



Neutral Citation Number: [2022] EWCA Crim 448

Case No: 202100703 B4  
202100875 B4

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM THE CROWN COURT AT HARROW**  
**Her Honour Judge Wood**  
**T20187135**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/04/2022

Before :

**LORD JUSTICE EDIS**  
**MR JUSTICE JULIAN KNOWLES**  
and  
**HIS HONOUR JUDGE ALTHAM**  
**Sitting as a judge of the Court of Appeal Criminal Division**

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Between :

<b>CHIN LAM</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>THE CROWN</b>	<b><u>Respondent</u></b>
<b>YIT GAN LAM</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>THE CROWN</b>	<b><u>Respondent</u></b>

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**Mr. Will Martin for Yit Gan Lam**  
**Ms. Grace Forbes for Chin Lam**  
**Mr. Ben Holt for the Prosecution**

Hearing dates : 25 February 2022  
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**Approved Judgment**

This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be 10:00am on Friday 1<sup>st</sup> April 2022.



**Lord Justice Edis :**

1. On 12 March 2021 Her Honour Judge Wood handed down a written ruling in the Harrow Crown Court. She had heard confiscation proceedings brought against Chin Lam over two days in January and had taken time to formulate her decisions on a number of issues. We would like to pay tribute to the care with which the judgment was prepared and the clarity of the reasoning. She had to decide many issues in addition to that which is the focus of the appeal, and there is no appeal against most of what she decided.
2. The decision under appeal is the determination under s10A of the Proceeds of Crime Act 2002 that Chin Lam (“Mr. Lam”) was the sole legal and beneficial owner of a property known as 11 Cavendish Road, Barnet. In so deciding, she rejected representations made on behalf of Yit Gan Lam (“Mrs. Lam”), who claimed a 50% beneficial interest in 11 Cavendish Road, having been given a reasonable opportunity to take part in the proceedings under s10A(2). Mr. Lam now appeals against sentence with leave of the single judge, contending that this decision led to an excessive confiscation order because the available amount reflected the full value of the equity in 11 Cavendish Road. Mrs. Lam appeals with leave of the single judge under s31(4) of the 2002 Act. By s32(2A) in such an appeal the Court of Appeal may:-
  - i) Confirm the determination; or
  - ii) Make such order as it believes is appropriate.
3. Mr. Lam pleaded guilty to three counts on an indictment which alleged that he was knowingly concerned in the fraudulent evasion of value added tax, contrary to s72(1) of the Value Added Tax 1994. He had operated two restaurants, each through a different company, Novari Limited and Novari at the O2 Limited. They both charged VAT to their customers but did not submit VAT returns and kept the money. This began in 2012 and ended at different dates, the most recent date being April 2017. He was sent to prison for three years. Mrs. Lam was charged along with Mr. Lam on a count of laundering the proceeds, but when he pleaded guilty the case against her was dropped and a not guilty verdict entered.
4. This was a criminal lifestyle case and Mr. Lam was charged on 16 April 2018 which means that the relevant period for the assessment of his benefit extended back as far as 16 April 2012. Coincidentally this happens to be about the time when the offending began. The benefit was agreed as £1,018,508 plus an increase for inflation.
5. It was also agreed that the only asset available to meet a confiscation order was 11 Cavendish Road. This was the matrimonial home where the appellants, who are married, have lived since about 2010. The available amount was the value of his beneficial interest in it.
6. The judge dealt with two issues raised by Mr. Lam on the value of the property, in addition to determining the question of whether Mrs. Lam had any interest in it. There is no appeal against her decisions on these questions which were themselves complex. First, Mr. Lam contended that the value of 11 Cavendish Road was £650,000-£750,000 and that the equity after payment of the first mortgage of £603,135.88 was therefore limited. Secondly, he contended that that equity was entirely extinguished as a result

of a second legal charge which he had granted to his sister's husband on 18 February 2018. The judge rejected both of these arguments. She found that the value of 11 Cavendish Road was £1,000,000. She found that the legal charge given to Mr. Lam's brother in law was a tainted gift and that it did not operate to reduce the available amount. These two conclusions involved a careful analysis of the evidence before the court and were fully reasoned by the judge in her exemplary written decision. There is no appeal against them and it is not necessary to set out any of the evidence or arguments which the court heard in this judgment. The judge's finding as to valuation was vindicated by events because 11 Cavendish Road was sold not very long after the decision for £1,050,000. The main relevance of these findings to the single issue before us is that they involved a finding that Mr. Lam had engaged in various ruses designed to reduce his liability under a confiscation order and was not approaching the proceedings in good faith. That finding is unassailable. Mr. Lam did not give oral evidence in the confiscation proceedings. The available amount was the value of the equity in 11 Cavendish Road. This was his, save to the extent that Mrs. Lam could show that she had a beneficial interest in it as well. It was therefore her claim rather than his which was determinative of the decision involved in this appeal.

### **The facts relevant to the beneficial ownership of 11 Cavendish Road**

7. Mr. and Mrs. Lam contended that the legal interest in this property was held by Mr. Lam subject to a constructive trust for them both in equal shares. The legal title is vested in him alone. They say that this trust was founded on their common intention that they would jointly own their home in which they intended to live together for the rest of their lives.
8. The judge considered documentary evidence, and heard oral evidence principally from Mrs. Lam on this issue. Mr. Lam provided some written evidence. Mrs. Lam was unable to explain many of the transactions about which she was asked. The judge's general observation about her credibility is as follows:-

“Mrs Lam was not an impressive witness. Her knowledge of her and Mr Lam's finances was limited, and her recollection of detail lacking. The provision of documents to support her claim appeared to me to be partial: no attempt had been made at a proper disclosure exercise.”

9. Mrs. Lam may have been both unimpressive and truthful if many of the transactions about which she was speaking were done by her husband without her knowledge. In that situation she would be genuinely unable to explain the reasons why things were done in a particular way. If he, rather than she, had control of the documents the criticism of the disclosure exercise would not properly be levelled at her. He was, of course, a criminal and she had been acquitted of any involvement in his crimes. He may have had his own motives for arranging the finances of the family in a particular way which he may or may not have explained truthfully to his wife. It does not follow from this passage that the judge had disbelieved Mrs. Lam on all the important questions on which she gave evidence. At paragraph 147(o) of her ruling the judge said that she was unable to accept Mrs. Lam's evidence on a particular point, namely her evidence about how some of the proceeds of sale of the matrimonial home which they had lived in immediately prior to 11 Cavendish Road were dealt with. Mrs. Lam had said that that part of those monies had remained in the joint account and had been used

to pay the mortgage and household bills and to fund household spending. We shall return to the basis on which this evidence was rejected later in this judgment.

