Neutral Citation Number: [2026] EWHC 2915 (BP)

Case No: LM-2026-000001

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11/11/2026

Before :

ROSALIND PHELPS KC
Sitting as a Deputy Judge of the High Court

- -

Between :

STANDARD GAS TECHNOLOGIES LIMITED

Claimant

- and -

ANDREW GOODWIN

Defendant

- -

Cleon Catsambis (instructed by Mishcon de Reya LLP) for the Claimant
Peter Head (instructed by McDermott Will & Schulte UK LLP) for the Defendant

Hearing date: 21 October 2026

- -

Rosalind Phelps KC:

A. INTRODUCTION

1. This judgment concerns two related applications in a claim brought by Standard Gas Technologies Limited ("**Standard Gas**"), against Mr Andrew Goodwin. The claim arises out of a written agreement dated 24 September 2025 entitled "Shareholder Loan Agreement" (the "**Agreement**"), under which Mr Goodwin undertook to pay to Standard Gas the sum of £1,500,000 in three tranches of £500,000. Mr Goodwin paid the first tranche, albeit late. He has not paid the second or third tranches. Standard Gas claims the outstanding £1,000,000 or damages in the alternative.

2. Standard Gas is the parent company of a group which has developed a pyrolysis technology known as SG100. Its subsidiaries include Standard Gas Limited ("**SGL**") and Standard Gas SG No.1 Limited ("**SG No.1**"). Mr Goodwin is a shareholder in Standard Gas. He is also, through his shareholding in Swift Technology Group Ltd, a person with significant influence or control over Swift TG Solutions Limited ("**Swift**"), the contractor engaged to design and build an SG100 plant at Scottow Enterprise Park, Norfolk (the "**Project**").

3. Two applications are before the court. The first, by application notice dated 6 March 2026, is Mr Goodwin's application for summary judgment under CPR Part 24 and/or for an order striking out the Claim Form and Particulars of Claim under CPR r.3.4(2)(a) (the "**SO/SJ Application**"). As originally issued, the SO/SJ Application sought the dismissal of the whole claim. It is now confined to that part of the claim by which Standard Gas seeks payment of £1,000,000.

4. The second, by application notice dated 19 June 2026, is Standard Gas's application under CPR r.17.1(2)(b) for permission to amend its Claim Form and Particulars of Claim (the "**Amendment Application**"). Mr Goodwin has consented, under CPR r.17.1(2)(a), to most of the proposed amendments, including a recast claim for damages. He opposes certain other amendments in the draft Amended Particulars of Claim ("**APOC**") which plead (i) the characterisation of the Agreement on which the claim for the £1,000,000 by way of an agreed sum and/or specific performance depends and (ii) that claim itself, namely paragraphs 8, 13G, 20, 20A and paragraph (1) of the prayer, together with the corresponding text in the draft Amended Claim Form (together the "**Opposed Amendments**").

5. The parties essentially agree that the two applications turn on a single question. Mr Goodwin's position is that the claim for the outstanding instalments may be advanced only as a claim for damages. In this regard he relies on what is said to be a rule (described as the "**No Debt Claim Rule**") that a borrower cannot sue as a debt for money which a lender has agreed but failed to advance, because that would be tantamount to an impermissible claim for specific performance of a contract of loan. Standard Gas's position is that the Agreement is not a contract of loan of the kind to which that rule applies; that, if it is, the rule is not absolute and specific performance may be available because damages are inadequate; and that, at the very least, these are fact-sensitive questions in an undeveloped area of law which are unsuitable for summary determination.

6. The key issue on both applications is therefore essentially whether the claim for the outstanding instalments under the Agreement may arguably be advanced as a claim for an agreed sum or for specific performance of Mr Goodwin's obligations to advance those sums, or whether this claim stands no reasonable prospect of success such that Standard Gas is confined to a claim in damages.

B. FACTUAL BACKGROUND

7. The factual background is set out in the first witness statement of Mr David Whitmarsh, Chief Executive of Standard Gas ("**Whitmarsh 1**"), and in the draft APOC. Mr Goodwin has not yet served a Defence and he has provided no evidence contesting the facts. The SO/SJ Application is advanced on the sole footing that the claim is misconceived as a matter of law. It was common ground that the Court should proceed on the basis that the facts alleged by Standard Gas would be proven at trial.

The Project and the dispute with Swift

8. The Project is governed by a Design Agreement dated 12 January 2020 and a Manufacturing Agreement dated 25 November 2021, each made between SGL and Swift and subsequently novated to SG No.1 (the "**Swift Contracts**"). Standard Gas's case is that Swift failed to deliver the plant on time, failed to deploy promised engineering resources and was responsible for defects, and that the resulting delay increased the cost of the Project and placed the group under significant working capital pressure.

9. By the summer of 2025, SG No.1 had prepared a draft letter of claim dated 29 August 2025, quantifying its claims against Swift at £2,169,056 (the "**Swift Claims**").

10. Standard Gas's evidence was that it regarded proceedings against Swift as a last resort, because Swift lacked the means to meet the claims (which might therefore precipitate its insolvency), and because Swift's specialist engineering knowledge could not readily be replaced without further disruption. Mr Whitmarsh says that he presented the draft letter of claim to Mr Goodwin in July or August 2025 and that the arrangement later embodied in the Agreement emerged from their discussions.

