

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

**B E T W E E N:**

**FUNDINGSECURE LIMITED**

**Claimant**

**-and-**

**(1) MARK DAMIAN CLARKSON**  
**(2) PAGEFIELD DEVELOPMENTS LIMITED**  
**(3) GLENN THOMAS**  
**(4) JOHN UNSWORTH**  
**(5) RICHARD LUXMORE**  
**(6) COLIN HOWARD BOSWELL**  
**(7) MDSC (LIVERPOOL) LIMITED**  
**(8) TAYCO 002 LIMITED**

**Defendants**

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**AMENDED PARTICULARS OF CLAIM (pursuant to 17.1(2)(a) of the CPR)**

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**Parties**

1. The Claimant is, and was at all material times, a company regulated by the Financial Conduct Authority (“FCA”) and in the business of peer-to-peer lending.
2. The First Defendant (“MC”) is an individual. At all material times, he was associated, as further particularised below, with the remainder of the Defendants and/or each of them.
3. The Second Defendant (“Pagefield”) is a company listed on Companies House as engaged in the business of buying and selling real estate. MC is its ultimate beneficial owner.
4. The Third Defendant (“GT”) is an individual. At all material times, he was an associate of (at least) MC.

5. The Fourth Defendant (“**JU**”) is an individual. At all material times, he was an associate of (at least) MC.
6. The Fifth Defendant (“**RL**”) is an individual. He is a former director of the Claimant and a chartered accountant. He was appointed a director on 26 June 2012 and resigned on 31 January 2019. At all material times, he was an associate of (at least) MC. Further, during the material time of his directorship at the Claimant he held the following roles in light of the Claimant’s status as an FCA regulated entity:
  - 6.1. Compliance Officer;
  - 6.2. Money Laundering Reporting Officer; and
  - 6.3. Client Money Oversight.
7. The Sixth Defendant (“**CB**”) is an individual. At all material times, he was an associate of (at least) MC.
8. The Seventh Defendant (“**MDSC**”) is a company conducting no discernible activity. At all material times, it was associated with (at least) MC. From 16 February 2016, its director has been CB.
9. The Eighth Defendant (“**Tayco**”) is a company conducting no discernible activity. At all material times, it was associated with (at least) MC. From 30 October 2015, its director has been Donald Drummond, an associate of MC.

### **The Claimant, its business, and internal operations**

10. The Claimant’s business is as a peer-to-peer lending platform, providing lenders the opportunity to invest in loans on its platform. Its model operates *inter alia* as follows:
  - 10.1. Prospective borrowers provide the Claimant with information concerning a required loan including details of the amount they wish to borrow, and details of any asset against which it is proposed the loan be secured.
  - 10.2. Security is required for all lending provided through the Claimant. Security can take the form of a charge over real property or against other valuable assets (any resultant loans being “**Property Loan(s)**” or “**Pawn Loan(s)**”, respectively).

- 10.3. Where the proposed security takes the form of real property, the Claimant requires the property to be valued by a chartered surveyor. If the proposed security takes the form of other property, the valuation is carried out by a panel approved by the Claimant.
- 10.4. If the security is considered satisfactory, the loan is featured on the Claimant's website (a "**Loan Entry**"). The Loan Entry will feature key loan details including *inter alia*:
- 10.4.1. its purpose;
  - 10.4.2. the total amount sought; and
  - 10.4.3. the security provided.
- 10.5. In the case of a Property Loan, a copy of the valuation will be featured as part of Loan Entry. This enables prospective lenders to make informed investment decisions.
- 10.6. Prospective lenders ("**Investor(s)**") register with the Claimant and input monies into the Claimant's client account. Once registered, Investors are able to browse the Loan Entries featured on the Claimant's website.
- 10.7. In the event an Investor identifies a loan on the platform which they wish to finance or part finance, they can notify the Claimant to that effect. Such notification will include the amount they wish to invest from those monies they have previously transferred to the Claimant's client account.
- 10.8. Once the loan amount has been sourced (whether from one or multiple Investors), a loan agreement is entered into between the Claimant and the borrower, and the monies are advanced from the Claimant's client account to the borrower.
11. In the premises, as an entity regulated by the FCA, the Claimant owed the Investors obligations as regards the handling of client money, as set out in CASS.
12. All loans offered by the Claimant are short term and no longer than six months. In the event a loan risks not being repaid in time, borrowers can request refinancing. In such circumstances a new Loan Entry will feature on the platform which will expressly provide that the funds are to be used to repay an existing loan.

