

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY
IN BANKRUPTCY**

**IN THE MATTER OF THE INSOLVENCY ACT 1986
RE: KEITH LOWE, ALAN LAWRENCE ROSS (DECEASED), EMMA JANE LOWE- MARSHALL and
ANNE ELIZABETH LOWE**

Leeds Combined Court Centre
The Courthouse,
1, Oxford Row
Leeds LS1 3BG
5 May 2016

B e f o r e :

**HIS HONOUR JUDGE ROGER KAYE QC
(Sitting as a High Court Judge)**

Between:

**CHRISTOPHER WOOD as Trustee in Bankruptcy of Keith
Lowe
and Administrator of the Estate of Alan Lawrence Ross
(Deceased)**

Applicant

- and -

**(1) KEITH LOWE
(2) ANNE ELIZABETH LOWE
(3) EMMA JANE LOWE-MARSHALL
(4) STEVEN MARSHALL
(5) MARTIN HALLIGAN**

Respondents

Simon Passfield instructed by Prodicus Legal appeared for the Applicant

The first and second respondents appeared in person

Eleanor d'Arcy instructed by Carrick Read Insolvency appeared for the third and fourth respondents

Jonathan French instructed by Lupton Fawcett Denison Till appeared for the fifth respondent on costs only

Hearing dates: 7-11 March, 11 April 2016

Hand down Judgment 5 May 2016

HTML VERSION OF JUDGMENT APPROVED

HH Judge Roger Kaye QC:

Introduction

1. This is another case in the sad continuing litigious saga of the complex corporate, financial, legal and property affairs of the first and second respondents, a Mr Keith Lowe ("Mr Lowe") and Mrs Anne Lowe ("Mrs Lowe") (particularly the former) and their family^[1].
2. The instant case chiefly concerns the beneficial ownership of two properties:
 - First, The Grange, Priesthorpe Road, Farsley, Pudsey, LS28 5RE currently registered (since 7 June 2004) in the sole name of Mr Lowe at HM Land Registry with freehold title absolute and comprised in title number WYK221723^[2]. It has sometimes been referred to as "Upper Grange" and "Lower Grange" (reflecting different parts of the property) but I shall refer to it simply as "The Grange". By way of an undated assignment thought to have been made on 6 November 2002 ("the 2002 Assignment") the beneficial interest in the Grange was assigned to the third respondent, Mrs Emma Lowe-Marshall (I hope she will forgive me if, for shortness sake, I refer to her as "Emma"), the daughter of Mr and Mrs Lowe, for an expressed consideration of £250. The assignment of the beneficial interest (which is not registered or noted in any way against the registered title of the Grange) was made by a Mr Peter Sargent, Mr and Mrs Lowe's then trustee in bankruptcy. The Grange is currently occupied by Emma and her husband, the fourth respondent ("Steven") and their children.
 - Secondly, Belvedere Hall, Main Street, Darley, Harrogate, HG3 2QF formerly known as Walker Barn ("Belvedere Hall"). This property is also registered at HMLR and comprised in title number NYK309574. It is registered in the joint names of Mr Lowe and his wife, Mrs Anne Lowe ("Mrs Lowe") and is expressly held on trust for themselves as tenants in common in equal shares. By a *Tomlin Order* made in previous proceedings (also before me) on 11 February 2016 Mrs Lowe transferred all or any interest she might have in this property to the applicant (as liquidator of Capital Design Build Ltd ("CDBL"))^[3].
3. The applicant, Mr Christopher Wood ("Mr Wood") is an insolvency practitioner employed by BHP Clough Corporate Solutions LLP of Cleckheaton, West Yorkshire. Mr Peter Sargent above-mentioned, the former trustee in bankruptcy of Mr and Mrs Lowe in their previous bankruptcy in 1996, is now a consultant in the same firm.
4. Mr Lowe's affairs have now been intertwined with Mr Wood for some time. Mr Wood:
 - was appointed trustee in bankruptcy of Mr Lowe on 20 February 2014 following the making of a further bankruptcy order against Mr Lowe on 11 November 2013 on his own petition;
 - is also the insolvent administrator (appointed on 20 November 2012) of the estate of the above-named Alan Ross, deceased ("Mr Ross"), a former close family friend of Mr and Mrs Lowe and who died on 22 October 2011;
 - is also the liquidator of two corporate ventures associated with Mr Lowe or his affairs, Heating Electrical Lighting and Piping Ltd ("HELP") and CDBL.
5. Mr Wood now claims in the proceedings before me :-
 - First, by an application dated 10 June 2015 ("the Possession Application") an order for the possession and sale of The Grange and of Belvedere Hall. Emma claims the entire beneficial interest in both properties, thus contending that Mr Wood is not entitled as he claims. In this respect she is supported by her father and mother and her husband, the fourth respondent ("Steven").

- Secondly, by an application dated 17 September 2015, an order to set aside (on grounds of material irregularity) joint individual voluntary arrangements ("IVAs") approved at a creditors' meeting on 28 July 2011 proposed by Emma and Steven ("the IVA Application"). The fifth respondent, Mr Martin Halligan, an insolvency practitioner and proprietor of MPH Recovery of Morley, Leeds, acted as nominee and supervisor of this IVA. He has taken no part in the proceedings (with the acceptance of all concerned) save on the question of costs depending on the outcome. This application was a satellite application to the Possession Application and in seeking to set aside the joint IVAs (depending on the outcome of the Possession Application) Mr Wood, as I understood it, ultimately sought recovery of property (namely the Grange and Belvedere Hall) on the footing that, if these properties were owned beneficially by Emma, and (in the case of Belvedere Hall) purchased with moneys advanced by her to her parents to facilitate the purchase, then these assets (the Grange, Belvedere Hall and the benefit of the debt owed by Mr and Mrs Lowe) ought to have been disclosed in the proposals for the IVA but were not. As the case progressed however, Mr Passfield, counsel for Mr Wood, in closing expressly abandoned pursuing this application further.

