



**IN THE HIGH COURT OF JUSTICE**

**BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES**

**BUSINESS LIST (ChD)**

**BETWEEN:**

**FUNDINGSECURE LTD**

**Claimant**

**and**

**MATTHEW GREEN**

**Defendant**

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**AMENDED PARTICULARS OF CLAIM**

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**These Particulars of Claim have been amended in accordance with the Order of Mr Justice Zuckerman dated 3 October 2018.**

**The parties**

1. The Claimant ("FSL") is a company incorporated in England and Wales with registration number 08120200 in the business of, among other things, providing peer-to-peer loans to individuals and companies.
2. The Defendant ("Mr Green") is an art dealer based in London and a director or former director of several companies dealing in fine art.

**Background**

3. Between November 2016 and July 2017, FSL and Mr Green executed a number of facility agreements ("the Facilities") and legal mortgage documents ("the Mortgages") with the intention that, in return for lending money to Mr Green, FSL would receive agreed interest and other fees, and that the loan would be secured by obtaining security over various artworks ("the Artworks").



4. A summary of these documents and the relevant Artworks is set out in the Schedule to these Particulars of Claim. They comprised:

- 4.1. A facility agreement ("Facility One") and mortgage document ("Mortgage One") dated 1 November 2016 in respect of five paintings (Gustave Loiseau, "Loing a Moret"; Raoul Dufy, "Les Regates"; Henry Moret, "Cote de Clohars"; Henry Moret, "Ile de Groix"; and Pierre Bonnard, "Matin Bleu"). A loan in the sum of £255,000 ("Loan One"), from which an arrangement fee of £5,000 was deducted, was advanced under these documents on 2 November 2016.
- 4.2. A facility agreement ("Facility Two") and mortgage document ("Mortgage Two") dated 2 December 2016 in respect of four paintings (Sir Alfred Munnings, "Sidney Webster Fish on a dark bay"; Walter Sickert, "Doge's Palace Venice"; Auguste Herbin, "Les Trois Vases"; and Ivon Hitchens, "Water, Dark Trees and Willows"). A loan in the sum of £494,700 ("Loan Two"), from which an arrangement fee of £9,700 was deducted, was advanced under these documents on 1 December 2016.
- 4.3. A facility agreement ("Facility Three") and mortgage document ("Mortgage Three") dated 2 December 2016 in respect of three items of silverware (a George III silver-gilt Warwick vase by Paul Storr; a George III silver-gilt cup and cover by Robert Sharp; and a massive Victorian silver centrepiece by R & S Garrard). A loan in the sum of £86,700 ("Loan Three"), from which an arrangement fee of £1,700 was deducted, was advanced under these documents on 2 December 2016.
- 4.4. A facility agreement ("Facility Four") and mortgage document ("Mortgage Four") dated 23 December 2016 in respect of a painting by Frank Auerbach, "The Pillar Box". A loan in the sum of £155,000 ("Loan Four"), from which an arrangement fee of £5,000 was deducted, was advanced under these documents on 23 December 2016.
- 4.5. A series of facility agreements ("Facilities Five, Six and Seven") dated 16 January, 23 January and 3 February 2017 respectively, and mortgage document dated 3 February ("Mortgage Five") in respect of a print by Pablo Picasso, "La



Minotaurornachic". A loan ("Loan Five") was advanced under these documents on various dates as follows:

- 4.5.1. Under Facility Five the sum of £206,000, from which an arrangement fee of £6,000 was deducted, was advanced on 16 January 2017.
- 4.5.2. Under Facility Six the sum of £206,000, from which an arrangement fee of £6,000 was deducted, was advanced on 16 and 23 January 2017.
- 4.5.3. Under Facility Seven the sum of £206,000, from which an arrangement fee of £6,000 was deducted, was advanced on 1 and 3 February 2017.
- 4.6. A facility agreement ("Facility Eight") and mortgage document ("Mortgage Six") dated 9 June 2017 in respect of a painting by Marc Chagall, "La Revolution". A loan in the sum of £463,500 ("Loan Six"), from which an arrangement fee of £13,500 was deducted, was advanced under these documents between 8 and 22 June 2017.
- 4.7. A facility agreement ("Facility Nine") and mortgage document ("Mortgage Seven") dated 26 July 2017 in respect of a work by L.S. Lowry, "Ladies and Gentlemen". A loan in the sum of £250,000 ("Loan Seven"), from which an arrangement fee of £7,500 was deducted, was advanced under these documents on 26 July 2017.

