



Neutral Citation Number: [2020] EWHC 3116 (Ch)

Case No: PT-2019-BRS-000020

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 25/11/2020

**Before :**

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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**Between :**

<b>Lorina Scott</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>(1) Melvin Bridge</b>	<b><u>Defendants</u></b>
<b>(2) Anita Bridge</b>	
<b>(3) Melvin Jesus Casas-Bridge</b>	

**And between :**

<b>Melvin Jesus Casas-Bridge</b>	<b><u>Part 20</u></b>
<b>-and-</b>	<b><u>Claimant</u></b>
<b>David Scott</b>	<b><u>Part 20</u></b>
	<b><u>Defendant</u></b>

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**John Sharples** (instructed by **BrayDilks**) for the **Claimant**  
**Rawdon Crozier** (instructed by **Nalders LLP**) for the **Defendants and Part 20 Claimant**  
**The Part 20 Defendant appeared in person**

Hearing dates: 21-24 July 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 10:00 am.**

**HHJ Paul Matthews :**

## **INTRODUCTION**

1. This is my judgment on the trial of (i) a claim brought by the claimant, Mrs Lorina Scott, against the defendants (respectively the parents and the son of her former daughter-in-law Charlotte Bridge) by claim form dated 3 April 2019, and (ii) a CPR Part 20 claim brought by the third defendant, Melvyn Jesus Casas-Bridge against David Scott, who is the son of the claimant and the former stepfather of the third defendant. For the sake of clarity, I shall refer to the third defendant either as such or as 'Zeus', because it appears to be the name which his family use for him, without intending any disrespect. I shall also refer on some occasions to Charlotte Bridge and David Scott by their first names, also without intending any disrespect. The litigation results from a sad breakdown in relations between two families, in consequence of the breakdown in the marriage of the parties linking those two families.
2. The original claim is essentially one to recover money and property said to have been transferred by the claimant to the defendants or one or more of them. The money concerned came from a bank account belonging to the claimant. The property concerned consisted of two dwelling-houses, one which the claimant had inherited from her parents, and in which she lived until recently, and one which was acquired by the first and second defendants under the social housing right to buy scheme. The claims are based variously on the doctrines of unjust enrichment, undue influence, resulting and constructive trusts, proprietary estoppel, and mistake.
3. The Part 20 claim is brought by the third defendant against his former stepfather David Scott in respect of monies which the third defendant alleges came from the claimant but which were then lent by him to David Scott. It is alleged that the borrowed monies were paid into a business account in the name of the third defendant but to which David Scott had exclusive access, because at that time he could not operate a business bank account in his own name. The third defendant further alleges that these loans were to be repaid by David Scott using his wages from a job with Luke Griffiths, so that the third defendant received David Scott's wages directly into his bank account. David Scott denies the allegations, and indeed any involvement in the transfer of monies from the claimant to the third defendant.

### **Background in summary**

4. As I have already said, there are two families involved in this story, which I will briefly describe. The claimant, who was born in 1943, was married to Ernest ("Ernie") Scott, who died in 2016. They had one child only, David Scott, who is the Part 20 defendant. David has had three children who feature in this story, each by a different partner. Danielle was born in 1995, Katelyn was born in 1998, and Nathaniel was born in 2002. The mother of Nathaniel was Charlotte Bridge. She was one of the three children of the first and second defendants, the others being Angela Bridge and Melanie Taylor. David Scott and Charlotte Bridge were school sweethearts, but lost touch after Charlotte went to live in Spain in the late 1980s. While she was in Spain she formed a relationship and had a son, the third defendant, born in 1990. She

returned to England in 2000 with the third defendant, met up with David Scott again, and was married to him in 2001. In 2018 they separated, after Charlotte discovered that David Scott was having an affair with a lady called Hayley Bonnington. In 2019 they were divorced.

### **Procedural history**

5. As I have said, the claim form in the main claim was issued on 3 April 2019, with particulars of claim attached. A defence was served for all three defendants, dated 12 June 2019. It incorporated a CPR Part 20 claim by the third defendant against the Part 20 defendant David Scott. A defence to the Part 20 claim was filed, although it was later amended, and a counterclaim introduced, in October 2019. A reply to the Part 20 defence and a defence to the Part 20 counterclaim were filed, but also were later amended, in July 2020. Directions to trial were given by DJ Watson on 17 October 2019. The trial was fixed for July 2020. Originally the time estimate for trial was three days, later extended to four.

### **Trial**

6. The claim and Part 20 claim and counterclaim were tried by me, remotely during the Covid 19 pandemic, over four days from 21 July 2020, using the MS Teams video-conferencing platform. Some participants, including me, had (intermittent, but serious) problems with audio; turning off cameras helped. Similar problems in other cases in July and August led to a working diagnosis by court digital support officers of lack of bandwidth in the Civil Justice Centre, presumably because it was never intended that several trials with multiple parties would be carried on simultaneously by videoconferencing. However, I am satisfied that the parties had sufficient opportunity to put their respective cases and to resist those of other parties. I am also satisfied that I had sufficient opportunity to observe witnesses and assess their evidence. The claimant and the defendants were represented by counsel, instructed by solicitors. Mr Scott had had the benefit of solicitors and counsel at an earlier stage, but by the time of the trial he was acting in person.

### **Post-trial**

7. I circulated my draft judgment in this matter on 18 November 2020. There are three matters to which I need to refer here. The first is that, in circulating the draft judgment, I invited submissions on what are now paragraphs 127 to 152 of the judgment, because in preparing the draft I had referred to a number of cases which had not been cited to me, and had accordingly expressed merely a provisional view on the law in those paragraphs. As it turned out, none of the parties wished to make any submissions on those cases, and I am therefore able to confirm that the originally provisional analysis which was set out there can now be treated as my definitive judgment. The second is that Mr Sharples kindly pointed out that I had incorrectly added up some of the figures which I had reached in relation to the Part 20 claim and counterclaim. I am very grateful to him for this, and have corrected these errors in this final version. Thirdly, Mr Crozier pointed out that, in calculating how much Mr Scott owed to the third defendant, I had overlooked the payment of the third defendant's wages during the time that he worked for Bubble & Bling. Mr Scott also made submissions on this, to which I refer later on. In the event, I have adjusted these figures accordingly, as will be seen.

## THE PLEADED CASES IN OUTLINE

8. In this section of my judgment I set out in summary form the main allegations made by the parties against each other. These are drawn from the parties' statements of case (formerly called "pleadings"). They are important, because they give notice to other parties as to what each party's case is, so that other parties may decide whether they wish to contest those allegations and, if so, how to meet them. They also help to define the issues for important litigation purposes like that of disclosure by each party. The present case is complicated by the multiplicity of claims, the multiplicity of parties, and by the existence of a subsidiary claim over by the third defendant against David Scott, who would not otherwise be a party. What follows in this section are accordingly *allegations*, or statements of what the parties *hope to be able to prove* at the trial. They are *not* findings of fact by the court. That process comes later on.

### Claimant

#### *First part – 1 Southgate*

9. The claimant's case falls into three main parts. First there is the claim in relation to the property known as 1 Southgate, South Hiendley, Barnsley, South Yorkshire, of which the first and second defendants were local authority tenants. The claimant says that when the first and second defendants exercised the right to buy that property, in 2016, she paid the remainder of the purchase price after deducting the statutory discount, but that she did not intend that payment to be a gift or loan to the first and second defendants. Accordingly it was the parties' implied, inferred or imputed intention that the claimant and the first and second defendants should each have a beneficial interest in the property, proportionate to their respective contributions to its purchase (that is, the 50% discount attributable to the occupation of the property by the first and second defendants, and the cash payment of the balance of the purchase price).

#### *Second part – 13 Lacy Street*

10. The second part of the claimant's case relates to the property known as 13 Lacy Street, Hemsworth, Pontefract. This property belonged to her late parents and was inherited by her from them. It was and is her only home (although she is currently living in Cornwall with her son David, following a fall). In 2016 Charlotte Bridge instructed a licensed conveyancer, David Lewis, to transfer this property from the claimant to the third defendant. David Lewis did not meet or contact the claimant, give her any advice, or advise her to seek independent advice, but acted solely on the instructions of Charlotte Bridge. The claimant does not recall signing any purported transfer of the property to the third defendant, and had no intention to give it to him, but recalls signing a document which Charlotte Bridge led her to understand transferred the property from her deceased parents to her. The purported transfer bears the signature of one Barry Saunders, with an address in Cornwall, near the home of Charlotte Bridge. The claimant has never met Barry Saunders or signed any document in his presence. The transfer was therefore void in law, and the transfer to the third defendant was therefore ineffective. The claimant therefore seeks the alteration of the registered title. Alternatively, she says the third defendant holds the house on resulting trust for her, and seeks the transfer of the legal title to herself.

*Third part – payments to third defendant*

11. The third part of the claimant’s case relates to her bank account with First Direct. She says that Charlotte Bridge obtained the claimant’s authority for herself or for the third defendant to make withdrawals from her bank account. Between September 2016 and April 2018 some £94,600 was transferred out of her account to accounts in the name of the third defendant. Those transfers are liable to be set aside on the basis of lack of authority or mistake. Alternatively, Charlotte Bridge or the third defendant holds those monies on resulting trust for the claimant.

*Generally*

12. More generally, the claimant says that she never intended to make gifts of the purchase price of 1 Southgate, of 13 Lacy Street or of the bank transfers. But, if they were gifts, she would be entitled to rescind them for mistake, alternatively on the basis of the exercise of undue influence. There is also a claim to set aside the transfer of 13 Lacy Street to the third defendant on the basis of the doctrine of *non est factum*, or alternatively misrepresentation.

**Defendants**

*1 Southgate*

13. In relation to the property at 1 Southgate, the defendants say that the offer of the purchase price was intended as a gift to the first and second defendants, and that the legal and beneficial interest in the property is vested in them absolutely.

*13 Lacy Street*

14. In relation to 13 Lacy Street, the defendants say that the instructions that were given to David Lewis by Charlotte Bridge were given with the knowledge of, or authority from, the claimant. They say that the claimant had decided to give the property immediately to the third defendant, although she would remain in it until her death. They also say that the transfer to the third defendant was genuine, properly witnessed and regularly executed.

*Payments to third defendant*

15. In relation to the claimant’s bank account, the defendants accept that the claimant gave Charlotte Bridge a device to enable her to access the claimant’s account, but also say that the claimant had access to the account herself and that the accounts were checked monthly. They further say that the transfers alleged were made, but always with the claimant’s authority, excepting one case, (£1700 on 5 April 2018, for David Scott to buy a car), where David Scott told Charlotte Bridge that the claimant had authorised it, but it turned out that she had not.
16. The defendants plead that payments out of the claimant’s account were made into two accounts in the name of the third defendant, number 53022587 and number 93247384. In relation to the former, the defendants say that this account, although in the name of the third defendant, was operated by David Scott as the business account for his private business “Bubble and Bling”, and that the claimant was aware that this

account was in reality that of David Scott. In relation to the latter account, the defendants accept that transfers totalling £79,900 were made into it, by way of advance inheritance for the third defendant, but that £40,000 of that money was lent to David Scott, who by the time of the statement of case had repaid £15,000 of it. The defendants also deny any undue influence in relation to any of the gifts.

## **Part 20 claim**

### *Claim*

17. The third defendant, Zeus, has made a Part 20 claim over against David Scott, claiming an indemnity from him, in case the claimant's claim against him succeeds, on the basis that he (David) received some of the money paid by the claimant to the third defendant, namely (i) £40,000 that had been lent out of the monies paid into account 93247384, of which £25,000 remains outstanding and still to be repaid, and (ii) all of the money paid into account 53022587.

### *Defence*

18. David Scott, as part 20 defendant, denies receiving *any* of the monies paid by the claimant to the third defendant. In particular David Scott denies receiving a loan from the third defendant of £40,000. Although he originally admitted and averred that account 53022587 was "his business account", out of which a *different* loan (from the claimant) was being repaid, his (amended) case now in relation to the (still denied) loan of £40,000 is that account 53022587 was operated exclusively by the third defendant and Charlotte Bridge and that he (David Scott) has never been able to access it. But, in his counterclaim (para 14), he continues to assert that account number 53022587 was "his business account". In relation to the £1700 paid for a car, David Scott says that this was expressly authorised by the claimant.

### *Counterclaim*

19. David Scott makes a counterclaim against the third defendant in respect of wages owed to him but received by the third defendant. He claims that the third defendant has been unjustly enriched at his expense and seeks an account from the third defendant of the wages received less any sums that the third defendant is entitled to retain.

### *Reply and defence to counterclaim*

20. Finally, there is a reply to the Part 20 defence and also a defence to David Scott's counterclaim. This says that David Scott should not be allowed to resile from his earlier admission that account 53022587 was "his business account" without the permission of the court. It also denies that the third defendant has been unjustly enriched, and denies that David Scott is entitled to any relief.

## **FACTFINDING AND EVIDENCE**

### **How judges find facts**

21. For the benefit of the lay parties in this case I will say something about how English judges decide civil cases like this one. I borrow the following words largely from

other judgments of mine in which I have made similar comments. First of all, judges are not superhuman, and do not possess supernatural powers that enable them to divine when someone is not telling the truth. Instead they take note of the witnesses giving live evidence before them, look carefully at all the material presented, and the arguments made to them, and then make up their minds. But there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

#### *The burden of proof*

22. The first is the question of the burden of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it. The importance of this is that, if the person who bears the burden of proof of a particular matter satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it *did* happen. But if that person does *not* so satisfy the court, then for those purposes it did *not* happen.

#### *The standard of proof*

23. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case it is merely the balance of probabilities. This means that, if the judge considers that a thing is *more likely to have happened than not*, then for the purposes of the decision it *did* happen. If on the other hand the judge considers that the likelihood of a thing's having happened does not exceed 50%, then for the purposes of the decision it did *not* happen. It is not necessary for the court to go further than this. There is certainly no need for any *scientific* certainty, such as (say) medical experts might be used to. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not to have happened.

#### *Party-led evidence*

24. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material put before them by the parties. So it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce in order to convince the judge to find in that party's favour. There are a few limited exceptions to this, but I need mention only one here.
25. Where a party could give or call relevant evidence on an important point without apparent difficulty, a failure to do so may in some circumstances entitle (though not compel) the Court to draw an inference adverse to that party, sufficient to strengthen evidence adduced by the other party or weaken evidence given by the party so failing. But before this point can be reached a number of conditions have to be satisfied. I will have to return to this question later.

#### *Oral evidence*



26. Fourthly, in commercial cases where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22]. This is not a commercial dispute, but a family dispute (in the sense of a dispute arising out of the breakup of a matrimonial relationship, amongst the extended members of the families involved). Yet essentially it concerns money and property, in the way that many commercial disputes do, and I have been taken to a considerable number of documents dealing with property and money transactions. In deciding where the truth lies in the sharply conflicting accounts given by the witnesses, I have had regard to the more objective contents of these documents. In addition to this, and as usual, in the present case I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to cross-examination and re-examination. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth (but may be mistaken) and who is not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available.

#### *Reasons for judgment*

27. Fifthly, a court must give reasons for its decisions. That is what I am doing now. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. They deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation. Put shortly, judgments do not explain all aspects of a judge's reasoning, although they should express the main points, and enable the parties to see how and why the judge reached the decision given.

#### *Overall*

28. So decisions made by civil judges are not necessarily the objective truth of the matter. Instead, they are *the judge's own assessment* of the *most likely facts* based on the *materials which the parties have chosen* to place before the court, though sometimes taking account of material which could have been adduced but was not, and also taking into account the fallibility of memory. And, whilst judges give their reasons for their decisions, they cannot and do not explain every little detail or respond to every point made.

#### **Witnesses**

29. The following witnesses gave evidence and were cross-examined before me: the claimant, Mrs Lorina Scott; the second defendant, Mrs Anita Bridge; the third defendant, Melvin Jesus Casas-Bridge; the third defendant's mother, Charlotte Bridge; Father David Wheatley; and the Part 20 defendant, David Scott. The first defendant was not called to give evidence, because of his poor state of health, as set out in a letter from his GP practice dated 18 February 2020, in the bundle. The

claimant makes no complaint about that. I give here my assessment of each of the witnesses called.