The Issue and Burdens of Proof

6. The remaining central issues therefore are whether the two properties are, or are not, beneficially vested in Emma.
7. Mr Wood's position is relatively simple:
 - The Grange is registered in the sole name of Mr Lowe. But for the 2002 Assignment, the entire legal and beneficial interest in this property would vest in him as Mr Lowe's trustee in bankruptcy. Although initially inclined to challenge the validity of the 2002 Assignment (no original has been produced, that in the bundle^[4] is an undated photocopy specifying the month as September but in fact is thought to have been executed or delivered on or about 6 November 2002), Mr Wood now accepts the assignment as a genuine copy executed by Mr Sargent. His case is that Emma has at all times been a nominee for her father who is the true beneficial owner.
 - As to Belvedere Hall, where the property is registered in the joint names of Mr and Mrs Lowe, here the expressed beneficial interests were declared at time of acquisition by Mr and Mrs Lowe in their favour as tenants in common in equal shares. Mrs Lowe, having assigned any interest she has in this property to Mr Wood as liquidator of CDBL under a compromise of earlier proceedings (see above and below), the remaining interest of Mr Lowe vests in Mr Wood again as Mr Lowe's trustee in bankruptcy. Emma, however, now also claims that Belvedere Hall was purchased solely with moneys emanating from proceeds of sale of part of the Grange and hence is also to be regarded as her property notwithstanding it was purchased in the name of her parents and the beneficial interests declared. Her case (as advanced on her behalf by Miss d'Arcy) is based on either a constructive or resulting trust (thus avoiding the necessity for writing under s 53(2) *Law of Property Act, 1925*) but as regards which the declaration of trust made on the 7 October 2013^[5] ("the 2013 Trust") in her favour is confirmatory (below). Mr Wood's case is that Emma fails to demonstrate she has any such beneficial interest or if she has any such interest as with the Grange she holds as a mere nominee or cipher for her father.

Representation

8. Mr Wood, as mentioned, was represented by Mr Passfield. Mr and Mrs Lowe have throughout represented themselves. In practice this took the form largely of Mr Lowe, no stranger to the practice and procedure of civil courts, representing himself and his wife. I acknowledge that whatever may be said as to their conduct behind the scenes, they both presented and represented themselves throughout with dignity, politeness, and restraint.

9. Emma and Steven were both represented by Miss d'Arcy. Steven, joined no doubt because he and Emma (plus their children) occupy The Grange, gave evidence, but took little part in the proceedings. He did not and never has claimed any interest in the two properties.
10. Mr Halligan I have dealt with above.
11. I was much assisted by Mr Passfield and Miss d'Arcy and by Mr and Mrs Lowe in their respective written and oral opening and closing submissions, arguments, and presentation of their case for which I am grateful.

The Evidence

12. All parties filed witness statements.
13. For the applicant, I heard evidence from Mr Wood.
14. For the respondents I heard evidence from them all (save Mr Halligan).
15. I deal with much of their evidence (particularly Emma's) in the main below, but I should state at the outset that despite Mr Lowe's impeccable conduct in his manner of presentation I have treated his evidence with a degree of caution not least because he admitted and accepted that his memory was not reliable. He was on medication which, he said, affected his memory and largely meant his recollection of events was based on enlightenment from documents. Undoubtedly however he was the major influence in his family and the controlling and instrumental will and mind at least so far as their business, financial, legal and property affairs were concerned. Indeed, I would go so far as to say that Mrs Lowe and Emma completely deferred to his wishes and designs even to the point of allowing (in Mrs Lowe's case) her email address to be used for Mr Lowe's purposes as explained below and to signing documents prepared by, or after discussions with, Mr Lowe. For these reasons, I also approached Mrs Lowe's evidence with a considerable degree of caution.
16. Emma has, in my judgment, a credibility problem. I regret that I have not, in general found her a reliable witness (despite Miss d'Arcy's submission that I should accept her evidence in its entirety) for, amongst others, the following reasons:
 - She too accepted that her memory was not as good as it was.
 - A repeated statement by her was to the effect that she did not understand matters, left them to her father, allowed her father to advise her and tell her what to do and say (though on occasions she asserted the contrary), contented herself with flipping through documents she was asked to sign and not checking, still less reading, them;
 - She was (as was Mrs Lowe) plainly dominated by Mr Lowe in almost all respects as regards anything to do with property, business, legal and financial matters;
 - She placed total (and to my mind unquestioning) trust, she maintained, in his advice and faith to act in her best interests;
 - She accepted that he drafted (or was instrumental in the preparation of) many of the letters and documents (e.g. Part 18 responses and witness statements used in the cases she had been involved in) signed in her name (sometimes under Statements of Truth) which she did no more than flip through and did not seemingly greatly understand or challenge. In this respect she was, to say the least, cavalier whether the contents of such documents be true or not and did not seem to care one way or the other or recognise her responsibilities in this respect as, to be fair to her, demonstrated in a number of ways as set out in this judgment;
 - For example, although Miss d'Arcy submitted that her case had been consistent throughout the

present case, this has not always been so. Far from it. She was inconsistent in a number of statements, pleadings and letters, making different statements to different people (no doubt for different purposes) which she repeatedly sought to explain as something she did not fully comprehend. Examples included:

i. Telling the Official Receiver in November and December 2013 she had loaned her father the £750,000 to purchase Belvedere Hall (after the above mentioned 2013 Trust in her favour and in contrast to her claims in these proceedings);

ii. Stating in a Part 18 response that had not consented to her father re-mortgaging the Grange (contrary to her present evidence);

iii. Claiming in a witness statement (drafted she said by her father) in support of an attempt by her father to remove Mr Wood from office in January 2015 that she had an unsecured claim for a loan to her father of £600,000 to enable him to purchase Belvedere Hall and both in the witness statement and in a letter (also according to her probably drafted by her father) to Mr Halligan also in January 2015 that it had been agreed at the outset she was entitled to a charge over Belvedere Hall in return for the funds coming from the sale of the Coach House, part of the Grange^[6] (again contrary to her present assertion that what was agreed at the outset was not a loan but that Belvedere Hall was hers);

iv. Signing confirmation letters for the purposes of the IVA proposals that her father and Mr Ross were owed substantial sums by her which she must have known were untrue or at the very least she did not know whether they were true or not or the extent to which they were true or not.