#### **Relevant terms of the Facilities**

##### ***Common terms***

#### **5. Facilities One to Eight each included the following terms:**

- 5.1. "Property" was defined as the relevant Artworks for that Facility as set out in paragraph 4 above.





- 5.2. By clause 1, FSL agreed to make available to Mr Green a term loan facility in an amount not exceeding a Facility Limit which was specified in each Facility, being in each case the amounts set out at paragraph 4 above. By clause 4.3, the Loan could only be drawn down in a single advance.
- 5.3. By clause 4.2, FSL was not obliged to pay unless, on the proposed Utilisation Date (being the date on which the loan would be advanced), (1) no Default was continuing or would result from the proposed Loan; and (2) the representations and warranties in clause 13 were true.
- 5.4. By clause 6.1, Mr Green would repay the Loan in full (together with all other sums outstanding under that Facility) on a Repayment Date which was expressly specified in each Facility. In each case, the specified Repayment Date was exactly 6 months after the date of the relevant Facility.
- 5.5. By section 1 of the Facility Mr Green was liable to pay (a) interest at the rate of 13% per annum on any balance outstanding under that Facility; (b) an Arrangement Fee in the amounts set out above at paragraph 4, to be deducted from the advance amount; (c) an Administration Fee on the outstanding loan at a rate of 0.72% per month of the amount at any time outstanding during the term of the loan to be paid in full by the Repayment Date; and (d) a Default Fee, under clause 8, on any amount payable under the Finance Documents which Mr Green had not paid by its due date, at a rate which was 0.5% higher than the Administration Fee which would have been payable pursuant to section 1 if the overdue amount had, during the period of non-payment, constituted the Loan. This fee was payable from the due date up to the date of actual payment.
- 5.6. By clause 11.1, Mr Green would indemnify FSL on demand against any cost, loss or liability incurred by FSL as a result of the occurrence of any Event of Default.
- 5.7. By clause 13, Mr Green made (among others) the following representations and warranties to FSL on the date of that Facility, on the Utilisation Date and on each subsequent day whilst the Loan was outstanding:



- 5.7.1. Each Finance Document had full force and effect and the obligations expressed to be assumed by Mr Green in each Finance Document were legal, valid, binding and enforceable obligations (clause 13.2).
- 5.7.2. The entry and performance by him of, and the transactions contemplated by, the Finance Documents to which he was a party did not and would not conflict with any agreement or instrument binding on him or any of his assets nor oblige him to create any Security over any of his assets (other than under a Security Document) (clause 13.4).
- 5.7.3. No Event of Default was continuing or was reasonably likely to result from the making of the Loan (clause 13.6).
- 5.7.4. Mr Green was the sole legal and beneficial owner of, and had good and marketable title to, the Property subject to no Security in favour of third parties (clause 13.8.1).
- 5.7.5. There were no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever which affected the Property (clause 13.8.3).
- 5.7.6. All information supplied by Mr Green to FSL in connection with the Finance Documents was true and accurate in all material respects as at the date it was provided or stated (clause 13.9).
- 5.8. By clause 14, Mr Green agreed to supply to FSL any information regarding his business and operations, the Property and his financial condition that FSL might request.
- 5.9. By clause 15.2, Mr Green undertook not to create or permit to subsist any Security over the Property.
- 5.10. By clause 16, each of the following (among others) were Events of Default:



- 5.10.1. If Mr Green failed to pay any amount payable under that Facility on the due date (clause 16.1).
- 5.10.2. If Mr Green failed to comply with any provision of a Finance Document (clause 16.2).
- 5.10.3. If any representation or statement made by Mr Green in any Finance Document was, or proved to be, incorrect or misleading when made (clause 16.3).
- 5.11. By clause 21, all obligations of Mr Green to FSL under the Finance Documents would be secured by all past and future Security in relation to the obligations of Mr Green to FSL.
- 5.12. By clause 24, if, at any time, any provision of the Finance Documents was or became illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions would be in any way affected or impaired.
- 5.13. By clause 28.1, to the extent that there was any inconsistency between the terms of Facility One and the terms of any Security Documents, then the terms of Facility One would prevail.
- 5.14. By the Definitions in clause 32.1;
- 5.14.1. "Default" included an Event of Default;
- 5.14.2. "Finance Document" meant the relevant Facility, each Security Document and each other document designated as such by FSL; as a result, the term "Finance Document" in each Facility included all the other Facilities and Mortgages;



5.14.3. "Security" meant a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

5.14.4. "Security Document" included the relevant Mortgage and any other document which conferred Security on FSL and any other document designated as such by FSL; as a result, the term "Security Document" in each Facility included all the other Mortgages.

5.15. The representations and warranties set out in paragraphs 5.7.4 and 5.7.5 above, and in paragraphs 7.5.1, 7.5.2, 7.5.3 and 7.5.4 below, will be collectively described as "the Good Title Representations".

5.16. In each Facility, as a result of the terms and definitions set out at paragraphs 5.7.1, 5.7.2, 5.10.2, 5.10.3, 5.14.2 and 5.14.4 above, Mr Green represented and warranted that the representations and warranties in each of the previous Facilities had been, and remained, true and accurate ("the Previous Facilities Representation").

#### *Facility Nine*

6. Facility Nine included materially equivalent terms to those pleaded at paragraph 5 above (and references in the remainder of these Particulars of Claim to terms in paragraph 5 should be taken to include the equivalent terms in Facility Nine), except that:

6.1. The Repayment Date was stated as 26 January 2017 which, on a proper construction, meant 26 January 2018.

6.2. The Administration Fee was 0.8% per month, rather than 0.72%.

6.3. The interest rate was 12% per annum, rather than 13%.

6.4. There was no Default Fee.





6.5. Clause 13 was renumbered as clause 9, slightly restructured and used the term "Chattels" instead of "Property". It still contained representations and warranties which were materially equivalent to those in paragraph 7 above.

6.6. In place of the undertaking at clause 15.2 of the other Facilities, Mr Green undertook at clause 10.2 (among other things):

6.6.1. Not to create or purport to create or permit to subsist any Security on, or in relation to, the Chattels (or any of them) or to enter into any preferential arrangement having a similar effect other than any security created by the Finance Documents without FSL's written consent (clause 10.2.1).

6.6.2. Not to create or grant (or purport to create or grant) any interest in the Chattels (or any of them) in favour of any third party without FSL's written consent (clause 10.2.2).

6.6.3. Not to permit to be done anything that would or might depreciate, jeopardise or otherwise prejudice the Security held by the Lender or materially diminish the value of any of the Chattels or the effectiveness of the Security created by the Finance Documents without FSL's written consent (clause 10.2.1.5).

6.6.4. Not to sell, assign, transfer, part with possession of or otherwise dispose of in any manner, surrender or create any legal or equitable interest in the whole or any part of any of the Chattels without FSL's written consent (clause 10.2.1.8).

6.6.5. To procure that no person should become entitled to assert any proprietary or other like rights or interests over the Chattels without FSL's written consent (clause 10.2.8).

6.6.6. To keep the Chattels in his sole and exclusive possession at Constantine Ltd, Constantine House, 20-26 Sandgate Street, London, SE15 1LE (clause 10.2.12).





6.7. The Events of Default in clause 16 of the other Facilities ~~did not appear in Facility Nine.~~

6.8. Clauses 21, 24 and 28.1 of Facility One were renumbered as clause 16, 19 and 23.1 of Facility Nine respectively. The definitions in clause 27.1 of Facility Nine were materially equivalent to those pleaded above, except that there was no definition of "Default".

6.9. On a proper construction of these terms, Mr Green made the Good Title Representations and the Previous Facilities Representation in Facility Nine.