13. The payment out of fully funded loans to borrowers was typically administrated through Ms Lisa Eden, the Claimant's accounts manager. In the normal course of events, this would usually involve *inter alia*:

13.1. The individual responsible for managing the loan providing Ms Eden with a payment request document (a "**Payment Request**") alternatively provide instructions as to payment. The Payment Request or instructions would typically provide *inter alia*: (1) a loan reference number; (2) a name for the recipient borrower; and (3) the name and/or details for the account into which the loan was to be paid.

13.2. Once Ms Eden received the Payment Request or instructions, she would set up the Claimant's client account such that the money was ready to be transferred to the account detailed on the Payment Request. The payment would then need to be authorised by a director of the Claimant instructing the bank to make the payment.

13.3. In the premises, the Payment Request or instructions and the administrative role of Ms Eden was machinery to effect a payment. Ms Eden followed the instructions provided in the Payment Request and/or of the individual at the Claimant requiring that the payment be made. For material purposes, that individual was RL.

### **RL's duties to the Claimant**

14. Paragraph 6 herein above is repeated. At all material times RL owed the Claimant the following *inter alia* duties under the Companies Act 2006:

14.1. A duty only to exercise his powers as a director of the Claimant for the purposes for which they were conferred (s. 171);

14.2. A duty to act in the way he considered, in good faith, would be most likely to promote the success of the Claimant for the benefit of its members as a whole (s. 172);

14.3. A duty to exercise reasonable care, skill and diligence (s. 174);

14.4. A duty to avoid a situation in which he had, or could have, a direct or indirect interest, that conflicted, or possibly might conflict, with the interests of the Claimant (s. 175);

14.5. A duty not to accept a benefit from third parties by reason of his being a director or doing (or not doing) anything as a director of the Claimant (s. 176); and

14.6. A duty to declare his interest in a proposed transaction or arrangement with the Claimant (s. 177).

15. Further or alternatively, RL owed the Claimant fiduciary duties to the same effect and/or including to act in the best interests of the Claimant.

### **The fraudulent course of conduct**

16. The circumstances in which RL became affiliated with MC and/or the Defendants and/or each of them are not currently known. The Claimant reserves the right to plead further pending disclosure and/or sight of the Defendants' (and each of their) defences.

17. In or around late 2015 or early 2016, until around November 2018, RL began the process of taking monies from the Claimant's client and/or company account and paying them to MC and/or MC's associates.

18. RL recorded payments made to MC and/or MC's associates on a spreadsheet privately controlled and managed by him and not disclosed at any point in time to the Claimant ("the **Luxmore Spreadsheet**"), a copy of which is annexed to ~~this~~ these amended particulars of claim at **Annex 1**.

19. The Claimant is unable to plead as to whether the Luxmore Spreadsheet is exhaustive in setting out each and every payment made to MC and/or MC's associates and which was orchestrated by RL. The Claimant reserves the right to plead further pending disclosure and/or sight of the Defendants' (and each of their) defences. Without prejudice to the foregoing: (i) the Luxmore Spreadsheet shows that £7,475,952 was recorded by RL ~~has~~ having been paid out to MC and/or MC's associates from the Claimant's client account and/or its account (~~"the wrongfully paid sums"~~); and (ii) from the Claimant's internal investigations (including, where the Claimant has been about to identify the holder of the account to which sums have been paid, by reference to the identity of that account holder), the Claimant has so far identified £8,155,552.25 (crediting £440,000 of receipts) being paid out to MC and/or MC's associates from the Claimant's client account and/or its account, as further particularised in **Annex 2A** attached hereto. References to the "**wrongfully paid sums**" herein shall include a reference to those sums paid out to MC

and/or MC's associates from the Claimant's client account and/or its account, as recorded in the Luxmore Spreadsheet and/or as so far identified by the Claimant from its internal investigations as set out above.