The Agreement

11. The Agreement was signed by Mr Goodwin on or about 19 September 2025 and by Standard Gas on 24 September 2025. Standard Gas is defined as the "Borrower" and Mr Goodwin as the "Lender". Its material terms include the following:

    i) Recital B records that Standard Gas and/or its subsidiary have accrued claims against Swift which it estimates at "*at least £2,169,056.00 (the Claims)*", outlined in a draft letter of claim annexed to the Agreement. Recital C records that Mr Goodwin "*is a person with significant control of Swift*".

    ii) Recital D provides: "*The Borrower has agreed to suspend and to procure that the Borrower's Subsidiary shall suspend pursuit of the Claims in return for the Lender advancing the Facility Amount on the terms of this agreement*."

iii) By clause 3 "*The Lender has granted to the Borrower an unsecured sterling term loan facility of a total principal amount not exceeding the Facility Amount*", defined in clause 1.1 as £1,500,000.

iv) By clause 4 the monies were to be used for the working capital purposes of Standard Gas and its subsidiaries and in connection with the Project.

v) Clause 5.1 provides that Mr Goodwin was to advance to Standard Gas the Facility Amount in three tranches of £500,000 on 20 October 2025, 20 November 2025 and 31 December 2025.

vi) Clause 6.1 deals with interest and provides that "*no interest shall accrue unless an Event of Default occurs*", in which case interest accrues at 10% per annum from the Event of Default until the earlier of repayment or remediation of the default.

vii) By clause 7.3, Standard Gas "*shall repay the principal and interest (if any) on any Tranche in full on the Final Repayment Date*", defined as the first Business Day ten Business Days after the last of the "*Repayment Conditions*" is satisfied.

viii) The Repayment Conditions are (i) the Project having passed the Site Acceptance Test (which requires the plant to have been fully commissioned and operated for a continuous period of at least 720 hours and an underwriter such as Munich Re to have confirmed its willingness to provide plant performance insurance on commercially viable terms); and (ii) Standard Gas and/or its subsidiaries closing and receiving the proceeds of a fresh fundraising round of at least £5,000,000 not contracted and anticipated before the date of the Agreement.

ix) By clause 7.4, Standard Gas is to use reasonable endeavours to procure satisfaction of the Repayment Conditions, "*but it shall not constitute an Event of Default if the Repayment Conditions are not satisfied*".

x) By clause 7.5, if in Standard Gas' reasonable opinion there is no realistic prospect of the Repayment Conditions being satisfied within two years, it may, "*in full satisfaction and discharge of all its obligations under this agreement*", assign or procure the assignment to Mr Goodwin of the benefit of the Swift Claims; failing such an assignment, the parties were to discuss and agree arrangements for repayment or satisfaction of the Loan in good faith.

xi) Clauses 8.1 to 8.8 list the Events of Default. Each relates to the position of Standard Gas as Borrower: failure to pay on the Final Repayment Date (clause 8.1), unremedied non-compliance with other provisions (clause 8.2), insolvency-related events (clauses 8.3 to 8.7) and repudiation or rescission of the Agreement by the Borrower (clause 8.8).

xii) Clause 8.10 entitles Mr Goodwin, upon an Event of Default, to cancel his outstanding obligations, to accelerate the Loan or to make it payable on demand, "*PROVIDED THAT, save in the case of an Event of Default under clause 8.1, the Borrower may, in full satisfaction and discharge of all its obligations under this agreement including without limitation remediation of the Event of Default, assign or procure the assignment to the Lender the benefit of all the Claims*". It

seems, therefore, that it may be open to Standard Gas to choose to repudiate the Agreement, thereby triggering an Event of Default under clause 8.8, and then satisfy its repayment obligations to Mr Goodwin by assigning the Swift Claims to him.

xiii) Clause 10.1 states that, provided Mr Goodwin complies in full with the terms of the Agreement, until the Final Repayment Date or earlier discharge of its obligations, Standard Gas shall not, and shall procure that its subsidiaries shall not, (a) waive, settle or compromise any of the Swift Claims without Mr Goodwin's consent (not to be unreasonably withheld or delayed), nor (b) commence proceedings in respect of them save so far as strictly necessary to protect them against limitation (and clause 14.2 gave Swift the right to enforce clause 10.1(b)).

Performance

12. Mr Goodwin paid the first tranche late, by payments of £100,000 on 28 October 2025 and £400,000 on 31 October 2025. He did not pay the second tranche, due on 20 November 2025, or the third, due on 31 December 2025. Non-payment is not disputed. Standard Gas's evidence is that during November and December 2025 Mr Goodwin gave repeated assurances that payment was imminent.

13. It is also common ground that the Repayment Conditions have not been satisfied. Standard Gas has not pursued the Swift Claims and says they remain suspended. Standard Gas's evidence is that it was unable to obtain substitute finance on comparable terms and instead raised funds through an accelerated rights issue at £100 per share. Mr Goodwin relies on that evidence as showing that Standard Gas has obtained the money elsewhere. Standard Gas also argues that it has adhered to its side of the bargain, in not pursuing the Swift Claims.

Procedural history

14. The claim was issued on 5 January 2026 and served personally on Mr Goodwin, who is resident in Switzerland, while he was within the jurisdiction in January 2026. The original Particulars of Claim claimed £1,000,000 as a debt or, alternatively, as damages, together with interest. On 6 March 2026, the date on which his Defence was due, Mr Goodwin issued the SO/SJ Application. Standard Gas responded with Whitmarsh 1 and a series of draft amended pleadings, served on 20 March, 9 April, 6 May and 29 May 2026.

15. By letters of 14 April and 15 June 2026, Mr Goodwin's solicitors consented to certain amendments including the recast damages claim (at APOC paragraphs 21 to 21I), on terms that Standard Gas pays his costs of and occasioned by them. By letter of 4 June 2026, they confirmed that the SO/SJ Application was pursued only in respect of the Opposed Amendments.