10. The judge set out the detailed evidence she had heard, and we will summarise the lengthy passage from her judgment where she did that. This is an edited version of that passage, with some paraphrase in the interests of brevity.

84. Mrs Lam came to the UK from Malaysia in 1973 and trained as a nurse, qualifying in 1976. Mr and Mrs Lam married in 1985. Their elder son, Jonathan, was born later that same year. They purchased their first property, a flat at 54 Kings Court, in 1987. That property was held in joint names, subject to a joint mortgage. Mrs Lam's recollection in oral evidence was that she had contributed £8000 towards the deposit, raised from her savings in Malaysia. She could not remember whether Mr Lam had contributed to the deposit or not. In answer to questions in cross-examination she said she could not remember what deposit was put down.

85. Mr and Mrs Lam's daughter, Joanne, was born in 1991. The family moved in 1997 to 31 Kernerne Drive, Barnet. That property was bought for £148,000 and registered in the joint names of Mr and Mrs Lam, subject to a joint mortgage in favour of Abbey National PLC. Mrs Lam continued to work full-time as a nurse between 1976 and 1997, including the periods when her two elder children were born. She had given up work and taken on the role of full-time mother and housekeeper towards the end of 1997, after the house move. In her affidavit, Mrs Lam stated that, prior to giving up work in 1997, she had contributed from her salary to the joint mortgage and household outgoings.

86. In 2005, an 8-bedroom property at 57 Victoria Road North, Portsmouth was purchased for the sum of £320,000, in the joint names of Mrs Lam and a Ms Chin Ju May, subject to mortgage. Mr Lam provided no evidence as to how the purchase of this property had been financed. In her police interview on 20 July 2017, Mrs Lam said that 57 Victoria Road was purchased by Mr Lam from the sale of a previous business. She understood that the business was a success and that Mr Lam was bought out by associates. The property was put in her name because Mr Lam already had a mortgage in his name, and so she thought they might get a better rate on the mortgage. This was not her idea, but it sounded sensible and lawful, so she agreed. She said "we own 50% and another of my husband's associates own the other 50%".

87. In cross-examination Mrs Lam agreed that both she and Mr Lam had a joint mortgage on Kernerne Drive, so their positions were the same so far as already having a mortgage in their name was concerned. She said that maybe she had meant that Mr Lam already had a mortgage in Kernerne Drive. The rent went to pay

the mortgage, the excess was divided up between her and the other wife. There was no evidence as to what Mrs Lam had done with the rental profits from 57 Victoria Road North. She did not suggest that any of those monies had been applied to payment of the mortgage on 11 Cavendish Road.

88. Both Mr and Mrs Lam provided various documents relating to their wills. On 14 September 2005 they both executed wills. In summary, each left everything to the other.

*11 Cavendish Road*

90. The Official Copy in respect of 11 Cavendish Road shows that Mr Lam was registered as sole proprietor with title absolute to the property on 15<sup>th</sup> January 2007. The price stated to have been paid on 21 December 2006 is recorded as £395,000.

*Capital contributions to purchase of 11 Cavendish Road*

91. No documentary evidence was provided by Mr or Mrs Lam as to how the purchase of 11 Cavendish Road was financed, including what sum, if any, was provided by way of deposit, and what sum, if any, was secured by way of mortgage.

92. Mr Lam stated in his section 17 response that the deposit was paid using monies that he received from the sale of his shares in a company of which he was a director in 2005. Asked about that in cross-examination, Mrs Lam said that she was sure that the money from that sale had gone into the purchase of 57 Victoria Road North. It hadn't gone into Cavendish Road. Her evidence was that the money to buy 11 Cavendish Road had all been borrowed, 100%.

*Express discussions between Mr and Mrs Lam as to how the beneficial interest in the property was owned*

93. Mr Lam gave no evidence as to his intention at the time of the purchase of 11 Cavendish Road, or subsequently, as to whether Mrs Lam would have a share in the beneficial interest, and no evidence of any discussions between them as to whether she would have a share. In his section 18 response he asserted that although the property was in his sole name, Mrs Lam had an equitable interest of 50% in the property, as the property was their family home, and referred to her affidavit.

94. In that affidavit Mrs Lam said that the property was purchased in 2006 and put in the sole name of Mr Lam, subject to a mortgage in his sole name. At the time of the purchase she and Mr Lam jointly owned 31 Kenerne Drive, and they intended to sell that property once 11 Cavendish Road was ready to live in. As the couple's only source of income was from Mr Lam, the

mortgage was based on his salary alone, and it therefore made sense to put the mortgage and the property in his sole name. She stated that it was nevertheless her and Mr Lam's intention as a married couple that the property would be shared equally between them as their new family home. She said that this intention was reflected in their wills. She pointed out that both had executed their wills in 2005, which she described as "just before this property was purchased".

95. In oral evidence Mrs Lam said that 11 Cavendish Road was intended by her and Mrs Lam to be their retirement home. Mrs Lam said that Mr Lam dealt with all the administration in connection with the purchase of 11 Cavendish Drive. In cross-examination she agreed that Mr Lam dealt with most of the financial dealings during the marriage. Asked about matters such as deposit, mortgage, mortgage rates, she said any big things that she didn't understand, he dealt with. She dealt with the day-to-day household bills, groceries and so on.

96. She said she was not concerned about the property being in Mr Lam's sole name. Everything they had was for each other and for the family. Whether the property was in his name or hers didn't matter: it was theirs, their home. She said that Mr Lam had not told her that he was putting the property in her sole name at the time. She had only found that out later. She said it hadn't worried her when she found out, because the property was still a family home.

97. Mrs. Lam rejected the suggestion that the reason 11 Cavendish Road was in Mr. Lam's sole name was because the Portsmouth property in hers was treated as being in lieu of her interest in 11 Cavendish Road. She said, no, that was not her family home. She did not suggest, however, that this was a discussed and agreed position between her and Mr. Lam.

#### *Contributions to the re-development of 11 Cavendish Road*

98. As at the date of the purchase, there was a bungalow on the site.

99. The Official Copy of the register of title shows that Mr Lam granted a legal charge dated 29 June 2007 in favour of The Mortgage Business PLC. No information was provided as to what sum was released by that mortgage, if any. I have no documentary or other evidence as to whether this was a first mortgage, a re-mortgage in the same amount as the amount outstanding under the mortgage, or a re-mortgage which released additional funds.

100. No documentary or written evidence was provided by Mr Lam as to the cost of the demolition of the bungalow and

construction of the house now on the site, or as to how those costs were met.

