursued speedily, if they are not to detract from the over-riding objective of the civil procedure rules. Where there has been no agreement as to the location and form of alternative dispute resolution, parties must, however, be free to litigate in the civilian courts without fear of extraneous sanction.
57. No question of privilege arises in respect of the documents relating to the rabbinical proceedings. Their relevance to the civil proceedings is that they represented the first occasion where there is a documentary record of how the Claimant put his claim and the response of the First Defendant to it.
58. The Claimant states he was asked by the First Defendant to institute proceedings in the USA. This is disputed by First Defendant who says that the proceedings should have been taken in the rabbinical court in the United Kingdom. It may be that in any event the First Defendant's US nationality made the institution of proceedings in the United States appropriate.

59. On the 15th December 2005 a summons was issued by the BDZ for a Bin Torah on the 21st December. The summons was issued to the First Defendant representing Yetev Lev in Jerusalem the City of London. The summons contained no statement of a pleaded case against First Defendant. However, there was an associated property freezing order issued on the same date by the BDZ where the nature of the Claimant's claim is set out in the translation in the core bundles as “ has certain claims and demands against you in respect of the loan in the sum of \$640,000 and is summoning you to a Bin Torah”. This is the first documentary record of the Claimant's assertions as to the meaning of the agreement signed 12 months previously. The two sums expressed in sterling in the December 2004 agreement are now expressed in US dollars. This may not be surprising as the arbitration was to be conducted in the USA. The two sterling sums amounted to £322,851 and translated into dollars at an exchange rate of 1.91 dollars to the pound come to something in the order of \$613,417. I note that 12 months interest at 4% comes to \$24,536 which together comes to \$637,953.
60. The freezing order of the BDZ was wide ranging and covered the personal property of First Defendant as well as the property of the charity. This lead to a swift riposte from First Defendant. By fax on the same date the First Defendant protested that the “iskar” (that the parties agree can be rendered neutrally as “transaction”) was in respect of the activities of the Trust and not a personal one and that his home should not be subject to the freezing order.
61. The Claimant relies on this statement as evidence that the First Defendant regarded the subject of the dispute as an “iskar” or business transaction rather than a gift to a charity. Secondly, he points out that First Defendant did not take this opportunity to contradict the assertion of a loan and claim that the sums were gifts. Thirdly he did not complain that the proceedings being taken in the wrong jurisdiction, but merely that he was willing to submit to the rabbinical court in the United Kingdom. On the 18th December 2005 the First Defendant wrote to the BDZ stating that he was unable to make the hearing date proposed. Fourth, I note that there is no suggestion in the First Defendant’s response to the BZD that the sums in dispute were never given by the Claimant personally at all.
62. It seems that a letter was sent by David Wineman to the First Defendant in February 2006 but neither side can now find a copy of this letter. I am aware that David Wineman’s client files were stored in a facility that was the subject of fire damage and are incomplete. There is a copy of a letter sent by David Wineman to the Second Defendant Mr Berger on the 10th February 2006. This states that loans amounting to £322,443.39 were advanced by the Claimant to the trustees of YLJT on the 23rd December 2004. The sum loaned was said to be repayable in US dollars at the rate of \$1.91 to the pound. Repayment of the loan is demanded within 14 days and the sum of \$640,000 is sought including interest.
63. Although this letter gives an explanation for how the sum of \$640,000 was arrived at, it does not reflect the 23rd December agreement in a number of respects. First, the sterling sums transferred were larger by £408 than the sum set out in the letter. Second, the agreement only provided for one sum transferred to be “handed over” in dollars and not both sums. Third, the exchange rate available to the Trust in December 2004 was a better rate than \$1.91, and was likely to be something in the order of \$1.96. Fourth, the agreement made no reference to interest being payable.