16. Standard Gas issued the Amendment Application on 19 June 2026, supported by the first witness statement of Mr Oliver Felton of Mishcon de Reya LLP. Mr Jack Thorne of McDermott Will & Schulte UK LLP made a witness statement in response on 3 July 2026.

C. THE APPLICATIONS

Relevant legal principles

17. The principles applicable to strike out, summary judgment and amendment applications are well-known and were not in dispute.

18. Under CPR 24.3, the court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

19. The principles were summarised by Lewison J in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], approved by the Court of Appeal in *AC Ward & Son v Catlin (Five) Ltd* [2009] EWCA Civ 1098 at [24]. In summary: (i) the court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success (*Swain v Hillman* [2001] 2 All ER 91); (ii) a realistic claim is one that carries some degree of conviction and is more than merely arguable (*ED & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 at [8]); (iii) the court must not conduct a "mini-trial"; (iv) it need not take at face value everything a party says, particularly where contradicted by contemporaneous documents; (v) it must take into account the evidence that can reasonably be expected to be available at trial (*Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550); (vi) it should hesitate to make a final decision without a trial where reasonable grounds exist for believing that a fuller investigation of the facts would add to or alter the evidence and so affect the outcome (*Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63); but (vii) where the application gives rise to a short point of law or construction and the court is satisfied that it has before it all the evidence necessary for its proper determination, and that the parties have had an adequate opportunity to address it in argument, it should "grasp the nettle and decide it". If further evidence not yet before the court might put the documents in another light then it would be wrong to give summary judgment but it is not enough to argue that something may turn up at trial (*ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725).

20. CPR r.3.4(2)(a) empowers the court to strike out a statement of case if it appears that it discloses no reasonable grounds for bringing or defending the claim. Practice Direction 3A, paragraph 1.2, gives as examples particulars of claim which set out no facts indicating what the claim is about, which are incoherent, or which "contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant". There is no material difference between the "no reasonable grounds" test under CPR r.3.4(2)(a) and the "no real prospect" test under Part 24: *Kryvenko v Renault Sport Racing Ltd* [2016] EWHC 2284 (Comm) at [54].

21. The commentary in the White Book at paragraph 3.4.2 states that "it is not appropriate to strike out a claim in an area of developing jurisprudence, since, in such areas, decisions as to novel points of law should be based on actual findings of fact", citing *Hughes v Colin Richards & Co* [2004] EWCA Civ 266. To similar effect, where the law is "in a state of transition", it may be "more satisfactory to allow the law to develop on the basis of a fuller appreciation of the facts than can be obtained from a bare consideration of the pleaded statement of case": *Independents' Advantage Insurance Co Ltd v Cook* [2003] EWCA Civ 1103 at [15], (Chadwick L.J.).

22. Once a statement of case has been served, it may be amended only with the written consent of all other parties or with the court's permission (CPR r.17.1(2)). A necessary condition for any amendment is that the claim as amended should have a real prospect of success, which is the same test as applies on an application for summary judgment.

Summary of the applications and the parties' arguments

23. Mr Goodwin seeks reverse summary judgment against Standard Gas on the claim for payment of £1,000,000 (and strike out of the corresponding part of the pleading). His grounds are that the claim has no real prospect of success, that there is no other compelling reason for a trial of it, and that the corresponding passages disclose no reasonable grounds for bringing it. Standard Gas conversely seeks permission to make the Opposed Amendments (paragraphs 8, 13G, 20 and 20A and paragraph (1) of the prayer of the APOC) on the basis that they have a real prospect of success and are properly pleaded. By these amendments, Standard Gas deletes the previous claim in debt and advances a draft claim for the remaining £1,000,000 as an agreed sum or as specific performance of the contract.

24. The essential arguments advanced by Mr Goodwin may be summarised as follows.

    i) The applications raise a short point of law. A claim in debt to compel a lender to advance money is the same in substance as a claim for specific performance of the obligation to lend, and an action for an "agreed sum" is simply another description of a claim in debt. Whichever label is used, the claim is barred by the principle (dating back at least to *Rogers v Challis* (1859) 27 Beav 175, of which *South African Territories Ltd v Wallington* [1898] AC 309 (HL) ("***Wallington***") remains the leading authority). This provides that no claim in debt or specific performance lies against a lender who fails to lend.

    ii) The Agreement is a loan agreement. It obliges Mr Goodwin to advance £1,500,000 and Standard Gas to repay it upon satisfaction of the Repayment Conditions, and so falls within the definition of a contract of loan at *Chitty on Contracts* (36th ed) [42-278], which extends to repayment "*at a fixed or determinable future time, conditionally upon an event which is bound to happen, with or without interest*".

    iii) The Agreement is not a compromise. It extinguishes no claims; clause 10.1(a) prohibits settlement of the Swift Claims, and clause 10.1(b) merely suspends them. A compromise is intended to bring disputes to an end (*Foskett on Compromise*, 10th ed, [8-01]), and the Agreement is not even made between the parties to the Swift Contracts.

    iv) Standard Gas "*cannot have it both ways*". If it contends that the advance was never genuinely repayable, it comes close to alleging a sham, which would defeat the whole claim, including the agreed damages claim. If the Agreement is a valid loan, the rule in *Wallington* applies, which binds this Court, and the question of whether damages are an adequate remedy does not even arise.

    v) In any event, the argument that damages are inadequate cannot succeed on the facts. Standard Gas's own damages case is that it obtained the money elsewhere, through an accelerated rights issue which raised some £2,000,000. An order

compelling Mr Goodwin to advance £1,000,000 which Standard Gas no longer needs would be perverse, and illustrates why the rule exists.