17. Despite Emma's repeated claims that she did not fully understand these matters she was prepared to say and sign these documents as advised or dictated or prepared by her father. None of this reflects well on Emma or her credibility.
18. As to Steven, apart from confirming Mr Lowe was instrumental in the IVAs entered into by him and Emma his evidence did not take matters much further.
19. I should add that I am aware of the criticism of the evidence of Mr and Mrs Lowe made in previous proceedings. I have, however, not allowed this to over influence my judgement of their evidence in this case. The fact that a person may be disbelieved in one case is not necessarily a reason for disbelieving them in another.
20. I also had a large number of documents over seven bundles comprising exhibits to witness statements and other documents.

The Background

21. The relevant background to the issues concerning the two properties is not largely disputed. It is, as I find it, as follows.
22. In 1988 the affairs of Mr Lowe were prospering. He established a trust known as the Keith Lowe 1988 Settlement (though I have not seen its terms) ("the 1988 Settlement") apparently as a discretionary trust for the benefit of Mr and Mrs Lowe and their children funded with the aid of a mortgage from Yorkshire Bank plc. The 1988 Settlement initially purchased the Grange but shortly after, in around 1989 or 1990, it was purchased from the 1988 Settlement trustees by Mr Lowe on terms that the purchase price was left outstanding. The property became subject to a second charge in favour of the trustees (said by Mr Lowe to be still owed about £330,000 and interest - I saw no evidence of this). The Grange comprises a large detached house set amidst some 11 acres including stables, garage and store and a small horse arena.

23. In May 1988, Mr and Mrs Lowe also purchased a property called Springwood also at Priesthorpe Road, Farsley, Pudsey ("Springwood") adjoining the Grange to the north-west. This property is also a large detached residence with outbuildings registered at HMLR and comprised in title number WYK421100. It is currently occupied by Mr and Mrs Lowe. Mrs Lowe's elderly father occupies an adjoining annexe. In the same year (1988) Mr and Mrs Lowe also purchased a further parcel of land to the south of Springwood (title number WYK426855) which subsequently became vested in Mr Lowe's other daughter, Joanna ("Joanna's Land").
24. In 1996 Mr and Mrs Lowe became bankrupt whereupon the various properties then registered in their name vested in their then trustee in bankruptcy, Mr Peter Sargent.
25. In 1996 Mr Ross also helped to construct stables on land comprising part of the Grange. Emma (who was and is keen on horses) managed the stables and rented them out, the horses also using Joanna's Land for grazing. Emma received the rent but paid it over to her father to do with as he thought appropriate.
26. Between about September and November 2002 a series of transactions took place concerning Springwood, the Grange, and Joanna's Land orchestrated and arranged by Mr Lowe who was hoping to recover the properties previously owned by the family. Mr Sargent was not happy in selling these properties back direct to Mr and Mrs Lowe but he was prepared, it seems, to enter into transactions which facilitated their ultimate transfer to the Lowe family via an intermediary. Mr Ross became such an intermediary. The beneficial interest in Springwood was sold to Mr Ross for £250 and then on, by Mr Ross, to Mrs Lowe for the same sum on 6 November 2002 (hence the assumed date of the 2002 Assignment)^[71]. The same appears (from the copy transfer and solicitors correspondence before me) to have been the intention with the Grange, but in this case the purchaser was changed at a late stage from Mr Ross to Emma (also for £250). Although Emma was assigned the entire beneficial interest in the Grange by the 2002 Assignment, it was Mr Lowe who became the registered proprietor in June 2004^[81] (though no cogent explanation was ever given for this beyond a kind of general - albeit important - statement that he usually dealt with such matters). Joanna's Land was dealt with similarly and ended up in Joanna's name. I deal with the circumstances of these transactions in more detail below.
27. Also in 2004 Mr Lowe proposed to pay off the mortgage secured on the Grange to Yorkshire Bank and to borrow further money from National Westminster Bank plc in order to pay for works of redevelopment to the Grange and in particular to convert part of it known as the Coach House into a house. For the first (and only time), Emma was asked for her consent to a charge in favour of NatWest over the Grange in priority to that in favour of the trustees of the 1988 Settlement. She duly signed the consent^[91] and the moneys were advanced and charge registered. Mr Lowe presumably paid the mortgage instalments, Emma could not. She did not have the funds. The works of development and conversion had started in about 2002 and had been paid for by family and friends by cash or credit card.
28. The Coach House development was completed in 2005 when a number of further transactions also took place:
 - First, the Coach House was sold in May 2005 for £750,000^[101]. Emma was not a party to the contract for sale nor to the subsequent transfer. Mr Lowe provided a full title guarantee to the purchaser under s 3(1) *Law of Property (Miscellaneous Provisions) Act 1994* impliedly covenanting to the effect that the property was free from all charges and incumbrances and all other rights exercisable by third parties. According to him £205,000 of the £750,000 was used to pay "fees" to the 1988 Settlement trustees, to repay the expenditure of family members on the redevelopment and conversion works and presumably the costs associated with the sale and purchase of Walker Barn (i.e. Belvedere Hall), then an undeveloped barn;
 - Secondly, Belvedere Hall was purchased on 2 June 2005 in the names of Mr and Mrs Lowe for £545,000. The transfer (form TP 1) contained an express declaration that they held the property on trust for themselves as tenants in common in equal shares^[111].
 - Thirdly, Mrs Lowe sold Springwood to a company called Corporation Interest Ltd and almost

immediately this property was then sold on to Mr Lowe when it was then charged to Halifax BS (now Bank of Scotland) to secure an advance of £549,000 in part to finance the purchase.

29. Between 2006 and 2008 Mr Lowe arranged further mortgages as follows:

- In July 2006 Mr Lowe re-mortgaged the Grange again, this time with Birmingham Midshires and again providing a full title guarantee. Emma was not involved and did not provide any written consent though Mr Lowe's evidence was that he had informed her^[12].
- In April 2007 Belvedere Hall was re-mortgaged to NatWest. Mr Lowe represented to that Bank that he had assets (including the Grange and Belvedere Hall) in excess of £5.5m. The aim of this mortgage was said to be to refurbish and develop Belvedere Hall into a house first with a view to renting it out and then ultimately as a home for Mr and Mrs Lowe^[13].
- Mr Lowe re-mortgaged the Grange again in 2008 to Halifax BS.