101. Mrs Lam's oral evidence was that the total cost of the whole project, buying and rebuilding, cost about £600,000. She thought that the construction had cost about £300,000. She then said that the mortgage is £600,000, so the build must have been over £200,000. She ended by saying that, because Mr Lam had dealt with the building and everything, she was not sure.

102. Mrs Lam said that the money he borrowed was paid into the joint account, and they drew cheques on that account. She thought that the builders had billed intermittently throughout the project, rather than all at the beginning or all at the end. She said that there was a period of about two years when they were living at Kenerne Drive and 11 Cavendish Road was a building site. She said as long as there was enough money in the joint account to pay the bills and the mortgage, she left everything else to him to sort out.

103. She said because Mr Lam had already borrowed a lot of money, she thought she would try and see if she could borrow some. She had her asked Mr Lam's sister to help because Mr Lam had already borrowed a lot of money from Mr Loy.

105. Mrs Lam's oral evidence was that her sister-in-law had agreed to help. The purpose of the loan was to pay the builders. She said it wasn't a gift; she wouldn't expect a gift of that much money from her sister-in-law, because she is not her sister. Even had the money come from her brother, she would have paid it back. There were no terms agreed, no interest, no date for repayment. The money has not been repaid in whole or in part.

107. Mr Loy confirmed that his wife had agreed to loan money to Mrs Lam to help rebuild the property at 11 Cavendish Road. The money was paid into Mrs Lam's account. Mr Loy provided an application for remittance in which he said that the purpose of the investment was “investment”

108. Mrs Lam provided a statement from her NatWest sole account showing a transfer dated 18 August 2009 into the account in the sum of £49,993.00. Two cheques were drawn on that account on 24<sup>th</sup> August 2009, cheque numbers 000945 and 000961, in the sums of £10,000 and £40,000 respectively. The stubs both record payments to the builders. The bank reviewed its records in 2020 at the request of Mrs Lam to find copies of those cheques, but had been unable to locate them due to the passage of time.



111. Mrs Lam dated the date on which the family were able to move from Kenerne Drive to 11 Cavendish Road as the end of 2009.

*11 Cavendish Road, payment of mortgage and household bills*

112. There was very limited evidence as to the history of payments made under the mortgage. I infer from the amount shown on the single bank statement provided which did show a mortgage payment that the mortgage must have been on an interest only basis.

113. In 2011, 31 Kenerne Drive was sold for £350,000. The net proceeds of sale of that property were £201,218.29.

115. Mrs Lam provided a copy of a statement dated 1 September 2011 from Mr and Mrs Lam's joint Halifax account showing that those monies were credited to that account on 31 August 2011. The statement shows that the opening balance on the account on 30 August 2011 was -£8,794.42. On 1 September 2011 a number of substantial withdrawals were made from the account by cheque. No explanation was advanced for those payments. A payment described as "DD -The Mortgage Bus" in the sum of £840.46 appeared to be a payment towards the mortgage. The closing balance on September was £131,942.54.

116. In oral evidence Mrs Lam said that the proceeds of sale of 31 Kenerne Drive were used to pay the mortgage and household bills and to fund household spending. In reply to questions in cross-examination she said that Mr Lam had used some of the monies for the business, and the rest was left in the joint account for their own use.

[The judge then summarised the evidence from Mr. Lam about his own income during the period after the purchase and development of 11 Cavendish Road. The evidence left many questions unanswered but showed that after 1997 Mrs. Lam produced very little income and had very little capital. Her income tax returns showed an income from one or more of Mr. Lam's companies, but it appeared that he had created these documents and she knew nothing about them].

123. Mrs Lam's evidence was that she had not, to her knowledge, been in paid employment since she gave up work in 1997. She described her role as running the house and running after the children, as a full-time mother. She said that she did everything to do with the house, and made sure that all the bills were paid on time. She ran the house in order to give Mr Lam time to devote to the business. Mr Lam didn't do anything at home. He worked very long hours. She said that it wouldn't have been possible for him to work the hours he did without her support.

124. It had come as a surprise to her that she was stated to be an employee of the various companies. She knew that money was coming into the joint account, but she had thought it was Mr Lam's salary. She now appreciated that declarations had been made in her name to HMRC in respect of earnings from the company in her name.

125. Mrs Lam stated in her affidavit that the mortgage and many of the household bills were paid from Mr and Mrs Lam's joint Halifax account. Mr Andrews, the financial investigator, confirmed in cross-examination that the mortgage payments and bills for 11 Cavendish Road were paid from the joint account. Mrs Lam stated that the reason that the payments were set up in that way was because they intended to share the financial responsibilities for the house together. In oral evidence Mrs Lam said that she and Mr Lam shared all the money.

126. By Schedule 1 to the Legal Mortgage dated 18th February 2018 and made between (1) Boon Chen Loy (Lender) and (2) Chin Seong Lam (Borrower), Mr Lam represented and warranted as follows:

1. That he was the legal and beneficial owner of the property and had good and marketable title to the property
2. That the property was free from any encumbrances other than (a) a charge dated 29 June 2007 in favour of the Mortgage Business; and (2) the legal charge created by this legal mortgage
3. That apart from the encumbrances referred to in paragraph 2, the Borrower had not received or acknowledge notice of any adverse claim by any person in respect of the Property or any interest in it.

127. It appears from this document, and absent any other explanation, that Mr Lam's instructions to the solicitor who drew it up must have been that he was the sole legal and beneficial owner of the property. Mrs Lam's evidence was that she had not known about the charge, and Mr Lam had not discussed it with her.

128. In January 2019, 57 Victoria Road North was sold for £410,000. No completion statement was provided by Mrs Lam. Mr Andrews estimated from that that the mortgage outstanding as at the date of sale was in the region £141,500, but accepted that it may have been greater. On the basis of that estimate, and a 50/50 split of the net sale proceeds between Mrs Lam and Ms Chin, he estimated that Mrs Lam's share of the proceeds of sale would have been in the region of £131,000. Mrs Lam's oral evidence was that in fact her share of the proceeds of sale had been sixty something thousand, and that all those monies had

been expended on lawyers' fees, and in paying the mortgage payments and household bills on 11 Cavendish Road and day-to-day living expenses whilst Mr Lam was in prison. In answer to questions in cross-examination she said that those monies had been paid into her sole account; the joint account was going to be closed, so she had no choice.

129. Mr and Mrs Lam continue to live at 11 Cavendish Road, with their two younger adult children.

### **The Law as applied by the judge**

11. The judge had earlier directed herself about the law she should apply when deciding whether Mrs. Lam had established a beneficial interest in 11 Cavendish Road, and, if so, to what extent. No criticism is made of this statement of the relevant law. The question on this appeal is whether she applied the law correctly when she came to her decision.
12. She said this.