20. The wrongly ~~obtained~~ paid sums fall into (at least) three categories as set out below.

#### Category 1 Advances

21. RL procured certain payments from the Claimant's client account where the purported loan referred to in the Payment Request prepared by RL and/or instruction he gave did not exist and there was no documentary record in respect of the same ("Off-Platform Advances" or "Category 1 Advances"). Accordingly, ~~the~~ any and/or each such Payment Requests ~~were~~ was falsified so as to facilitate wrongful payment. As to the Category 1 Advances:

21.1. RL procured the payment of monies from the Claimant's client account to MC and/or his associates in the absence of (1) a Loan Entry; (2) any security; and (3) any loan agreement with the recipient.

21.1A. Further particulars are by means of the spreadsheet annexed at Annex 2A.

21.2. Further, on a number of occasions, as further particularised in **Annex 2A** attached hereto, the purported recipient borrower referred to on the falsified Payment Request and/or to which RL referred did not correlate with the named payee and/or the holder of the bank account to which it was instructed that payment be made.

21.3. At the time of finalising these amended particulars of claim, and based on the material currently available to the Claimant, the Claimant has identified £1,711,493 £2,548,067.77 being wrongly dissipated by means of Category 1 Advances to MC and/or his associates.

#### Particulars

(1) ~~£1,042,600~~ £1,466,100 to MC including via solicitors;

(2) ~~£182,000~~ £582,000 to JU;

(3) £50,000 to GT;

(4) ~~£20,000~~ £45,000 to Donald Drummond (the director of Tayco and it is averred is an associate of MC);

~~(5) £120,000 to Taylors Solicitors LLP (“Taylors”), solicitors for MC;~~

(6) ~~£9,000~~ £44,000 to Andrew Pickles (who it is averred is an associate of MC);

(7) ~~£43,493~~ £46,967.77 to Sue Anderson (who it is averred is an associate of MC);

(8) £15,000 to S. Hirani / Wcap

(9) £21,000 to Brightwells (an entity who it is averred is an associated of MC);

~~(10) £38,400 to PDM Industries (an entity who it is averred is an associated of MC);~~

(11) £250,000 to JMW Solicitors LLP (“JMW”), solicitors for MC;

~~(12) £20,000 to an unknown account.~~

(13) £8,000 to RL;

(14) £10,000 to Daniel Smith; and

(15) £10,000 to AST Hamptons.

### Category 2 Advances

22. RL procured certain payments from the Claimant’s client account where the purported loan agreement to which the Payment Request prepared by RL referred did not exist but RL subsequently raised funds on the Claimant’s loan platform to cover the shortfall in the client account (“**False Loan Entry Advances**” or “**Category 2 Advances**”). As to these:

22.1. RL procured the payment of monies from the Claimant’s client account in the same manner as in respect of the Off-Platform Advances. After the sums were advanced, RL created or procured the creation of false Loan Entries on the Claimant’s platform in respect of which certain investors unwittingly authorised the use of sums previously input by them into the Claimant’s client account. The Loan Entries were false and fraudulent in that they

were created *ex post facto* and the stated purpose and/or security and/or recipient were fabricated by RL.

22.2. Further particulars are provided by means of the spreadsheet annexed at **Annex 2A**.

22.3. Further, on a number of occasions, as further particularised in **Annex 2A**, the purported recipient borrower referred to on the falsified Payment Request and/or to which RL referred did not correlate with the named payee and/or the holder of the bank account to which it was instructed that payment be made.

22.4. At the time of finalising ~~this~~ these amended particulars of claim, and based on the material currently available to the Claimant, the Claimant has identified ~~£3,732,200~~ £4,369,484.48 being wrongly dissipated by means of Category 2 Advances to MC and/or his associates.