30. Throughout the period since his first bankruptcy it is unclear what precisely was the source of Mr Lowe's income. He appears to have had interests or connections with many different ventures including building and acting as an insolvency consultant (which seems to have taken the form of introducing people to insolvency practitioners he knew).

31. By June 2011 Emma and Steven were in financial difficulty. They had substantial credit card and utility bill debts. Mr Lowe introduced them to one of his insolvency contacts, a Mr Hodgson, an associate of Mr Halligan of MPH Recovery. Mr Hodgson visited Mr Lowe at Springwood. Emma and Steven were in attendance for part of the time but largely left matters (as was usual) to be sorted out by Mr Lowe with Mr Hodgson. IVA proposals were prepared for both Emma and Steven (and signed by them) providing in each case for a dividend of 0.39p in the pound incorporating information mostly supplied by Mr Lowe. Mr Halligan was the proposed nominee and supervisor.

32. Included in the information given to Mr Hodgson was the claim that Mr Lowe and Mr Ross were each owed substantial sums by Emma and Steven, namely £188,600 and £187,200 respectively. Proofs of debt for these amounts were submitted on 15 July 2011 along with a letter of explanation drafted by Mr Lowe setting out alleged details of the alleged debts. Emma and Steven signed the letters to confirm the amounts owed.

33. On 28 July 2011 the creditors' meeting to consider the IVA proposals was held. Mr Lowe and Mr Ross did not attend. Six creditors with debts totalling £37,215.12 voted against the proposal. The debts of Mr Lowe and Mr Ross together with Yorkshire Water (£822.06) voted in favour. Thus the necessary minimum 75% of creditors including 50% of creditors not associates of Emma and Steven secured approval to the proposals (see *Insolvency Rules 1986* (as amended), *rule 5.23(4)*). Had the votes of Mr Lowe and Mr Ross (who had not even completed a valid proxy form) not been counted the proposals would not have been approved.

34. On 5 August 2011 following a written request from Mr Halligan for documentation in support of the claimed debt, Mr Ross withdrew his claim. He later died the same year in October. Mr Lowe subsequently "waived" his right to a dividend in October 2013^[14].

35. In January 2013 Mr Lowe granted a tenancy of Belvedere Hall (in his name) at a monthly rent of £2,250^[15]. Emma was not consulted and did not even know who the tenants were. Her father collected the rent and again seems to have used it as he saw appropriate, usually to repay mortgage instalments.

36. In the meantime, HELP had gone into liquidation. Mr Wood was appointed liquidator. In proceedings before HHJ Langan QC (*Heating Electrical Lighting and Piping Ltd (in liquidation) v (1) Ross, (2) Lowe and Ors* [2012] BPIR 1122), Mr Wood brought misfeasance proceedings against Mr Ross's estate. His estate was insolvent and being administered by the Official Receiver. Mr Lowe and another were the executors. A range of issues ended up being disputed before the judge including an issue over whether Mr Lowe was entitled to vote at

creditors' meetings of the company, Mr Wood having rejected his claims against the company assets. Mr Lowe also took an active part in defending the misfeasance claim. In September 2013, the judge made an order for costs against Mr Lowe and made an interim order for payment on account. The proceedings also led to Mr Wood being appointed administrator of Mr Ross's insolvent estate.

37. Mr Lowe's immediate response was to instruct his then solicitor, Mr David Coates ("Mr Coates"), from whom I did not hear evidence, then of Lupton Fawcett Lee and Priestly (now of Lupton Fawcett Denison Till) and formerly of Brooke North (the firm he had instructed in relation to the property transactions mentioned previously). Mr Coates was asked to register charges and restrictions against Springwood, Belvedere Hall and the Grange in an obvious effort to obtain priority over any charging order registered by Mr Wood to secure the order for costs in his favour. This request was done by, or rather in the name of, Mrs Lowe in an email ostensibly emanating from her (but drafted in my judgment by Mr Lowe despite his doubting this in his evidence) sent to Mr Coates^[16]. It included an indication that Emma wished to register her interest in the Grange and that Mrs Lowe wished to secure loans made by her to her husband on Belvedere Hall. (Mrs Lowe, in her evidence, could not recall any details of her alleged loans.) The email contained no suggestion that Emma had any interest in the latter property.
38. The following day, however, in a further email^[17] Mr Coates was asked to register a charge against Belvedere Hall to protect the alleged use of Emma's proceeds from the Coach House in the purchase of Belvedere Hall. A few days later, at the beginning of the following month, apparently after consulting Mr Coates, it was decided to draft the declaration of trust whereby it was declared that Emma was the sole beneficial owner of Belvedere Hall. The document (the 2013 Trust) was prepared and signed by Emma and dated 7 October 2013^[18].
39. In the same month, the IVAs of Emma and Steven were certified as completed, Mr Halligan issuing certificates of completion. In fact although both IVAs had proposed that they would each be funded by a contribution by Mr Lowe of £2,500 (i.e. £5,000 in all), Mr Lowe in fact only paid in £2,000, £1,000 into each IVA. Mr Halligan also waived part of his nominee's fees and all of his supervisor's fees. By this time Mr Ross had withdrawn his claim and Mr Lowe had waived any right to dividend in the IVAs.
40. Shortly thereafter, on 11 November 2013 Mr Lowe was adjudged bankrupt having presented his own petition. Mr Wood was eventually appointed trustee in February 2014. That led to further hostility between him and Mr Lowe with the latter attempting (and failing) to secure Mr Wood's removal from office.
41. Against that background, I now turn to the central issues, the beneficial ownership of the Grange and Belvedere Hall.