#### The Law

77. The leading authorities in relation to the approach to be taken by the courts in assessing the beneficial interest held by parties in matrimonial homes are the decisions of the House of Lords in *Stack v Dowden* [2007] 2 AC 432 and of the Supreme Court in *Jones v Kernott* [2007] 2 AC 432. Both of those cases involve a situation, unlike the present situation, where the property was registered in joint names, and one party sought to assert a beneficial interest of more than 50%.

78. In *Jones v Kernott* Lord Walker and Lady Hale, giving a joint leading opinion, set out the principles applicable in a case where a family home is purchased in the joint names of a cohabiting couple, both of whom are responsible for any mortgage, but without any express declaration of their beneficial interests at paragraph 51:

- (1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.
- (2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.
- (3) Their common intention is to be deduced objectively from their conduct: "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party"

(Lord Diplock in *Gissing v Gissing* [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in *Stack v Dowden*, at para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, "the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property": Chadwick LJ in *Oxley v Hiscock* [2005]Fam 211, para 69. In our judgment, "the whole course of dealing ... in relation to the property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).

79. They set out their view (in obiter remarks) as to the approach to be adopted by the courts where the legal title was registered in one party's name only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51 (4) and (5) above.

80. In *Stack v Dowden* at paragraphs 69 and 70, Baroness Hale set out the following non-exhaustive list of factors which may be relevant to divining the parties' true intentions:

[69] In law, 'context is everything' and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had

responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

[70] This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties' intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then.

81. Taking these passages together, the following principles emerge. The starting point is that equity follows the law: where the legal title is vested in the name of one party alone, the evidential burden is on the person who seeks to establish that she has a share in the beneficial interest to show a common intention to share beneficial ownership. The court's task is to determine the common intention of the parties objectively from their conduct, taking into account factors such as those mentioned by Baroness Hale in *Stack*.

82. If the person asserting that they have a share satisfies that burden, the second issue is what that interest is. There is no presumption that the sharing is equal. The evidence in relation to issue 1 may establish what shares were intended, or it may not. Where it is not possible to ascertain by direct evidence or by inference what the parties' actual intention was as to the shares in which they would own the property, each is entitled to that share which the court considers fair having regard to the whole

course of dealing between them in relation to the property. "[T]he whole course of dealing ... in relation to the property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

### **The judge's decision**

13. It is necessary to set out the judge's reasoning in full. As we have said, there is no criticism in this case of her earlier statement of the law, and her reasons must be analysed with care to understand whether she applied the law correctly or not.

144. In my judgment it is important, in assessing the available evidence and the absence of evidence, to take into account the context of this case. This is not a case where a former couple are in dispute as between themselves as to who owns what share in their former home. This is a case where Mr and Mrs Lam, who remain a couple, are seeking together to assert that Mrs Lam has a share in the beneficial interest in their home. Mrs Lam has not previously asserted any such claim. Mr Lam has denied any such claim on the part of Mrs Lam until the commencement of these proceedings. There is an obvious motivation to make and concede such a claim now, to seek to preserve part of the value of the house, for their joint future benefit.

145. In my judgment I am entitled to draw the inference that further evidence, which could have been provided and which has not been provided, has not been provided because it would not support Mrs Lam's claim to a 50% share in the beneficial interest, but might tend to undermine it. The paucity of evidence as to Mr and Mrs Lam's intentions, in my judgment, results in part from the decision of Mr Lam not to give oral evidence, and in part from a deliberate decision to provide a minimal amount of documentation in the hope that what has been provided will be sufficient to persuade the court to decide that Mrs Lam, as Mr Lam's wife, must own half of the beneficial interest in their home.

146. The starting point is that equity follows the law: legal title is vested in Mr Lam's sole name. The evidential burden is on Mrs Lam to show a common intention to share beneficial ownership. The court's task is to determine the common intention of the parties objectively from their conduct, taking into account factors such as those mentioned by Baroness Hale in *Stack*.

147. I identify the following factors as of assistance in determining Mr and Mrs Lam's common intention as to whether and if so how the beneficial interest in the property should be shared:

a. Mr and Mrs Lam have been married since 1985, and remain married and together, despite the undoubted stress of Mr Lam's conviction and subsequent imprisonment.

b. The purpose for which 11 Cavendish Road was acquired in December 2006 was to provide a home for Mr and Mrs Lam and any of their three children, then approximately 21, 15 and 8, who continued to live at home. The house was built for them, and I accept Mrs Lam's evidence that it was envisaged to be their permanent and last home.

c. There is no evidence as to any advice sought or received as to in whose name the title should be registered. There is no evidence as to why Mr Lam chose to put the property in his sole name. The conveyancing file was not provided and Mr Lam (who is the only person who might have been able to give evidence on this point) chose not to give oral evidence and did not deal with this question in his written evidence

d. There was a paucity of evidence about how the initial purchase property was financed. No documentary evidence was provided by Mr or Mrs Lam as to how the purchase price of £395,000 was funded, including what sum, if any, was provided by way of deposit, and what sum, if any, was secured by way of mortgage. On Mrs Lam's evidence, it was Mr Lam who dealt with all major financial decisions and the administration associated with those decisions. Mr and Mrs Lam's evidence as to whether a deposit had been paid at all was in conflict: Mrs Lam said that all of the money to buy the property had been borrowed and Mr Lam's evidence that a deposit had been paid from the proceeds of sale of his shares in Aroma (presumably Aroma (Basildon) Limited), was directly contradicted by Mrs Lam, who said that those monies had gone towards the purchase of 57 Victoria Road North. Mr Lam's decision not to give oral evidence meant that he was unable to comment on this conflict, or clarify or correct his written evidence.

e. Mr and Mrs Lam between them owned two other properties at the time of the purchase of 11 Cavendish Road: the family home at 31 Kenerne Drive, title to which was in their joint names, and the investment property at 57 Victoria Road North acquired in 2005.

f. Title to 57 Victoria Road North was (with a third party) registered in Mrs Lam's sole name. The source of the funds provided towards the purchase of 57 Victoria Road North by Mr Lam was unclear on the evidence, but there was no suggestion that any of the funds had been provided by Mrs Lam. Mrs Lam's initial explanation as to why that property had been put in her name (that Mr Lam already had a

mortgage) simply did not hold water, and when challenged, her evidence changed to Mr Lam had wanted to give it to her. The prosecution's attempt to introduce an argument that 50% of the proceeds of sale received by Mrs Lam in January 2019 were attributable to Mr Lam was strongly resisted by Mr Lam and ultimately abandoned by the prosecution as a result. There was no evidence from Mr Lam as to why this property was put into Mrs Lam's name.