#### Particulars

- (1) ~~£889,000~~ £1,480,184.48 to MC including via solicitors;
- (2) ~~£554,500~~ £544,500 to Mr Pickles including via solicitors;
- (3) £9,000 to Beasleys & Co Valuers, MC's property valuers;
- (4) ~~£25,000~~ £124,000 to CB (via solicitors);
- (5) ~~£203,000~~ £175,000 to GT;
- (6) ~~£461,184.48~~ £100,000 to JMW;
- (7) ~~£815,000~~ £860,000 to JU;
- (8) £31,000 to Miss C Capstick;
- ~~(9) — £40,000 to Pagefield;~~
- ~~(10) — £25,315.52 to Pagefield Mill Limited;~~
- (11) ~~£117,200~~ £77,800 to PDM Industries; and



(12) ~~£177,000 to Scotts Wright Solicitors;~~ £968,000 to MDSC (via solicitors).

~~(13) —£250,000 to Taylors;~~

~~(14) —£135,000 to an unknown account.~~

### Category 3 Advances

23. RL further procured certain payments from the Claimant's client account in respect of loans to MC and/or his associates which were *prima facie* genuine and appeared as Loan Entries on the platform at the appropriate time, but remain unpaid (“**Genuine Loan Entry Advances**” or “**Category 3 Advances**”). Further, if the Claimant had known about the Category 1 and/or Category 2 Advances, it would not have permitted the Category 3 Advances to have been made. As to these:

23.1. Further particulars are provided by means of the spreadsheet annexed at **Annex 2A**.

23.2. Further, on a number of occasions, as further particularised in **Annex 2A**, the purported recipient borrower referred to on the Payment Request and/or to which RL referred did not correlate with the named payee and/or the holder of the bank account to which it was instructed that payment be made. In the circumstances of the Category 3 Advances, nine of the fifteen advances made named JU as the borrower, but the bank account details in the corresponding Payment Request / instructions were not his in any instance.

23.3. At the time of finalising ~~this~~ these amended particulars of claim, and based on the material currently available to the Claimant, the Claimant has identified £1,568,000 £1,678,000 outstanding in respect of the Category 3 Advances made to MC and/or his Associates.

### Particulars

(1) ~~£190,000~~ £260,000 to MC including via solicitors;

(2) £300,000 to ~~Taylors~~ JU (via solicitors);

- (3) ~~£70,000 to JMW; £450,000 to Mr Pickles (via solicitors);~~
- (4) ~~£10,000 to Pagefield; £120,000 to Tayco (via solicitors); and~~
- (5) ~~£998,000 to Scotts Wright Solicitors; and £548,000 to Pagefield (via solicitors).~~

24. In respect of all and/or each category of advances, MC and/or Defendants were aware that the advancing of the sums concerned was contrary to the Claimant's proper procedures and involved the wrongful dissipation of funds and/or the creation of false and fraudulent documentation so as to conceal such wrongful dissipation from the Claimant.

### **The Claimant's Claims**

25. The concealed nature of Defendants' (and each of their) activity is such that the Claimant is not, prior to disclosure, able to fully particularise its case. What follows are the best particulars the Claimant can provide at this juncture. The Claimant reserves the right to plead further pending sight of disclosure.

### **Breach of duties to the Claimant**

26. In the premises, RL is in breach of his duties to the Claimant in that he:

#### **Particulars**

- (1) Abused his position as a director of the Claimant so as to procure the payment out of client monies contrary to the Claimant's obligations to Investors, including under CASS;
- (2) Acted (including in bad faith) contrary to the best interests of the Claimant by procuring the dissipation of the wrongfully paid sums, knowing that such payments had not been knowingly authorised by the Investors and contrary to the Claimant's practice and protective measures; and/or
- (3) Failed to exercise reasonable care, skill, and diligence in the discharge of his duties in all the circumstances referred to above.