25. Standard Gas made the following arguments:

i) First it cast doubt on the proper applicability and scope of the No Debt Claim Rule, pointing out that (at least according to the exposition of the rule in *Chitty*) it is based on three old cases, has been widely criticised, and lies in an area of developing law in which strike-out is inappropriate. The rule had only ever been applied to 'ordinary' commercial loans for repayment after a fixed term with interest, and in any event allowed for exceptions in certain circumstances.

ii) Second it pointed to features of the Agreement which meant that it was (arguably at least) not caught by the rule; it was not a conventional loan but a hybrid or sui generis type of agreement which involved some features of a loan but also elements of a settlement agreement (in particular the fact that Mr Goodwin's £1.5m payment was to be made in exchange for a forbearance from suing under clause 10.1(b), and in certain circumstances Standard Gas could assign the Swift Claims to Mr Goodwin in place of repayment under clauses 7.5 and 8.10). No ordinary lender would have entered into an agreement whereby its loan could effectively be cancelled in exchange for an assignment of claims against a third party, and part of the rationale of the Agreement was to incentivise Mr Goodwin to help get the Project over the line.

iii) In this regard, Mr Whitmarsh's evidence was that the repayment provisions were essentially an afterthought to provide a benefit to Mr Goodwin in the event that the Project turned out to be successful, and the Agreement was principally a settlement agreement dealing with the Swift Claims. The board minutes of 16 September 2025 record that Mr Goodwin had agreed to provide £1.5 million "in lieu of the Company pursuing its claims at this time". In January 2026 the Board described the sums to be paid as *"Andrew Goodwin (AG) Swift Settlement Payments"* and the arrangement as a *"Loan Settlement"*. (A further argument, that the Agreement was a form of suretyship, was not seriously pursued as a standalone argument, but remained part of the Claimant's case that the Agreement was a *sui generis* contract with elements of both a settlement and a surety agreement).

iv) Third in any event the rule was not absolute and the court still had to consider whether damages were an adequate remedy. Here, the loss was not simply the outstanding £1 million, but the whole package of rights and obligations under the Agreement, including the effect of these on Mr Goodwin's behaviour in 'getting the Project over the line'.

v) Fourth questions as to both (i) the proper characterisation of the Agreement and (ii) the adequacy of damages were both acutely fact-sensitive and unsuitable for summary judgment. Further, the fact that there would be a trial of the damages claim in any event was another compelling reason why the claims should be disposed of at trial under CPR r.24.3(b) (*Iliffe v Feltham Construction Ltd* [2015] EWCA Civ 715 at [72]-[73]).

D. THE "NO DEBT CLAIM" RULE

The statement of the rule in *Chitty on Contracts*

26. Mr Goodwin's counsel took as his starting point the statement of the rule in *Chitty*, Vol II, at paragraph [42-285], under the heading "Breach of executory contract: remedies of borrower":

> If a person contracts to lend money, and then, in breach of contract, refuses or fails to advance the money, the borrower cannot sue for the money agreed to be loaned as a debt, for this would be tantamount to an order of specific enforcement, and such an order will not normally be granted for a contract of loan. But the borrower can claim damages for the failure to advance the money. The damages will very often be merely nominal, but if expense has been reasonably incurred in procuring the loan elsewhere, that expense is recoverable as special damage provided it was caused by the breach and was within the contemplation of the parties. If the borrower can only procure the loan from other sources at a higher rate of interest than that agreed under the contract, and this was reasonably foreseeable at the time when the contract was made, it seems that the borrower can recover the additional interest they will have to pay as damages from the lender. If the borrower is unable to raise the money from other sources at all, and they are consequently unable to enter into or complete some transaction for which the money is required, the lender may be liable for loss of profit on such a transaction or other consequential loss. But it would have to be shown that the lender had express notice of the purpose for which the money and possibly also that the loan was agreed to be made for that purpose and for no other. The same principles will no doubt apply where it is agreed that the borrower shall be entitled to draw down the loan in tranches during a specified period, but the lender, without any breach on the part of the borrower, refuses to allow the borrower to draw down the balance of the loan.

27. The authorities cited in support of the first sentence (footnote 1766) are *Sichel v Mosenthal* (1862) 30 Beav 371, *Wallington* and *Re Smelting Corporation* [1915] 1 Ch 472, discussed in more detail below. The footnote also refers to s.740 of the Companies Act 2006 which states that "*a contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance*", and (with a cf.) to *Beswick v Beswick* [1968] AC 58.

28. The converse proposition, that a lender cannot obtain specific performance against a borrower who refuses to take the loan, is stated at [42-286], with reference to *Rogers v Challis* (1859) 27 Beav 175. At [31-025], *Chitty* states that "A contract to lend money cannot, as a general rule, be specifically enforced at the suit of either party: it is assumed that damages, based on current rates of interest, are an adequate remedy."

29. *Snell's Equity* (35th ed) at [17-002] states that "a normal contract for the loan of money, whether or not on mortgage, will not be specifically enforced; for the borrower can obtain money elsewhere, and if he has to pay more for it, he may sue for damages".