30. Given the diametrically opposed cases of the claimant and the defendants, it is unusual for me to be able to record, as I do, that I found both the claimant and the second defendant to be honest and straightforward witnesses, each telling the truth as she saw it. In each case, however, the witness gave the impression of being slightly bewildered by events. This is perhaps unsurprising in a case where the central parties to the main claims were actually on the periphery of events. For that reason, each of them was reliant on others for some important aspects of what had happened, and accordingly I think that some of their evidence was mistaken. In relation to the claimant, I will add that, although her stroke has plainly made things more difficult for her generally, I did not experience any difficulty in understanding what she wished to tell me, although sometimes it was necessary to wait a little longer than usual. What is clear to me is that her eyesight is poor (because of macular degeneration) and accordingly she does not read well. It is also clear that she has been obliged since her husband's death to rely on others to help her deal with her own affairs. I also bear in mind that in recent times, since she had a fall, she has been living in Cornwall with her son David and his current partner, Hayley Bonington, and so is more dependent on him than once she was, especially since she no longer has contact with Charlotte or the third defendant, Zeus.
31. The third defendant was a much more complex witness. Most of what he told me was straightforward, and was clearly what he believed to be the truth, and indeed was the truth. Some of it was what he had been told by others and accepted, or was wishful thinking on his part, without being deliberately untruthful. However, unfortunately, the evidence is such that I consider that some of what he told me he knew not to be the truth, where he allowed his loyalty to others to outweigh his oath to the court.
32. Charlotte Bridge was an intelligent and quick-witted witness. I was confident that she was generally telling the truth as she saw it, and she accepted correction on some points. But there were aspects of her evidence – some of them important – which I could not accept, and reluctantly I am driven to the conclusion that she knew what she was saying on these occasions was not true. Her antipathy to David Scott, the Part 20 defendant, was clear.
33. Father David Wheatley is the Master of Archbishop Holgate's Hospital, which plays a small part in the story that follows. He was a clear, transparent and obviously truthful witness. I have no concerns about accepting at face value all the evidence which he gave. This included evidence of a telephone call which he received either at the end of 2018 or the beginning of 2019 from David Scott, in which David Scott was aggressive and wanted to get Father Wheatley to evict the first and second defendants from the cottage and to get the police involved in how they came to be living there.
34. David Scott was a fluent and confident witness, and was very polite to me. However he came across also as controlling and aggressive (thus incidentally confirming the evidence of Father Wheatley, to which I have already referred). In his eyes, he was always in the right, and everyone else who said differently was in the wrong. He did himself no favours by his cross-examination of other witnesses, particularly of his ex-wife and stepson. He frequently answered questions in a cool, insouciant way. For example a proposition might be put to him, concerning something that he would know

about if it were true, and instead of either agreeing or disagreeing, he would simply answer “There is no evidence of that”, as if this was some kind of game. He accepted in cross-examination that he saw this litigation as a way of getting back at his ex-wife, Charlotte. Frankly, I did not have any confidence at all in his evidence. I am satisfied that he was not telling me the truth on a whole range of issues, although that does not mean that he must have been lying throughout in everything he said. I can accept his evidence where it is independently corroborated. Other than that, I have exercised great caution, and as I say I disbelieved much of what he said.

## **THE MAIN CLAIMS**

### **General**

35. In this first section I deal with facts that are either not controversial, or at any rate less controversial. They are based on the evidence that I read and heard, though I do not set out the evidence here in any detail. The claimant was married to her husband Ernest for 49 years, until his death in April 2016. He looked after the family finances. He also looked after the claimant, as she could not see very well (as I have said, she suffers from macular degeneration). He worked in the construction industry, as a clerk of works, until he retired. After his retirement he became ill with Crohn’s Disease, and could not do very much. When she was younger the claimant ran a local corner shop. However, in 1990 the claimant suffered a stroke which has affected her thought processes. I will not repeat what I have already said about her son, her grandchildren and the family of the defendants, which is not controversial. Until recently, the claimant lived for many years at a house at 13 Lacy Street, Hemsworth, Pontefract, which had been bought by her parents (though financed by the claimant and her husband) under the right to buy scheme. She had been born there and lived there until her marriage. After her mother’s death in 1992, she and her husband moved back there. She became entitled to it by inheritance on her father’s death in 2004, and continued to live there, even after her husband’s death. However, it turned out after Ernest’s death that the property had been registered in the names of her parents when they bought it and never transferred thereafter.
36. I have already described the relationship between David Scott and Charlotte Bridge, which began when they were at school, how Charlotte went to Spain and later returned, and how she met up with David again and they were married, and had a son together, Nathaniel. Her son by an earlier relationship, Zeus, lived with them as part of the family, until he moved out aged 16, though he thereafter stayed occasional nights at the family home. In 2004 the family sold up and moved from Yorkshire to Cornwall. This left them with a capital sum, about £85,000. Charlotte returned to Yorkshire for visits about once per month, David less often.
37. From 2005 they operated a trading unit at the Par Market in St Austell, called “Bubble & Bling”. David went further, and began to operate shops in Camborne and Tavistock. However, when the credit crunch of 2008 supervened, there were financial problems, including difficulties with paying business rates, and the shops failed. David was obliged to enter an IVA in 2009, which imposed limits on what he could lawfully do in business terms thereafter, including the opening of full bank and credit card accounts. As a result, his only (lawful) account was a Lloyds Bank Cash Account, which offers a debit card facility but neither a cheque-book nor an overdraft facility. The running of the house was left in Charlotte’s hands.

38. In 2010 there was a flood at Par Market. Charlotte became ill with myalgic encephalomyelitis (ME), and progressively unable to work. Her illness has continued to the present day. David took over the business. He came out of Par Market in 2011, to focus on online sales from home, for example through eBay and Amazon. David was interviewed in 2015 by the local authority trading standards department in respect of an allegation of infringing trade marks (“counterfeiting”) in 2014. There was even a raid on their home in the course of the investigation. He was prosecuted and fined £4,000 for this in 2016. David thereafter moved his business out to a unit above the Southwest Carpets Warehouse in Newquay. In addition he held down a job with Luke Griffiths in 2016-18. Zeus worked for Bubble & Bling twice, the second time from October 2016 to May 2017.
39. The claimant had previously asked Charlotte to “do” her will for her. When she was visiting the claimant in August 2017 in Yorkshire Charlotte asked her if she wanted her will done then. The claimant said that (she) Charlotte had already done it and that it was in the drawer. In the drawer was a two-page handwritten document which Charlotte had not written. It was not signed by the claimant, although it was purportedly witnessed by one of her friends (Beryl Felstead) and her sister-in-law (Elaine Jackson). Charlotte read it to the claimant, who said this was not what she wanted. In cross-examination, the claimant said she had not signed it, but hoped to make another one in due course. In cross-examination, David Scott admitted that he had drafted the will, Hayley Bonington had then written it out in the will form, and he had sent it to his mother, the claimant, saying that if she was happy with it she should sign it. But, as I find, she had not done so.
40. The purported will appointed David as sole executor, and gave him all her bank accounts, investments and property, except that the income from 1 Southgate was to be split equally between David and Charlotte, £500 to was to be given to each of her grandchildren and Zeus, £1,000 was to go to her sister and brother-in-law, £1,000 was to go to Charlotte, and her jewellery was to be divided between her granddaughter Katelyn and Charlotte. (If it *had* been duly executed, the gift to Elaine Jackson and her husband would have failed in any event, as she was one of the witnesses: see the Wills Act 1837, section 15.)
41. As I have already said, in 2018 Charlotte discovered that David Scott was having an affair with Hayley Bonington. She also became aware that he had been stealing goods from his employer Luke Griffiths, and reselling them. They separated, and in 2019 they were divorced. I shall have to deal with this episode in more detail later, and set out some of the evidence.
42. In the witness statement evidence from the second defendant, the third defendant and Charlotte Bridge, there are allegations of physical violence and abuse carried out by David Scott, mostly directed at his then wife Charlotte, though sometimes at the third defendant Zeus. The witness statements of the claimant and of David Scott himself do not refer to these allegations. In cross-examination David Scott asserted that he was a good provider during his marriage, and denied any violence.
43. However, the statements of case, so far as I can see, make no allegations or denials in relation to any such violence or abuse, and accordingly there is no issue between any of the parties on this subject. I will therefore make no findings on those allegations, one way or the other. As will be seen, I have resolved the issues between the parties

without consideration of these allegations. But in my judgment, even if the allegations of abuse and violence had been issues in the case, my decision on the main issues arising would have been the same however I decided the issue of those allegations.

44. The claimant accepted in evidence that she had been very close to Charlotte during her marriage with David. And, after the death of Ernest in 2016, she depended on Charlotte to deal with financial matters for her. For example, she could not see well enough to write out cheques. But she also left Charlotte to implement matters which they had discussed and she (Lorina) had decided. For example, when both David and Charlotte told her they thought it was a good idea for the first and second defendants to exercise the right to buy in relation to their council property, and for the claimant to provide the money, she left it to Charlotte to deal with that for her. The relationship between the claimant and Charlotte did not break down after the relationship between Charlotte and David was damaged by her discovery of his affair with Hayley Bonnington. On the contrary, the claimant was sympathetic to Charlotte. What caused the rupture between them was Charlotte's threat to tell David's employer that David had been stealing from him. The claimant told Charlotte that if she did that she would not speak to her again. She would take David's side, because he was her son.
45. The claimant and the first and second defendants knew each other from the claimant's corner shop in the village. However, that would have been no more than facial recognition and a few words spoken. She met them socially for the first time at her son's wedding to Charlotte Bridge. Their relationship was cordial, but they had their own circles of friends. At least before Ernest's death, they did not spend much time together, except on special occasions. One such was a party for Zeus (either first communion or confirmation, but it does not matter which), which was held at the claimant's house, because she had a large sitting room and a garden. The claimant and her late husband treated Zeus in the same way as their three grandchildren. They would exchange Christmas cards with the first and second defendants, but not birthday cards.
46. After Ernest's death in 2016, the claimant and the first and second defendants met more frequently. The claimant cannot drive. So the first and second defendants would take her to appointments with the chiropodist and at the hospital, and to go shopping. On occasions they would also bring her fish and chips when the first and second defendants had been to their local fish shop. The claimant and the first defendant would also discuss the relationship between their children, and the problems that the first claimant had had over time with her son David. In evidence the claimant accepted that David had a temper, and could be quite manipulative. She also accepted that he had got himself into money troubles, and subsequently discovered that he had been prosecuted for trading standards offences. However, once the relationship between David and Charlotte broke down, so too did contact between the claimant and the first and second defendants.

## **1 Southgate**

47. From about 1995 the first and second defendants lived in a local authority property known as 1 Southgate, South Hiendley, Barnsley. In early January 2016 they were offered the opportunity to rent a cottage at Archbishop Holgate Hospital, Hemsworth, Pontefract, a group of cottages run by a Christian charity, founded in 1555. They told their children, including Charlotte. Charlotte discussed the matter with David and

with Zeus. Then she suggested to the first and second defendants that they should buy their existing property under the right to buy scheme, as (given the discount available) it would be a good investment. She also discussed it with the claimant and her husband Ernest. Everyone thought it was a good idea. It appeared that the first and second defendants would be entitled to a 50% discount on the market value, resulting in a purchase price of £34,302. Unfortunately, Ernest then died suddenly, in April 2016.

48. Nonetheless, the first and second defendants did indeed apply to exercise the right to buy, which was acknowledged by the local authority by letter dated 4 May 2016. They instructed David Lewis, a licensed conveyancer based in Hemsworth, who wrote to acknowledge their instructions on 16 May 2016. David Lewis's assistant wrote to the local authority on 17 May 2016 asking for the transfer document, and the local authority responded on 18 May 2016 giving a timescale of 2 to 4 weeks' time, because of the need to prepare large-scale plans. The transfer itself was sent to David Lewis on 7 June 2016. He wrote to the first and second defendants on 15 June 2016 enclosing a completion statement showing a balance due of £34,302. Completion was arranged for 4 July 2016, and the purchase price was duly paid and received by the local authority. On 7 July 2016, the first and second defendants were registered as proprietors of the property. The land registry documents were received by David Lewis, who sent them to the first and second defendants on 3 August 2016. In fact, shortly afterwards they took up the offer of a tenancy at the Archbishop Holgate Hospital, and moved out to live there. The Southgate property has since been rented out.
49. But the balance of the purchase price after taking account of the discount was provided by the claimant. This is not controversial. Her First Direct bank account shows that the claimant's bank account was debited with the sum of £34,302 and that this sum was transferred directly to 'David Lewis and Co' on 16 June 2016. It is the circumstances in which this sum was provided which are controversial. The claimant says she understood that she was making an investment to leave to her grandchildren, although she accepted that the first and second defendants had a share too because they had the right to buy and it was because of their long occupation that the 50% discount had been obtained. The defendants say however that they understood that the provision of the purchase price was a gift. Originally they had looked at the third defendant's obtaining a mortgage, but after Ernest died the plan changed.

#### *The claimant's evidence*

50. The claimant knew of the plan to purchase 1 Southgate from the local authority, and of the idea that the third defendant would obtain a mortgage to finance the balance of the purchase price. But after Ernest's death she became aware that she now had a significant amount of money which was sitting in the bank and could be used for this purpose instead. So she made it available. The question is on what terms she did so. Her witness statement says that there was never the slightest suggestion that she was making a gift to the first and second defendants. On the contrary she was buying it as an investment, which she could leave on her death to her grandchildren if she wished. However she accepted (as already mentioned) that she would have a half share, whilst the first and second defendants would have the other half, because they were entitled to the discount. She was not sure who would be the "owner". As I have already said, she left the details of transferring the money for the purposes of the purchase to

Charlotte. She was taken by the second defendant to see David Lewis in relation to the purchase. However, she cannot remember what he told her, and the copy of his conveyancing file does not contain any note of their interview. Her evidence is that she signed something and paid him £5.

51. Her witness statement evidence was not significantly shaken in cross-examination. What she said in cross-examination was that she wanted to remain owner of Southgate until she died, and then it would go to the grandchildren. She did not intend to live there. She thought the rent it produced would be paid to Charlotte, rather than to anyone else, for the benefit of David and Charlotte. The claimant herself did not need the rent money to live on.

*The second defendant's evidence*

52. The second defendant in her witness statement said that the plan had been for her and her husband to buy Southgate with the help of Zeus, but the claimant said that she would give Zeus the money, to save him getting a mortgage. She told the first and second defendants that she was giving Zeus the money because she did not need it and she did not want it simply sitting in the bank. There was no suggestion that the money was being provided as a loan. It was a gift from the claimant to Zeus. She was cross examined on the allegation in the defence that the gift from the claimant was to the first and second defendants. The second defendant accepted that this was what the defence said, but said the claimant knew that it was for Nathaniel and Zeus in future. The claimant was therefore trusting the first and second defendants to pass the property on to Zeus once the covenant to repay the discount had expired, in five years. She readily accepted that it was an extraordinary thing to happen, for the claimant to make such a large gift to one of her grandchildren (Nathaniel) and to Zeus, whom she treated as a grandchild. She denied that the claimant had thought she was buying the property for herself. Once again, cross-examination made little impact on her evidence.

*Charlotte Bridge's evidence*

53. In her witness statement, Charlotte Bridge says that, when she discovered that her parents wished to go into the Archbishop Holgate Hospital, she suggested that Zeus could buy Southgate as a good investment for him and Nathaniel. The first and second claimants were happy with that and made the enquiries to find out what the price would be with the discount. When they did, Zeus started looking for a mortgage, and the first and second defendants informed the council that they intended to exercise the right to buy. After Ernest's death in April, the claimant found out how much money she now had, and said she would give Zeus the money, rather than him obtain a mortgage. When David Lewis asked for the balance of the purchase price, she telephoned the claimant who instructed her to carry out the transfer. Charlotte could do this because the claimant had obtained an electronic device from her bank which could access her bank account without a card. She had given this to Charlotte so that Charlotte could carry out financial transactions for her even though Charlotte was living in Cornwall and the claimant in Yorkshire. She says she carried out the transaction whilst David was present at home with her.
54. In cross-examination, she was pressed on whether she told the claimant that buying Southgate would be a good investment to leave to her grandchildren. She denied

saying this. She was also pressed on whether David Lewis thought it was Charlotte herself paying the balance. Again she denied this, saying that David Lewis was aware where the money was coming from. She was shown a handwritten receipt given by David Lewis and Co for the sum of £34,302 as having been received from “Bridge”. She was asked whether in fact it should have been received from “Scott”. In response, she pointed out that Mr and Mrs *Bridge* were the clients buying the house. She insisted that David was involved from the beginning in the plan for the claimant’s money to be used for the purchase of Southgate.

*The third defendant’s evidence*

55. Her son Zeus, the third defendant, says in his witness statement that his mother Charlotte told him that the claimant had told her and David that she would give him the money to buy Southgate. When it was discussed subsequently in the family, there was no mention of any repayment. His evidence is that the claimant intended the payment to be a gift to him. When the first and second defendants moved out of Southgate and it was let, the rent was paid to him. In cross-examination, however, Zeus said that Southgate was an investment for his brother Nathaniel as well. He said that although it was a gift to him, Nathaniel was close to him and he “would sort him out” when the house was sold. He also said that the initial plan was for him to get a mortgage himself, although he never actually applied for one. He simply investigated the possibility, and was told that he could apply for one as he was working. He accepted that he never saw David Lewis, the conveyancer. He did not know whether his interest in the property was ever put into writing, but he did not think it necessary at the time. He accepted that he did not pay the outgoings in respect of the house, and said that Charlotte and David rather than he paid for the repair of the boiler. (In fact according to the relevant bank statement the amount of £195 on 25 June 2018 was debited to the Bubble & Bling business current account in the name of Zeus.)

*David Scott’s evidence*

56. In his witness statement evidence, David Scott said nothing significant about 1 Southgate. But he was asked questions in cross-examination. He denied that the first and second defendants had been trying to buy the property under the right to buy scheme and said there had never been any discussion about Zeus trying to get a mortgage to finance the purchase. However, his cousin (who was a bank manager)) said it would be a good investment given the discount and would produce a rental income. David Scott said he just left everything to Charlotte. But he was present at a meeting at the claimant’s house where the claimant said she would put the money up. He said that the first and second defendants wanted nothing to do with the purchase, because they were fearful that the Department for Work and Pensions would find out and it would affect their benefits.