g. Mrs Lam had both joint and sole bank accounts. In terms of the accounts of which Mrs Lam had knowledge which were in her name, two were sole accounts (NatWest and Santander), one was a joint account with Ms Chin Ju May, the co-owner of 57 Victoria Road North, and one was a joint account with Mr Lam (Halifax). There was no evidence as to whether Mr Lam ran any personal accounts other than the joint Halifax account. Mrs Lam's evidence was that she kept her savings from her salary after she stopped work in 1997 in her sole NatWest account. The Santander was used to pay some household bills, but, as she put it, was used for the sole purpose of benefitting from their generous cash-back offer. No statements from that account were provided to show what bills had been paid.

h. Mr and Mrs Lam, by their wills executed in September 2005, each left their estates to each other as primary beneficiary.

i. There is no evidence of any express discussions between Mr and Mrs Lam at the time of the acquisition of 11 Cavendish Road which cast light on their intentions then. In his written evidence, Mr Lam simply asserted that Mrs Lam had a 50% equitable interest in the property, and provided no reason for that assertion other than that the property was their family home. As he chose not to give oral evidence, there was no opportunity for him to clarify or expand on his assertion. Mrs Lam's explanation as to why the property had been registered in Mr Lam's sole name did not stand up to scrutiny in cross-examination: in fact it transpired that the true position was that Mr Lam had not told her at the time that the property was to be registered in his sole name, and she had only found out later. She did not suggest that there had been any discussion at the point when she found out. She had found out, Mr Lam had not told her, and she did not appear to have broached the subject with him. Mrs Lam's confidence, (not expressed to and shared with Mr Lam), when she found out that 11 Cavendish Road was registered in Mr Lam's sole name, that it didn't matter, because it was theirs, their home, and he had made provision in his will for it to pass to her (along with the rest of his estate) if he predeceased her in my judgment is not



sufficient to cast light on what Mr **and** Mrs Lam's joint intentions were as to whether she should have a share in the beneficial interest in the property.

j. No documentary or other evidence was provided as to whether the legal charge dated 29th June 2007 in favour of the Mortgage Business PLC was a first mortgage, a re-mortgage in the same amount as the amount outstanding under a mortgage taken out to finance the purchase, or a re-mortgage which released additional funds. The conveyancing file for the mortgage was not provided. I have no evidence as to any advice which was sought or given. I have no evidence as to what, if anything, was said by Mr Lam to the mortgage lender as to whether any other person had a share in the beneficial interest in the property when the mortgage was taken.

k. There was no evidence as to what advice Mr Lam received from any mortgage broker or financial adviser either in relation to the 2007 mortgage, or in relation to any mortgage taken when the property was acquired. There was therefore, no evidence as to whether there were any discussions as to whether the fact that the investment property and mortgage at 57 Victoria Road North was in Mrs Lam's name had any effect on the decision to put the property at 11 Cavendish Road in Mr Lam's sole name.

l. No documentary or written evidence was provided by Mr Lam as to the cost of the demolition of the bungalow and construction of the house now on the site, or as to how those costs were met. Mrs Lam's evidence was completely unclear as to how much the construction had cost, and as to how those costs had been paid, other than saying that Mr Lam had borrowed extra money for the re-build. Again, Mrs Lam's evidence was that Mr Lam concerned himself with these matters, and he chose not to give oral evidence. There was no documentary evidence provided to support her assertion that the money he borrowed had been paid into the joint account and that cheques had been drawn to pay the construction bills on that account.

m. Mrs Lam claimed to have made a financial contribution to the construction project by applying monies borrowed from her sister-in-law to payment of a total of £50,000 to the builders. This loan was a soft family loan (no terms as to repayment, no interest charged, and still remaining unpaid and apparently still not pressed for more than 10 years after it was provided) from Mr Lam's sister.

n. It was common ground that the mortgage and household bills were paid from Mr and Mrs Lam's joint Halifax account. Mrs Lam, to her knowledge, had no source of income after

she stopped work as a nurse in 1997. To her knowledge, the monies which were regularly paid into the joint account were Mr Lam's salary.

o. The proceeds of sale of 31 Kenerne Drive were paid into the joint Halifax account when that property was sold in 2011. Again, there was a conflict of evidence between Mr and Mrs Lam as to how those monies had been applied. Mrs Lam asserted that part of those monies had remained in the joint account and had been used to pay the mortgage and household bills and to fund household spending. The statement from the Halifax joint account showing the proceeds of 31 Kenerne Drive being paid into the Halifax joint account was provided. I was able to see that one payment towards the mortgage was taken from the joint account while some of the monies representing the proceeds of sale of 31 Kenerne Drive remained in the account. No explanation was advanced for the substantial payments out of the account, reducing the funds in the account by the end of the month to £131,942.54. Mrs Lam's evidence was directly contradicted by Mr Lam's evidence that the whole of the proceeds of sale of 31 Kenerne Drive were paid into Watermargin Limited. No evidence (such as subsequent dated bank statements) was provided to substantiate Mrs Lam's evidence that the balance of the proceeds of sale, after some of the monies were used for the business, was left in the account. In light of her evidence as to the responsibilities each of them took in the marriage for financial decisions and arrangements, absent any supporting documentary evidence, I am unable to accept her evidence on this point.

p. P60s submitted on Mrs Lam's behalf recorded that she had been paid as an employee of various companies in which Mr Lam had an interest. On Mrs Lam's evidence, Mr Lam knew about these payments, as he prepared her tax returns. He did not comment on them in his written evidence. No attempt had been made to show that the monies notionally paid to Mrs Lam as an employee of the various companies had in fact been paid, or that they had been paid into the Halifax joint account. Assuming in her favour that they were, I am not persuaded that the fact that payments in her name, of which she was unaware, were made into the joint account from which the mortgage and household bills were paid is capable of casting any light on the parties' joint intentions as to the ownership of the property. It is difficult to see how Mrs Lam could be taken as intending by those contributions to acquire a share, because she was completely unaware of them. There is no evidence as to whether Mr Lam intended that Mrs Lam, by those contributions, should acquire a share in the beneficial interest in the property.

q. To the extent that any payments from the Halifax account are beneficially attributable to Mrs Lam, in my judgment, as payments of interest due under the mortgage, rather than repayments of capital, they are to be given substantially less weight than would be afforded to repayments of capital, when seeking to determine the parties' joint intentions as to the ownership of the beneficial interest.

r. Mr Lam, in executing the 18<sup>th</sup> February 2018 Legal Charge in favour of Mr Loy, warranted that he was the sole legal and beneficial owner of the property. According to Mrs Lam's evidence, he did not discuss his intention to execute the charge with her at all. In my judgment, absent any explanation, this warranty is telling evidence of his intention as to the beneficial interests at the time the charge was executed.