The three authorities cited by Chitty in support of the rule

30. In *Sichel v Mosenthal* (1862) 30 Beav 371; 54 ER 932, the plaintiffs carried on business in partnership. By articles of agreement dated 8 July 1861 the defendant agreed to join their firm as a partner, paying £5,000 on joining and causing a further sum of £10,000 to be paid at a later date. If the defendant failed to join the firm he was to pay on request £5,000 as a fixed loan on which interest was payable. The firm sought specific performance of the obligation to make the advance, and the defendant filed a general demurrer for want of equity. Sir John Romilly MR allowed the demurrer, first expressing doubt about whether the partnership aspect of the agreement was certain enough to be enforced, and then (at 376-377) stating as follows:

> Assuming the first part of the agreement could be specifically enforced, still there is this clause — that if the Defendant fails to carry out his part of the agreement he will lend the firm £5000. He has failed to do so, and the remaining question is, whether this clause can be enforced. The agreement is to this effect: A. says I agree to join B. in partnership, and if I fail in that I agree to lend him £5000 at five per cent. What mutuality is there in this? The Defendant might say, I am ready to lend you the money at five per cent., by which I may derive considerable profit; while the Plaintiffs might say, 'You would not join our firm, and we will not take your money.' Could the Defendant file a bill to compel the Plaintiffs to take the money? I am of opinion he could not; if so, this is an agreement without any consideration for it.

31. *Wallington* involved a company which offered mortgage debentures secured by a floating charge of its assets (and which were exchangeable for shares within a stated period). The price was payable by instalments. The respondent paid the deposit for some debentures, which were allotted to him, but refused to make any further payment and the company sued for (1) specific performance, (2) payment of the balance of the price of the debentures, and (3) damages.

32. At a trial which, as Lord Halsbury LC noted, took seven minutes to try (at 313), Wright J held that specific performance could not be granted, but gave judgment for £520, the instalments then due and unpaid, on the footing that the respondent's promise to pay in his letter of application had created a debt. No evidence of damage was tendered. The Court of Appeal (Lord Esher MR, Lopes and Chitty LJJ, [1897] 1 QB 692) reversed that decision and entered judgment for the respondent.

33. The House of Lords dismissed the appeal:

i) Lord Halsbury LC (at p.312) stated that:

> …the real nature of the whole transaction is an agreement by the applicant to lend money at certain interest, and the action in this case was in truth mainly, if not altogether, directed to compel the intending lender to perform his contract to lend, which undoubtedly he had refused and neglected to do. With respect to the claim for specific performance, a long and uniform course of decision has prevented the application of any such remedy, and

> I do not understand that any Court or any member of any Court has entertained a doubt but that the refusal of the learned judge below to grant a decree for specific performance was perfectly right. But, of course, in this, like any other contract, one party to the contract has a right to complain that the other party has broken it, and if he establishes that proposition he is entitled to such damages as are appropriate to the nature of the contract.

ii) Lord Watson (at p.314) said that the respondent's only engagement "consisted in a promise to advance money to them in loan; and it is settled in the law of England that such a promise cannot sustain a suit for specific performance", and that the company's obligation to issue mortgage bonds against the loan did not "in any way alter or affect the character of the transaction, or give the company any right to sue as for the price of an article sold by them which they were ready to deliver". The only remedy open to the company was an action for damages.

iii) Lord Herschell (at 315) stated as follows:

> I do not think it is open to any doubt that a person with whom a contract to lend money has been entered into cannot obtain specific performance of that contract. All the learned judges who have considered this case have been of that opinion, and none of the authorities cited afford any real support to the contrary view. But for the fact that Wright J. arrived at another conclusion, I should have thought it equally clear that the sums of money constituting the instalments which the defendant agreed to pay did not constitute a debt. It was argued that the defendant had agreed to purchase certain debentures of the company, and that the moneys sought to be recovered were the price of the debentures so agreed to be purchased. I think this is a fallacy. The transaction was not in its nature a contract of purchase: it was an agreement on the one side to lend money for a term of years, and on the other side to give the lender the specified security for his loan. I am at a loss to see how an agreement of this description can create a debt from the lender to the borrower.

iv) Lord Macnaghten said (at 318-319) "That specific performance of a contract to lend money cannot be enforced is so well established, and obviously so wholesome a rule, that it would be idle to say a word about it". As regards the action for the price, he said "there is no contract to pay except as incidental to the contract of loan. There is no contract of sale at all. The term 'price' applied to such a transaction as this is quite out of place. To order payment, as was done in this case, of an amount equal to the sum of the remaining instalments, would be to enforce the agreement against one of the parties to the contract and to set the other free — free from any obligation to pay interest, and free, too, from any obligation to repay the principal. That would be a very one-sided sort of specific performance, contrary to all precedent, and in the result plainly unfair."

34. The judgments do not speak with one voice, especially as to whether there is a blanket principled rule that contracts to lend may never give rise to a debt claim (see Ld. Herschell and Ld. Macnaghten), or whether there is simply a bar to specific

performance which, in the case of ordinary loan contracts, cannot be overcome (see Ld. Halsbury). It is also noteworthy that none of their Lordships examined the rationale of the specific performance limb at any length: Lord Halsbury LC relied on "a long and uniform course of decision", and Lord Macnaghten considered it "idle to say a word about it", but viewed its rationale as being the one-sided effect of the order, rather than adequacy of damages, which is a more coherent modern explanation. Finally, it should be noted that the decision predates that of the House of Lords in *Beswick v Beswick* [1968] AC 58, where it was made clear that there was no bar in principle to an order of specific performance of an obligation to pay money.

35. Section 740 of the Companies Act 2006 (originally enacted as s.16 of the Companies Act 1907) was introduced to reverse the result on the facts in *Wallington*. Counsel for Mr Goodwin pointed out that, by expressly permitting specific performance (in circumstances where the plaintiff would still need to satisfy the court that the conditions for specific performance were made out), its wording was consistent with the blanket rule (since it suggested there was a need to remove an obstacle other than the ordinary bars to specific performance).