*Decision*

57. On the evidence before me, I am quite satisfied, first, that the first and second defendants had decided to try to buy 1 Southgate and there had indeed been discussions about Zeus obtaining a mortgage, but, second, that the claimant had no intention to make a gift of the sum of £34,302 to the first and second defendants. The project was not put to her on the basis that the first and second defendants needed help, or provision for the future, or for any other reason which should engage her



generosity towards them. Their relationship was cordial, and they did spend time together, but it was not the kind of relationship where the claimant might be expected to make such a large gift for their benefit, and (ultimately) at the expense of her own blood relatives. I find that the claimant never expressed any desire to benefit the first and second defendants, and that subjectively she never intended to.

58. On the other hand, I find that she intended Charlotte to pay the money to David Lewis for the purchase of the property. She had in her mind the idea that in paying this money she would in the future be in a position to benefit her grandchildren, for this purpose including Zeus. Yet that is a long way from making or intending to make an immediate gift at this stage of her life to Zeus (and perhaps Nathaniel) of a relatively large sum of money which would most benefit them, but not the claimant's other two grandchildren. On the material before me I find that she intended to *invest* in this property, that is, to acquire a share in it (not the whole), with a view to drawing an income from it during her lifetime, and being in a position to leave her share in it for the benefit of her grandchildren (and Zeus). But I also find that she did not intend to make a gift at this stage to any of her grandchildren. Her purpose was to enable the property to be bought, rather than to enable it to be bought and given to Zeus (or Nathaniel).
59. All that said, I find that the first and second defendants *did* think that the claimant was making a gift, although not to them, but to Zeus and Nathaniel. That means that their intention necessarily was that the claimant would not have any interest in the property after it was acquired. They themselves had no intention to benefit from it either. They intended to hand over the property to Zeus as soon they could do so without triggering the covenant to repay the discount. The misunderstanding was due largely to the fact that the claimant and the first and second defendants did not discuss the matter directly between them. Instead, their respective children, David Scott and Charlotte Bridge, brokered the payment of the money and left each side believing that the position was as each of them imagined. I find that both David and Charlotte were aware that the claimant on the one hand and the first and second defendants on the other were at cross purposes, but chose not to say anything to either. They assumed, as some people do in acting as "go-betweens", that everything would be all right in the end, and that the mismatch in thinking would never be exposed. However, once the relationship broke down, the matter was otherwise. Each of them has since supported his or her own side.
60. In light of the facts I have found, it is not necessary for me to decide whether, if the claimant had intended a gift, and had indeed made one, it would be one calling for explanation. Nor is it necessary to consider whether, if she had made a gift, she made it under mistake, or there was any misrepresentation to induce the payment. That would make a long judgment even longer, for no obvious advantage.

### **13 Lacy Street**

61. As I have already said, the claimant was born and grew up at 13 Lacy Street (in respect of which her parents were then tenants of the local authority) and moved back there with her husband after her mother's death (by which time her parents had bought the house, financed by the claimant and her husband). It appears that nothing was done about the title to the property after her father's death, and it was not until after Ernest's death in 2016 that the matter was looked into. What is now available to

the court comes from what remains of the conveyancing file kept by David Lewis. Mr Lewis is now dead, and the file was retrieved (as was that relating to Southgate) by David Scott after a visit to Mr Lewis's widow, from a store of such files kept in the garage of their house.

62. It is clear from the documents I have seen that, when David Lewis considered the matter, he realised that the title was still registered in the names of the claimant's deceased parents, and that it would be necessary to obtain letters of administration to the estate of the second to die of them. He also understood that there was a deed of trust involved, as the claimant and her husband had paid the purchase price for the house. However, all the relevant deeds were held by the firm of solicitors (or its successor) which had dealt with the original transaction in 1992. The claimant therefore had to give her authority to those solicitors to release them to David Lewis and Co. The documents were sent to David Lewis on 23 August 2016. They showed that the property had been transferred to the claimant's parents by a transfer dated 17 August 1992 under the Housing Act 1985 (the right to buy scheme) and registered in their names on 27 August 1992.
63. Although the documents in the file referred to a trust deed, no copy of that was in the trial bundle, and I infer that none was found in the conveyancing file. This is an odd omission. As to the fact that the title was still in the names of the claimant's deceased parents, David Lewis was a licensed conveyancer and not a solicitor, and could not extract a probate. So he had to instruct another firm in Pontefract, called Liberty Legal Services Ltd, to obtain letters of administration to the estate of the claimant's father (who had survived her mother). It is not clear when those letters of administration were obtained. Again, there was no copy of the letters of administration in the bundle, and I therefore infer that there was none in the file. This omission is potentially even stranger. Without that document, no transfer of the property could ever be made. However, I mention a possible explanation for both omissions later. It is also curious that there are no attendance notes by David Lewis. If there are contacts between a lawyer and a client, the lawyer usually makes a record of it, either a letter to the client, or a note for the file.
64. There is nothing in the bundle to indicate that the register was ever changed to show the claimant as proprietor in place of her late parents. Instead, in the bundle are (and, presumably, in the conveyancing file were) two copies of a transfer of the property from the claimant to the third defendant, Zeus. One copy is undated and unsigned, and the other is both signed and dated. There is also a copy of the letter from David Lewis and co-dated 27 April 2017 addressed to Charlotte at her home in Cornwall. This letter encloses "for your kind attention" both David Lewis's bill of costs in the sum of £302 (also addressed to Charlotte rather than to the claimant), and also
- "Transfer Deed for signing by [the claimant] and [Zeus] where indicated between the pencil cross marks. These should be witnessed by an independent witness should add their own name, address and occupation and return it to us as soon as possible".
65. The date shown on the signed version of the copy transfer is 6 June 2017, and the signatures of the claimant and the third defendant are witnessed by someone called Barry Saunders, with an address near Newquay in Cornwall. But there is a letter on the file from David Lewis to Charlotte in Cornwall dated 31 May 2016

acknowledging safe receipt “of the signed transfer deed” but asking for settlement of the account before registering the transfer. It seems clear that this letter has been mis-dated, and it was really sent a year later. In the bundle there was a copy of an unsigned email dated 3 June 2017 to David Lewis from an email account bubbleblingcmw@yahoo.co.uk, which said “Hello I have paid via bank transfer the amount of £302 for the transfer of 13 Lacy St, Hemsworth.” There was also a handwritten receipt for £302 on account number 14964 (which appears to be David Lewis’s file number for this transaction), dated 5 June 2017. The application for registration of the transfer and its accompanying documents were received by the Land Registry at 14:54 on 6 June 2017. I therefore assume that it was David Lewis who inserted the date of 6 June 2017, and that the transfer was actually executed before 31 May 2017.

66. The day after receipt of the transfer, 7 June 2017, the Land Registry raised a requisition upon it, because the register contained a restriction requiring that no disposition be registered without the consent of the claimant and her late husband (no doubt because they paid the purchase price and were beneficially entitled under the deed of trust). This requisition was not complied with, and, despite warning of cancellation, the application was cancelled on 6 July 2017. A further application for registration was made, being received at the Land Registry on 2 August 2017, timed at 15:27. A further requisition, in exactly the same terms as before, was raised by the Land Registry on 3 August 2017. Once again, this application was cancelled because of a failure to comply with the requisition, on 4 September 2017. On the same day, a *third* application for registration was made, being received by the Land Registry at 15:29. This time the application was accompanied by an appropriate application to withdraw the outstanding restriction, which was successful, and the property was at last registered in the name of the third defendant on 6 September 2017.
67. The bundle also contains a copy of a letter from David Lewis to the third defendant dated 6 September 2017, informing him that the deeds were now back from the Land Registry and “ready for collection”. This letter is followed by two copies of a schedule of deeds, one unsigned and undated, and the other signed and dated. It appears to have been signed by the second defendant (whose signature is found on other documents in the bundle), and is dated 18 September 2017. This document acknowledges receipt of a number of documents relating to the title to 13 Lacy Street, including the land registration documents, the letters of administration (in the schedule called “probate”) to the estate of the claimant’s father, death certificates for the claimant’s husband, father and mother, and the original trust deed and copy, as well as other search documents. None of these documents (except office copy entries of the register) is in the trial bundle, and I infer that none therefore was in the conveyancing file as handed over to the claimant’s solicitor. The explanation may be that they were sent out to the second defendant and have since been lost. For the sake of completeness I record here that there is no mention in the schedule of any document by which the title to the house was transferred from the estate of the claimant’s father to the claimant herself.

*The claimant’s evidence*

68. The claimant’s witness statement says that she and her husband Ernest paid £14,000 for the purchase of 13 Lacy Street. But it is not clear what happened in relation to the

property after her husband's death in April 2016. She says that she is "muddled", but that

"it emerged that none of the legal steps to transfer Lacy Street to me had been undertaken".

In cross-examination, however, she said that Charlotte had "sorted that out" for her, so that the property was transferred from her father's name to her own. She thought that David Lewis was there to put the house in her name. She intended later to pass it to her son David in her will, but at this stage she was only seeing Mr Lewis in order to have the property put into her own name. There was no discussion with David, Charlotte or Zeus before (as she thought) this was done. It was her own business, and nothing to do with them.

69. So far as concerns the execution of the transfer in favour of Zeus, which bore the date of 6 June 2017, the claimant was adamant in cross-examination that she was only ever once in Cornwall, and that was at Christmas 2016, where she arrived two or three days before Christmas Day, and came back to Yorkshire before New Year. She said she never met Mr Saunders, who apparently witnessed her signature. She said that the signature was not her signature, even though it looked like hers. She said she visited David Lewis on a second occasion, when she again signed something and paid £5.

*The third defendant's evidence*

70. In his witness statement, Zeus says that his mother Charlotte discovered that the property at 13 Lacy Street was not in either the claimant's or Ernest's names, but in that of the claimant's father, and that Charlotte sorted this out. But during this time, at the claimant's house one day the claimant said (whilst David and Charlotte were there) that "she wanted to sort out Lacy Street now, by transferring it to" Zeus. According to him, the claimant "said that she wanted to bypass David" because she wanted to help Nathaniel and him with their futures. As to the execution of the documents, Zeus says that, being based in Cornwall, he "wasn't able to get away from work to go up to Yorkshire and sign the deeds, so it was decided that the next time [the claimant] came down we would do the signing of the deeds then". He goes on to say that the claimant came down to Cornwall and everyone came to Charlotte's house, where the documents were signed by the claimant and himself "in front of Barry Saunders, who is our local courier". Finally he says that he agreed with the claimant, Charlotte and David that the claimant would be able to stay at 13 Lacy Street until her death, but that the claimant never asked for this to be put in writing.
71. In cross-examination, it was put to Zeus that the meeting between the claimant, David, Charlotte and him at which the claimant said she wanted to give the property to him straight away did not happen. He said that it did. He parried a question about why the claimant would want to give it to him now instead of leaving it to him in her will by saying that counsel would have to ask the claimant herself. He said that the claimant had confirmed on the telephone on multiple occasions subsequently her intention to give the property to him. He said he had no concerns about the claimant's health, and did not suggest that she could go to a doctor. In response to a question whether he was not adopting a rather incurious approach, he said that he just did what he was told. In response to questions about the upkeep of the property he said it would have been discussed as a family, and that Charlotte would have dealt with the

question of white goods and other household appliances. He confirmed that he never met David Lewis.

72. In further cross-examination about the execution of the transfer in his favour, he confirmed that this took place in Cornwall, at a time when he was working 12 hours a day, six days a week, for Jambo Ltd. He said he thought it was easier if the claimant came down to Cornwall, rather than him ask for a day off. He said that Barry Saunders lived about a mile away, but that he had not asked or approached him about confirming that the claimant was there when the documents were signed. There is no evidence before me, and certainly nothing in the bundle to suggest, that Zeus formally thanked the claimant for her generosity, although in relation to questions about payments of money from her bank account to him, he said in cross-examination that he did so orally.

*Charlotte Bridge's evidence*

73. In her witness statement, Charlotte says that after Ernest's death it came to light that 13 Lacy Street was still in the name of the claimant's father, and the claimant asked her to sort it out. Because she had to track down evidence concerning the claimant's father's death and also Ernest's, it took almost a year. During this time there were conversations with the claimant about what to do with Lacy Street. Charlotte says that the claimant had decided that she wanted to give the property away straight away and not on her death because of the problems that there had been with the title. She says the decision was made between the claimant, David, Zeus and herself that the property would be transferred to Zeus. She also says it would be transferred to Zeus and Nathaniel and bypass David because of his problems with money, and that David did not object to this. Indeed, he came with Charlotte to David Lewis to explain what was proposed. She says the claimant then visited David Lewis to sign the documents needed to transfer Lacy Street into her own name, and subsequently told her that she (the claimant) had discussed her intention to transfer Lacy Street to Zeus with David Lewis.
74. Charlotte further says in her witness statement that when it came to the execution of the transfer to Zeus, Zeus was finding it difficult to get to Yorkshire because of his work commitments. She therefore arranged with David Lewis that he would send the transfer to Charlotte so that the claimant and Zeus could sign it in Cornwall. When the claimant came to Cornwall to stay with David and Charlotte, Zeus came over to sign the transfer and David's friend Barry Saunders (a courier) witnessed both of them sign. She says it was agreed within the family that the claimant would stay in Lacy Street as long as she wanted to, or until she died.
75. Charlotte was cross examined on this account. A curious feature of the cross examination is that she could not tell me when the transfer of Lacy Street was executed, even approximately, though she was clear that it was signed at her home near Newquay in Cornwall. A copy of David Lewis's letter dated 27 April 2017 enclosing the bill (for £302) and the engrossed transfer for signature was put to her. Asked why this letter was sent to her rather than to the claimant, she said that it was because the claimant was already there (in Cornwall). She accepted that the invoice was addressed to her, and referred to her giving instructions.

76. Statements from the claimant's bank account were put to Charlotte, showing that, on 23 March 2017, 12 April 2017, 2 and 21 May 2017, and 11 and 22 July 2017, cash was withdrawn from an ATM in Hemsforth using the claimant's card. During that period there are no transactions recorded on the statements as having taken place in Cornwall. Yet the transfer had to have been executed between 27 April 2017 (when David Lewis sent it out) and 31 May 2017 (when he received it back). Charlotte said that perhaps the card was used by David Scott, but also that Beryl Felstead, a friend of the claimant's, used the claimant's card to take out cash for her.
77. The same bank statements do not show any transaction whereby £302 was transferred from the claimant's bank account to David Lewis and Co. Nevertheless Charlotte accepted that the fees had been paid, although she was not sure whether she herself had sent the email of 3 July 2017 or whether David Scott had done it, because she said he used it as a business email address. When the letter of 31 May 2017 (but incorrectly dated 2016) from David Lewis to her, acknowledging receipt of the signed transfer, was put to her, she said she did not know whether she sent the signed transfer to David Lewis and Co. She said it might have been David Scott who dropped it off there.
78. Charlotte's explanation for the evidence of the claimant that she did not recall signing this transfer was not that the claimant was lying, but that she was being coerced. She insisted that Barry Saunders was a friend of David Scott's, and came to the house almost every day to pick up parcels. But she accepted that she had not checked to see whether he was still around. It was put to her that the claimant's solicitors had written to Mr Saunders in November 2018, enclosing a copy of the transfer, and asking about it, but there was no response. Charlotte was asked whether she knew of any equivalent effort on the defendants' side. She said she did not. Again, there is no evidence before me, that Charlotte ever formally thanked the claimant for her generosity towards her children. She maintained that David was involved in the plan for Lacy Street to be transferred to Zeus.

*The second defendant's evidence*

79. In her witness statement, the second defendant said that after Ernest's death the claimant was thinking of an alternative to staying in Lacy Street. She said the claimant asked whether she (the second defendant) could approach Father Wheatley at Archbishop Holgate Hospital to see if she could apply for a cottage there. One was available, and offered to the claimant, but she decided she would rather stay at Lacy Street. Subsequently, the claimant asked the first and second defendants to ask Father Wheatley again. Once more a cottage was offered to the claimant. However, this was at the time when Charlotte found out that David was having an affair with Hayley Bonington, and also that David told a friend of Hayley's that she could rent Lacy Street from him for £400 a month. The second defendant says that the claimant was very upset when she found that her son was trying to rent her house out. She declined the offer of a cottage at the Hospital for the second time.
80. Further, the second defendant says that the claimant told her that she could never trust her son David, and that was why she decided to "sort out" Lacy Street before she died. The claimant said she knew that if she transferred Lacy Street to David "he would probably sell it and leave her homeless", but she wanted to make sure that Zeus and Nathaniel got the benefit of it instead.

81. The second defendant was cross examined on her account. Asked if it was her suggestion that the claimant should move to Archbishop Holgate Hospital, she said it was not, it was David's suggestion. It was he that came to the second defendant to get a form for his mother, the claimant. The second defendant accepted that she was not a party to any discussions between the claimant and Zeus, although she knew that the claimant was intending to make the transfer to him. She said that the claimant wanted Zeus and Nathaniel to benefit from this. Asked about the two granddaughters of the claimant, the second defendant said that she did not know what provision had been made for them.