64. It may well be that this letter was attempting to bring the claim as formulated against the Trust in the BDZ proceedings to the attention of the most wealthy of the trustees. On his version of the text exchanges with the First Defendant, the Claimant may well have believed that interest had been agreed to be paid given the longer than expected period for repayment of the loan. The exchange rate quoted may well indicate that the Claimant was unfamiliar with the exchange rates available to the Trust in December 2004.
65. In the meantime the proceedings in the rabbinical court in the US were not progressing. The First Defendant had written on the 11th March 2006 naming his arbitrator in the proceedings. On the 26th March 2006, the BDZ responded indicating that the person nominated had denied being contacted by the First Defendant to act as such:
- “in the light of the above, it turns out that you are postponing the Din Tora time and again on various pretexts that make no sense at all, therefore (the BDZ) grant (the Claimant) permission to levy an attachment in order to save what is his”.
66. On the 2nd April 2006 the BDZ having heard no further from the First Defendant granted the Claimant permission to sue in the civil courts. Although at the Second Defendant’s instigation, attempts were made to arbitrate the matter in the rabbinical court in the United Kingdom, the case thereafter proceeded in the civil court.

The civil proceedings

67. On the 19th June 2006 the Claimant issued his own claim form seeking recovery of the sum claimed in Wineman letter (£322,443.39) as a debt from all three defendants for money due and owing. With interest this sum came to £360,410.62. The particulars of claim are dated the 6th June 2006 and allege payment of the two sums of money to the First Defendant in his personal capacity or all three Defendants as trustees for the Trust pursuant to an agreement dated 23rd December 2004. It is common ground that these particulars failed to accurately record the precise sums transferred in December and at the outset of the trial the Particulars were amended without opposition to reflect the true sum of £322,851.34 plus interest accrued to the date of issue of £37,786.87 and at a daily rate thereafter of £79.04.
68. A Defence of the First and Third Defendant was issued on the 20th June 2006 by their solicitors. Three aspects of this pleading deserve highlighting. First, these Defendants deny receiving any money at all from the Claimant. They state the monies came from David Wineman’s client account, and are believed to have come from two companies Gilda Estates and UK 2000 Limited. The December 2004 agreement is not admitted and the Claimant is put to strict proof of it. Secondly, the fact that the Trust receives donations from time to time is pleaded and then it is said “*accordingly* any monies received are treated as donations unless otherwise stated” (emphasis supplied). No transfer with the intention of the transferor that the sums be treated as a donation is pleaded. Third, the currency transaction is denied and the meaning of the text exchanges in November 2005 is given thus “the context of the text messaging referred to another matter where the First Defendant and the Claimant were involved and where if the Claimant had placed monies in an interest bearing account he would earn 4% interest per year”. This looks like the suggestion of an investment

opportunity (at a not particularly attractive fixed rate) rather than a loan to be paid to the Claimant at a low interest rate of 4%. Following a Part 18 request, on the 7th September 2006 the First Defendant accepted that this was incorrectly pleaded and that what was meant was “an agreement between the First Defendant and the Claimant for the arrangement of a loan for or on behalf of the Claimant to be arranged personally by the First Defendant for the Claimant if and when requested by the Claimant to do so”. At the outset of the case, without objection, the First Defendant’s defence was amended to read that this agreement was reached at the same time as the Claimant agreed to make the donations and the agreement was “the First Defendant agreed to assist in arranging or obtaining a loan for the Claimant if and when requested to do so”.