#### **Relevant terms of the Mortgages**

7. Mortgages One to Seven each included the following terms:

7.1. By the Definitions in clause 1.1:

7.1.1. "Property" meant the relevant Artworks for each Mortgage, as described in paragraph 4 above.

7.1.2. "Charged Property" included all the property subject to any Security created by the relevant Mortgage. On a proper construction of the Mortgages, "Charged Property" meant the relevant Artworks for each Mortgage, as described in paragraph 4 above.

7.1.3. "Secured Liabilities" included all present and future liabilities of Mr Green to FSL.

7.1.4. "Security" included any mortgage, charge, assignment by way of security or other security interest, or any other agreement or arrangement having a similar effect.



- 7.2. By clause 1.4(a), a reference to a charge or mortgage of or over the Property included the proceeds of sale of the Property.
- 7.3. By clause 3.1(a), Mr Green purported to grant a legal mortgage over the Property and its proceeds of sale for the purposes of securing the Secured Liabilities.
- 7.4. By clause 3.1(b)(iv), Mr Green purported to grant a charge over the Property for the purposes of securing the Secured Liabilities to the extent that the legal mortgage in clause 3.1(a) was ineffective.
- 7.5. By clause 6.1, Mr Green made the following representations and warranties which would be deemed to be repeated on each day until the Secured Liabilities were discharged:
- 7.5.1. Mr Green was the legal and beneficial owner of the Charged Property and had good and marketable title to it (clause 6.2).
- 7.5.2. The Charged Property was free from any Security other than the Security created by the relevant Mortgage (clause 6.3).
- 7.5.3. There were no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affected the Charged Property or its value (clause 6.4).
- 7.5.4. The Mortgage created valid, legally binding and enforceable Security for the obligations expressed to be secured by it in favour of FSL, ranking ahead of all (if any) Security and right of third parties except those mandatorily preferred by law (clause 6.13(b)(i)).
- 7.6. By clause 7.1, Mr Green undertook not at any time, except with FSL's prior written consent which should not be unreasonably withheld:
- 7.6.1. To create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property.



- 7.6.2. To sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property.
- 7.6.3. To create or grant (or purport to create or grant) any interest in the Charged Property.
- 7.7. By clause 7.2, Mr Green undertook not to do, or permit to be done, anything that would or might depreciate, jeopardise or otherwise prejudice the security held by FSL or materially diminish the value of any of the Charged Property or the effectiveness of the Security.
- 7.8. By clause 7.5, Mr Green undertook to promptly give FSL notice in writing of (a) any representation or warranty which he had given to FSL which is incorrect or misleading in any respect; and (b) any breach of covenant in the relevant Mortgage.
- 7.9. By clause 7.8, Mr Greens undertook to notify FSL of any breach of the terms of the Mortgage.
- 7.10. By clause 23, if any provision (or part of a provision) of the Mortgage was or became invalid, illegal or unenforceable, it would be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification was not possible, the relevant provision (or part of a provision) would be deemed deleted. Any such modification or deletion would not affect the legality, validity and enforceability of the rest of the Mortgage.
8. The Good Title Representations and the Previous Facilities Representations representations set out in paragraphs 5.7, 6.5 and 7.5 above induced FSL to enter into the Facilities and Mortgages, were intended to do so and were objectively likely to do so.



## **Performance**

9. Between November 2016 and July 2017, FSL advanced a total of £2,322,900 to Mr Green in the amounts and on the dates set out in paragraph 4 above in the belief that Mr Green was entitled to loans under the Facilities.

10. FSL raised most of this money by arranging contributions from peer-to-peer lenders, many of whom were ordinary consumers investing their personal savings. FSL estimates that around 1,400 investors contributed money towards the Loans with each investor contributing an average of £1,668.

11. Pursuant to an oral understanding between FSL and Mr Green in, and as set out in the Schedule to these Particulars of Claim:

11.1. Mr Green paid some interest towards Loans One to Five; and

11.2. the Repayment Dates under Facilities One to Seven were extended by approximately six months (and, in the case of Facility One, for approximately twelve months).

11.3. The Good Title Representations and the Previous Facilities Representations in each of the Facilities and Mortgages induced FSL to agree to each of these extensions, were intended to do so and were objectively likely to do so.