*David Scott's evidence*

82. In his witness statement evidence, David Scott said nothing significant about Lacy Street. He was nevertheless asked in cross-examination whether he had removed anything from the file that he retrieved at the end of September 2018 from the widow of David Lewis. He denied doing so, saying that he took the file down to Cornwall and gave it to the claimant's solicitor. He said that he had discussed Lacy Street with the claimant's brother, who said he was not making any claim to the house. Accordingly, it was going to be transferred into the claimant's name, although David Scott also understood that the claimant said she wanted to give it away before she died. However, he said there was never any discussion about the claimant being able to live in the property for the rest of her life or that Zeus would be able to remortgage it.
83. He denied seeing any transfer to Zeus and he denied that the claimant had ever signed such a transfer. He said that the claimant came to Cornwall only once, on 23 December 2016 when she stayed for nine or 10 days. She did not come to Cornwall in April and May 2017. He said that Barry Saunders never met the claimant, and that he understood from the police that Barry Saunders was not still at his address. The last time he saw him was in June or July 2018.

*Trial bundle documents*

84. In the trial bundle, there are statements of Zeus's personal bank account. They show sums being paid into the account monthly by Celtic Sheepskins between March and August 2016 (with the reference "wages"), and by Jambo Ltd in September and October 2016 (with the reference "payroll posting"), and then weekly by Acorn Recruitment and then Riverside Finance (which apparently merged) from June 2017 to January 2018. The sums would appear to be wages or salary. These statements accordingly show that by 6 June 2017 Zeus would have been working for Acorn Recruitment, rather than Jambo Ltd.

*Decision*

85. The question of the failure of Barry Saunders to give any evidence at all in this case raises a question which I mentioned briefly in discussing how judges decide cases. This is that in some circumstances the failure by a party without any reasonable explanation to call an obvious witness may entitle the Court to draw an inference adverse to that party, sufficient to strengthen evidence adduced by the other party or weaken evidence given by the party so failing (see *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, CA). The due execution of the transfer of Lacy

Street is a key issue in this case. In order to be effective at law, the signatures of the parties have to be witnessed. The reason for the law imposing such a requirement is obvious. It is to prevent disputes arising as to whether or not a person did in fact execute a document, and to provide for the possibility of independent evidence about the circumstances of the execution.

86. Here the claimant has said that she did not execute this document in Cornwall on the date it bears, and indeed did not intend to execute such a transfer at all. Barry Saunders would obviously have very highly material, indeed critical, evidence to give on that point, *ie* whether or not the claimant did sign the document in front of him in Cornwall. Yet, in the present case, although the claimant's solicitors have sought to trace Mr Saunders and ask him about witnessing the transfer (though without success), none of the defendants, despite being legally advised from the outset, has even attempted to do so. (I note in passing that David Scott, whose friend Mr Saunders was supposed to be, and whom he saw almost every day, does not appear to have made much of an effort to trace him, either. But he is not a party to the main claim, and therefore no one is seeking to draw an adverse inference on this point in relation to him.) Although adverse inferences of this kind are not lightly to be drawn, I consider that the failure even to attempt to obtain Mr Saunders evidence is so striking that I must indeed take it into account in considering the claimant's allegation that she did not sign the transfer in Cornwall in front of Mr Saunders and the defendants' allegation that she did.
87. There are other points that I must bear in mind too. One is that Charlotte was quite unable to say when the transfer was executed, even approximately, even though the transfer on her evidence was executed in front of her in her own house by the claimant on a rare visit to Cornwall. Secondly, Charlotte told me that the letter sending the transfer for execution was addressed and sent to her (rather than the claimant) at Charlotte's Cornwall address, because the claimant was there at the time. There also appears to have been a complete failure, whether by Charlotte, Zeus or anyone else in the Bridge family) to thank the claimant formally for these acts of significant generosity. (Zeus said he telephoned the claimant to thank her for the gift in relation to Southgate, at the same time telling me that his generation did not "do" cards and flowers.) I think the second defendant is mistaken in thinking that the claimant wanted to give the property away to Zeus and Nathaniel immediately. What she wanted was to get the property into her own name and then think about how to benefit her grandchildren (not just Zeus and Nathaniel) rather than her son David.
88. In my judgment, on the evidence before me, the claimant did not execute the transfer of Lacy Street in front of Barry Saunders in Cornwall. It is not credible that Charlotte did not know when her mother-in-law, the claimant, visited her home in Cornwall for the one and only time. Nor is it credible that the elderly claimant would be required to come down to Cornwall for several days to sign a document simply because the third defendant, a young man, was not able to come up to Yorkshire on his day off in order (on the defendants' case) to receive a life changing gift. The bank statement evidence suggests that the claimant was in Yorkshire at the relevant time, not in Cornwall. But in any event, there was no need for all the parties to be in the same place and execute the transfer at the same time. Every day in modern conveyancing practice, documents for execution are sent by post with instructions for witnessing to each party in turn and then returned to the lawyer.



89. On the other hand, despite the claimant considering that she never signed it at all, I am satisfied that she did sign the transfer at some other time, and in Yorkshire. But this would have been, not with the intention of transferring to Zeus, but instead with the intention of transferring the house to her own name. I have no doubt that Charlotte was instrumental in persuading the claimant to sign the transfer. The claimant trusted her, and relied on her to carry out various of her financial transactions, giving her an electronic device that enabled her to make transfers from the claimant's bank account. (I shall return to the use of this device later.) I should also say that I am satisfied that the claimant did visit David Lewis, but in my judgment on the evidence this was either in order to sign the authority for the deeds to be released from her late parents' solicitors, or to sign a document for which she paid £5 (an 'oath' fee) and not for any other purpose. There is simply no evidence to support the view that David Lewis used that occasion to explain any particular transaction to her, and I am not satisfied that he did.
90. I am satisfied that, from the beginning, David Scott was well aware of what was going on, and indeed was complicit in the scheme for the house to be transferred to Zeus. I am equally satisfied that Charlotte would not have gone through with the transfer without David's agreement and support. He knew that his mother did not trust him, and that there was no way she would give him control of the house during her lifetime. But in my judgment he thought that if it was in the name of his stepson, with whom he worked, and he was still married to and living with Charlotte, his wife, then he would have more opportunity to benefit from it. All involved knew that, with her poor eyesight and the confidence that she reposed in Charlotte, there was no reason why the claimant would ever find out during her lifetime that this had happened. I find that Charlotte did not point out to the claimant when she found her "will" and read it that she (the claimant) had already given away the property. I also find that nobody thanked the claimant for what she had done. The reason for both of these things was that they did not want to alert her to what happened. It was the breakup of the marriage between Charlotte and David that led David – in order to get back at Charlotte – to tell his mother what had happened. Finally, I find that Zeus had no positive belief as to the claimant's intentions, but realised that something was up, and so said nothing.
91. As before, in light of the facts I have found, it is not necessary for me to lengthen this judgment by deciding whether, if the claimant had intended a gift of 13 Lacy Street, and had indeed made one, it would be one calling for explanation. Nor is it necessary for me to decide whether the claimant made any mistake, or anyone else misrepresented the position to her in order to induce the transfer. Indeed, given my finding of facts, it is logically impossible for me to do so. Since she did not intend the transfer, I cannot find that such an intention on her part was vitiated by any relevant factor. There is also no point in my considering whether the factual requirements of the doctrine of *non est factum* are satisfied.

### **Transfers to the third defendant**

#### *The claimant's evidence*

92. I turn now to the third aspect of the claimant's case, which relates to transfers made out of her bank account into bank accounts in the name of the third defendant, Zeus, amounting to some £94,600, between September 2016 and April 2018. In her witness

statement, the claimant says that she did not know anything about these transfers at the time, and she did not receive bank statements once Charlotte had taken over the conduct of her financial affairs after her husband's death. She says Charlotte did not have her authority to make such transfers and is not aware how she was able to do so. All her regular outgoings were paid by direct debit.

93. In cross-examination, the claimant said that her husband Ernest always handled financial matters during his life. She said she knew that Ernest had some savings, but not where it was until he died. He had also made pension provision for her. Once Ernest had died, she depended upon Charlotte to help her with financial matters, such as writing out cheques and making bank transfers. The claimant said she would give the same sums of money to each of the three grandchildren and to Zeus on their birthdays and at Christmas. She thought the biggest gift she had made to a grandchild was £500 to Katelyn for her wedding. She accepted that she was comfortably off in income terms.

*Charlotte Bridge's evidence*

94. In her witness statement, Charlotte said that the claimant had ordered a little electronic device from her bank in order to access her bank account without a card. The claimant gave this to Charlotte (even though she lived in Cornwall), so that Charlotte could make transfers, but only as instructed by her. It was this device she used in order to make the payment in respect of Southgate. But she also used it for everyday banking for the claimant. She says she sent the claimant monthly printouts of her statements or, if Charlotte was visiting her in Yorkshire, showed her the account online. When the claimant asked Charlotte to buy things, she would pay for them and then use the device to transfer the money from the claimant's account to her own to reimburse herself. The claimant also asked her to make payments from her account to Charlotte's of birthday money for members of the family, including David.
95. The claimant also authorised Charlotte to transfer sums from time to time to Charlotte's account by way of financial assistance to David and her. One transfer that Charlotte thought had been authorised was for the payment of £1700 in April 2018. David told Charlotte that the claimant had told him he could have that sum to buy a car. The money was transferred into Charlotte's account, and she used it at David's request to pay the seller. When later Charlotte asked the claimant about it, she said she knew nothing about it. She had not authorised this at all.
96. David and Charlotte had a joint bank account (though in Charlotte's name alone). But he also had access to the Bubble & Bling business current account which had been opened by Zeus, at his request, to enable David to trade online during the currency of his IVA. It was in effect David's account rather than Zeus's, and David kept the cheque books and the bank cards. Similarly there were credit card accounts opened by David for his own use, but in Zeus's name. Zeus agreed to this because he knew that otherwise David would take it out on Charlotte. David also had a PayPal account.
97. According to Charlotte's witness statement, the claimant had discussed with David and with her that she wanted to transfer £85,000 in total to Zeus as an advance inheritance. Because of limits imposed on the use of the electronic device to make transfers, she says the money was paid in several tranches, each time with David present with her in their home, watching her carry them out. Indeed, in re-

examination, she said he “badgered” her to do them. She says that in hindsight she thinks David had in mind the idea that he might be able to access these funds in the hands of Zeus. She says also that the claimant had called her after the first transfers to say that her bank had telephoned her about the transfers out, and she (the claimant) had told the bank that they were authorised. From time to time, says Charlotte, the claimant asked her to transfer various further sums to Zeus. So the payments continued up to August 2017, making the total received by Zeus £88,400. However, she considers that David Scott may have made some of the payments, using the same device.

98. Charlotte was cross examined on her witness statement evidence in some detail. She accepted that the claimant had trusted her in dealing with her bank account. She said that she could not be sure that she had in fact made all of the transfers out of the claimant’s bank account, because David might have made some of them. The account in her own name to which payments were made was in fact a joint account with David Scott. In addition he had his own personal bank account.
99. On being taken to certain entries in bank or credit card statements, Charlotte accepted that she had in fact carried out a small number of transactions on the Creation credit card account and the Bubble & Bling current account. But she maintained that David had kept the cards.

*The third defendant’s evidence*

100. In his witness statement evidence Zeus said that, in about May 2016, Charlotte and David told him that the claimant wanted to give him his inheritance early, in order to enable him “to get onto the housing ladder”. Transfers of money were made in September 2016. At David’s suggestion, these were made into a business saver account (93247384) that had been opened in the name of “Mr Melvyn Jesus Casas-Bridge trading as Bubble and Bling”, but not so far used. Further smaller transfers of £1000 continued up until August 2017. Zeus says he was not involved in transferring the money from the claimant’s account. The witness statement does not mention any contact between Zeus and the claimant in relation to these payments.
101. But Zeus’s witness statement does go on to discuss the business known as Bubble & Bling. He says this was an online business run by David Scott. Zeus says he worked for David in this business on two occasions. On the first occasion the business was closed down after David was successfully prosecuted and fined for counterfeiting. eBay thereupon closed down David’s account with them, thus preventing him selling goods on their website. David asked Zeus if he could use Zeus’s own personal eBay account so he could continue in business. Zeus says he allowed him to take control of that account.
102. Because David was still working through an IVA he could not have a business bank account in his own name. He had already persuaded Zeus (he says in about 2008) to open a current account for Bubble & Bling in Zeus’s name (account 53022587). There was also a savings account for Bubble & Bling in Zeus’s name (account 93247384). Zeus explains that he allowed David to do all this because, if he did not, David

“would have made my mum’s and my lives hell”.

Zeus says that David had also opened credit cards in Zeus's name for his business and also for personal use.

103. Zeus was cross examined on this written evidence. When he was asked about statements for the account 53022587 (the business current account), he said that this was David Scott's account, and that if money was paid into this account it was not him (Zeus) that was getting it. So far as concerns the business saver account 93247384, Zeus said he had never had access to this account, and he did not know whether it was David Scott's or not. It was the account used for the money from the claimant. It was quite separate from his personal accounts. He himself considered that the money from the claimant was put into the business saver account so that David Scott would have easier access to it. However, he was also asked about a payment from the Bubble & Bling saver account to the current account on 23 July 2018, in the sum of £10,000. Zeus said that David had debts, and Charlotte wanted to get him out of their lives as soon as possible.
104. When he was asked whether he was aware that the claimant's account was in effect wiped out, he said he did not know that, and he thought she had another account. He also said that a further question, whether if he had known it was her entire life savings he would have taken it, was hypothetical, but he would have asked her if she was okay with this. Asked if he thought he should give something back to the claimant, he said he did not know. He did not think she was destitute. However, he agreed with the proposition that this was a way of his fighting David Scott in his dispute with his mother, Charlotte. Although in his witness statement he did not mention any discussions or other contacts with the claimant about these payments, in cross-examination he said that they had conversations beforehand, and he thanked her. He wished now that he had thanked her more formally, although he did not think it necessary at the time.
105. Zeus was also asked about his own personal bank accounts, a current account and an everyday saver account. Asked why he did not put the 'inheritance' from the claimant into his personal saver account, he said he wanted to keep it separate and not touch it. He was asked why he did not change the Bubble & Bling account after his mother and stepfather had separated. He replied that it was controlled by David Scott. In answer to another question he confirmed that the point of the cash gifts was to provide him with the money to use as a deposit for the purchase of the property. However, he said that he lost his job before he could obtain a mortgage. After that he went to work for David Scott.

*David Scott's evidence*

106. In his witness statements (21 February 2020 and 2 July 2020), David Scott denied accessing either of the two Bubble & Bling accounts. He says that Charlotte and Zeus took over the running of his business from about April 2016 and were solely responsible for all aspects of it thereafter. In cross-examination he accepted that he had £13,600 from his mother the claimant by way of loan and a £1000 payment for a car. He accepted that the claimant had helped out Charlotte in him from time to time. He denied that the money paid to Zeus was a deliberate gift to him (Zeus). He denied making any of the transfers from the claimant's account to Zeus, saying that he could not access that account, as Charlotte always kept the bank device. He also denied being present when the transfers were made. He asserted that the claimant was not

aware that Charlotte was transferring money out of her account. Asked why Zeus was involved in the opening of the business accounts, David said that they had to have an account to make any money, and it did not matter whose name it was in. Asked whether Bubble & Bling was or was not his business, he replied that what he was saying was that he was not *running* it.

*Documents in the bundle*

107. In the bundle there is a one page document dated 17 December 2016 which purports to set out two engagements between David Scott and his mother, the claimant. The first is one whereby she agrees to lend him £13,000 (not £13,600)

“to consolidate his and Charlotte Scott’s debt’s. The debt’s are personal to both and also related to David’s Business” [sic].

The second engagement is by David and agrees to repay the claimant, also saying that

“These debt’s [sic] are mostly related to my business Bubble and Bling”.

It appears that each of the claimant and David has signed her or his name in an appropriate space in the document. It is not witnessed.

108. In the bundle there is also an invoice from LS Wholesale in Newcastle for goods ordered by “Bubble and bling” dated 10 January 2017. The “customer” is stated to be Charlotte Scott, but the billing address is “mj casas-bridge” at Charlotte’s and David’s home address, and the shipping addressing is “mj casas-bridge, 1st floor above southwest carpets, newquay, Cornwall, Cornwall tr72sx, United Kingdom.” (This is the physical unit to which David moved his business after the 2016 prosecution: see para 38 above). But there is also an email dated 14 February 2018 from “Lindy Bop Wholesale” to [bubbleblingcmw@yahoo.co.uk](mailto:bubbleblingcmw@yahoo.co.uk), confirming an order for goods placed earlier that day. The email begins “Hello, David Scott. Thank you for your order from Lindy Bop.” It states that the billing information is “mj casas-bridge, bubble and bling”. It then gives David’s and Charlotte’s home address. It also gives a mobile telephone number. Following that it sets out shipping information: “davis = d scott, bubble and bling, 1st floor above southwest carpets, treloggan estate, newquay, cornwall tr72sx, united kingdom.” It then gives the same mobile telephone number as in the billing information.

109. In the interview with trading standards officers on 13 April 2015, David Scott was asked about invoices that were in Charlotte’s name. He said

“I might have set accounts up in Charlotte’s name, having lost my business and had to do an IVA rather than go bankrupt I am honest I would rather pay the debts back to be honest with you. That is what I had to do so sometimes if I had a credit check I had let Charlotte apply for it, I would apply for it in her name, it’s that’s that’s why”.