Applicable legal principles

69. As noted above the Claimant accepted at the outset of this trial that the burden of proof lay on him to establish his entitlement to the money transmitted. In response to questions from the court Mr. Crystal accepted that the burden was to show that the money sent to Trust was a loan and not a gift. The case was said not to rely on any presumptions that the law may or may not make as to whether a sum of money transmitted is to be treated as a gift. However, in his closing submissions, Mr. Crystal did draw the court’s attention to some authorities in other jurisdictions to the effect that there was indeed a common law presumption against a gift. Since Mr. Hornett had already completed his submissions in response to the opening he was entitled to address these new authorities, and submitted in writing that it was too late for the Claimant to change his case to one of resulting trust where un-pleaded equitable defences might arise or seek to reverse the burden of proof. I agree with those observations, but the law relating to gifts seems to me to be of relevance in how the Claimant discharges the burden on him. If he can show that the payments were not gifts, it makes it substantially more probable that they were loans.
70. In that context Mr. Crystal drew to my attention, the conclusion of Marais JA in the case of Welch v Commissioner for the South African Revenue Service Case 23/2003 delivered in the Supreme Court of South Africa on the 11th March 2004. where he said at [30]- [31]:
- “in my opinion [the South African] legislature has not eliminated from the statutory definition the element which the common law regards as essential to a donation, namely that the disposition be motivated by pure liberality or disinterested benevolence and not by self interest or the expectation of a *quid pro quo* or some kind from whatever source it may come. If one were to.....find a single word apt to convey that the disposition should be motivated by pure liberality and in expectation of any *quid pro quo* of whatever kind, one would not find a better word than gratuitous. The shorter OED gives the following meaning to the word: ‘1. Freely bestowed or obtained, granted without claim or merit; costing nothing to the recipient; free’”.
71. Clearly people frequently make gifts to charities and the Defendants can point out that very large sums by way of gift have been made to this charity. However, charitable gifts are not usually made as part of an agreement with mutual obligations, and where someone donates to charity there is not usually a dispute as to what the donor’s intentions were. Where there is a dispute it seems to me that it is the intentions of the

donor that will be crucial, rather than the more familiar exercise of ascertaining the intentions of both parties in construing the agreement.

72. Mr. Hornett's written reply helpfully refers me to Halsbury's Laws of England 4th Edition (2004) vol 20(1) that address the topic of "Gifts Made Between Living Persons" at Paragraph [1] p. 3. :

"A gift made between living persons...may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true owner in possession to another person with the full intention that the thing shall not return to the donor. A gift appears to be effective when the donor intends to make it a gift and the recipient takes the thing given and keeps it knowing that he has done so. The mere fact that the recipient regards the thing given as a loan and intends so to treat it does not by not itself prevent the transaction from being effective as a gift".

73. The first two sentences confirm the view of the common law reached by the South African Supreme Court in Welch. The support cited for the proposition found in the last two sentences is the case of Dewar v Dewar [1975] 2 All ER 728. This was a decision of Goff J., as he then was, that confirms that for a transaction to have effect as a gift there must first be the intention of the donor to give it as such. In my judgment if the facts of Dewar were reversed and the donor intended a loan while the donee took it as a gift there would be no effective gift in law. Of course, this does not mean that a donor who makes an unconditional gift can change his mind later after it has been accepted as such (see Halsbury's Laws paras. [58]- [61]). Where the gift is not by deed, delivery is a necessary part of the gift and as stated at paragraph [38]:

"to constitute delivery the act must be such or be accompanied by such words as to be equivocal;".

74. Taking the passage cited at [72] above as a whole I derive from it two principles of relevance to the present dispute:-

- i. Gifts are voluntary and gratuitous, that is to say made without consideration.
- ii. Gifts require the donor to intend that the gift shall not be returned to him.

75. It is certainly not sufficient to constitute a gift for a charity to assume that any transfers made to it are gifts unless the contrary is shown. This would particularly be the case where the charity is in the habit of receiving both gifts and loans and does not have a standard form donations slip that it asks donors to use..

Conclusions: Issue 1: the agreement

76. However unsatisfactory aspects of the Claimant's unsupported evidence are, what remains clear is that both parties understood that they were making arrangements for transfers that were to be recorded in writing and signed by both of them. However informal and hastily drafted this agreement was, it was clearly of importance to the

Claimant and the fact of such agreement is an indicator was that this was not an unambiguous or unequivocal delivery of a gift to the charity.