The Grange

42. The Grange is registered in the sole name of Mr Lowe. The registered title contains no mention (whether by restriction or otherwise) of any beneficial interest owned or claimed by Emma^[19].
43. The 2002 Assignment of the beneficial interest in the Grange to Emma^[20] was, as I find, part of a series of transactions involving Mr Lowe, Mr Ross, Mr Sargent, and Mr Coates, then of Brooke North, concerning Springwood, Joanna's Land, and the Grange, together forming an enclave of land and houses at Priesthorpe Road, Farsley.
44. The aim was to enable Mr Lowe to acquire back from Mr Sargent, the trustee in bankruptcy of him and his wife, the properties owned previous to his (and Mrs Lowe's) bankruptcy. At the time the Lowe family (including Emma) lived at Springwood.
45. Since Mr Sargent would not assign the properties direct to Mr Lowe, Mr Ross agreed to purchase Springwood and the Grange as an intermediary and assign them on to Mr Lowe. The assignment of Springwood was effected in a similar fashion. The assignment of the Grange was also originally envisaged to be effected in a like manner with Mr Ross as the intermediary since the copy of the 2002 Assignment I have seen whilst amended to show

Emma as the purchaser in accordance with Mr Lowe's instructions^[21] still shows Mr Ross as the intended signatory. The copy was shown as executed by Mr Sargent, but not by Emma. It seems reasonable to infer that Joanna's Land was at least intended to be dealt with similarly.

46. I must now deal further with Emma's evidence. Despite the arguments of Miss d'Arcy I placed very little weight on Emma's evidence for a number of reasons partly those previously indicated but also for a number of other reasons:

- First, her omissions or inconsistencies in evidence:

- i. for the first time in a lengthy saga of proceedings involving the Lowe family and its properties, Emma suggested in cross-examination that her grandparents had given her the £250 (as well as, and at the same time as making a similar gift to Joanna) to use as she saw fit. No mention of this was made in her witness statement in these proceedings^[22] or elsewhere. She said in her evidence that she had decided she wanted to purchase the Grange and said she gave the money from her grandparents to her parents for that purpose and assumed they had paid it to Mr Sargent.

- ii. In earlier possession proceedings involving the Bank of Scotland against her and her parents seeking possession of the Grange (the proceedings were eventually compromised) Emma (above a Statement of Truth) stated in a CPR Part 18 response^[23] to a Request for Further Information that Mr Lowe had proposed the assignment to her, produced it, and she signed it (no such signed copy has ever been produced), that she did not have a specific desire to purchase the beneficial interest in the Grange and did not understand what that meant, she wished to continue living in the Grange as it is/was her family home (it wasn't at the time; she lived at Springwood and only moved into the Grange after it had been purchased). She did not know whether the £250 was in fact paid. I do accept however that it was part of a plan by Mr Lowe to reacquire the properties.

- Second, the manner in which she left her father to deal with the Grange as he saw fit largely without recourse to her:

- i. As previously noted, Emma's repeated mantra during her evidence was to the effect that the Grange was her property, that there were (or would have been) discussions between members of the family, that she trusted her father to act in her best interests, that she did not fully understand everything, and generally to the effect that she let him get on with everything or advise her. The picture that emerged overall was a family totally dominated by one man whom they trusted and left to get on with the property, legal, financial and business affairs. Emma seems to have simply left all matters affecting the Grange to be dealt with as and when and how her father thought appropriate. She did not necessarily understand documents she was asked to sign or even on occasions read the documents placed before her beyond, at most, flipping through them and signing them, wholly uncritically (and even incuriously) trusting, she maintained, her father to act in her best interests (without regard, as previously stated, to her own responsibilities). She was happy for her father to deal with everything.

- ii. More telling was her acceptance that these properties were somehow regarded as family assets. Mr Lowe was head of the family and determined what was to be done with them.

- iii. Thus the entire family (and friends apparently including Mr Ross) chipped in and helped with the redevelopment of the Grange and the Coach House using cash and credit cards to assist.

iv. The Grange was registered in the sole name of Mr Lowe. Emma was over 21 at the time of the purchase (or rather repurchase) of the Grange from Mr Sargent. There was absolutely no reason if she was to live at the Grange why, given she purported to acquire the entire beneficial interest, it should not have been registered in her name.

v. The building works were also partly funded by the mortgage from NatWest in 2004 (above). Emma signed the letter of consent to the mortgage following a request from Mr Coates^[24], stating she had read the letter, understood it and signed it at her father's solicitors' offices in Leeds (it appears in fact to have been signed in Bradford) again at her father's request. Again, in contrast, in her earlier statement in the Part 18 response referred to above, she stated that she did not recall the letter from Mr Coates or signing the consent, she did not understand it, never intended to sign it, and believed she was signing a document of a wholly different nature^[25].

vi. She allowed her father to organise the redevelopment and conversion of the Coach House and to sell the property, dispersing the proceeds as he saw fit and for purposes (the payment to the trustees of the 1988 Settlement) of which she was ignorant. She was not a party to the contract or transfer enabling her father to (incorrectly if she had a beneficial interest) give a full title guarantee on the sale. She did not know how the balance of the proceeds of the Coach House after the purchase of Belvedere Hall (the £205,000) was dealt with apart from to pay off trustee fees, credit cards and works. She never queried what happened to it.

vii. Mr Lowe executed the two further mortgages of the Grange (above) without her consent being either formally sought or given. Again her father gave the full title guarantee. In the Part 18 response referred to she claimed to have no knowledge of these dealings after November 2002^[26]. Yet in cross-examination before me she asserted there must have been discussions but could not recall any details.

viii. When Mr Lowe sought to re-mortgage Belvedere Hall (see above and below) he represented to NatWest that he was the owner of assets in excess of £5m including the Grange (valued at £1.3m) and made no mention of Emma's alleged interest in either property^[27].

o Third, in addition to the foregoing she demonstrated how much she left her father to orchestrate her and her own husband's affairs with regard to both the properties:

i. Thus she allowed her father to select the insolvency practitioner she dealt with as regards her IVA. She (and her husband) mainly left the details of the proposals^[28] to be sorted out between her father and Mr Hodgson. Yet she signed up to the proposals (dated 27 June 2011^[29]) as made with her knowledge and approval and represented the statements were true^[30].

ii. Nevertheless the proposal as signed by her failed to disclose any interest in the Grange or in Belvedere Hall on the basis she had been led to believe (by her father) they were "*in negative equity*" and therefore had no value.

iii. She further allowed the impression to be given in the IVA proposal that the Grange was not beneficially owned by her but rented (she did not say from whom in the IVA proposal - though Mr Lowe admitted in his evidence the disclosed specified monthly "*rent*" of £2083 was paid to him for the mortgage^[31]).