27. At this juncture, the Claimant is unable to particularise whether RL was in breach of his “no-conflict” obligations as set out at ss. 175-177 Companies Act as the Claimant is unaware of the personal reasons for which RL was wrongfully acting, including whether he was being remunerated by MC and/or the Defendants and/or each of them and/or another natural or corporate person or persons in respect of his conduct. The Claimant reserves the right to plead further pending sight of the Defendants’ (and each of their) disclosure.

### Conspiracy

28. Further or alternatively, RL, MC and/or the rest of the Defendants and/or each of them combined, agreed and conspired together to injure and/or use unlawful means against the Claimant with the intention of causing it harm.

### Particulars

(1) At time which, pending disclosure, the Claimant is unable to plead to, RL and MC devised a scheme whereby RL would procure the advancement of the wrongfully paid sums to MC and/or his associates in breach of his duties particularised above and so as to cause damage and/or injure the Claimant. Without prejudice to the generality of the foregoing, the Claimant will rely as evidence of the same *inter alia* on:

- a. Emails sent by MC to RL on 23 March 2018 with a shopping list of requests for monies to fund various items and on 11 April 2018 with requests for payments to himself, Mr Drummond, JU and GT.
- b. Emails exchanged between MC and RL on 18 July 2018 demonstrating that as between them it was known that certain sums had been advanced where no security had been documented, i.e. Category 1 Advances, referred to as ‘*unalloc*’.
- c. Emails between MC and RL on 10 and 13 August 2018 where, following a further shopping list sent by MC on 10 August, RL expressly stated that payments had been made which were not on the Claimant’s platform, i.e. Category 1 Advances.
- d. Emails exchanged between MC and RL on 18 September 2018 where MC signed backdated loan agreements to facilitate Category 2 Advances.

- e. A meeting held between MC and RL at Birmingham Holiday Inn North – Cannock on 24 November 2018 where *inter alia*, and as evidenced by an email from RL to MC of 27 November 2018, the Category 1 Advances were discussed.
- f. Emails exchanged on 23 November 2018 where RL informed MC of monies owed in respect of certain purported loans; such information being communicated directly and not through the Claimant's ordinary channels.
- g. A further shopping list email on 6 December 2018 sent by MC to RL in respect of further monies sought, some of which lack any purported purpose.
- h. The extensive number of telephone conversations made between RL and MC during the course of 2017 and 2018. RL's frequent use of his mobile phone for such purposes was abnormal: the Claimant's ordinary communication channel was via the office line and/or company email.

(2) RL and MC concealed the scheme including *inter alia* by:

- a. Identifying nominal borrowers to hide the fact that payments were ultimately being made to MC. On 21 December 2017, RL emailed MC to clarify whether GT would 'front' a certain loan. MC confirmed that this was the case by email dated 21 December 2017, and that GT's c.v. read '*really well*'. In the premises, RL and MC were conspiring to deceive the Claimant and the Investors as to the true recipient of the purported loan.
- b. Targeting Investors who they thought were less likely to conduct due diligence checks. In the same email chain referred to above, RL asked what the minimum amount of funding required for a certain venture of MC's would be on the basis that '[l]arger loans attract larger investors who do their own due diligence with regards to property and client'.

(3) Pending disclosure, the Claimant is unable to particularise the involvement of the Defendants other than RL and MC in the conspiracy but will say *inter alia* that such involvement is to be inferred from:

- a. Their (and/or in the case of MDSC and/or Tayco, their directors) being listed as purported borrowers and/or in receiving the wrongfully paid sums.

- b. By letter from Taylors to the Claimant's solicitors, TWM Solicitors LLP, dated 12 June 2019, MC informed the Claimant that he was the ultimate beneficial owner of properties owned by MDSC and Tayco and that he could procure certain activity by those companies.
- c. MC is the ultimate beneficial owner of Pagefield.

(4) As to the unlawful means conspiracy, such unlawful means comprised the aforesaid breaches of duty by RL to the Claimant.

#### Knowing assistance

29. Further or alternatively, at all material times, the Defendants (and/or each of them) save RL knew that RL was acting in breach of his duties to the Claimant as set out above and, in the premises, dishonestly assisted RL in breach of his duties to the Claimant.