77. Here it is clear that in December 2004, the Claimant was anxious that any transactions that he had with Trust through the First Defendant should be recorded in writing. The First Defendant agreed and drew up the text of the agreement, albeit that the parties to it had already been identified by the Claimant. It is an unusual procedure for a gift, where the donor can merely transfer the sum usually accompanied by a clear expression of charitable intent. Those who give sums to charity may also claim tax relief on it, although as Mr Weiss acknowledged they will usually require a receipt or other formal proof of the gift to do so. In my judgment the fact that an agreement was being drawn up at all, in contrast to the transaction in October suggests either some circumspection by the Claimant in dealing with the First Defendant a second time with respect to the Trust or that a more complex transaction was envisaged.
78. Such an indication is reinforced by the absence of a letter of thanks or receipt for what would be an extremely generous donation, and on the Defendant's case a further donation, amounting in total to some £522,000 made over between October and December 2004. I do not accept that the absence of a receipt is to be explained by uncertainty as to who to make it out to. Neither the Trust nor any of the Defendants had dealings with the Claimant's property companies. They only had dealings with the Claimant. It was the Claimant who identified the parties to the agreement signed by both parties in December and if any acknowledgement of delivery and receipt was to be made it was to the Claimant who had made the transfer of both sums.
79. Further, making every allowance for the fact that this was a hastily drawn up document, written in Hebrew by parties whose first language is Yiddish, there are a number of clear pointers in the text away from this being a donation to charity:-
 - i. The fact that two sums were specified rather than one, suggests that the two sums had different destinations and different purposes. This is more consistent with the Claimant's case that the first sum was a currency exchange transaction and the second sum was a loan in connection with property works the charity was undertaking in Stamford Hill. On the Defendants' case, all the funds were going to the charity's beneficiaries in Israel and there would be no point in making a distinction between the two sums. Even if the First Defendant is right that there had been no precise agreement as to the sum to be transferred before the 23rd December meeting, the expectation was a significant sum similar to the previous transaction of October 2005 for £200,000. On the First Defendant's case therefore the additional sum would be a fortunate and unanticipated windfall given for no particular reason.
 - ii. The precise amount of the first sum, of £120,445.59 strongly suggests that it was arrived at by converting back a sum of \$250,000 at an exchange rate of about 1.96 dollars to the pound with a variable third or fourth decimal point. The First Defendant would have known what rate the charity could obtain for its inter-account transfers and would have been able to make the calculation as the Claimant suggests. The Claimant would not have known what rates were available to the

charity, and would only have known that this would be a more favourable rate than transmission through a bank or currency exchange office where commissions and a discount on the full spot rate were likely to diminish the amount received.

- iii. It is clear that the parties to the transaction were concerned at specifying the immediately available dollar conversion rate. This is consistent with the Claimant's case but makes little sense on the Defendants'. The First Defendant's proffered explanation that the gift was to be expressed in dollars to make it seem more generous is unconvincing having regard to the fact that the sum recorded is not in dollars, and the two sums are not aggregated and converted to dollars.
- iv. It is much more difficult to ascertain how the precise sum in the second transaction came to be calculated. The First Defendant says that the Claimant asked his solicitor to clean out the balance in one of his company accounts, but the client account records from David Wineman suggest that this was not done and a small balance remained in the account after transfer (see [95 (ii)] below).
- v. If the First Defendant calculated the sums for the first transaction, it is more plausible that he did so for the second transaction. There is no evidence that the money went to pay off a bank loan for the property transaction on the Craven Walk synagogue but it is possible that the charity's urgent needs were represented to the Claimant by reference to immediate needs for financing the property development, and bank charges and interest payments might have come to the odd sum that was eventually recorded. I conclude overall that it is more probable that the sum was calculated by the First Defendant rather than by the Claimant.
- vi. The second sum specifically refers to repayment as a loan. This is the only word used to characterise either of the transactions in question. The absence of the Hebrew word for a gift is striking. The suggestion that these words were intended to mean that in return for a gift, the First Defendant would use reasonable endeavours to obtain a loan to be paid to the Claimant's accountant seems a very tortured reading of an admittedly imprecise text. The Defendants suggest that the Claimant was asset rich but could be cash poor; but if he was so concerned about the need to replace the capital he was giving away that he wanted assistance with a loan, it seems more likely that he would be willing to make the payment as a loan to the charity, to be repaid when requested. The charity undoubtedly was in the business of accepting loans from others for long or short term projects as the accounts books demonstrate. I conclude that it is much more probable that the agreement was referring to repayment to the accountant of the sums paid over to the Trust as a loan.
- vii. Admittedly there is a lack of clarity and detail that one would expect to see in a commercial document: when the loan was repayable; to precisely who; whether interest was to be paid and the like. However