He was also asked about invoices in the name of Zeus, and David answered:

“Once again I’ve given you the reasons for that... Sometimes I can’t get credit ’cause I’m in an IVA so that’s the only reason I will set an account up or he will have it set up for me in his name, that is all.”

110. There are almost no other documents in the bundle which relate to the payments in dispute, apart from bank statements. There are bank statements for the business current account 53022587, and the business saver account 93247384 that have been referred to. Both are in the name “Mr Melvyn Jesus Casas-Bridge trading as Bubble and Bling”. There are also statements for a separate bank account (ending 975) in the name of “Mr MJ Casas-Bridge”, without any mention of Bubble & Bling. The address on the statements for all three accounts was not Zeus’s home address at the time, but instead the home address of Charlotte and David Scott. A feature of the current account statements is the constant series of direct debits in favour of a PayPal account. The same feature can be observed in Zeus’s personal current account. The references for the two direct debits (which may refer to the PayPal accounts concerned) are completely different. This suggests to me that these were two different PayPal accounts operated by two different people.
111. From the documents before me, it is not clear when the business current account and personal account were opened. The statements I have seen relate to their operation from 2016 onwards. However, it is clear from the bank statements that the business saver account was opened as long ago as 27 March 2009. That is about the time of David’s IVA. Nevertheless, the first transaction recorded on that account was the initial payment of £100 from the claimant’s bank account received much later, on 15 September 2016, closely followed by two payments of £25,000 and £49,900 on 19 September 2016, and then a further payment of £5,000 on 28 September 2016. There are then further payments from the claimant’s account of £1000 each on 23 October 2016, 28 November 2016 (two payments of £1000), 3 January 2017, 31 January 2017, 6 March 2017, 26 June 2017, and 1 August 2017. There is also a payment of £1,500 from the claimant’s account on 2 May 2017. I make this a total of £89,500. I will come back to transfers out of the business saver account later, but I mention here that, on 23 July 2018, the sum of £10,000 was transferred from the saver account to the business current account.
112. The claimant’s particulars of claim at paragraph 34 give particulars of these payments (with minor date variations), although the payment pleaded of £1,000 on 28 November 2016 is shown by the bank statement to have been in fact two payments of £1,000 (one with the reference ‘Lorina’ and one with the reference ‘Loan Repay’). But the particulars of claim pleaded further payments from the claimants account to the third defendant, on dates between 19 September 2017 and the 5 April 2018, totalling £6200. In fact, the claimant’s bank statements show that these sums were paid to the joint account of Charlotte and David, with references such as ‘David Phone’, ‘Washer’ and ‘Pants Eggs’.

### *Decision*

113. In considering this matter, I have taken into account all the evidence and all the arguments made to me. But I am particularly struck by a number of things. First, there is the claimant’s own evidence, which I accept as truthful on her part, that she did not instruct these transfers to be made, and that she did not see any bank statements at the time. She could have been truthful but just mistaken, in the sense that she in fact did

authorise them, but has since forgotten about it. But the transfers are so significant that that seems unlikely to me. Second, there is the absence of any formal thanks by Charlotte or the third defendant to the claimant for what, on the defendants' own view, was a life-changing gift, or a series of gifts, of money to Zeus. Third, there is the fact that the claimant was physically unable to deal with her own financial affairs and had handed over the electronic device to operate her bank account to Charlotte, who was still then married to and living with David. Fourth, there is the inherent improbability of a loving grandmother preferring one 'grandchild' to all, when the evidence is that she did not do so before, and there is no evidence of equalising transactions for the others. Fifth, there is the fact that the money was not paid into Zeus's *own* saver account, but instead into a business saver account for Bubble & Bling, an account which Zeus says he did not control.

114. Sixth, there is the evidence of the documents in the bundle. These include (1) the transcript of the interview between David and Cornwall Trading Standards Department on 13 April 2015, in which David asserted (amongst other things) that he had owned Bubble & Bling for the last eight years, that Charlotte had either "very little" or "no" involvement in the business, and that accounts and invoices were sometimes in Charlotte's or Zeus's name because David could not get credit in his own name, (2) the statement in the alleged loan agreement (signed by David) in December 2016 that Bubble & Bling was David's own business, (3) the invoice from LS Wholesale dated 10 January 2017 and the order email from Lindy Bop of 14 February 2018 showing that Bubble & Bling operated out of the unit above Southwest Carpets, but bills went to David's and Charlotte's home, and that David was still involved, even after the trading standards investigation, and (4) a letter from David Scott on Bubble & Bling Boutique headed paper, undated but written after 22 January 2016, seeking compensation from Cornwall County Council for his loss of earnings directly resulting from the actions of trading standards officers.
115. In the light of all the material before me, I find that (1) the claimant did not authorise the transfers to Zeus, and had no intention to give these monies to him, and that (2) Charlotte and David both knew that the claimant had not authorised them. Nor did the claimant know about them until after the breakup between Charlotte and David.. I am satisfied that Charlotte and David agreed between them that these transfers would be made out of the claimant's account, by using the electronic device entrusted to Charlotte by the claimant. At this stage they were still married and acting in concert. I am also satisfied that Charlotte (who controlled the electronic banking device) would not have gone through with the payments without David's agreement and support. David knew well, as I have said, that his mother would not trust him with any more money. This was a way of getting it out of her hands, and into an account which he thought would be easier to tap. I accept, indeed, that he "badgered" her to do it. Charlotte's motive was to ensure that her own children benefited in the end, rather than David's other children, with whom he had little or no contact.
116. It was not argued before me that by giving the device to Charlotte, the claimant was clothing her with authority (actual or ostensible) to make gifts out of the account without reference to her. Accordingly, as between the claimant and the third defendants, these payments were without any legal basis. On the evidence, I find that the total of payments from the claimant's account to the business saver account in Zeus's name was £89,500. The further £6200 paid out of the claimant's account was

paid to the (joint) account of Charlotte and David. There is no evidence that those payments were made to Zeus's account. Charlotte and David are not parties to the main claim, and any claim by the claimant to the sum of £6200 against Zeus must fail.

117. I find that the third defendant, Zeus, knew much less of what was going on than his mother and stepfather. Whether or not he was technically the signatory (which, as the account holder, would be usual, but as to which I have no evidence), he did not in practice control either of the two Bubble & Bling accounts that had been opened in his name. He kept his head down, and did what he was told. At the same time, he knew very well that something was up, and that he should say nothing. He was on notice, but made no enquiries. So I find that he did not thank the claimant, or even mention it to her, because otherwise she would have found out what had happened. As it is, she only found out after the marriage breakdown, because David told her. I do not accept that Zeus lost his job before he could get a mortgage on the property. He was in employment from before the first payment in September 2016 until January 2018 at least.
118. As to Bubble & Bling, I am quite satisfied that this was David's business from 2010 onwards at least, and that the ownership and management of it did not change after the trading standards prosecution in 2016. Moreover, I find that David Scott had control of the Barclaycard and Creation credit card accounts, even though they were in Zeus's name. This brings me to the question of the two bank accounts, both in the name of Zeus "trading as Bubble & Bling". I find that David Scott controlled at least the current account, in order to sidestep the prohibition on business banking following the IVA and so to be able to continue to run Bubble & Bling, which as I have found has been at all material times since 2010 a business wholly owned by him, rather than by Charlotte and/or Zeus, even though both of them worked in the business at different times. I do not accept David's denial of any access to the account. It is perfectly plain from the bank statements and other documents in the bundle that whoever owned and operated Bubble & Bling had access to the current account, and used it to run the business. It is not necessary for me to decide who in fact controlled the saver account, though the evidence I have seen and heard suggests that it was not David but Charlotte. For example, it is said that she "paid David off" with £10,000 from the saver account in July 2018 (and there is certainly a payment consistent with that shown in the statement for the business saver account). But, for present purposes, it is sufficient that the account is in the name of Zeus, and he is therefore the legal owner, and as a party to these proceedings amenable to any remedies that may be awarded in respect of the transfers.
119. Once more, in light of my findings it is not necessary (nor indeed logically possible) for me to make findings on the alternative basis that the claimant intended to make a gift to Zeus of these monies. Nor is it necessary for me to consider whether the claimant was mistaken in making the payments or whether anyone induced her to do so by misrepresentation.

### **The law**

120. A gift is often considered to be an entirely unilateral transaction, perhaps because it is not a (simple) contract. Yet the reason it is not a contract is because it lacks consideration. The position in the civil law is different: the concept of consideration is absent, and the contract of gift is well-known. But in fact, at common law, a gift is a



bilateral (or multilateral) transaction whereby property in a thing is immediately and gratuitously vested by its owner in another or others. However, in English common law, *each party* to a gift has to consent to it, even though in some cases the relevant consent may be supplied by way of a presumption, and if the presumption is rebutted there is no gift. As Ventris J once put it in an old case, “a man cannot have an estate put into him in spite of his teeth”: see *Thompson v Leach* (1689) 2 Vent 198, 206. Thus, in *Cochrane v Moore* (1890) 25 QBD 57, Lord Esher MR said (at 76):

“It is a transaction consisting of two contemporaneous acts, which at once complete the transaction, so that there is nothing more to be done by either party. The act done by the one is that he gives; the act done by the other is that he accepts. These contemporaneous acts being done, neither party has anything more to do.”

121. As to the requirements for a valid gift, I was referred to a dictum from the decision of Vice-Chancellor Stuart in *Howard v Fingall* (1853) 12 LTOS 12, 13 col 1:

“In order to make a valid gift, there must be perfect knowledge in the mind of the person making the gift of the extent of the beneficial interest intended to be conferred, and of which it is intended to divest oneself in making it.”

This deals with both the donor’s intention to give the thing, and knowledge of what that thing consists of. But these are subjectively and not objectively ascertained. As Blake J said in *Meisels v Lichtman* [2008] EWHC 661 (QB) (a case about charitable gifts to which I was also referred):

“71. ... Where there is a dispute it seems to me that it is the intentions of the donor nor that will be crucial, rather than the more familiar exercise of ascertaining the intentions of both parties in construing the agreement”.

122. So far as concerns the position of the recipient, as I have said, it is necessary that the recipient should accept the property given. There is here a presumption that, when a gift of property is made, the donee is *presumed* to accept it unless, upon learning of the gift, the recipient repudiates it: see *eg Townson v Tickell* (1819) 3 B & A 31, 37-38; *Standing v Bowring* (1885) 31 Ch D 282, CA, 285, 288, 290. Subject to that, it is clear that, even if the recipient considers that the gift is not a gift but a loan, yet nevertheless accepts it, the intention of the donor prevails, and it is a valid gift. In *Dewar v Dewar* [1975] 1 WLR 1532, 1538H, Goff J said:

“where a person intends to make a gift and the donee receives the thing given, knows that he has got it and takes it, the fact that he says: ‘well, I will only accept it as a loan, and you can have it back when you want it’ does not prevented from being an effective gift. Of course, it does not turn it into a loan unless the donor says: ‘very well, let it be a loan.’ He could not force the donor to take it back, but the donor, having transferred it to him effectively and completely, intending to make a gift, and he – so far from repudiating it – having kept it, it seems to me that that is an effective gift...”

123. The final requirement of a valid common law gift is that the property in the thing the subject of the gift must be validly transferred to the donee. If it is a chattel (other than a lease), this must be either by delivery or by deed. If it is land or an interest in land,

then (with certain exceptions) it must be transferred by deed in order to operate at law: Law of Property Act 1925, section 52(1). A deed executed by an individual requires the formalities set out in section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989. This includes a requirement applicable to the present case that the instrument be signed by that individual in the presence of a witness who attests the signature. It will be appreciated that I am not now discussing the use of trusts to make gifts. However, there is an obvious parallel here with the so-called doctrine of the three certainties in the law of trusts: certainty of intention, certainty of subject matter and certainty of objects. If there is not the certainty of intention to give, the certainty of what it is that is intended to be given, and the certainty of the person to whom it is to be given, there can be no gift.

124. I should add, once again, that submissions were made to me on the law relating to undue influence, misrepresentation and mistake, but on the findings of fact that I have made in this case these doctrines do not arise, and it is therefore not necessary for me to express any views upon them. I will not make this judgment any longer by doing so. On the other hand, no submissions were made to me on unjust enrichment. But I take the law to be now settled, without citation of authority, that, where A pays money to B in circumstances where B is unjustly enriched at A's expense, and there are no relevant defences, A is *prima facie* entitled to a remedy (whether personal or proprietary) against B for unjust enrichment.

## Conclusions

### *1 Southgate*

125. In relation to the property at 1 Southgate, I have held that the claimant did not intend to make a gift of the purchase price to anyone, but instead intended to invest in the property for a half share which she could then in due course give or leave to her grandchildren. Since she had no intention to give, there is no valid gift of this money in favour of the first and second defendants or indeed Zeus and/or Nathaniel. On the other hand, she did intend that her money be paid to David Lewis for the purposes of the purchase. The question is then what rights are generated by the (valid) transfer of the money and its subsequent use for the purchase of the property. At the least, she must be entitled to the return of that money from the first and second defendants, who made use of it in purchasing the property. But the claimant seeks a declaration that the first and second defendants hold the property 1 Southgate on trust for themselves and the claimant in proportion to their respective contributions to the acquisition, that is, half and half.
126. The problem is that the first and second defendants in acquiring the legal title intended the entire beneficial interest to go to Zeus (and Nathaniel), their grandchildren. They did not intend the claimant to have any interest at all. This is not like the usual presumed resulting trust case where A and B each contribute in stated shares to the purchase of a property which is conveyed into the name of B only. In such a case, in the absence of evidence showing a contrary intention, a resulting trust is presumed for both of them, in proportion to the shares in which they contributed. But here I have found that there was no such intention on one side, although there was on the other. The dictum of Blake J in *Meisels v Lichtman* was made in the context of ordinary common law gifts, and not of trusts arising by operation of law. It therefore does not apply to the present case. That presents itself as a mixed substitution, where

the claimant on the one hand and the first and second defendants on the other each contribute to the acquisition of an asset in the name of the first and second defendants.

127. The leading case on the law of mixed substitutions is the decision of the House of Lords in *Foskett v McKeown* [2001] 1 AC 102. This was not however cited to me, and I must therefore proceed with caution. A property developer using monies which he held on trust to carry out a development instead mixed those monies with his own in his bank account, and subsequently used those mixed monies to pay premiums on a life assurance policy on his own life, vested in trustees for his children. After his death, the life assurance company paid out on the policy. The beneficiaries of the development monies trust made a proprietary claim to a share in the monies paid out by the life assurance company.
128. Lord Millett (with whom Lords Browne-Wilkinson and Hoffmann agreed; Lords Hope and Steyn dissented) set out the applicable principles as follows:

“A beneficiary of a trust is entitled to a continuing beneficial interest not merely in the trust property but in its traceable proceeds also, and his interest binds everyone who takes the property or its traceable proceeds except a bona fide purchaser for value without notice. In the present case the plaintiffs' beneficial interest plainly bound Mr Murphy, a trustee who wrongfully mixed the trust money with his own and whose every dealing with the money (including the payment of the premiums) was in breach of trust. It similarly binds his successors, the trustees of the children's settlement, who claim no beneficial interest of their own, and Mr Murphy's children, who are volunteers. They gave no value for what they received and derive their interest from Mr Murphy by way of gift” [at page 127].

[ ... ]

“Accordingly, I would state the basic rule as follows. Where a trustee wrongfully uses trust money to provide part of the cost of acquiring an asset, the beneficiary is entitled *at his option* either to claim a proportionate share of the asset or to enforce a lien upon it to secure his personal claim against the trustee for the amount of the misapplied money. [...] Two observations are necessary at this point. [...] Secondly, the beneficiary's right to claim a lien is available only against a wrongdoer and those deriving title under him otherwise than for value. It is not available against competing contributors who are innocent of any wrongdoing. [...] As against the wrongdoer and his successors, the beneficiary is entitled to locate his contribution in any part of the mixture and to subordinate their claims to share in the mixture until his own contribution has been satisfied. This has the effect of giving the beneficiary a lien for his contribution if the mixture is deficient. Innocent contributors, however, must be treated equally *inter se*. Where the beneficiary's claim is in competition with the claims of other innocent contributors, there is no basis upon which any of the claims can be subordinated to any of the others. Where the fund is deficient, the beneficiary is not entitled to enforce a lien for his contributions; all must share rateably in the fund. The primary rule in regard to a mixed fund, therefore, is that gains and losses are borne by the contributors rateably. The beneficiary's right to elect instead to enforce a lien to obtain repayment is an exception to

the primary rule, exercisable where the fund is deficient and the claim is made against the wrongdoer and those claiming through him” [at pages 131-32].