30. In the premises the Defendants (and/or each of them) save RL are accountable to the Claimant in respect of all benefits they have received as a result of RL's breaches of duty and are obliged to pay equitable compensation to the Claimant in respect of the losses it has suffered in consequence.

#### Unconscionable / dishonest / knowing receipt

31. Further or alternatively, and in the premises, the Defendants (and/or each of them) save RL unconscionably received the benefit of RL's breaches of duty as set out above in (1) the sum of any monies so received; and (2) any profits made in respect of those monies and hold the same on trust for the Claimant and/or is liable to account to the Claimant in like amount.

#### Restitution for unjust enrichment

32. Further or alternatively and in the premises, the Defendants (and/or each of them) save RL have been unjustly enriched in the sum of the wrongfully paid sums received in that the same were paid without basis and/or authorisation by the Claimant.

### Monies due and owing

33. Further or alternatively, the Defendants and/or each of those that are party to loan agreements to which a Category 3 Advance relates have failed to repay the sums loaned and the same, being £1,568,000, is due and owing alternatively by reason of the non-payment in breach of the same loan agreements, the Claimant has suffered loss and damage in like amount.
34. Further or alternatively, the Claimant is entitled to and does claim, pursuant to the terms of the loan agreements to which Category 3 Advances relate, its costs of these proceedings and interest at the contractual rate alternatively by reason of the non-payment of the same in breach of the aforesaid loan agreements, the Claimant has suffered loss and damage in like amount.

### Loss and damage / account

35. By reason of RL's breaches of duty and/or each of them and/or the conspiracy set out above, the Claimant has suffered loss and damage in the sum of the wrongfully paid sums and in respect of which, where the same have been paid from its client account, it is liable to the Investors. Further or alternatively, the fact of the wrongfully paid sums led to a shortfall in the Claimant's client account which was remedied by capital injections from the Claimant.
36. Further or alternatively, the Defendants (save RL) and/or each of them are accountable for all benefits received as a result of receipt of the wrongfully paid sums and/or hold the same on trust for the Claimant.

### Interest

37. Paragraph 34 herein above is repeated.
38. Further or alternatively, the Claimant claims and is entitled to equitable compound interest on all sums due, save its claims in conspiracy, unjust enrichment, and debt in respect of which it is entitled to and claims interest pursuant to s. 35A of the Senior Courts Act 1981 all at such rates and for such periods as the Court sees fit.

AND THE CLAIMANT CLAIMS:

- (1) From the defendants and/or each of them damages for conspiracy.
- (2) From MC, Pagefield, GT, JU, CB, MDSC and/or Tayco, equitable compensation in respect of all losses and/or an account of benefits they and/or each has received arising from RL's breaches of duty to the Claimant and MC, Pagefield, GT, JU, CB, MDSC and Tayco's dishonest assistance therein and/or which they and/or each of them have unconscionably received and/or a declaration that such sums are held on constructive trust for the Claimant.
- (3) From MC, Pagefield, GT, JU, CB, MDSC and/or Tayco, restitution in the sum of the wrongfully paid sums received.
- (4) From RL, equitable compensation in respect of all losses arising from his breaches of duty to the Claimant.
- (5) From MC, Pagefield, GT, JU, CB, MDSC and/or Tayco, such sums as are found to be due and owing in respect of the Category 3 Advances alternatively damages.
- (6) Contractual interest where applicable in respect of the Category 3 Advances.
- (7) Equitable compound interest in respect of all sums due under the equitable claims.
- (8) Interest pursuant to s. 35A Senior Courts Act 1981.
- (9) Costs as contractually entitled.
- (10) Such further or other relief as the Court sees fit.
- (11) Costs

WILLIAM BUCK  
WILLIAM HOOPER  
WILLIAM BUCK  
WILLIAM HOOPER

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

I am duly authorised by the Claimant to sign this statement.

.....

Carl Davies, Director

Dated:

Served this 12<sup>th</sup> day of July 2019 by TWM Solicitors LLP, Solicitors to the Claimant.

Re-served this 7<sup>th</sup> day of October 2019