the Claimant's case is that this was a relationship based on personal contact and where the charity represented it had a pressing need for funds. The Claimant may well be somewhat naïve in imagining that the memorandum clearly and satisfactorily recorded the true nature of the agreements that he alleges existed in respect of either sum of money, but that commercial naivety may need to be assessed in the context of the background noted above.

80. These conclusions are further supported by the evidence of Mr Fisher called by the Defendants and whose evidence was heard on live link from Israel. His evidence was given in a clear and forthright manner. His evidence is of some importance although it relates only to a small part of the case. He had never met or heard of Rabbi Meisels before the telephone call on the 23rd December. He was very used to dealing with Mr. Lichtman and had almost daily telephone calls with him and acted on his instructions with respect to withdrawals and payments from the Trust's Israeli bank account. He had experience of banks, business opportunities and the regulatory scheme for international transfers in Israel. He acted on a commercial basis for the Trust and if introduced to someone by Mr. Lichtman would offer his commercial services and advice to that other business.

81. The conversation he had with Rabbi Meisels on this occasion lasted a minute or so. It was put to him by Mr. Crystal that this was a business call. His reply was in the following terms:-

“I don't know if it was a business call or not. *I think Mr. Lichtman wanted to calm down Mr Meisels*, I was presented with someone who said he was Meisels” (emphasis supplied)

He subsequently declared that he was not a psychologist and cannot say what Mr. Lichtman's motives were in asking Rabbi Meisels to speak to him.

82. The impression that Mr. Fisher had of the purposes of Mr. Lichtman asking Mr Fisher to speak to Rabbi Meisels is a pointer to the nature of the first of the two transactions. Why would any re-assurance be needed of the charity's ability to convert money into dollars if the transaction was merely a donation by a generous donor to the general purposes of the charity? It is also of potential significance that Rabbi Meisels was never introduced to Mr. Fisher as a donor. If there was a need for calming down or re-assurance this was likely to be in the context of the anxiety of Rabbi Meisels to understand whether dollars were immediately available at the Israel end of the transaction. It is impossible to see why that should be of importance if this was a conversation leading to a mutually agreed gift.

83. There was another aspect of Mr Fisher's evidence that may be informative. He gave evidence that he was *never* a trustee of YLJT as averred by the First Defendant. It seems that his signature to the trust documents was obtained by way of misunderstanding as to what the First Defendant told him he was signing. Mr Fisher thought he was being made a signatory to the bank account for ease of commercial arrangement. He never agreed to be a trustee. The First Defendant says he did. This is not a central issue in the case but it provides some evidence of the First Defendant being over optimistic in interpreting what others have agreed to.