129. The problem in the present case is that the first and second defendants were not trustees of any property for the benefit of the claimant before they received the balance of the purchase price from her. They never agreed or assumed to act as a trustee for her, or undertook any fiduciary obligations towards her. They were not wrongdoers, acting in breach of any fiduciary obligation in using the money that they thought had been gifted to buy the property. In this sense they were innocent contributors. Accordingly, the case is different from that of *Foskett*, where the property developer already held the funds on trust that he later wrongfully mixed with his own and applied for his own purposes. The question is whether this makes any difference.
130. The Court of Appeal in *Re Diplock* [1948] Ch 465 certainly thought so. Lord Greene MR, giving the judgment of the court, said (at 540):
- “It is to be observed that neither Lord Parker nor Lord Haldane [in *Sinclair v Brougham* [1914] AC 398] suggests that the equitable remedy extends to cover all cases where A becomes possessed of money belonging to B, a view which Lord Dunedin [in the same case] seemed inclined to accept if he did not actually do so. Lord Parker and Lord Haldane both predicate the existence of a right of property recognized by equity which depends upon there having existed at some stage a fiduciary relationship of some kind (though not necessarily a positive duty of trusteeship) sufficient to give rise to the equitable right of property. Exactly what relationships are sufficient to bring such an equitable right into existence for the purposes of the rule which we are considering is a matter which has not been precisely laid down. Certain relationships are clearly included, *eg*, trustee (actual or constructive) and cestui que trust; and ‘fiduciary’ relationships such as that of principal and agent.”
131. On the face of it, therefore, the present case falls outside the scope of the rules under which a subsisting equitable proprietary interest persists into the hands of a transferee who is not a good faith purchaser for value without notice. Accordingly, the question is why the claimant’s claim to unjust enrichment should give her any *proprietary* rights, which would as a consequence give her priority in the event of the insolvency of the defendants. In some of the scholarly literature on unjust enrichment this is described as the need for a ‘proprietary basis’. It is fair to say that the decision of the Supreme Court in *Menelaou v Bank of Cyprus UK Ltd* [2016] AC 176 has had some impact on this question, at least in the context of *subrogation* to proprietary rights. But this has not been argued before me, and after all this is not a case of subrogation. So I leave that aspect on one side.
132. Instead I concentrate on the question whether there are good reasons to give the claimant any more than a personal right to restitution for unjust enrichment against the first and second defendants. It is fair to say that the claimant did not intend to take the risk of the first and second defendants’ insolvency. She thought she was investing in real property, and acquiring a share in a house. For their part, on the other hand, the first and second defendants did not think or intend that they were becoming her debtors, let alone co-owners with her in the purchase of the house. Undoubtedly the

claimant contributed to an increase in the defendant's assets. But the innocent first and second defendants thought she was making a gift.

133. A striking feature of the case is that the claimant did not directly contact the first and second defendants about what she was doing. Had she done so, the misunderstanding between them would have been exposed at once. Instead, she chose to rely on her son and her daughter-in-law. Nor, so far as the evidence goes, did she ask David Lewis to give her any advice. If he had, and it was good advice but she went ahead nevertheless, that would be at her own risk. If he had and it was bad advice, a claim would on the face of it lie against him. In the circumstances, I am not satisfied that it would be fair or reasonable to give the claimant any more potent remedy than the usual personal remedy of the payment of a sum of money, rather than a share in property.

*13 Lacy Street*

134. It is clear on my findings of fact that the claimant never intended to part with 13 Lacy Street at all. She inherited it from her father, and wanted it to be put in her own name. But, quite apart from this, the alleged transfer dated 6 June 2017 was ineffective in law, because of the failure to comply with the formalities for a deed. But, by virtue of section 58 of the Land Registration Act 2002, registration of the third defendant as proprietor has nonetheless conferred the legal estate in the land upon him. I could therefore simply make an order (which is what the claimant asks for) that Zeus transfer the property to the claimant. However, since, as I understand the position, the property remains registered in the name of Zeus, and has not been charged or otherwise dealt with in the meantime, a simpler and more effective remedy would be to rectify the register, under Schedule 4 of the 2002 Act, so as to show the claimant as proprietor of that property for the future.
135. So far as material, that schedule provides as follows:

*“Introductory*

1. In this Schedule, references to rectification, in relation to alteration of the register, are to alteration which—

- (a) involves the correction of a mistake, and
- (b) prejudicially affects the title of a registered proprietor.

*Alteration pursuant to a court order*

2.(1) The court may make an order for alteration of the register for the purpose of—

- (a) correcting a mistake,
- (b) bringing the register up to date, or
- (c) giving effect to any estate, right or interest excepted from the effect of registration.

(2) An order under this paragraph has effect when served on the registrar to impose a duty on him to give effect to it.

3.(1) This paragraph applies to the power under paragraph 2, so far as relating to rectification.

(2) If alteration affects the title of the proprietor of a registered estate in land, no order may be made under paragraph 2 without the proprietor's consent in relation to land in his possession unless—

(a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made.

(3) If in any proceedings the court has power to make an order under paragraph 2, it must do so, unless there are exceptional circumstances which justify its not doing so.

[ ... ]”

136. The concept of a ‘mistake’ for the purposes of this jurisdiction were discussed by the Court of Appeal recently in *NRAM v Evans* [2018] 1 WLR 639. The court cited with approval the views of the editors of Megarry and Wade, *The Law of Real Property*, 8th edition, para 7-133, and Ruoff and Roper, *Registered Conveyancing*, loose-leaf edition, para 46.009. They are very similarly expressed. The latter extract reads as follows:

“ ‘Mistake’ is not itself specifically defined in the 2002 Act, but it is suggested that there will be a mistake whenever the Registrar (i) makes an entry in the register that he would not have made; (ii) makes an entry in the register that he would not have made in the form in which it was made; (iii) fails to make an entry in the register which he would otherwise have made; or (iv) deletes an entry which he would not have deleted; had he known the true state of affairs at the time of the entry or deletion. The mistake may consist of a mistaken entry in the register or the mistaken omission of an entry which should have been made. Whether an entry in the register is mistaken depends upon its effect at the time of registration.... ”

137. In this sense, there has plainly been a ‘mistake’ in registering the third defendant as proprietor of this property. Had the registrar known, at the time of registration of the transfer, that the transfer form itself had not been properly witnessed, and that the transferor did not intend to transfer the property to anyone but herself, the entry in the register would not have been effected. Paragraph 3(3) of Schedule 4 makes clear that where the power to alter the register applies, the court must exercise it, “unless there are exceptional circumstances which justify its not doing so”. Although this alteration plainly “affects the title of the proprietor of a registered estate in land”, namely Zeus, and therefore falls within paragraph 3(2), it would in my judgment be obviously unjust for the alteration not to be made to the register, because the claimant has been deprived of her land without her knowledge or consent, and Zeus is a volunteer and will lose nothing by having to restore it to her.

138. So far as concerns any income of the property received by or on behalf of Zeus in the meantime, there must be an inquiry and an account, unless the position can be agreed between the parties.

*Money transfers to Zeus*

139. On my findings of fact, the claimant did not authorise the transfers of £89,500 in total from her bank account which were made to the Bubble & Bling business saver account. However, I expect (although they were not in evidence) that the terms of the banking contract under which the electronic device was given to the claimant (and passed by her to Charlotte) will provide that, *as between the bank and the claimant*, the claimant is deemed to have authorised any transfers made as a result of the operation of that device, at all events unless (for example) the bank is notified by the claimant that the device has been lost or stolen. In principle this means that the bank can rely on the use of the device, but the person who operates the device without the claimant's authority will be committing a wrong for which the claimant may claim compensation. But that is not how this case has been pleaded and argued. Instead, the claim is against the recipient of the monies (Zeus) as the legal owner of the business saver account. The claim is put on the basis that the payments are liable to be set aside on the basis of lack of authority or mistake, or that Zeus holds those monies on resulting trust for the claimant. The claimant seeks an order that the monies should be returned to the claimant and also an inquiry as to how Zeus has applied them.
140. As I have already said, it was not pleaded or argued that Charlotte had authority from the claimant (*eg* by merely giving Charlotte the electronic device) to bind the claimant as between her and third-party transferees of the claimant's funds. As between the claimant and the third defendant, therefore, the claimant had no intention to make the payments. Therefore, at a minimum, the claimant is entitled to restitution in respect of the unjust enrichment of the third defendant, subject to any applicable defences. As I have said, £71,595.85 was paid out of this saver account to the current account controlled by David, although the third defendant was at least on notice of the lack of authority for the payment of money from the claimant's account to the business saver account. But change of position, whether for this or any other reason, was not argued. Neither, indeed, was it pleaded, as it should have been if it was intended to be relied on: *Prudential Assurance Co Ltd v HMRC* [2016] EWCA Civ 376, [148]-[151]. In the circumstances, I do not need to consider it further.
141. The claimant does not however seek merely a personal remedy against the third defendant, but instead makes a proprietary claim, that is, that Charlotte Bridge/the third defendant "hold the monies paid by the Bank Transfers on resulting trust or presumed resulting trust for the Claimant" (Particulars of Claim, [37]). Since Charlotte is not the holder of the business saver account I am not clear how the case can be put against her. There is an alternative pleading that she caused the transfers to be made, but none as to her having received them or having them in her possession now. Leaving that on one side, and concentrating therefore on the third defendant, the question is why, if monies so taken from the claimant are paid over to another person's bank account (whether that person is the taker, a confederate of the taker or an innocent third party), that payment should in effect generate a trust of the relevant bank account. After all, no fiduciary relationship between the claimant and the third defendant was argued to exist, let alone established.

142. *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 was a decision of the House of Lords concerning the power of the court to award compound interest. The bank had paid money to the local authority under a contract which turned out to be ultra vires and void. The question was whether, in addition to ordering the repayment of the money to the bank on unjust enrichment principles, the court could also award compound interest. It was clear law that the court had power to do so in the case of a breach of trust. Accordingly, the appellant bank's printed case at paragraph 11 stated that

"The bank's submission in summary is that where money is paid either (i) pursuant to a contract which is void, or (ii) under a fundamental mistake of fact or law, the money is impressed in the hands of the payee with a trust in favour of the payer. The payee is then accountable to the payer not only for the principal but for the entire benefit which he has obtained from his possession of the principal in the intervening period" (see at page 737 of the report).

143. It was argued that there was a resulting trust for the bank. All five judges held that there was no such trust. Lord Goff (who dissented in the result, arguing that the jurisdiction to award compound interest was not confined to trust cases) agreed with Lord Browne-Wilkinson (in the majority) that there was no resulting trust of the monies paid in that case, saying (at 690):

"For all of these reasons I conclude, in agreement with my noble and learned friend, that there is no basis for holding that a resulting trust arises in cases where money has been paid under a contract which is ultra vires and therefore void ab initio."

And (later on the same page):

"However, if no resulting trust arises, it also follows that the payer in a case such as the present cannot achieve priority over the payee's general creditors in the event of his insolvency – a conclusion which appears to me to be just."

144. Lord Slynn agreed (at 718) with Lord Browne-Wilkinson's reasons for holding that no resulting trust could arise. Lord Woolf (who also dissented in the result, and agreed with Lord Goff) agreed with Lord Goff and Lord Browne-Wilkinson (at 720) that

"the bank is not entitled to proceed by way of an equitable proprietary claim and that the recipient of a sum of money paid under an ultra vires contract should not be regarded as owing the duty of a trustee or a fiduciary to the payer of that sum".

145. In my judgment there is no relevant difference between that case and the present. The third defendant did not intend a trust. He did not agree to undertake any fiduciary duties towards the claimant. The claimant not only did not intend there to be a trust for her; she did not intend the payments at all. Any presumption of resulting trust is accordingly rebutted on the evidence. However, the fact that there is no *resulting* trust does not conclude the matter, trust or no. There is a well-known *obiter dictum* of Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 716-16:



“The argument for a resulting trust was said to be supported by the case of a thief who steals a bag of coins. At law those coins remain traceable only so long as they are kept separate: as soon as they are mixed with other coins or paid into a mixed bank account they cease to be traceable at law. Can it really be the case, it is asked, that in such circumstances the thief cannot be required to disgorge the property which, in equity, represents the stolen coins? Moneys can only be traced in equity if there has been at some stage a breach of fiduciary duty, *ie* if either before the theft there was an equitable proprietary interest (*eg* the coins were stolen trust moneys) or such interest arises under a resulting trust at the time of the theft or the mixing of the moneys. Therefore, it is said, a resulting trust must arise either at the time of the theft or when the moneys are subsequently mixed. Unless this is the law, there will be no right to recover the assets representing the stolen moneys once the moneys have become mixed. I agree that the stolen moneys are traceable in equity. But the proprietary interest which equity is enforcing in such circumstances arises under a constructive, not a resulting, trust. Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity. Thus, an infant who has obtained property by fraud is bound in equity to restore it: *Stocks v Wilson* [1913] 2 KB 235, 244; *R Leslie Ltd v Sheill* [1914] 3 KB 607. Moneys stolen from a bank account can be traced in equity: *Bankers Trust Co v Shapira* [1980] 1 WLR 1274, 1282C-E: see also *McCormick v Grogan* (1869) LR 4 HL 82, 97.”

146. But this *obiter dictum* in favour of the arising of a constructive trust has been doubted (in my respectful view, convincingly) by Rimer J in *Shalson v Russo* [2005] Ch 281, where he said:

“110. I do not find that an easy passage. As to the first paragraph, a thief ordinarily acquires no property in what he steals and cannot give a title to it even to a good faith purchaser: both the thief and the purchaser are vulnerable to claims by the true owner to recover his property. If the thief has no title in the property, I cannot see how he can become a trustee of it for the true owner: the owner retains the legal and beneficial title. If the thief mixes stolen money with other money in a bank account, the common law cannot trace into it. Equity has traditionally been regarded as similarly incompetent unless it could first identify a relevant fiduciary relationship, but in many cases of theft there will be none. The fact that, traditionally, equity can only trace into a mixed bank account if that precondition is first satisfied provides an unsatisfactory justification for any conclusion that the stolen money must necessarily be trust money so as to enable the precondition to be satisfied. It is either trust money or it is not. If it is not, it is not legitimate artificially to change its character so as to bring it within the supposed limits of equity's powers to trace: the answer is to develop those powers so as to meet the special problems raised by stolen money.

111. As to Lord Browne-Wilkinson's more general proposition in the second paragraph that property obtained by fraud is automatically held by the recipient on a constructive trust for the person defrauded, I respectfully regard the authorities he cites as providing less than full support for it. At any rate,

they do not in my view support the proposition that property transferred under a voidable contract induced by fraud will immediately (and prior to any rescission) be held on trust for the transferor.” [The judge then continued to discuss the cases relied on in detail.]

(In passing, I note that the first part of paragraph 110 was cited with approval by Arden LJ (with whom Buxton and Clarke LJ agreed) in *Sinclair Investment Holdings SA v Versailles Trade Finance Ltd* [2006] 1 BCLC 60, [43].)

147. In the circumstances, I cannot see any proper basis upon which I, sitting at first instance, should be entitled to conclude that the payments made from the claimant’s bank account to that of the third defendant should have the effect in law of creating a trust (whether resulting or constructive) of the third defendant’s bank account for the benefit of the claimant to the extent of the money paid in.
148. Accordingly, the same question arises as in relation to 1 Southgate: is there any other proprietary basis to support the claim to a proprietary remedy? Once more, it is obvious that the claimant did not intend to take the risk of the first and second defendants’ insolvency. I accept also that the claimant certainly contributed to an increase in the defendants’ assets. But most, if not all, unjust enrichment is based on that. The one significant point of distinction with the Southgate case, however, is the claimant had no intention to make these payments at all. The money was removed from her account without her consent. Yet if (as I consider to be the law) a thief does not hold stolen money on trust for the victim, I see no basis for saying that the third defendant (who is not a thief) should do so. I agree that if a thief steals a chattel, he or she does not obtain title to it, and ordinary proprietary remedies may be sought. But money paid into a bank account is different.
149. In *Foskett v McKeown* [2001] 1 AC 102 Lord Millett said (at 127-28):
- “We speak of money at the bank, and of money passing into and out of a bank account. But of course the account holder has no money at the bank. Money paid into a bank account belongs legally and beneficially to the bank and not to the account holder. The bank gives value for it, and it is accordingly not usually possible to make the money itself the subject of an adverse claim. Instead a claimant normally sues the account holder rather than the bank and lays claim to the proceeds of the money in his hands. These consist of the debt or part of the debt due to him from the bank. We speak of tracing money into and out of the account, but there is no money in the account. There is merely a single debt of an amount equal to the final balance standing to the credit of the account holder. No money passes from paying bank to receiving bank or through the clearing system (where the money flows may be in the opposite direction). There is simply a series of debits and credits which are causally and transactionally linked.”
150. So, following a transfer from the victim’s account to the thief’s account, his or her bank substitutes a larger credit in the bank account for the smaller. That, as I have said, belongs at law to the thief. In rare cases, statute may cause the legal ownership of the bank account to change, for example on bankruptcy of the account holder or holders (compare *Trustee of the Property of FC Jones & Sons (A Firm) v Jones* [1997] Ch 159, CA). But, absent such statutory justification, there is a personal but

not a proprietary claim to the value represented by the bank account. To put it another way, I do not see any basis (and certainly none was argued) for saying that the third defendant's bank, instead of owing bank account obligations at law to the third defendant *alone*, has now acquired such obligations owed to the third defendant *and* the claimant. In my judgment, these payments did not have the effect of changing the nature of the bank's obligations from a sole to a joint account, or to separate the account into two sole accounts, one for the third defendant, and one for the claimant.