36. In *Re Smelting Corporation; Seaver v The Company* [1915] 1 Ch 472 the company had issued some first mortgage debenture stock. All stockholders were entered on the register and received certificates, but some of them had not paid all instalments due. The company was wound up voluntarily in 1907. The trustees had realised the security and had been distributing the proceeds among the fully paid stockholders. The question raised by originating summons was whether the partly-paid stockholders were required to pay their unpaid instalments before they could participate, in accordance with the principle in *Cherry v Boultbee* (1839) 4 My & Cr 442 (which required a person who owes money to an estate first to settle that debt before being entitled to his share). This was said to depend on whether the stockholders' unpaid instalments constituted a debt. Astbury J, relying on *Wallington*, found that they did not (at 476):

> prior to the Companies Act, 1907, specific performance could not be granted in respect of a contract to lend a company money payable by instalments upon the security of debentures, and … the moneys due for unpaid instalments do not constitute a debt to the company, but the company is only entitled to damages for actual loss caused by the breach of the contract.

Other cases referring to the rule

37. Counsel's researches identified relatively few later decisions in which the three authorities have been considered.

38. The principal one is a decision of the Privy Council, *Loan Investment Corporation of Australasia v Bonner* [1970] NZLR 724 ("***Bonner***"). There, Mr Bonner agreed to sell two houses to the appellant company for £13,300 on terms that on settlement he would "deposit" with the company £11,000 for a term of ten years at 7.5% interest, unsecured save for a personal guarantee. Mr Bonner repudiated the agreement. Wild CJ ordered specific performance, holding that the contract was "in truth and substance a contract for the sale and purchase of land, with a provision for part of the purchase money to remain on loan to the purchaser". A majority of the Court of Appeal of New Zealand allowed the appeal in *Bonner*, citing *Wallington*. The President cited *Starkey v Barton*

[1909] 1 Ch 284 (a case where a tenant was granted specific performance of an option to purchase a property for a fixed sum, part of which was to be left on mortgage, Parker J deciding that in substance the contract was one for the sale and purchase of land, not a loan and therefore ordering specific performance), but distinguished it on the basis the contract in question was not one for the sale of land.

39. The Judicial Committee, by a majority, dismissed the company's appeal. Lord Pearson for the majority held (at 734-735) that the contract was a composite contract combining two transactions — a sale of land and an unsecured loan of £11,000 for ten years — each of which was a principal transaction, with neither being subsidiary or subordinate or ancillary to the other, although the contract was entire and indivisible. He observed that "The form of the contract is a good prima facie guide to its nature and character, but ultimately the substance is more important", and that where a composite contract includes "what is in substance and reality a long-term unsecured loan, the loan ought not to be treated, when specific performance is sought, as something different simply by being connected with a sale of land". He continued:

> A mere contract for a loan of money will not be specifically enforced. An ordinary contract for sale and purchase of land will be specifically enforced. Such a contract will be specifically enforced, even if it includes an ancillary provision for part of the purchase price to remain on mortgage. ... Such contracts ... are distinguishable from the present composite contract, in which the long-term ... unsecured loan is not ancillary to the sale of land but is a principal transaction in itself. (4) There is an obvious objection in principle to granting specific performance of an unsecured loan. It would have a one-sided operation, creating a position of inequality. The borrower obtains immediately the whole advantage of the contract to him, namely the loan itself — a sum of money placed completely at his disposal. The lender on the other hand has to wait and hope for the payment of interest from time to time and for the eventual repayment of the capital. ... This objection in principle may not prevail in exceptional cases. (5) This composite contract was predominantly in the nature of a commercial bargain. The appellant company wanted the property not for their own use but for selling, letting, mortgaging and perhaps developing, and they wanted the loan to help in financing their business generally. As has been stated, this is not a mere or ordinary contract for the sale of land, but a composite contract in which the other part, the provision for a loan, is not ancillary but a principal transaction. If the appellant company can show that they have been deprived of a good bargain by the respondent's wrongful refusal to carry it out, they are entitled to proper damages. On the whole, damages are a sufficient and suitable remedy, and the special remedy of specific performance should be refused.

40. Sir Garfield Barwick (the Chief Justice of Australia) dissented. He considered that there was a single transaction for the sale of land, one of whose terms was that part of the price should remain in the purchaser's hands. More generally, he said (at 741-742) that

the reason specific performance of loan contracts is generally refused is solely because damages are normally an adequate remedy. It was therefore wrong to conclude that a contract to lend money could never in any circumstances be ordered to be specifically performed; it would all depend on the particular facts as to whether damages were inadequate.

41. Counsel for Standard Gas identified only two other reported decisions referring to *Wallington*, neither of which shed particular light on its rationale or scope*: R v Kohn* (1979) 69 Cr App R 395 (CA) (whether a bank's customer's rights were a "thing in action" capable of being stolen under the Theft Act 1968) and *RKW Ltd v Revenue and Customs Commissioners* [2014] UKFTT 151 (TC) (whether a share subscription gave rise to a debt for the purposes of s419 of the Income and Corporation Taxes Act 1988).