84. In my judgment it is quite probable that in the case of Rabbi Meisels as in the case of Mr Fisher, Mr. Lichtman's enthusiasm in promoting the interests of the charity may have led him to misunderstand what the other party was intending or agreeing to. Mr. Lichtman knew that the charity had an urgent need of further funds, whether for the Craven Walk synagogue or otherwise. I am sure that he can be a forceful advocate for the cause, and I conclude that his prime concern would be to obtain funds by one means or another. He might have assumed that any funds he obtained could be treated as gifts or merely hoped that a loan given in one set of circumstances would be converted into an outright gift by an apparently wealthy member of the Stamford Hill orthodox community who shared some sympathies with the aims of the Israel charity and who could be prevailed on to show solidarity.
85. I recognise the point made forcefully by Mr. Hornett on behalf of the Defendants that if this was the commercial transaction that the Claimant states, it is extraordinary that he did not respond to the failures to collect in January by a clear statement of his case and start proceedings to secure the return of his monies. I conclude that this is not simply a commercial transaction between the parties. Here again the cultural background to this case is of significance. It concerns religious and charitable functions likely to be recognised as of importance to both. It concerns personal relations inside the Hasidic community in North London, social standing, mutual respect and esteem. I am conscious from the numbers of people attending court and indeed the evidence of the Second Defendant that this dispute is of considerable interest in the broader community of observant Jews. In such a context there may well be reluctance to stand on legal rights to the prejudice of an esteemed charity by pressing for a return of funds that were apparently urgently needed for philanthropic purposes.
86. There would be understandable reluctance to turn to the machinery of the civil courts, solicitors and formal recovery procedures. There may also be reluctance to undermine personal business relations in Stamford Hill and possibly create scandal or social turmoil by instituting proceedings in the rabbinical courts either in the UK or the US.
87. The impression I have of the Claimant from the witness box is of a reserved quiet and personal man who would avoid conflict and social turmoil if he could. He appears to have depended on personal trust and honour in his dealings with the charity, rather than resort to professional advisers and professionally drafted agreements that he delegated to others to execute.
88. The Defendants point out that when the claim was expressed formally in correspondence in February 2006 it was confused and inconsistent as to the sums. I have already made some observations on this letter. As against the criticism of inconsistency by the Claimant, it can be said that the Claimant was clear from December 2005 that both transactions were loans. The First Defendant did not assert that the payments were gifts in the correspondence with the BDZ. They are not even said to be gifts in the Defence drafted in June 2006, it is merely asserted that they were assumed to be.
89. I further consider that the November text message is a pointer much more consistent with the Claimants case than the First Defendants. I take note of the proposition that a text is not a contract and cannot be construed as such, but I find it quite impossible to read the phrase "I will send the money" as "if you want a loan fill in the necessary

applications forms and I will use best endeavours with Mr Fisher to find you an institution willing to make a loan to you and if successful I will pay the money into your account". The text is a clear statement of present intention to pay money and moreover that the payment attracts interest.

90. The First Defendant points to the witness statement of Rabbi Wasner that the court received as the Rabbi was unwilling to come to give evidence in a civil court. This suggests that for observant Jews interest can be only charged with rabbinical permission and after a "hettar iskar" or formal agreement had been entered into. The Claimant said that such permission had been given. The First Defendant disputes this. In my judgment, this is not a strong point for the Defendants. If the First Defendant is right, he was proposing to loan the Claimant money that the First Defendant was to receive from Israel and charge 4% interest on it. There was no written to pay interest in the 23rd December document. This too would have required prior rabbinical permission. If the Claimant is right the proposal about interest only arose because a short term loan and a related currency transaction was not honoured by the First Defendant. Interest was here compensation for a breach of an agreement rather than a fresh commercial transaction in its own right. I note that the Claimant was not embarrassed to sue for interest in the BDZ, taking the February 2006 letter as an explanation for the quantum in dollars put forward in December. I further note that the First Defendant's explanation of the text is not consistent with the explanation pleaded in the defence.
91. I further conclude that the First Defendant's explanation as to why no receipt for a donation was ever issued to Rabbi Meisels holds no water. There could be no confusion as to who a receipt should be made out to, whatever the ultimate source of the funds. The identity of the transferor was plain both from the agreement and the history of requests made by the First Defendant to the Claimant. The absence of a receipt as an acknowledgement and an expression of thanks for what on any view are very considerable sums of money such a sum is itself significant. I cannot conceive that a charity would not want to be prompt and clear in its expression of thanks for such a sum if it had indeed been given to it. The only person to thank or acknowledge is Rabbi Meisels.
92. Despite the obvious frailties in the Claimant's evidence standing alone I am satisfied of the essential features of his account when set against the documentary support noted above. Taking the evidence as a whole, therefore, I prefer the Claimant's account to that of the First Defendant and I am driven to conclude that neither transfer made by the Claimant to YLJT was intended to be a gift or took effect as a gift. Whatever the First Defendant may have hoped would turn out to be the result, the terms on which the Claimant was willing to assist the Trust, as reflected in the agreement, should have made it plain to him that the sums transferred were not gifts. The Claimant expected repayment in the short term future either by way of a currency transaction in dollars in Israel or repayment to the accounts of his financial advisers in the United Kingdom. It may well be that these payments were induced on the basis of a profitable introduction to Mr. Fisher with his experience of international remittances and doing business in Israel. That does nothing to undermine the Claimant's account that these transactions were repayable to him.
93. I have not been assisted in resolving this central issue by an examination either of the Claimant's performance as a director of his property companies, or the somewhat