148. I do not accept the submission made on behalf of both Mr and Mrs Lam that somehow Mrs Lam's contribution to the family falls to be taken into account. That contribution would be relevant in a matrimonial case, and might be relevant in a joint names case, but the property interests in this sole name case fall to be determined according to property law. The relationship provides the context, but is not to be counted as if it were a monetary contribution. I do not accept the submission that the 2005 wills cast any substantial light on Mr and Mrs Lam's intended joint beneficial ownership of a property purchased in December 2006. I reject the submission that the fact that mortgage payments were made from the joint Halifax account means that Mrs Lam contributed to the payment of the mortgage, and those payments in turn give rise to an inference of a common intention to share the beneficial interest in the property. The Halifax account was the account into which the household income was paid, and it was used for payment of all household expenditure. It was obviously necessary in that context for Mrs Lam, as the person who made the day-to-day payments of household bills and household expenditure, to be a joint account holder on the account. I am not persuaded that the bare fact that the mortgage payments were made from an account in joint names is sufficient by itself to justify the description of those payments as having been made beneficially by Mrs Lam.

149. For the reasons set out above, I am not satisfied as a matter of evidence that the proceeds of sale of 31 Kenerne Drive went towards paying the mortgage. I am not persuaded that Mrs Lam made any regular or substantial contributions towards the mortgage or household bills.

149A. As to Mrs Lam's contribution of the £50,000 paid towards the cost of building works, I do not accept that the fact that those monies were asked for by Mrs Lam, and paid by Mr Loy on behalf of his wife into Mrs Lam's sole NatWest account,

necessarily means that they were provided beneficially by Mrs Lam, or that the use of those monies to pay bills outstanding in respect of the construction project necessarily supports an inference that Mrs Lam was intended to have a beneficial interest in the house. The monies were provided to Mrs Lam because of the familial relationship between Mr Lam and his sister. There is no evidence of any discussions between Mr and Mrs Lam as to whether the provision of these monies would affect the shares each of them held in the beneficial interest in the house. In my judgment this alleged contribution, absent any express discussions, to the extent that it can be regarded as being provided beneficially by Mrs Lam, would tend fall into the same category as the efforts of Mrs Rosset in *Lloyds Bank v Rosset* [1991] 1 AC 1, and Ms James in *Thomas v James* [2008] 1 FLR 1598: efforts by a non-owner to support the project of the owner designed to create a home for them both, not intended by either to give her a share in the beneficial interest in the home.

150. When I take all the evidence into account, the factors identified above which might point towards a shared intention are not sufficient to persuade me that there was a common intention to share the beneficial interest in 11 Cavendish Road, when weighed against the deliberate, unexplained and apparently undiscussed choice on the part of Mr Lam to register the property in his sole name, and his willingness in February 2018 to provide a warranty in the charge in favour of Mr Loy to the effect that he was the sole legal and beneficial owner of the property. In my judgment Mr Lam's motivation in now supporting his wife's claim is to reduce his available amount in these proceedings.

### **The Grounds of Appeal**

14. The court has received conspicuously able submissions from all three counsel in the case. We will not summarise them, but we will identify the Grounds of Appeal relied on.
15. Mr. Lam's Grounds are as follows:-
  - i) The determination was wrong in principle because the judge did not take into account Mrs. Lam's contribution to the household and her role within the family when determining whether she had a beneficial interest. They had been married for 36 years and she gave up her career in order to raise their children. This allowed Mr. Lam to focus on his career and generate income. Therefore, the judge erred in concluding that Mrs. Lam's contribution to the family was not to be counted as a monetary contribution.
  - ii) The judge erred in distinguishing this case from "matrimonial cases" or "joint name cases". Whilst the roadmap for considering beneficial interest in joint name cases was different, "context" is no less pertinent in this case than in joint name cases. In sole name cases, a person's contribution to the family may be

more significant when determining whether the parties intended to share the beneficial interest.

- iii) In matrimonial cases, the boundaries between the principles that the court must apply are inherently blurred. The leading authorities arise from disputes following the breakdown of a relationship. As a matter of principle, Mrs. Lam should not be left in a significantly worse position in relation to her beneficial interest simply because she had not divorced her husband.
- iv) The judge erred in concluding that “the relationship provided context but is not to be counted as if it was a monetary contribution”. The roadmap for considering the beneficial interest in sole name case was summarised in *Jones v Kernott* [2011] UKSC 53. The first issue is whether it was intended that the other party have any beneficial interest and the second issue is the level of the benefit interest. In respect to the first question, it would be wholly artificial to disregard the dynamic of the relationship in the search for the common intention. It would be “bizarre” if despite being married for 36 years, having three children together and giving up her nursing career to raise those children, the common intention was that she had no interest in the family home. It cannot be that Mr and Mrs Lam understood that following her decision to give up work to look after the home and the family, Mrs. Lam would have no beneficial interest in their family home.
- v) In relation to the second question, in cases where it is not possible to ascertain the parties’ actual intention, the share will be that which the court considers “fair”, having regard to the parties dealings. In this case, what is fair is that they have an equal benefit in the home, based on the length and nature of their relationship and their respective roles.
- vi) Whilst the consideration of fairness does not apply to the first question, in *Jones v Kernott*, Lord Walker and Lady Hale observed, “nor will it matter in practice that at the first stage of ascertaining the common intention as to the beneficial ownership, the search is not, at least in theory, for what is fair. It would be difficult (and perhaps absurd) to imagine a scenario involving circumstances from which, in the absence of expressed agreement, the court will infer a shared or common intention which is unfair”.
- vii) Additionally, the judge erred in failing to take into account Mrs. Lam’s financial contributions when considering her beneficial interest in the property. In *Lloyds Bank PLC v Rosset* [1990] 2 WLR 867, the Court held that financial contributions would readily justify the inference necessary for the creation of a constructive trust. The principle was upheld by subsequent courts.
- viii) Mrs. Lam arranged the £50,000 from her sister-in-law. It was paid into her sole bank account and used to fund part of the renovation work. The money was transferred at her request to her and into her account. Upon transfer, the money could only have been hers, whether it was hers alone or held jointly with Mr. Lam. The judge erred in concluding that in the absence of express discussions, the use of the £50,000 to fund the renovation did not support the inference that Mrs. Lam was intended to receive a beneficial interest in the house. Evidence of a discussion would have readily founded a beneficial interest without the need

for the court to embark on the task of divining the parties' common intention. However, a financial contribution alone would readily justify an inference that a beneficial interest was made absent explicit discussions.