## **Breaches of contract duty by Mr Green**

### ***(1) Legal ineffectiveness of mortgages and charges***

12. Under the Bills of Sale Act 1878 and/or the Bills of Sale (1878) Amendment Act 1882, the provisions of the Mortgages in paragraph 7.3 and 7.4 above were void to the extent that they purported to create mortgages or charges over the Artworks.

13. As a result, Mr Green was in breach of each of the warranties set out in paragraph 5.7.1 and 6.5 above (in Facilities One to Nine) and in paragraph 7.5.4 above (in Mortgages





One to Seven). FSL is entitled to recover any losses caused by the ineffectiveness of the security.

*(2) Security to third parties*

14. ~~In breach of the continuing warranties at paragraphs 5.7.4 and 5.7.5 (in the Facilities) and 7.5.1 and 7.5.3 above (in the Mortgages), and the undertakings at paragraphs 5.9 (in the Facilities) and 7.6.1, 7.6.2, 7.6.3 and 7.7 above (in the Mortgages), Mr Green (a) purported to grant security over and (b) parted with possession of the following Artworks at some time after the relevant Facilities and Mortgages:~~

~~14.1. On an unknown date, Mr Green delivered the painting by Sir Alfred Munnings, "Sidney Webster Fish on a dark bay", which was subject to Facility Two and Mortgage Two, into the possession of James Page Financial Services Ltd (trading as New Bond Street Pawnbrokers) ("NBSP") by way of pledge.~~

~~14.2. In or around February 2017, Mr Green delivered (a) a George III silver gilt Warwick vase by Paul Storr (worth £95,000), (b) a George III silver gilt cup and cover by Robert Sharp (worth £15,000), and (c) a Victorian silver centrepiece by R & S Gurnell (worth £80,000), each subject to Facility Three and Mortgage Three, into the possession of NBSP by way of pledge.~~

~~14.3. In or around 2017, Mr Green also delivered (a) a painting by L.S. Lowry; (b) a painting by Pierre Bonnard; (c) a painting by Auguste Herbin; (d) a painting by Gustave Loiseau; (e) a painting by Raoul Dufy; and (f) other paintings to NBSP by way of pledge. It is possible that some or all of these are the same Artworks as the ones described in Schedule 1 to these Particulars of Claim and, if this is confirmed, FSL will seek to amend these Particulars of Claim to reflect that.~~

~~15. Further, if it appears that Mr Green had already pledged any Artworks by way of security to any third party before entering into the relevant Facility or Mortgage or advancing the relevant Loan, then Mr Green will have misrepresented the true position to FSL (including by the representations and warranties in paragraphs 5.7, 6.5 and 7.5 above) and FSL will seek to amend these Particulars of Claim to reflect that fact.~~



14. On various occasions before August 2017, Mr Green delivered each of the Artworks into the possession of James Page Financial Services Ltd (trading as New Bond Street Pawnbrokers) ("NBSP") by way of pledge.
15. To date, Mr Green has refused to give the dates or details of the pledges to NBSP despite (a) repeated requests to do so; (b) an obligation to do so under paragraph 10 of the Order of Mr Justice Barling dated 24 July 2018; and (c) an obligation to do so in response to the Particulars of Claim served on 17 July 2018 (in respect of which no Defence or Acknowledgement of Service has been filed); In the circumstances, it may be inferred that, at the time of each Loan, each of the relevant Artworks had been pledged to NBSP.
16. As a result, each Loan (and each extension agreement pleaded in paragraph 11 above) was procured by Mr Green's deceit in that, in respect of each Loan, the Good Title Representations and/or the Previous Facilities Representations were false.
17. More specifically:
- 17.1. To the extent that some or all the Artworks listed in the corresponding Facility had been pledged at the time of the Loan (or at the time of the extension agreement) (and it is FSL's primary case that they all had been) then the Good Title Representations in the corresponding Facility and Mortgage were false and Mr Green knew that they were false or was reckless as to their truth or falsity.
- 17.2. To the extent that any Artwork listed in a previous Facility had been pledged at the time of the Loan (or at the time of the extension agreement) (and it is FSL's primary case that they all had been) then (a) the Previous Facilities Representation, made in the corresponding Facility, was false and Mr Green knew that it was false, or was reckless as to its truth or falsity; and (b) the Good Title Representations, made as continuing representations in the relevant previous Facility and Mortgage, had become false and Mr Green knew that they had become false, or was reckless as to their truth or falsity.