unusual way the YLJT did business as a charity although both these issues took up a great deal of the pre trial interlocutory process and much of the cross examination at hearing.

Conclusions Issue 2: the Corporate point

94. A significant part of the Defence case has been that even if, the monies paid to the trust were a loan, they were not the money of Rabbi Meisels but of one or more of his companies and it is the companies and not the Claimant personally who would be entitled to the return of them. My conclusions on this issue have to some extent been prefigured above by my conclusions on the question of a receipt [78] and [91] above. I reject this argument for a number of reasons.
95. First, on the evidence of the transactions themselves, none of the parties to them or those who arranged for the transfer of the funds thought that this was a company payment. The following points can be noted: -
- i. Any dealings that the First Defendant had prior to either the payments in October or December were with the Claimant personally. There is no suggestion that he was soliciting a gift from one of his companies.
 - ii. Both transfers were made through David Wineman client account. The extracts from the client account ledgers that the Defendant's sought in 2006, demonstrate that the client was Rabbi Meisels rather than one of his companies. The CHAPS payment for £202,407.95 was made from Client Account M 15231 Meisels and left a balance of £162.15. The funds appear to have come from the sale of 2a Belfast Road, N.16. The payment of £120,443.39 was made from Account M 15294 Mr. M Meisels. The funds appear to relate to the sale of a commercial property in Salford. The transfer left a balance of £2,597.27.
 - iii. 2a Belfast Road was a property that had been purchased and sold by Gilda Estates. The Claimant was a Director of this company. The Claimant's wife was the shareholder in Gilda Estates, but it is clear that the Claimant was the dominant personality in terms of giving instructions and the dealing with the funds.
 - iv. In a letter of 26th April 2007, written in response to orders for specific disclosure made against the Claimant, Mr. Brahams of David Wineman, confirmed that

"I have acted for you since 1999. By the time these payments were made, you and I had a regular course of dealing where it was accepted that I would not get written instructions to make payments but that I would rely on your instructions by telephone since we were at that time used to dealing with one another and I recognised your voice. Having received such instructions my practice would have been to make a careful note and to confirm what was done by fax or letter at a later date. There would not have been any written documents from you authorising or directing me to make these transfers"

- v. There are other documents from the accountants to Gilda Estates to the effect that Rabbi Meisels was entitled to draw for his personal use some of money from Gilda Estates. Nobody with knowledge of the affairs of the Claimant's companies seems to have been concerned about the transactions he authorised. If the Claimant has to account to anybody else for any money he receives back from the Defendants that is not a matter that arises in these proceedings.
- vi. It is clear that the Claimant and his wife were in substance the sole and joint owners of the companies established by the Claimant to undertake property transactions Gilda Estates and UK 2000 Limited. They were able to draw down funds in the companies accounts and transfer them for their personal use. There is no suggestion that Mrs Meisels or anyone else connected with the company has protested against these transfers. Mrs Meisels is clearly fully aware of the history of the matter having made a witness statement although not in the end called as a witness