iv. This assertion of negative equity (said to be on the advice of Mr Hodgson, who was not called) was apparently based largely on the effect of the charge in favour of the 1988 Settlement trustees (never produced), which seems to have gone off the title and then on again pursuant to Mr Lowe's arrangements to grant priority to bank mortgages. Emma seemed to have no knowledge or even curiosity about these matters. The development potential of the land as evidenced by the development and sale of the Coach House also seems not to have been taken into account in listing or assessing the value of her assets in her IVA proposal. Yet she did reveal ownership of another property at Stanningley (not part of these proceedings) and did specify that there was no equity available in respect of this property owing to the mortgage charged against it. I have to say I infer from all of this that she had no intention of revealing or asserting any beneficial ownership of the Grange;

v. She signed letters confirming the debts of Mr Lowe and Mr Ross, in my judgment, without any clue as to their accuracy or otherwise but simply because her father told her to;

vi. Although the stabling of horses at the Grange was meant to be her venture, the rent was paid over to and utilised by her father (presumably to help pay the mortgage instalments) at his discretion. Here again in the IVA she now asserted that she had been loaned the income from the stables by Mr Ross.

- Fourth, Steven's evidence adds little to the foregoing save to confirm it in relation to the IVAs.
- Fifth, I make all due allowances for Emma's age (though she appears to be well educated). I recognise too that Mr Lowe's actions as purported owner of the Grange are not necessarily Emma's. But they are informative that Emma was happily prepared to let her father deal with the Grange in such manner and as and when he saw fit. At no time does she seem to have insisted on her registration of ownership. Lest this be thought to be unfair to a daughter reposing such trust and confidence in her father, there is a fine line between trust and confidence and abdicating all responsibility. Emma never seems to have considered either her rights or her responsibilities as regards the Grange. There is no evidence she ever considered paying rates, council tax, insurance, repairs, mortgage instalments or similar outgoings. She left everything to her father because in truth he had been and was again to be and was the real legal and beneficial owner of the Grange.

47. In summary, in my judgment the assignment of the Grange into the name of Emma by the 2002 Assignment was done as arranged and organised by Mr Lowe. Despite Mr Lowe's contentions to the contrary, in my judgment it was never truly intended to be beneficially owned by Emma, it was not her property. It was intended to be and became Mr Lowe's, albeit possibly as a kind of *pater familias* but not as a trustee. Emma largely abdicated total responsibility to her father because she knew it was really his property. He could deal with the property as he thought fit. Mr Lowe and Emma expressly or tacitly allowed the world to view the property as Mr Lowe's. They cannot now, in my judgment, assert the contrary. Emma left everything to her father, and would do and say as he directed her. In so far as she says she trusted him, he did nothing to protect her property (if it was her property) but dealt with it to all intents and purposes as if it was his own.
48. In my judgment Emma was indeed his nominee and any beneficial interest held by her in the Grange was and is for his benefit.
49. The Grange is not occupied by Mr and Mrs Lowe but by Emma and her family. It was not occupied by Mr and Mrs Lowe as their sole or principal residence at the date of his bankruptcy hence the provisions of *Insolvency Act 1986, ss 283 and 313A* (relating to the bankrupt's home) do not apply.
50. In my judgment therefore Mr Wood succeeds in the Possession Application. I will consider the consequences and what orders to make at a later date.

Belvedere Hall

51. Miss d'Arcy, on behalf of Emma (supported by the first four respondents) contends that Emma is the true beneficial owner of Belvedere Hall on the basis of the use of her moneys from the Grange to acquire this property whether by way of resulting, or constructive trust. She relies on the declaration of trust of 7 October 2013^[32] (the 2013 Trust) merely as an evidential basis confirming what had always been agreed.
52. As previously stated Belvedere Hall is registered in the joint names of Mr and Mrs Lowe. The transfer in HMLR form TP 1 into their joint names dated 2 June 2005^[33] signed by them both contained the declaration (by the appropriate box being crossed) that they were to hold the property for themselves as tenants in common in equal shares (rather than as might be expected with married couples as joint tenants). As mentioned Mrs Lowe, as part of the compromise of proceedings involving CDBL assigned her interest (if any) in this property to Mr Wood^[34].
53. In cross-examination Mr Lowe indicated that he thought that the declaration of trust (as tenants in common) in the standard box in the form TP 1 had been crossed due to a mistake though he accepted, as was usual, he alone dealt with the solicitors on the purchase, the family leaving everything to him. If there was a mistake, he did nothing about it (he said he had not pointed out the error at the time) and neither was there any evidence to suggest that he had written at any time to Mr Coates his solicitor acting on the transfer (and who, as I have said, was not called) to correct this alleged mistake. Miss d'Arcy asked me, somewhat on the hoof, to set aside the TP 1 on grounds of mistake. No application was made to this end or to rectify the transfer and I reject this claim. I do not, despite not having heard from Mr Coates, accept it was a mistake.
54. In *Goodman v Gallant* [1986] Fam 107 CA a conveyance of property into joint names of husband and wife on trust for themselves as joint tenants was held to be conclusive and left no room for the application of the doctrine of resulting, implied, or constructive trusts absent any rectification or rescission (see per Slade LJ at pp. 1110F-111B). The decision was not doubted in *Stack v Dowden* [2007] 2 AC 432 HL and summarised at para. 49 by Baroness Hale of Richmond thus:

"No one now doubts that such an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel"
55. Thus Mr Wood's primary case is that since Mrs Lowe no longer has any beneficial interest in Belvedere Hall, in view of the conclusive declaration contained in the 2005 TP 1, Mr Lowe's beneficial interest must vest in him as trustee in bankruptcy.
56. Here again, as with the Grange, so with Belvedere Hall, the pattern was the same. Mr Lowe's dealings with the property are entirely consistent with his having ownership to the exclusion of Emma: he mortgaged the property to NatWest in 2007 having previously represented he owned it (valued at £1m) and without seeking any consent from Emma (above). Emma made no claim to it or reference to it in her IVA proposal. It was Mr Lowe who granted the tenancy of Belvedere Hall in January 2013 (above). Emma had no involvement and did not even know who the tenants were.
57. Emma claimed (in her evidence) that it was agreed at the outset she should have an interest in Belvedere Hall on the basis that part of the Grange (i.e. the Coach House) should be sold and the proceeds used to develop what became known as Belvedere Hall. The respondents all asserted that there had been a family discussion about this. There may well have been some discussion between the family members about acquiring Belvedere Hall but I do not accept that it was on the basis that Emma would own this property except, if at all, as intended nominee for her father. Any ownership by her would not and did not affect the complete freedom Mr Lowe had to deal with this property as with the Grange, as he thought fit.
58. The suggestion that Emma somehow had an interest in Belvedere Hall of some description first appeared in September 2013 following Mr Wood obtaining the costs order against Mr Lowe and in an attempt to delay or

defeat his claims and in particular the real possibility that he might obtain charging orders against the Grange and, in the present context, more specifically Belvedere Hall. Initially, it was only after suggesting to Mr Coates (via Mrs Lowe's email) first, that Emma's interest in the Grange should be registered (a matter she admitted in cross-examination had been prompted by her parents without any discussion with her) and, second, that Mrs Lowe's alleged loans should be secured by a charge against Belvedere Hall, that the idea was then hit upon that the so-called use of Emma's proceeds of sale from the Coach House should entitle her to a claim against Belvedere Hall. Otherwise at the outset there was no mention of her alleged interest, rather the basis on which it was put to Mr Coates was that Mr and Mrs Lowe were joint owners^[35]. There was no suggestion at this point that the TP 1 was a mistake or that Emma was beneficial owner here too.

59. Even when the notion first occurred that Emma might have an interest, the initial suggestion was not that it had all along been agreed she should own Belvedere Hall but, instead, that her interest should be protected by a charge as if she had loaned the money to purchase the property. It was only after discussion with Mr Coates that it was thought preferable to prepare a declaration of trust declaring Emma was the beneficial owner of the property on the basis (as the declaration recites) that she had provided the purchase moneys^[36]. If she did, it could only have come from the sale of the Coach House as no other potential source was identified. The 2013 Trust document was prepared without any reference to Emma but signed by her (and dated 7 October 2013), she said in evidence, without reading or understanding its contents and because her father asked her to. Again it was, in my judgment, something arranged and orchestrated by Mr Lowe.
60. Despite all this Emma wrote letters to the Official Receiver in November and December 2013 claiming that she had loaned the money to her father to purchase Belvedere Hall. Mr Lowe too indicated to the Official Receiver's examiner in a questionnaire dated 3 December 2013 that Emma had loaned the money for this purpose to the extent of £600,000 (in contrast to the current explanation)^[37].
61. Throughout the proceedings Emma's stance has been unclear up to the point that in a hearing before DJ Kelly on 6 October 2015 (at which Emma was professionally represented), on being asked to state on what basis her claim was made to Belvedere Hall the order of that date recorded she claimed her interest "*by operation of resulting or constructive trust in the amount of her alleged contribution to the purchase price of*" that property^[38]. No mention was made of the 2013 Trust.
62. The first task is, of course, to ascertain what the intention of the parties was at the time of the acquisition of Belvedere Hall: that is answered by the TP 1 above-mentioned. In so far as Emma alleges that the intention was that she should have a beneficial interest by constructive trust, the above demonstrates in my judgment that there was no such intention.
63. Although Emma again referred to discussions I find that it was never agreed or understood she should have a beneficial interest. This idea only arose subsequently as a means of delaying or defeating Mr Wood's claims. Even as a so-called resulting trust arising because of the use of her alleged proceeds of sale from part of the Grange (i.e. the Coach House) this is rebutted by the finding above that she had and has no interest in the Grange and by the parties intention that Belvedere Hall was to be beneficially owned by Mr and Mrs Lowe. Miss d'Arcy argues that some kind of sub-trust might have arisen in favour of Emma but if so, the property could have been held immediately on acquisition for Emma's benefit. The fact that it was not all shows, to my mind, this was not the intention of the parties.
64. Although the issue of Mrs Lowe's interest does not arise, if anything, as with the Grange, so with Belvedere Hall: the reality is that Belvedere Hall was regarded by all as Mr Lowe's property to do with as he wished for the benefit of himself and the family in whatever manner he thought appropriate.
65. Moreover, as with the Grange, Emma plainly was never intended to have any specific beneficial interest in the property:
 - Despite the alleged mistake in the TP 1, Mr Coates clearly understood (from Mr Lowe) that it was Mr and Mrs Lowe who were acquiring Belvedere Hall as tenants in common. Emma never featured as part of this

purchase. Emma allowed her so-called proceeds of sale (if, contrary to the above conclusions regarding the Grange, such be the case) without question to be used in whatever manner her father decided. She regarded it as something her father was free to do: it was his property, his proceeds, his transaction;