- ix) In 1987, Mrs. Lam contributed £8,000 towards the purchase of 31 Kenerne Drive. This too should have been given weight when considering whether she had a beneficial interest. There was no evidence that following the sale of 31 Kenerne Drive, either £8,000 or half of the sale proceeds were reclaimed for her own personal use. Indeed, it was Mrs. Lam's evidence that the money was put towards mortgage payments and household payments of 11 Cavendish Drive. The evidence before the court suggested that their financial resources were pooled. Neither her direct contribution of £8,000 nor the largely pooled nature of their resources were considered by the judge when determining the issue of beneficial interest.

16. Mrs. Lam's Grounds are similar. They are as follows:-

- i) The judge erred in finding that Mrs. Lam's contribution to the family should not be taken into account when determining whether she had an equitable interest in 11 Cavendish Road. Her contribution was plainly an important factor.
- ii) The judge implicitly recognised the importance of her contribution by accepting that it would be a relevant consideration if dealing with a matrimonial case or joint name case. However, the judge should not have distinguished between those types of case and a sole name case. The legal principles remain the same. As a result, the judge erroneously disregarded her non-financial contribution.
- iii) The judge erred in finding that Mrs. Lam's contribution of £50,000 did not establish an equitable interest. The fact of the contribution was not in dispute and there was no proper basis upon which the judge could conclude that such a contribution did not establish any equitable interest.
- iv) The judge erred in finding that Mrs. Lam's financial contributions were akin to those contributions of Mrs Rosset in *Lloyds Bank v Rosset* [1991] 1 AC 107 or Ms James in *Thomas v James* [2007] EWCA Civ 1212. In those cases, neither Ms Rosset nor Ms James made direct financial contributions to the construction of the property. At the hearing, the judge did not invite submissions on the matter. The cases were neither relied upon nor referred to by any party to the proceedings. The judge ought to have sought submissions on the point.
- v) Had the matters set out above been taken into account, the judge would have concluded that Mrs. Lam had a beneficial interest in the property of 50%.
- vi) Additionally, the judge erred in concluding that Mrs. Lam had deliberately withheld evidence because it would not support her claim to 50% share in the beneficial interest. It is accepted that the extent of the material available to the court is a relevant consideration when determining whether there is a beneficial interest. However, the judge's conclusion was unfounded and amounted to mere speculation. It played a central role in the judge's determination but was not raised during proceedings. In such circumstances, the judge should not have relied upon it.

## **Decision and discussion**

17. The first point to make is that this is an appeal about the facts. No new point of principle is involved.
18. We have come to the conclusion that the judge's determination of Mr. Lam's beneficial interest in 11 Cavendish Road at 100% cannot be sustained. This is because an examination of her paragraph 148 of the judgment holds by implication that Mrs. Lam's "contribution to the family" is irrelevant as a matter of law. The judge said that it might be relevant in a matrimonial case or a joint names case, but that the case before her had to be decided "according to property law". The judge's subsequent reasoning is then entirely concerned with whether and to what extent Mrs. Lam made a financial contribution to the purchase price of 11 Cavendish Road, or paid any of the mortgage payments. This is an error of law, as her summary of the law at paragraphs 81 and 82 of her judgment, quoted in full at our paragraph 12 above, makes clear. In our judgment it is not right to say that evidence going to these issues which "might be relevant in a joint names case" is not relevant as a matter of law in a single name case. The exercise is the same in both types of case: to ascertain whether the common intention of the parties was that the legal ownership of an asset should be held on trust, and if so what the terms of that trust were.
19. Accordingly, it is necessary for us to re-evaluate the evidence having regard to all the evidence including Mrs. Lam's "contribution to the family". This means in this context the evidence (which was not rejected) that she used her income for the benefit of the family for the first 12 years of the marriage until 1997 when she gave up work in order to look after the family and the family home. At the time when she did that it is common ground that she was a joint legal and beneficial owner of the matrimonial home. The fact that the first two matrimonial homes were held jointly as to the legal and beneficial interests is evidence that this was their common intention between 1987 and 2006. There was no evidence of any agreement between her and her husband that this situation should change at the time of the acquisition of 11 Cavendish Road. The decision that 11 Cavendish Road should be conveyed into his sole name appears to have been taken by him alone and not to have been the result of any agreement between them both. Rather than looking for an express agreement that the property should be jointly owned in 2006, it would have been more appropriate to look at the conclusive evidence to that effect in respect of the previous matrimonial homes and to see whether there was any common intention that the position would be different when they moved house for a third time. There wasn't.
20. The judge was right to evaluate the evidence she had heard in detail and to address the many problems in it. However, it might also have helped to stand back and look at the overall picture. A working wife had contributed to the family finances by contributing her income and some savings. She had also looked after the children and homes while the husband attended to his business. There was no reason to reject any of this evidence. When they bought their first two matrimonial homes the properties were in joint names and there would be no reason why equity would not follow the law in that instance. The last matrimonial home was acquired in a complex way, because it was purchased as a bungalow and then re-developed. During the long period when that was happening and while it was being funded in various ways which never became entirely clear, the family lived in the previous, jointly owned, matrimonial home. The proceeds of sale of that property, £201,218.29, were paid into a joint account. The only bank statement

which was produced showed this, see the judge's analysis at her paragraph 115 and 147(o) of the judgment, set out above. She did not accept the evidence of Mrs. Lam that the balance remaining in the account after payments made during the time covered by the single statement largely remained in the joint account to be used for mortgage payments, household bills and other such things. However, it follows from the findings that she did make that this was jointly owned money, half of which belonged to Mrs. Lam. If the mortgage payments and other household bills were not paid with this money, then they must have been paid with other money instead and the joint account money must have been used for some other purpose (it is agreed that it is not still there). The family finances appear to have been managed by Mr. Lam, but the assets he managed included a substantial amount of pooled joint money.

21. The judge began the passage of her judgment in which she sets out her decision on this issue with a finding that Mr. and Mrs. Lam were conspiring in these proceedings to preserve their joint family wealth. She said of their evidence in her paragraph 144 that:-

“There is an obvious motivation to make and concede such a claim now, to seek to preserve part of the value of the house, for their joint future benefit.”