96. Second, the Defendants accept that if the sums had been transferred from the company account into the personal account of the Claimant and from there to the charity, then there would be no issue that any funds to be returned would be returned to him. I am satisfied that the fact that the funds came from the David Wineman client account make no difference. Rabbi Meisels was the client and was able to give instructions without more.
97. The Defendants have obtained searches of the companies of which the Claimant is a Director or shareholder at Companies House. This material was in part used to point out that company accounts are substantially in arrears, that companies have been struck off in the past for non compliance with statutory duties, that a number of companies have charges and management orders made against them. The Defendants argue that if the accounts had been kept up to date it might have shown that the payments were made by the company as charitable donations. There were such charitable payments made in 2002. They also submit that the letters from the Claimants solicitor and accountant suggesting that the Claimant was entitled to draw on the company's accounts are not reflected in the accounts to date. I accept that these points may show marked informality by the Claimant in his business dealings, and some cavalier responses to his duties of record keeping as a director. They do not persuade me either that the payments were in truth made by the companies or that the First Defendant thought at the time in either October or December 2004 that he was dealing with the company rather than the Claimant, whatever he may subsequently have told Mr Weiss.
98. Third, by this plea the First Defendant is in essence seeking to undermine the agreement and deny that it reflected the true nature of the transactions on the 23rd December. I have concluded that the agreement is the distinguishing feature of the December transactions and was intended to reflect the understanding of the parties. The agreement is with Rabbi Meisels personally and not with any company that he controlled. If the First Defendant thought he was dealing with a company he might have expected the agreement to say so and there to be a formal resolution of the Directors before receiving any payment. There was none and no time for any to have been obtained.

99. Fourth, when the First Defendant was responding to the BDZ correspondence in December, he was at pains to point out that the transaction concerned the charity and not the First Defendant personally. He did not also point out that they did not concern the Claimant personally but one of his companies. The corporate issue seems only to have arisen in June 2006, when the Defendants instructed professional advisers who had not seen and did not accept the validity of the written agreement examined under the first issue.

Outcome:

100. On the findings of fact set out above, I conclude that the Claimant is entitled to succeed for the recovery of the monies transferred plus interest from the date or dates that the loans should have been repaid. I have seen no evidence that interest was agreed to be paid in December.
101. The First Defendant submits that the written agreement was too obscure to have validity as a valid contract, and if the sums transferred were a failed gift, the claim has not been pleaded as a resulting trust and it would be unjust to the charity to have to repay them. It seems that the charity has wound down its fund raising initiatives since June 2006, and has a number of creditors.
102. For the reasons given in reaching the conclusions on the first issue, in my judgment in the case of both transactions neither was intended to be a gift and the legal principles to be considered are not those relating to intended gifts that fail for one reason or another. The First Defendant was either aware or should have been aware that under the arrangements stipulated by the Claimant these sums were repayable.
103. I am conscious that the Second and Third Defendants have personal responsibility for the repayment of these sums by reason of their position as trustees, although they were not party to the terms in which the funds were received or any breach of personal obligation to the Claimant. However, they relied on the First Defendant's efforts as fund raiser and director for the Trust when it was active and they must take the failures along with the successes, the rough with the smooth. I imagine that there is an apposite Yiddish phrase.
104. The fact that the charity instantaneously transferred the funds to Israel does not make it unjust that they should have to repay them. There is no reason now that its legal obligations have been made clear that it cannot revive its fund raising activities to meet them.
105. I accordingly find for the Claimant on both issues.

Postscript

106. I would hope that the bitter controversy this claim has created within the synagogues of Stamford Hill will now abate. The court has not been diverted into engaging with mutual recriminations of unethical behaviour, and has no authority in theological matters. It is, perhaps, possible to draw back from the turmoil of litigation and conclude that both sides may well have thought at the time that they were behaving in the best interest of the charity: the First Defendant in seeking and the Claimant in giving short-term support.