42. Three points emerge from this review:

    i) There is no decision which appears expressly to doubt *Wallington*, and the proposition that a contract to lend money will not ordinarily be specifically enforced is consistently repeated.

    ii) However, outside the loan cases, the law as to specific performance of obligations to pay money has developed since *Wallington*, notably through *Beswick*. Furthermore, the only appellate examination of the loan rule since then, in *Bonner*, was by a divided Judicial Committee of the Privy Council whose majority expressly left open the possibility that the objection to specific performance of a loan might not prevail in "exceptional cases", and that "on the whole, damages are a sufficient and suitable remedy" (and which contained a powerful dissenting judgment).

    iii) The rule has been applied only to transactions which the court characterised as, in substance, contracts to lend money with interest. It has been held not to apply where the provision of finance is ancillary to a transaction which is itself capable of specific relief (*Starkey v Barton*, as explained in *Bonner*).

Extrajudicial criticism

43. The No Debt Claim Rule has been subject to criticism by commentators and academics, principally based on the argument that there should be no absolute bar but rather courts should in theory be free to order a lender to lend if the factual circumstances justify it:

    i) Professor Rawlings ("Avoiding the obligation to lend" [2012] JBL 89 at 105-107) observes that "it is not surprising that the uncompromising views expressed in [*Wallington*] generally terminate discussion, but shifts in the modern law relating to specific performance should encourage reconsideration". He notes that the rule "has only been applied where the loan is the principal transaction and not where it is ancillary to a transaction that can be the subject of an order for specific performance, such as the conveyance of land, or the purchase of shares not freely available on the market, or the assignment of a patent", and that "the law relating to specific performance has changed significantly since the decision in Wallington and so has the nature of finance". He concludes that the judges in *Wallington* must now be taken to have based their opinions on the presumption that alternative funds are available in the market, but if that

presumption does not apply then the reason for denying specific performance falls away. In other words, it should all turn on the adequacy of damages. This article is cited by Paget's Law of Banking (16th ed.) at [12.9], which describes the "absolute rule" as having "increasingly come under pressure".

ii) Spry, *The Principles of Equitable Remedies* (9th ed, 2014) states (at 72-74) that decisions holding damages adequate for contracts to pay or lend money "must be re-assessed by reference to the question whether damages leave the plaintiff in the same position in all material respects as specific performance"; that "even for simple loan agreements damages may not be an appropriate remedy, if, for example, the appropriate quantum of damages is uncertain or loans from other sources may not be readily obtainable". This work concludes that "purported rules denying specific performance on the ground of the adequacy of damages in regard to contracts to loan or pay amounts of money need to be modified and that a greater liberality should be shown, where the circumstances justify this course".

iii) Andrews, Tettenborn and Virgo on *Contractual Duties: Performance, Breach, Termination and Remedies* (4th ed 2023) accepts (at §27:10) that there is much to be said for the rule at least where simple loans are involved, because "if the circumstances of a would-be borrower have changed, it seems hard to compel a lender to commit his money to what he may see as certain loss", and because of the "one-sided operation" identified in *Bonner*. But this text describes "the normal reason given for this unwillingness (the adequacy of damages)" as "unconvincing", observes that "damages for failure to provide credit may in many cases be enormously difficult to prove", and considers it to be arguable that the exceptions do not go far enough. It concludes that there is "a strong case for a further relaxation in respect of agreements by banks and similar institutions to provide finance for particular projects", subject to a defence where the defendant could show a relevant change of circumstances such as a drastic deterioration in the claimant's position.

iv) An article by J Nash KC, "COVID-19: Specific Performance of Loan Agreements", Practical Law, 21 April 2020 criticises the formulation of the rule in *Chitty* and the three authorities underlying it as being old and lacking in proper analysis justifying the rule. He concludes that there is a solid argument that *Chitty*'s unqualified statement does not represent the modern law, and that specific performance of loan contracts should not be denied where damages are not an adequate remedy.

DISCUSSION

44. I was not much persuaded by Standard Gas's argument (in reliance on *Iliffe v Feltham Construction Ltd)* that one of the reasons for refusing summary judgment was that the remainder of the claims were in any event proceeding to trial. The parties have taken court time and expended costs to argue the applications before me, and if the claims stand no real prospect of success then I should strike them out or grant summary judgment, even if there is to be a trial on the other issues between the same parties in any event.

45. As to the application of that test, the starting point is that there is no reported case involving a straightforward loan contract in which the courts have granted a debt claim or ordered specific performance of an obligation to lend (or borrow).

46. Counsel for Mr Goodwin argued forcefully that the analysis need not progress beyond the identification of the claim as one essentially for a debt on an ordinary loan contract (there being, he submitted, no practical difference between that and the reformulated action for an agreed sum in the Opposed Amendments). He submitted that I could and should dismiss the claim on a straightforward application of *Wallington* (by which I was bound) without even considering the issue of adequacy of damages.

47. However, the scope, and (relatedly) the theoretical underpinnings of, the No Debt Claim Rule appear to me to be unclear:

    i) Although authority at the highest level, there is no real analysis in *Wallington* of the rule, and the case was decided at a time before *Beswick v Beswick* when there was doubt as to whether any obligation to pay money could be specifically enforced.

    ii) As I have set out above, it is unclear to what extent there is a blanket rule that there could never be a debt claim in respect of a loan agreement, or whether the principle is based only on the likely unavailability of the remedy of specific performance.

    iii) Lord Pearson for the majority in the Privy Council in *Bonner* appeared to view the rule as confined to the latter of these aspects, and, importantly, noted that it may not prevail in "exceptional cases".

    iv) The scope of this potential exception is not clear. The cases show that the rule is not applied where, as in *Starkey*, the transaction is in substance not properly characterised as a loan, although it could be said that this is not technically an exception at all. The more natural reading of Lord Pearson's opinion is that the objections to specific performance could be overcome on particular facts, even if these would be rare in practice. That would also accord with many of the academic views I have outlined above. I accept that the wording of the Companies Act exception points the other way (paragraph 35 above) but that might well be explained by the legislators adopting a 'belt and braces' approach to the immediate statutory reversal of *Wallington* in the pre-*Beswick v Beswick* era.