22. This, in our judgment, acknowledges the reality of the position. However opaque and devious Mr. Lam's dealings have been over the years, there is really no reason to doubt Mrs. Lam's evidence that as far as they were both concerned their family wealth, including in particular their home, was jointly owned for their joint benefit. They may well be gilding the lily now to try and strengthen their case, which is undermined by Mr. Lam's inability to give any plausible evidence. There are certainly many missing documents and much missing information. If the central plank of their case, joint beneficial ownership of the family home, were implausible these things would be fatal to it; but actually it is not implausible at all. There is really only one piece of evidence which militates against it, which is Mr. Lam's arrangement of the transfer of the legal title of the home into his sole name. This is unexplained.

23. We therefore turn to some aspects of the evidence concerning that acquisition of the title and the judge's approach to them. First, we find that her approach to the Legal Mortgage dated 18 February 2018 and made between (1) Boon Chen Loy (Lender) and (2) Chin Seong Lam (Borrower) was unjustified. That approach was set at 147(r) of the judgment, quoted above. She found elsewhere in her judgment that this was a genuine legal charge created by Mr. Lam in favour of Mr. Loy but was a tainted gift actually designed by Mr. Lam to defeat the confiscation proceedings. The prosecution case was that it was a sham and thus conferred no beneficial interest in 11 Cavendish Road on Mr. Loy. The judge did not make that finding but held that it was effective to create a charge in favour of Mr. Loy to secure repayment of the loans made nine years earlier. It was carefully structured so that Mr. Loy could not force the sale of the property. Mrs. Lam's evidence was that she had not known anything about the charge at the time when it was granted although she knew that in 2009 four payments of just under £50,000 had been made to Mr. Lam, because they were received into the joint account. She also knew that at the same time a further payment in the same sum was made by Mr. Loy to her which was a further loan, meaning that she knew that between them she and her husband owed Mr. Lam £250,000. The judge did not say whether she accepted that evidence or not.



24. The significance of this question to the present appeals is that the judge decided that the fact that Mr. Lam had declared that he was the sole legal and beneficial owner of the property in this (from his point of view) dishonest document was “telling evidence” that this was true. Since she rejected almost everything else which Mr. Lam had ever said, and since she gave a detailed and convincing explanation of his life of deceit and fraud, this is rather puzzling. It would seem that the reason why the charge was not a sham was that it was accepted in good faith by Mr. Loy, and that it reflected the agreement he thought he was entering into. From Mr. Lam’s point of view the charge was simply to preserve his home from the reach of the then anticipated confiscation proceedings, so that he and his wife could live in it. Although it did not, on its face, look like a gift by him that is what the judge held that it was. These findings are not challenged in this appeal, and the only live issue is whether Mr. Lam’s declaration in the 2018 charge that he was the sole beneficial owner of the property was of any evidential value. In our judgment it was clearly not.
25. The evidence concerning the reason why 11 Cavendish Road, unlike the previous two matrimonial homes, was conveyed into Mr. Lam’s sole name was very limited. He did not give evidence, and Mrs. Lam said she did not know that this had happened until much later. The court was therefore faced with deciding on the balance of probabilities whether this was done because the common intention of the parties was that Mr. Lam should be the sole legal and beneficial owner of the family home, or for some other reason. Mrs. Lam’s evidence was very clear that she and her husband both regarded the family assets including this property as jointly owned, and that the purpose of the acquisition and development of 11 Cavendish Road was to provide a home for them both for the rest of their lives. If that is true, what reason might Mr. Lam have for causing the legal title to fail to reflect this common intention? He was, it should be recalled, a dishonest businessman whose businesses were struggling. That would often cause such a person to ensure that the joint ownership of family assets was concealed as the sole ownership of his wife in order to protect them from creditors. Why might Mr. Lam choose a different course? Almost the only conceivable benefit to him of arranging matters so that the legal title in the matrimonial home was vested only in him was that it would enable him more easily to borrow against it without his wife’s knowledge and without potential lenders ensuring that she had been separately advised about whether she should agree to the proposed borrowing secured on her home. The fact that he did create a charge in 2018 using the apparent sole legal and beneficial interest and not telling his wife what he was doing may perhaps suggest that this was in fact his motive. If, in the absence of criminal proceedings, she had asserted a joint beneficial interest in the property and sought to rectify the title accordingly it is very difficult to see how she could have been defeated by what appears to have been a fraud on her. There is no finding by the judge that she was complicit in the way the purchase of 11 Cavendish Road was dealt with.
26. Further, the £50,000 loan to Mrs. Lam from Mr. Loy, which is described in paragraph 23 above, was paid to her and used to pay builders for the development of the property. The judge accepted that the loans made to Mr. Lam as part of the same series of transactions were genuine loans, and it is not clear why this fifth loan should be treated differently. If it was a genuine loan (a big “if”, but one accepted by the judge in respect of the loan arrangements generally) why should this not be treated as a contribution by Mrs. Lam to the development costs of 11 Cavendish Road?

27. There is no doubt that the dealings with 57 Victoria Road North, Portsmouth, muddied the waters and were never satisfactorily explained by either Mr. Lam in his written contributions or Mrs. Lam in her evidence. This purchase occurred in 2005 and was of a much cheaper property than 11 Cavendish Road and appears to have been associated with Mr. Lam's business. In our judgment it was probably irrelevant to the common intention of Mr. and Mrs. Lam as to the ownership of their home. It was put to Mrs. Lam that she had acquired this in some way in substitution for her half interest in the matrimonial home and, unsurprisingly she rejected that suggestion. It was a poor swap in money terms, and it was not her home. The judge records her evidence on this issue at paragraphs 96 and 97 of her judgment which we have set out above.

### **The Result**

28. For all these reasons, as we have said, we find that the determination that Mrs. Lam had no beneficial interest in 11 Cavendish Road cannot be sustained and we allow both of these appeals to that extent. We find that it was established on the evidence that she held a 50% beneficial interest in it. The confiscation order made by the judge is therefore varied to that extent only.
29. It follows from this finding that the available amount is 50% of the proceeds of sale of 11 Cavendish Road after payment of the mortgage granted in 2007 in favour of the Mortgage Business. The available amount is not reduced to any extent by the charge in favour of Mr. Loy, by reason of the findings made by the judge. We say nothing further about the status of the charge in favour of Mr. Loy. There was no appeal in relation to that and the issue is not before us. It has been determined under s10A (Mr. Loy being present and represented as a person who held or may have held an interest in the property) that the charge was created by Mr. Lam alone and that Mrs. Lam did not know about it. It contained a false declaration by him that he was the sole legal and beneficial owner of the property and had good and marketable title to the property.
30. We invite the parties to draw up an amended confiscation order further to this judgment and to lodge it with both the Court of Appeal and the Crown Court at Harrow.