151. I respectfully consider that to hold otherwise would subvert the law of property. And, as Lord Millett pointed out in the House of Lords in *Foskett v McKeown*, at 127,

“The transmission of a claimant's property rights from one asset to its traceable proceeds is part of our law of property, not of the law of unjust enrichment. There is no ‘unjust factor’ to justify restitution (unless ‘want of title’ be one, which makes the point). The claimant succeeds if at all by virtue of his own title, not to reverse unjust enrichment. Property rights are determined by fixed rules and settled principles. They are not discretionary. They do not depend upon ideas of what is ‘fair, just and reasonable’. Such concepts, which in reality mask decisions of legal policy, have no place in the law of property”.

Similarly, Lord Hoffmann, agreeing, said (at 116):

“This is not based upon unjust enrichment except in the most trivial sense of that expression. It is, as my noble and learned friend says, a vindication of proprietary right”.

152. My conclusion accordingly is that, although the claimant is entitled to judgment for the sum of £89,500 on unjust enrichment principles, she is not entitled to a proprietary claim as against the third defendant's bank account or its traceable proceeds.

## **THE PART 20 CLAIM AND COUNTERCLAIM**

### **The Part 20 claim**

153. The third defendant, Zeus, pleads as follows:

“42. To the extent that the Claimant is seeking repayment of monies paid to the Third Defendant, the Third Defendant is entitled to and claims an indemnity from you on the grounds that you have received certain of the monies paid by the claimant to the Third Defendant.

[ ... ]

50. If and to the extent the Third Defendant is found liable to the Claimant the Third Defendant is entitled to an indemnity in respect of all and any claims received and used by the Third Party.”

### *The third defendant's evidence*

154. In his first witness statement, Zeus says that, after receiving his ‘inheritance’ from the claimant, David asked if he could borrow some of it to pay off some debts, as he was

struggling with the interest. According to him, they agreed that David would arrange for his wages from the job with Luke Griffiths to be paid to Zeus until Zeus was repaid in full. But, as David repaid some money, he would borrow more. The first such loan payment was made on 18 October 2016, by transferring money from the Bubble & Bling business savings account (where the inheritance money was) to the business current account for Bubble & Bling. The total of loans to David was (he says) approximately £61,000. The repayments, in the form of David's wages from Luke Griffiths, were paid directly into Zeus's personal bank account. Zeus says David told Luke the account details. This continued until David lost his job in July 2018.

155. In his supplemental witness statement, Zeus says he cannot remember when he started receiving David Scott's wages from Luke Griffiths. David told him he would get them paid to him as he could not have a bank account because of his IVA. Zeus also refers to the use of credit cards with Barclaycard and Creation, on accounts which were opened (not by him) in his name. He says that these cards were in the possession of, and operated by, David, and not himself, although because he was the account holder he would have to deal with the payments. When he received texts from Barclaycard telling him what was due, he asked what to do and was told to use the money from Luke Griffiths or money transferred to him from the Bubble and Bling current account, which was operated solely by David, as a means of avoiding the restriction in the IVA on his having a business bank account. His evidence is that he used the Luke Griffiths money to pay the Barclaycard bills between April and October 2016. Zeus says he paid nothing towards either Barclaycard or Creation accounts after September 2017.
156. In that supplemental witness statement, Zeus also refers to the purchase of an easyJet flight ticket apparently carried out with a credit card in Ibiza in July 2017. He says that was not him, but that his brother Nathaniel had got into trouble at school and his parents (Charlotte and David) sent him over to Ibiza to stay with relatives for a couple of weeks. He says that Charlotte told him that David gave Nathaniel his credit card for emergencies and in order to book a flight home. (In the trial bundle there are statements for two credit card accounts, one a Barclaycard and the other a Creation credit card, both in the name of Zeus. Neither of them shows any entry for an easyJet flight. However, there are two entries for transactions apparently in Ibiza on 11 and 12 July 2017.)
157. Zeus says he worked a second time for Bubble and Bling between 17 October 2016 and the end of May 2017. He set up listings and posted purchases out, from 9 am to 5 pm five days a week, for which David agreed to pay him £50 a day. He took that money out of the Luke Griffiths money, but was told to pay the balance of that into Charlotte's account. After a while he became worried about the amount David was taking from his "inheritance", and kept the whole of the Griffiths money as repayment from about June 2017.
158. Zeus was cross examined on this account. It is clear from this that some aspects of his evidence are wrong. I deal with this later. And he was constrained to accept (as a matter going to credit) that he himself had applied for Jobseekers' Allowance, despite the fact that he had about £70,000 in savings. He also accepted that Charlotte had worked at Bubble and Bling for 2 to 3 hours a week, though he said she owned no part of the business. He denied being in Ibiza at the time that the easyJet flight ticket was purchased on 16 July 2017. On the other hand, Zeus said that when he was

working at Bubble & Bling, David would come in the morning for a short while to see what was happening, and then leave to go to work for Luke Griffiths.

*Charlotte Bridge's evidence*

159. I have already referred to what Charlotte says in her witness statement about David's involvement in Bubble & Bling and its bank and card accounts. In addition I have already noted that she says David also had a Paypal account for online sales. Moreover, she says that she occasionally worked in the business, doing what David told her. But it was always his business, and his tax returns showed that he was the sole owner. Cross-examination made no impact on this evidence. Indeed, there was no cross-examination on the evidence about the tax returns.
160. Charlotte's witness statement also refers to a document in the bundle which appears to be a loan agreement between the claimant and David for £13,000 dated 17 December 2016. She says that she had not seen this before David's solicitors sent it to the defendant's solicitors, and does not know what it is about. She denies that David ever told her to repay this "loan" to the claimant, whether out of Luke Griffiths' wages or otherwise. She also says that the claimant's signature on the document "looks odd". However, her witness statement also says that, after the marriage breakup, the claimant had told her that David owed her £15,000, although she did not want it back, in order to give him a fresh start going forward.
161. Her witness statement also refers to David asking Zeus if he could borrow some of the inheritance money. According to her, Zeus agreed to lend him some, though Charlotte says she did not know how much. But she says she knew that David's wages were going to Zeus, because David and she were living off benefits. According to Charlotte, David stopped paying back Zeus when David lost his job in July 2018, having been fired for stealing from his employer, Luke Griffiths. Charlotte says she told him all about this, "as [she] felt [she] had to". In cross-examination on behalf of the claimant she agreed that she had done this, but said that David would have had to leave anyway because he did not feel comfortable knowing how much he had stolen from his employer. On the other hand, David Scott did not cross-examine Charlotte on this point, and therefore left her evidence unchallenged. Charlotte's witness statement said nothing about the use of credit cards in Ibiza. I record also here that Charlotte was not cross examined on the alleged agreement dated 17 December 2016.
162. In her witness statement, Charlotte says that she found out about David's affair with Hayley Bonington in May 2018, and that he had been seeing her for 18 months. Initially she told him that she would forgive him and take him back. For six weeks "David kept coming home and telling me he had ended his relationship with Hayley and then changing his mind and leaving again". Then she told Luke Griffiths about David stealing from him, and David was sacked. She said that David never came back to her after that. Charlotte was not cross-examined about this.

*David Scott's evidence*

163. David's witness statements deny that he ever borrowed *any* money from Zeus. He also denies that Zeus was allowed to keep any of his (David's) wages from Luke Griffiths. He says the wages were to be paid into the Bubble & Bling business current account and then transferred to his mother's (the claimant's) account in repayment of

a loan from her to David and Charlotte. He says that once he saw the bank statements for the Bubble & Bling business current account after disclosure given in this litigation, he realised that this showed that his wages from Luke Griffiths were not paid into that account, and therefore says that Zeus must have kept the money. His witness statements also refer, as I have already said, to a written agreement between the claimant and himself in respect of what he says were loans to him and to Charlotte.

164. David was cross-examined on this agreement. He accepted that he had drafted it and that it referred to Bubble & Bling as “my business”. It was put to him that it was drawn up later than the date it bore, and he accepted that it was drafted “a few weeks later”. When it was put to him that it was drawn up much later, he responded “You can suggest what you like”. He denied fabricating it later on. In answer to a question why he did not get Charlotte to sign it as well (as it purports to consolidate her debts) he said she was not in Yorkshire then. He was also cross examined on behalf of the claimant and asked why the loan agreement was in large type. He said this was so that the claimant could read it. If it was in normal type she could not see it. He was also asked if he stood to gain anything by this, and said that he did not think so. It was just a simple formality.
165. In cross-examination David was also pressed on the circumstances in which his job with Luke Griffiths came to an end. He said that, after the marriage breakup with Charlotte, she threatened to tell Luke Griffiths that he (David) had been stealing stock from him. So he admitted to Luke that he had stolen two pairs of shoes, and had reported Charlotte for blackmail. Luke told him to have a week off, and then come back. However, some weeks later Charlotte told Luke that David had stolen a lot of other stock. Luke had told David that the evidence was compelling, and David had to leave. David said that this was the truth. He also said he could have called Luke Griffiths to give evidence, but insisted that he did not need him.
166. In cross-examination David also referred to a document which he said he had transcribed from a recording made on 28 June 2018 on his iPad, of a conversation with Charlotte. He accepted that Charlotte was not aware that the telephone conversation was being recorded, and also that the transcript appears to begin in the middle of the conversation. David explained this by saying that he found out he had taken Luke Griffiths’ iPad, and not his own, to the meeting. This had software on it which automatically recorded telephone conversations. David maintained that it was an accident that the conversation was recorded. He did not however explain what happened to the rest of the conversation which either appears not to have been recorded or not to have been transcribed. It was put to him that the conversation as transcribed read as if he was trying to set Charlotte up to admit blackmailing him. David said he did not so read it. David was asked about one point in the transcript, where there is a reference to Charlotte hanging up the phone and David’s talking to the police. David said that it was only after he spoke to the police he realised that the call was being recorded.

*The claimant’s evidence*

167. The claimant’s witness statement says nothing about any loan she may have made to her son David, or about the document dated 17 December 2016 in the bundle which appears to record such a loan. She was not asked any questions in cross-examination

about any loan that she might have made to David. The document of 17 December 2016 was not put to her, and she was not asked to confirm her signature.

*Documents in the bundle*

168. In the bundle there are bank statements relating to the Bubble & Bling business saver account. These show payments in from the claimant's account, as I have said, amounting to £89,500. But they also show credits from other sources totalling £12,120.97. This includes two payments totalling £2450 from the Bubble & Bling business current account in October and December 2016, £5313 from Zeus's personal saver account between June and August 2017, £4285 in what appears to be rent payments monthly from May 2017 to April 2018 and £72.97 interest.
169. In the bundle there are also copies of statements from Zeus's personal bank account. They show a series of payments into Zeus's account, beginning in March 2016 and running through to June 2018, from Luke Griffiths, who employed David during that period. There are two sums of £308 on 23 March 2016 and 20 April 2016, and a sum of £462 on 14 April 2016. Thereafter, from 27 April 2016 the figure appears to be £385 on a weekly basis (sometimes £770 for two weeks), although there are occasional variations (eg £355 on 13 July 2016). The figure of £385 was increased subsequently to £440.
170. What is apparent from these bank statements is that the money from Luke Griffiths was used on numerous occasions either to pay Barclaycard (the account which I have held was operated by David Scott, though in the name of Zeus) or to pay over to the bank account in Charlotte's name (which was in fact a joint account with David Scott). Thus on 14 April 2016 the sum of £462 is paid by Luke Griffiths to Zeus, and on the same day he makes a payment of that sum to Barclaycard. (Incidentally, this is the first payment to Barclaycard that I can see from Zeus's personal bank account in the documents in the bundle.) On 27 April 2016 Luke Griffiths paid £385 to Zeus, and on the next day Zeus paid £385 to Charlotte's bank account. On 5 May, 1 June, and 29 June, Luke Griffiths paid £385 to Zeus, and on 10 May, 2 June and 30 June Zeus paid the same sum to Barclaycard. On 17 June, 22 June and 6 July, Luke Griffiths again paid £385 to Zeus, and on 17 June, 29 June and 6 July, Zeus paid that sum to Charlotte's bank account. On 13 July Luke Griffiths paid Zeus £355, and on 20 July, 27 July and 9 August £385, totalling £1510. On 10 August Zeus paid Barclaycard £1490. On 10 August 17 August and 30 August Luke Griffiths paid Zeus £385. On 11 August Zeus paid Charlotte £375, on 18 August Zeus paid Barclaycard £345, and on 31 August Zeus paid Charlotte £385. On 31 August and 7 September Luke Griffiths paid Zeus £385, and on 8 September Zeus paid Barclaycard £745. On 16 September, 21 September and 28 September Luke Griffiths paid Zeus £385. On 19 September Zeus paid Barclaycard the same sum, and on both 22 September and 29 September he paid Charlotte £385.
171. The pattern changes on 1 November 2016, when a payment of £5,932 is made to Zeus from the Bubble & Bling current account, and on the same day he makes two payments to Barclaycard, totalling £5931.26. The first Barclaycard statement in the bundle is dated 8 November 2016, and shows that the previous balance on the account was £5632.73. It is improbable that earlier Barclaycard purchases exactly matched David Scott's wages from Luke Griffiths, and therefore payments being made by Zeus in earlier months were probably not discharging the total expenditure in each

month, so that a large balance had built up. The statements for the Bubble & Bling current account show that on 1 November 2016 the account began the day overdrawn £1,766.85. But on that day two transfers were made into it from the Bubble & Bling saver account, of £2,000 and £11,000 respectively, and out of those credits a transfer was made from the current account (as I have said) to Zeus of £5,932. At the end of that day the Bubble & Bling current account (taking account of other transactions) was in credit to the tune of £5,355.09.

172. But this was not in fact the first payment out of the Bubble & Bling saver account. The first such payment was two weeks earlier on 18 October 2016, when £1,450 was transferred out of the account to the Bubble & Bling current account. On the same day this sum was transmitted out of the current account by an online bill payment to someone called “Karen Elbow Ref SMART”. Subsequently, on 23 February 2017, the sum of £4,000 was paid out of the saver account to the current account, which was then overdrawn in the sum of £1,917.19, producing a credit balance of £2,082.81. On 27 February 2017, £2200 was paid from the current account to Zeus’s personal account (with the reference “Barclaycard”). On the same day, £2,185.13 was paid out of Zeus’s account to Barclaycard. On 15 March 2017 £3,000 was paid out of the saver account to the current account, on 27 March £2,000, and on 5 April £1,000. The first payment (15 March 2017) covered a cash withdrawal at Barclays Newquay on the same day of £2,200, the second (27 March) helped to cover the transfer to Zeus’s personal account on the same day of the sum of £3,000 (with the reference “Barclaycard”, which went out of Zeus’s account the same day to Barclaycard), and the third (5 April) reduced the current account overdraft from £2,231.40 to £1,231 40.
173. The next payment out of the saver account was £2000 on 2 May 2017, to the current account. Unfortunately, the relevant page in the bundle is missing (it should be page 3 of the account for the period 8 April to 5 May 2017, and should therefore be between pages 750 and 751 of bundle 3). But it is clear from the bank statements for Zeus’s personal account that on 2 May 2017 he received a transfer from the Bubble & Bling current account of £2,600, which went out of his account to Barclaycard on the next day 3 May 2017. At the end of June there were three payments out of the saver account to the current account, one of £1,116 on 30 June, one of £946 and another of £2,000, both on 4 July. The sum of £1,116 was paid out on the same day it was received, to Smart Innovation with the reference “PINK SMART CAR”). From the sum of £946, £692 was paid out on the same day to Zeus’s personal account with the reference “Barclaycard” (from which the sum of £691.61 was paid to Barclaycard on the same day). Also on the same day, I note that there were two card payments to Ryanair from the Bubble & Bling current account, one for £104.96 on 30 June and one for £56 on 2 July. The sum of £2,000 received on 4 July 2017 wiped out an overdraft in the sum of £1,700.70 and turned it into a credit balance of £299.30.
174. There were further payments out of the saver account to the current account on 9 August 2017 (£1,000) and 4 September 2017 (£1,500). Out of the current account, payments were made on 9 August 2017 of £1,117.20 to TLG Brands Ltd, with the reference “Bubble and Bling”, and 4 September 2017 of £900 to Zeus’s personal account, with the reference “Barclaycard” (which went out again on the same day to pay Barclaycard). Next, there was a payment of £6,000 from the saver account to the current account on 24 October 2017. On the same day (but debited the next), £5,000 was paid directly to Barclaycard. The other £1,000 went to reduce the overdraft which



before the receipt of the £6,000 stood at £1,758.96. On 20 November 2017 there was a payment from the saver account to the current account of £720. The same day (but debited the next) there was a card payment from the current account to Creation Online in the sum of £1,300.