48. If indeed there is no blanket/automatic rule and specific performance of an obligation to lend could be available in exceptional cases, then it would be necessary to consider the factual circumstances and, in particular, whether Standard Gas have a real prospect of persuading a court at trial that damages would not be an adequate remedy for Mr Goodwin's breach. As to this:

    i) As reflected in Recital D to the Agreement, an inherent part of the commercial bargain was Standard Gas's forbearance from pursuing the Swift Claims in exchange for the sums to be transferred from Mr Goodwin, and Standard Gas's option in certain circumstances to assign those claims to Mr Goodwin in place

of finding cash to repay the loan (see clauses 7.5 and 8.10, and paragraph 11(xii) above).

ii) That renders the Agreement not a straightforward commercial loan, not least because (i) this was not a package of rights that could be easily replaced by going out into the market and obtaining it from another source and (ii) the value of that package of rights to Standard Gas would depend, among other things, on the true value of the Swift Claims.

iii) Counsel for Mr Goodwin argued that the fact that the Agreement provided for additional ways to repay the loan (just as in *Wallington* the debt could be exchanged for equity) did not mean that it was not a loan agreement to which the No Debt Claim Rule applies, but it seems to me that these non-standard features of the loan arguably go beyond straightforward alternative repayment routes. Furthermore, the evidence of Mr Whitmarsh, which I must accept for these purposes, is that the agreement was principally a settlement agreement, with the repayment provisions being essentially an afterthought, a feature which is also reflected in the contemporaneous board minutes (paragraph 25(iii) above). There were benefits to Standard Gas to having Mr Goodwin 'at the table', i.e. bound into the project by virtue of having advanced the sums and being someone who was also in a position to help procure the successful completion of a complex technical project which had run into difficulties. That, it seems to me, is capable of founding an argument that damages for Mr Goodwin's failure to advance the sums would not be an adequate remedy.

iv) That also meets the point made by Mr Goodwin's counsel that Standard Gas subsequently raised funds through a rights issue. That alternative funding did not bring with it the other benefits I have outlined above, some of which were unique to Mr Goodwin's involvement and many of which were potentially difficult to quantify in damages. There is also considerable force in Standard Gas's submission that since the Project is ongoing, any losses caused by the delay in obtaining funding are potentially speculative and difficult to quantify.

v) Courts are often willing to specifically enforce settlement agreements; Snell observes (at [17-007]) that "it is important that the Court ensures that valid settlement agreements are enforced according to their terms", citing *Hewavisenti v Wickramasinghe* [2021] EWHC 2045 (Ch) at [91]. Although, as Mr Goodwin's counsel pointed out, that was a case involving property (where specific performance is commonly awarded) it is not surprising that damages are often considered inadequate for breaches of agreements to resolve disputes.

49. Taking all of the above into account, I am not persuaded that Standard Gas's claim either for an agreed sum or for specific performance of the loan stands no real prospect of success:

i) There has been remarkably little judicial scrutiny of the rule given its age. In a sense therefore, this is not a 'developing area of law' (cf. paragraph 21 above) but rather, as counsel for Standard Gas submitted, an undeveloped area of law. Counsel for Mr Goodwin submitted that the paucity of decided cases is because the law is so clear. However it seems to me that there is considerable uncertainty as to the scope and rationale of the rule and the exceptions to it. This, coupled

with the fairly widespread extra-judicial criticism of a blanket rule, mean that the claim for specific performance/an agreed sum in the context of this unusual agreement is better considered against the background of a full trial of the facts.

ii) The Agreement in this case is clearly not simply a straightforward loan agreement consisting only of an obligation to lend in exchange for a promise to repay. Equally, it clearly does contain elements of a loan agreement and, as counsel for Mr Goodwin fairly pointed out, it was precisely that part of the contract of which specific performance was sought. Ultimately, the debate about the proper label to place on the agreement was somewhat arid and I agree with Standard Gas's submissions that this is a *sui generis* form of agreement (which is not the same thing as suggesting it is a 'sham').

iii) For the reasons set out above I consider that Standard Gas has a real prospect of showing at trial either that the court is not bound to apply *Wallington* to dismiss the claim outright or that damages are not an adequate remedy (or that specific performance should otherwise be granted on the facts of this case). Those claims should proceed to trial so that the relevant legal arguments can be developed against the background of detailed findings of fact.

50. As to the Opposed Amendments themselves:

i) An argument that these were objectionable because they amounted to submissions rather than pleadings of material fact, contrary to *Tchenguiz v Grant Thornton UK LLP* [2015] EWHC 405 (Comm) was not seriously pursued, but in any event, I would not have been persuaded to disallow them on this basis.

ii) I am not prepared to strike out only those parts of the Opposed Amendments which refer to the Agreement having some characteristics of a surety agreement (see paragraph 25(iii) above). This relatively minor part of the pleading was not so hopeless that it should not proceed to trial as part of the broader arguments about the proper characterisation and function of this *sui generis* contract (even accepting that Standard Gas was not technically benefiting from a guarantee given that the Swift Claims were owed to another party, SG No.1).

iii) I note that Standard Gas have already agreed to pay Mr Goodwin's costs of and occasioned by the amendments on the standard basis, to be assessed if not agreed.

51. Accordingly, I will make an order dismissing the applications for summary judgment and strike out, and permitting the Opposed Amendments on the terms as to costs of and occasioned by the amendments referred to above.