16.

18. FSL is entitled to damages for the unpaid principal, interest and fees under the Loans, representing the losses which it has suffered as a result of Mr Green's deceit.

(3) ~~Disposal of one Artwork~~ Disposal of the Artworks

19. On 16 May 2018, Mr Green sold "Les Regates" by Raoul Dufy, one of the Artworks listed in Loan One and Mortgage One, at auction in New York for £111,189. He has failed to remit the proceeds to FSL. On various dates which are believed to be between approximately August 2017 and 24 July 2018, Mr Green sold each of the Artworks as follows and, in each case, failed to remit the proceeds to FSL:

19.1. At an unknown date, he sold "The Pillar Box" by Frank Auerbach (an Artwork listed in Facility One) to Offer Waterman, an art dealership in London, for unknown consideration.

19.2. At an unknown date, he sold "Doge's Palace Venice" by Walter Sickert (an Artwork listed in Facility Two) to Offer Waterman and/or to a buyer known as Mark Maurice for unknown consideration.

19.3. On 16 May 2018, he sold "Les Regates" by Raoul Dufy (an Artwork listed in Facility One) at auction in New York for £111,189 to Helen Macintyre of Art Advisory.

16.1-19.4. At unknown dates, he sold the remaining Artworks for unknown consideration to Richard Green (Fine Paintings), an unlimited company registered in England and Wales which is connected to Mr Green's family and of which Mr Green was a director until December 2012.

16.2.

17-20. In respect of this Artwork By selling each of these Artworks:



~~17.1.20.1.~~ Mr Green is in breach of the continuing warranties at paragraphs 5.7.1, 5.7.2, 5.7.4 and 5.7.5 above (in Facility One) and at paragraphs 7.5.1 and 7.5.3 above (in Mortgage One).

~~17.2.20.2.~~ Mr Green is in breach of the undertakings at paragraph 5.9 above (in Facility One) and paragraphs 7.6.2, 7.6.3 and 7.7 above (in Mortgage One).

~~17.3.20.3.~~ Mr Green acted deliberately and dishonestly because he knew that he was breaching his obligations owed to FSL not to sell them.

***(5) Failure to repay the loans***

~~19.21.~~ In breach of the terms set out in paragraphs 5.4 and 6.1 above and the agreed extensions described in paragraph 11.2 above, Mr Green has failed to repay any of the Loans in full on the relevant Repayment Date, on the extended deadline for repayment or at all.

~~19.22.~~ As set out in the Schedule to these Particulars of Claim, the entire principal of £2,322,900 ~~is outstanding~~ was outstanding on 4 July 2018, together with:

~~19.22.1.~~ a total of £212,632.28 in contractual interest, having accrued from day to day at a rate of 13% per annum (or 12% for Facility Nine) and continuing to accrue at a rate of £820.48 per day from and including 4 July 2018;

~~19.22.2.~~ a total of £278,663.60 in Administration Fees, having accrued at a rate of 0.72% per month (or 0.80% for Facility Nine) and continuing to accrue at a rate of £556.43 per day from and including 4 July 2018; and

~~19.22.3.~~ a total of £58,720.78 in Default Fees, having accrued at a rate of 0.50% per month for Facilities One to Eight, and continuing to accrue at a rate of £340.75 per day from and including 4 July 2018.

As of 3 October 2018, the total outstanding amount was £3,030,942.31. The calculations are set out in an Updated Schedule served with these Amended Particulars of Claim.





### **Requests for payment and information**

**20.23.** From October 2017 to April 2018, FSL made a series of requests for payment from Mr Green by phone, text message and email. Mr Green repeatedly promised to pay but failed to do so. Among other communications:

**20.1.23.1.** On 13 December 2017, FSL emailed to Mr Green a summary of all the outstanding loans, interest and fees which were due.