175. On 15 January 2018 there is a payment out of the saver account to the current account of £789, and on 6 February 2018 in the sum of £2,000. On the same day there is also a further transfer of £2,000 out of the saver account to a different account (at the same Barclays branch) 43859304, with the reference “Koolart”. I do not know whose account that is. On 15 January 2018 there are two online bill payments from the current account, one to Ralawise Ltd and the other to Powder Design Ltd, totalling nearly £1,000 between them, each with the reference “Bubble and Bling”. On 6 February 2018, an online bill payment was made out of the current account to Koolart, with the reference “Dave Scott Decal”, in the sum of £1,799.99. On the same day, there was also a transfer from the account 43859304 (to which £2000 had been paid from the saver account on the same day) to the current account of £1,990. This turned an overdraft of £1701.42 to a credit of £288.58, though I note that on the same day (but debited the next) there was a card payment from the current account to Barclaycard of £800.
176. On 1 March 2018 there is a payment from the saver account to the current account of £1325, and a further payment to the same account on 6 March 2018 of £600. Also on 1 March, there is a card payment out of the current account to Barclaycard in the sum of £1200, and on 6 March 2018 there is an online bill payment (out of the same account) to Koolart, again with the reference “Dave Scott Decal”, in the sum of £600. On 4 April 2018 there is a payment out from the saver account to the current account of £4,700. Prior to that payment the current account was in overdraft in the sum of £1,852.45, and on the same day (but debited the next) a card payment to Barclaycard was made out of the current account of £2,200. On 30 April 2018 two payments were made from the saver account to the current account, one of £999.85 and the other of £2,450. Prior to those payments the current account was in overdraft in the sum of £2459.94. On the same day card payments were made out of the current account to Creation Online in the sum of £800, and to Barclaycard in the sum of £1300 (but in each case debited to the account subsequently).
177. On 4 June 2018 the sum of £2000 was transferred from the saver account to the current account, and on 7 June the sum of £3000 was similarly transferred. On 3 June 2018 a card payment had been made out of the current account to Creation Online of £2000, but only debited to that account on 4 June 2018. On 6 June 2018 a card payment had been made out of the current account to Barclaycard in the sum of £2400, but only debited on 8 June 2018. On 25 June 2018 a further sum of £2000 was transferred from the saver account up to the current account, which reduced the overdraft from £2060.04 to £60.04. On 23 July 2018 the sum of £10,000 was transferred from the saver account to the current account. This is the payment referred to in the evidence of Zeus as Charlotte’s “paying off” David. So far as I can see, there are no further statements in the bundle for the business saver account. The balance carried forward as at 7 August 2018 was £30,025.12. I make the total of payments out of the saver account to the current account to be £71,595.85. This includes the sum of £2000 that went out of the saver account on 6 February 2018 via account number 43859304 and ended up (less £10) in the current account on the same day.

178. So far as concerns other documents in the bundle, in the last few paragraphs I have mentioned ‘Koolart’, which appears to be a company based in Eastbourne. This company granted David Scott/Bubble & Bling licences from 2014 to reproduce cartoon caricatures, for which fees were invoiced and paid. I have also mentioned a company called Ralawise Ltd. In the bundle there is an email correspondence between David Scott and Jamel Masaoud of that company in September 2014. One curious feature of this correspondence is that David Scott is using the email address “charlotte@bubbleandblingboutique.co.uk”. In addition to this, I have already referred to the interview with trading standards officers on 13 April 2015, where David Scott admitted that Bubble & Bling belonged to him alone, and admitted applying for accounts in Charlotte’s or Zeus’s names because he could not get credit lawfully or would have failed a credit check. I have also referred to and discussed the purported agreement of 17 December 2016, and to the undated email (timed at 09:58) from Luke Griffiths to Charlotte, saying “I can confirm that I have never taken wage payment instructions from anyone except my direct employees.”
179. Lastly, there is an email in the bundle from Luke Griffiths to David Scott dated 29 July 2018, which relevantly reads:
- “Very sad about all that has happened, but you need to understand that once any doubt about honesty occurs I have to protect myself, there is too much at stake. Messages I have seen are too incriminating, postage costs going back to 2016 are too high and have Hermes deliveries to Hayley which I do not understand!”
180. At trial, during the re-examination of Charlotte Bridge by the defendant’s counsel, David Scott intervened to suggest that the court should seek further evidence from the police regarding the state of their investigation. In my judgment, it was far too late for him to do this. As I have said, our system is one in which the parties look for and use the evidence they wish to rely on. It is not for the judge to investigate, let alone on his or her own. In the defendants’ written closing submissions, counsel dealt with this by seeking to put in evidence in the form of an email correspondence with the police. In all the circumstances, however, I do not need to deal with this further.

### *Decision*

181. The Part 20 claim is that loans were made out of the Bubble & Bling Saver account to David, to be repaid by using David’s wages from Luke Griffiths. But it is also said that David’s wages from Luke Griffiths were used to pay Zeus’s wages when he worked at Bubble & Bling. One problem with this is that David’s wages were first paid to Zeus in March 2016, although the “inheritance” money itself was not paid out of the claimant’s account to the Bubble & Bling Saver account until September and October 2016, and the first transfer out of the account to the Bubble & Bling current account was made in October 2016. Secondly, Zeus worked for Bubble & Bling from 17 October 2016 (after finishing at Jambo) to the end of May 2017 (before joining Acorn Recruitment). So in March 2016 he could not have needed Luke Griffiths’ money as a resource to pay his own wages out of. Yet that is when (so far as I am aware) the payments from Luke Griffiths began to be made to Zeus.
182. In my judgment, however, David’s story about *not* having had money from Zeus also faces difficulties. The email from Luke Griffiths to Charlotte shows that Mr Griffiths

paid David's wages only into the account designated by David himself. So, since they were paid into Zeus's personal account, that means that David must have so directed. There is no sufficient evidence of intention to pay them first into the Bubble & Bling current account, and then to pay them into the claimant's account. Secondly, I have held that David owned Bubble & Bling, and controlled the Bubble & Bling business current account. He would therefore have known long ago that his wages were not being paid into it, without waiting for this litigation.

183. Moreover, the claimant's evidence did not mention the loan that David says she made to him and Charlotte, even though what appears to be the claimant's signature is on the copy in the bundle. Nor did she say anything about expecting David's wages to be paid into her account, let alone that she had not received them. Indeed, if she was truly intended to receive the wages, there would be no reason to pay them firstly into the Bubble & Bling account and then out again to the claimant's account. As the email from Luke Griffiths shows, David could have given the claimant's bank details for his wages to be paid directly to her. But apparently he did not. And the fact that he did not call Luke Griffiths to support his story, though – as he himself said – he could have done, is telling.
184. I find that the document purportedly recording a loan agreement of 17 December 2016 was drawn up much later, after the breakup with Charlotte, and in order to provide a plausible reason for his wages from Luke Griffiths to have been received by others. But his explanation for why the agreement does not bear Charlotte's signature is feeble. He could have taken it back to Cornwall and got her to sign it there. If the claimant wanted it back in her possession, he could have posted it to her. After all, he did that with the claimant's "will". The obvious explanation is simply that, by the time it was drawn up, Charlotte and he had broken up, and she would not have signed it. In any event, it purports to be an agreement between the claimant and David at a time when David and Charlotte were still married, and when the claimant trusted Charlotte in preference to David. In my judgment she would never at that time have agreed to sign such a document without reference to Charlotte. My conclusion therefore is that this is evidence fabricated by David at a later stage of the litigation. In view of the fact that it was not put to the claimant, I make no finding as to whether in fact she signed it, let alone whether (if she did ) she understood what it was.
185. I also find that David knew very well he was recording the conversation with Charlotte on 28 June 2018. I do not accept his story about taking the wrong iPad. He knew what he was doing. I do not know whether the transcript in the bundle is an accurate transcript of the recording itself, because I have not heard that. In any event it is not complete, and if David were telling the truth about the software always recording telephone conversations automatically, it would have recorded the whole of this one and not started in the middle. But in any event I am quite satisfied that the part that has been transcribed reads clearly as though David is trying to get Charlotte to admit that she is blackmailing him, but that she (who does not know this is being recorded) is saying that she is not. All the references to blackmail are instigated by David, and not by Charlotte. Charlotte asks repeatedly whether David wants to get their marriage to work, but David says he is "letting [her] go" so that she can find "somebody normal that does not drink, that is not angry".
186. On the material before me, I find that David Scott *did* get his hands on substantial sums out of the "inheritance money" paid into the Bubble & Bling business saver

account. In my judgment he had always intended to do this, by agreeing with, and encouraging, Charlotte to transfer the money out of the claimant's account in the first place. From David's point of view it was a single scheme. His mother would not give him the money that he had discovered she had inherited from her late husband, so he managed to arrange for it to leave her account and get into the hands of someone who could be prevailed upon to let him have access to it.

187. From the saver account, the money has gone in instalments to the current account (controlled by David Scott) and has been used then either to reimburse Zeus for the Barclaycard bills, or to pay those credit card bills direct, or to pay other liabilities of David's business, Bubble & Bling. In any of these ways, he has had the benefit of the claimant's money. Essentially, David Scott has had £71,595.85 from the saver account. Into that account £89,500 of the claimant's money was paid, but also £12,120.97 from other sources, making a total of £101,620.97. On the final bank statement I have seen for the saver account, there was a credit balance carried forward of £30,025.12 on that account. This sum added to £71,595.85 makes the same total of £101,620.97.
188. I find that the payments to David Scott, via the Bubble & Bling business current account, were not gifts to him. It is clear from the use by Zeus of David Scott's wages from Luke Griffiths to reimburse the credit card account payments and later to pay himself wages that Zeus expected monies transferred to David from the saver account to be restored at a later date by him. Zeus's evidence is that £60,865.65 of these payments to the current account were loans to David Scott, and I so find. David Scott denies that there were any loans, and therefore offers no evidence of any repayment. Zeus however accepts that David Scott has (via his wages) repaid some of this. He pleads that some £25,000 remains outstanding. David does not accept this. And, at trial, the matter was not gone into in detail.
189. However, Zeus's witness statement says that he received £360 per week from Luke Griffiths from December 2016, which later increased to £440 per week. I understand these payments to be what Zeus accepts as repayments by David Scott of the loans to him. In fact, the bank statements show variable amounts being paid at first, but settling down at £385 per week by April 2016 and increasing to £440 per week by the end of July 2017. From December 2016 to July 2017 there are 36 weeks (at £385) and from July 2017 to July 2018 there are 52 weeks (at £440). I make these sums (with Mr Sharples's help) to be £13,860 and £22,880 respectively, which total £36,740.
190. Mr Crozier, in comments on my circulated draft judgment, reminded me that it was out of this sum that Zeus's wages whilst employed at Bubble & Bling had been paid. These must therefore be taken into account. In my draft judgment, I had overlooked this, and I agree with Mr Crozier that these payments must be deducted. Mr Crozier says they are for 31 weeks and four days at £250 per (five day) week, which makes £7,950. Mr Scott, on the other hand, in *his* comments on the draft judgment says that, in fact, Zeus was paid only £6,900 over that period. In other words, he was not paid £250 every week. He also says that the total Zeus received from Luke Griffiths was £45,551.25, not £36,740. Finally, he says that the £10,000 payment to him which is referred to above in paragraph 177 above was never received by him.
191. The problem for Mr Scott is that the fact-finding procedure in this trial is already over (this is, incidentally, made clear in para 21.108 of the *Chancery Guide*, a copy of

which paragraph was circulated with the draft judgment). Mr Scott had his opportunity at the trial to present the evidence he wished in relation to these issues. In my judgment it would be unfair to take into account fresh evidence and change the facts found without revisiting the whole of these factual issues, in another hearing, at which everyone concerned could also present fresh evidence. That is not how the courts work. A trial is not a dress rehearsal, to be repeated if it does not produce the desired effect. Instead, it is the one and only performance. What Mr Crozier (and for that matter Mr Sharples) was doing in post-judgment comments was pointing out that, *on the facts that I had found*, I had then produced both a manifest arithmetical and a manifest logical error. I found as a fact that Zeus was paid £250 per week from 17 October 2016 to the end of May 2017. It is too late for David Scott to adduce evidence (untested and indeed not previously disclosed to the other parties, let alone put to Zeus) that Zeus worked for a shorter period than this and did not work every weekday, or that the amount paid by Luke Griffiths to Zeus was more than that shown by the evidence. Accordingly, I must proceed on the basis that the sum to which Zeus was entitled as wages was £7,950, and that that sum deducted from £36,740 is £28,790. That deducted from £60,865.65 leaves £32,075.65 outstanding. I therefore find that, of the loans made to David, £32,075.65 remains outstanding.

192. It is clear from the documents in the bundle that David has accused Charlotte and Zeus of stealing the money from his mother. I am not required to make any decision about that, and do not do so, but I observe that, on the findings I have made, if it *were* a case of theft, then David would appear to be at least as involved as they were. So it was unfortunate for him that, being so involved, he was simultaneously (i) carrying on an extramarital affair which was then discovered, and (ii) stealing from his employer, which his wife already knew about. That directly led to both his marriage breakup and his losing his job. It also led to the direct rupture between the claimant and Charlotte, because the claimant resented Charlotte's telling David's employer about his thefts. That in turn led to the present litigation. Although he is not the only one in the wrong in this litigation, all roads ultimately lead back to David.
193. I also find that David agreed to his wages from Luke Griffiths being paid over into Zeus's bank account. But in my judgment this was not originally done in order to pay Zeus's own wages for the work which he did for David, trading as Bubble & Bling, or to repay the sums that he had borrowed from the "inheritance". This is because in March 2016 neither of those things had happened. Nor was it done – as David said – because he could not have a bank account. He could. But he could not have a business account with an overdraft facility. Instead, I find that the wages were paid into Zeus's personal account because he was incurring liability on the credit cards in his name but operated by David for his own purposes, and Zeus wanted funds for the repayment of the charges incurred. After Zeus began to work for David's business in October 2016, he was also able to use these monies to pay his own wages. As Zeus said in his evidence, whatever was left over out of the money from Luke Griffiths was to be paid to Charlotte's bank account (which was in fact joint with David). There is no evidence before me as to what happened to it after that.

*Law*

194. Claims to contribution and indemnity arise both at common law and in equity (in relation to debt claims) and under the Civil Liability (Contribution) Act 1978 (in relation to other kinds of claim, including in tort, contract and breach of trust). There

are also some specialist regimes for contribution and indemnity with which we are not concerned in this case. Section 1 of the 1978 Act relevantly provides:

“(1) Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).”

And section 6 relevantly provides:

“(1) A person is liable in respect of any damage for the purposes of this Act if the person who suffered it ... is entitled to recover compensation from him in respect of the damage (whatever the legal basis of his liability, whether tort, breach of contract, breach of trust or otherwise).”

195. It was said by the Court of Appeal in *Friends' Provident Life Office v Hillier Parker May & Rowden (A Firm)* [1997] QB 85, 102, that, despite the references to “compensation” in section 6, claims in unjust enrichment fell under the regime of the 1978 Act. But this view was criticised by the House of Lords in *Royal Brompton Hospital NHS Trust v Hammond* [2002] 1 WLR 1397, 1413, per Lord Steyn (with whose speech all their lordships agreed), who said this was not the law. The point was not argued before me, so I shall therefore proceed on the basis that the 1978 Act does not apply to unjust enrichment claims.

#### *Application of law to facts*

196. The third party (Zeus) claims an indemnity from the third party (David Scott) on the pleaded basis extending to “all and any sums received or used by the third party”. I have held that, of the £89,500 paid from the claimant’s account to the business saver account, £71,595.85 was paid out to the business current account, controlled by David Scott, where it was consumed for the purposes of his business Bubble & Bling and his own private purposes. But I am not aware of any authority that holds that, where A pays money to B in circumstances in which a claim to unjust enrichment lies against B, mere receipt of money by C from B renders C liable for a claim for contribution or indemnity from B. Nor, so far as I can see, does the fact that B *lends* some of the money to C make any difference. Certainly, no authority was cited for the proposition that it did.
197. Nor is this a case of ministerial receipt, where A pays B, who is C’s agent, and pays over the money to C (see *eg Portman Building Society v Hamlyn Taylor Neck* [1998] 4 All ER 202, 207). I can see that, where B and C are co-adventurers in a scheme to obtain money from A, in circumstances that give rise to a claim by A against B, B may well have some kind of claim over against C. But that is not the case which is pleaded or argued here, even though I have found that that is more or less what has in fact happened. The claim for indemnity accordingly fails.
198. On the other hand, the third defendant has pleaded loans to David Scott out of the business saver account, which I have found on the evidence to amount to £60,865.65, and of which David has repaid £28,790. That leaves £32,075.65 outstanding. It is not necessary that the prayer for relief should include a claim for an order for payment of this debt. It is sufficient if the third defendant has pleaded it and proved it, as I hold

that he has. Accordingly, I will order David Scott to repay the sum of £32,075.65 to the third defendant, Zeus.

### **David Scott's counterclaim to the Part 20 claim**

199. David's counterclaim is in unjust enrichment, in respect of wages owed to him but received by the third defendant. On the findings of fact that I have made, this counterclaim is hopeless. First of all, I have found that David agreed to his wages being paid by Luke Griffiths to Zeus. He agreed to this to provide funds to Zeus to discharge the credit card bills that David was incurring in running his business. Subsequently David agreed to this money also being used to pay Zeus's wages when he worked for David, and also to repay loans made to him out of the business saver account. Secondly, Zeus has not been unjustly enriched. He has – as agreed with David – used the money paid to him to discharge liabilities incurred by David to others or to himself. The counterclaim accordingly fails.

### **CONCLUSION**

200. In my judgment, the claimant's claim succeeds in respect of all three heads, although in relation to the first and third of these only giving rise to a personal remedy. The third defendant's Part 20 claim against the third party succeeds as to the outstanding loan balance of £32,075.65, but otherwise fails, as does the third party's counterclaim.