- Mr Lowe mortgaged the property in 2007 to NatWest without recourse to her representing it was his property, not hers. If there were "discussions" as Emma says, then it was something of which she was aware but herself asserted no claim;
 - Mr Lowe arranged the tenancy of Belvedere Hall and collected the rent, again without involving Emma who did not even know the identity of the tenants. She was, she indicated, tellingly of her general approach, happy for her parents to have the money if they needed it;
 - Emma did not include Belvedere Hall in her IVA proposal. In so far as she alleges this was also because it too was in negative equity in 2011 I have dealt with the inconsistent treatment in the IVA proposal between this and other property owned by Emma (the Stanningley property) above; but in any event there is no evidence Belvedere Hall was in negative equity, this was again based, she said, on what her father told her and Mr Hodgson;
 - The first assertion that Emma had or might have any kind of interest in Belvedere Hall was as lender not investor, that she was a lender of moneys to her parents (or to Mr Lowe). She was not involved with this or had any advice or discussions about the matter with any solicitor, merely signing the 2013 Trust again at the request of her father. It was not, in my judgment, ever intended to be a valid declaration of trust by Mr and Mrs Lowe merely a device for defeating Mr Wood's anticipated claims to a charging order, Emma signing, as I find, not because it reflected what had been agreed with her but because her father asked her to;
 - Even Emma herself did not consider she herself had an interest in Belvedere Hall at this stage whether by reason of a resulting or constructive trust arising from the so-called discussions or by reason of the 2013 Trust as evidenced by her subsequent assertions after this declaration of trust to the Official Receiver that she was a creditor of her father by reason of an alleged loan to enable Belvedere Hall to be purchased and entitled to vote (in an attempt to defeat Mr Wood's appointment as trustee).
66. Miss d'Arcy submitted that the acquisition of Belvedere Hall was for development or investment purposes (it was purchased, so Mr Lowe told NatWest as their ultimate intended home - above) and therefore the resulting trust principles survived comments indicating that they no longer served any purpose - at least in the domestic context - (see the judgments in *Stack v Dowden* (above, at paras. 3 (Lord Hope) and 60 (Baroness Hale) and *Jones v Kernott* [2012] 1 AC 776 (at para. 25)) on the basis of *Laskar v Laskar* [2008] EWCA Civ 347 as a non-domestic purchase.
67. I reject this. I do not accept the respondents' evidence so far as it asserted there was an understanding all along that Belvedere Hall was to be Emma's property. The common intention was that it was left by both Emma and Mrs Lowe to Mr Lowe to decide how matters should be dealt with and he decided it should be acquired by him (Mr) and Mrs Lowe. The TP 1 accurately reflected this. Emma did not, in my judgment, truly regard it as her property. At best it was loosely regarded as a family asset, but the ultimate director of operations and the person who decided how it should be dealt with was Mr Lowe. It was always up to him how the property and the proceeds of sale (if such be the case) should be dealt with, just as with the Grange.
68. I accept that Emma is not a lawyer and unsophisticated in legal matters, but her father was and she left matters entirely to him to do as he advised and wished. She never challenged him. She left everything to him. Belvedere Hall was never regarded as her property until late in the day and only then when it looked as though Mr Wood might claim a charging order over it.
69. In my judgment, therefore, Mr Wood succeeds also as regards Belvedere Hall. Having regard to the interests the court is required to consider or assume under s 335A *Insolvency Act 1986* in my judgment Mr Wood is entitled to the orders he seeks.

The IVA Application

70. It is no longer necessary for me to deal with this matter.
71. In my judgment however, Mr Passfield was right to discontinue this part of the case but only having regard to the evidence as it emerged, namely that the claims of Mr Lowe and Mr Ross were not genuine.
72. The IVA was only "completed" because Mr Ross withdrew his claim, Mr Lowe waived his right to dividend and Mr Halligan waived part of his nominee's fees. Thus for some £2,000 (instead of £5,000) the IVAs were completed to satisfy debts of £45,992.51 (Emma) and £33,993.60 (Steven) excluding the claims of Mr Ross and Mr Lowe. As with the Grange and Belvedere Hall, Emma left everything to be arranged by her father and seemed, at least in signing the IVA proposal and the letters confirming the debts of her father and Mr Ross to be, if anything, at the very least careless with the truth.

Conclusion

73. In my judgment therefore there will be judgment for Mr Wood in light of the above. I will discuss the terms of the order at a later date.

Note 1 At least three cases involving Mr Lowe's affairs have been reported, namely at *Lowe v W Machell Joinery Ltd* [2011] EWCA Civ 794; *Heating Electrical Lighting and Piping Ltd (in liquidation) v Ross and Ors* [2012] EWHC 3763 (Ch), [2012] BPIR 1122; *Wood v Lowe* [2015] EWHC 2634 (Ch), [2015] BPIR 1537. [\[Back\]](#)

Note 2 See Core Bundle (CB), pp. 28-29 (office copy entries) (henceforth cited thus: CB/28-29). [\[Back\]](#)

Note 3 CB/106-117. [\[Back\]](#)

Note 4 CB/3-5. [\[Back\]](#)

Note 5 CB/75-80. [\[Back\]](#)

Note 6 See CB /100-105 (witness statement 16 January 2015 in *Lowe v Wood*, No. 1109 of 2014). [\[Back\]](#)

Note 7 5/34/1316-1318. [\[Back\]](#)

Note 8 See letter from Brooke North to Mr Lowe dated 27 Sep 02 at CB/1; 2002 Assignment at CB/3-5 and registration of Mr Lowe at 5/34/1108. [\[Back\]](#)

Note 9 6/35/1369. [\[Back\]](#)

Note 10 CB/5C-5K. [\[Back\]](#)

Note 11 6/35/1388-1392. [\[Back\]](#)

Note 12 Witness Statement, para. 12 at 1/14/89. [\[Back\]](#)

Note 13 Letter to NatWest 15 Mar 07 at CB/25-27. [\[Back\]](#)

Note 14 CB/81. [\[Back\]](#)

Note 15 4/995. [\[Back\]](#)

Note 16 CB/68. [\[Back\]](#)

Note 17 CB/69. [\[Back\]](#)

Note 18 See generally CB/70-80. [\[Back\]](#)

Note 19 See office copy entries at CB/28-29. [\[Back\]](#)

Note 20 CB/3-5. [\[Back\]](#)

- Note 21 Letter 27 Sep 02 from Brooke North (Mr Coates) to Mr Lowe at CB/1. [\[Back\]](#)
- Note 22 Witness Statement of 7 Sep 15 at 1/12/78-83. [\[Back\]](#)
- Note 23 CB/96. [\[Back\]](#)
- Note 24 CB/5A-B. [\[Back\]](#)
- Note 25 CB/99. [\[Back\]](#)
- Note 26 CB/98. [\[Back\]](#)
- Note 27 CB/25-27. [\[Back\]](#)
- Note 28 CB/30-49. [\[Back\]](#)
- Note 29 CB/38. [\[Back\]](#)
- Note 30 See CB/31, 38. [\[Back\]](#)
- Note 31 CB/44. [\[Back\]](#)
- Note 32 CB/75-80. [\[Back\]](#)
- Note 33 CB/6-10. [\[Back\]](#)
- Note 34 See CB/106-117. [\[Back\]](#)
- Note 35 CB/68. [\[Back\]](#)
- Note 36 CB/68-80 for emails, attendance notes of Mr Coates and copy executed declaration of trust. [\[Back\]](#)
- Note 37 CB/88-90 (letters), 5/34/1130 (questionnaire). [\[Back\]](#)
- Note 38 1/1/1-5. [\[Back\]](#)