**20.2.23.2.** On 6 March 2018, FSL emailed Mr Green stating that all the Loans were due and demanding payment and for Mr Green to hand over the Artworks.

**20.3.23.3.** On 14 May 2018, FSL's solicitors wrote to Mr Green setting out the Facilities and the Mortgages, explaining that the money was due, demanding payment and requesting information about what had happened to the Artworks.

**20.4.23.4.** On 7 June 2018, FSL's solicitors sent a further letter to Mr Green outlining the case set out in these Particulars of Claim and demanding payment and requesting information about what had happened to the Artworks.

**21.24.** ~~Mr Green has not engaged~~ did not engage substantively with the letters of 14 May 2018 or 7 June 2018 or FSL's other demands for payment. The Loans, interest and fees remain outstanding.

**22.25.** In breach of the terms of the Facilities set out at paragraph 5.8 above, Mr Green has failed to provide the information regarding his business and operations, the Artworks and his financial condition that FSL's solicitors requested in the letters of 14 May or 7 June 2018.

**23.26.** In breach of the terms of the Mortgages set out at paragraph 7.8 and 7.9 above, Mr Green has failed to notify FSL of the breaches set out in these Particulars of Claim. By



continuing to deal with FSL without notifying FSL of these breaches in circumstances where he had a positive contractual duty to do so. Mr Green acted dishonestly.

**Loss, relief and interest**

24.27. The breaches of duty alleged in these Particulars of Claim caused loss to FSL in that:

24.1-27.1. FSL has been unable to obtain prompt repayment of the money which it advanced to Mr Green; and

24.2-27.2. FSL has been unable to obtain or enforce security over the Artworks.

25.28. The breaches of contract alleged in these Particulars of Claim constituted Defaults and Events of Default under the relevant Facilities. Under the term set out in paragraph 5.6 above, FSL is entitled to an indemnity from Mr Green against any cost, loss or liability incurred by FSL as a result of those Defaults and Events of Default.

26.29. FSL intends to elect between its remedies when it has sufficient information about Mr Green's means and what has happened to the Artworks. At the date of these Particulars of Claim, FSL considers that it FSL is entitled to the following relief:

29.1. £3,030,942.31 as damages for deceit;

29.2. alternatively, £3,030,942.31 as damages for dishonest breach of contract;

26.1-29.3. alternatively, payment of the £2,322,900.00 advanced under the Loans;

26.2-29.4. payment (as debt, as damages or as agreed interest on damages) of the contractual interest, Administration Fees and Default Fees set out in paragraph 19 above and in the Updated Schedule to these Particulars of Claim;

26.3-29.5. alternatively, interest under section 35A of the Senior Courts Act 1981 at such a rate and for such a period as the Court considers appropriate; and



~~26.4. an injunction to restrain Mr Green from disposing of or diminishing the value of~~  
~~(a) such Artworks as are still in his possession or control and (b) the traceable~~  
~~proceeds of the sale of any Artworks;~~

~~26.5. an order to provide the information sought in FSL's pre-action letters and any~~  
~~other information relating to the Artworks and Mr Green's financial condition~~  
~~that FSL may request;~~

~~26.6. damages for breaches of contract; and~~

~~26.7.~~ 29.6. an indemnity against any cost, loss or liability incurred by FSL as a result of  
Mr Green's failure to comply with the provisions of the Facilities and the  
Mortgages.

THOMAS GRANT Q.C.

TED LOVEDAY

Maitland Chambers


2 July 2018

3 October 2018

### STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Amended Particulars of Claim are true.

I am duly authorised to sign this Statement of Truth on behalf of the Claimant.

Signed: 

Name: ANDREW BECK

Position: PARTNER

Date: 4 OCTOBER 2018



IN THE HIGH COURT OF JUSTICE

BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BETWEEN:

FUNDINGSECURE LTD

Claimant

and

MATTHEW GREEN

Defendant

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UPDATED SCHEDULE  
TO PARTICULARS OF CLAIM

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See the attached spreadsheet.