



Neutral Citation Number: [2022] EWHC 1080 (Ch)

BR 2021 000043

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF SHAFQAT MOHAMMAD MAJEED (IN BANKRUPTCY)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 16/05/2022

Before :

ICC JUDGE BARBER

Between :

(1) HUGH FRANCIS JESSEMAN
(2) PAUL DAVID ALLEN
(AS JOINT TRUSTEES IN BANKRUPTCY OF
SHAFQAT MOHAMMAD MAJEED)

Applicants

- and -

(1) GAZALA ALI
(2) IMTIAZ ALI

Respondents

Sri Carmichael (instructed by Clyde & Co) for the **Applicants**
Mark Warwick QC (instructed by Rainer Hughes LLP) for the **Respondents**

Hearing dates: 11 November 2021 and 17-18 February 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be sent to The National Archives for publication. The date and time for hand-down is deemed to be 9.30 a.m on 16 May 2022

.....

ICC Judge Barber

1. This is the application of the Trustees in Bankruptcy of Shafqat Mohammad Majeed seeking declarations and related relief in respect of a freehold dwelling-house known as Babington, Firs Road, Kenley CR8 5LG, registered at HM Land Registry under Title Number SGL575060 ('the Property').
2. The registered proprietors of the Property are the Respondents. The Applicants maintain that Mr Majeed owned 50% of the equitable interest in the Property at the time of his bankruptcy and that this 50% share in the equity now vests in the Applicants as his Trustees. They seek declaratory relief and orders for possession and sale on that basis.
3. In the alternative the Applicants maintain that in 2015, Mr Majeed loaned Mr Ali the sum of £125,000, that the loan was repayable on demand, that repayment was demanded in 2020 (or thereafter) and that the loan remains outstanding. Under this alternative head of their claim, the Applicants seek an order that Mr Ali pay the sum of £125,000 together with interest.
4. The Respondents fully contest both limbs of the application.

Background

5. The Respondents married on 20 December 1998. They purchased a house in Shenley in their joint names, with the assistance of a mortgage, as their matrimonial home. On 1 October 2001, they had twins, Fiza and Firas.
6. On 1 May 2002 the Respondents sold the Shenley property and purchased the Property as their matrimonial home. The purchase of the Property was funded by a mortgage in their joint names with Northern Rock Building Society. At all material times, the Respondents have been registered at HM Land Registry as the joint registered proprietors of the Property.
7. After the Property was purchased, the original mortgage loan was increased to approximately £500,000. Following the demise of Northern Rock, the mortgage was transferred to Topaz Finance Ltd, which remains the mortgagee.
8. In 2009, the Second Respondent, Mr Ali, was convicted of harbouring concealing or dealing with controlled drugs contrary to section 170(1)(b) of the Customs and Excise Management Act 1979. The drugs in question comprised 119.7 kilos of cannabis. Two co-accused were also convicted. The trial judge sentenced Mr Ali to 8 years' imprisonment. Mr Ali was also the subject of confiscation proceedings. These began in 2011 and in January 2013 a confiscation order under the Proceeds of Crime Act 2002 was made against him in the sum of £2.2m. The order required the sum of £2.2m to be paid within 6 months, in default of which Mr Ali was to serve an additional 8 years' imprisonment. Mr Ali appealed that order. On 19 November 2014, the Court of Appeal dismissed his appeal.
9. As a result of these confiscation proceedings, the Second Respondent had to sell two properties that he owned. In addition, the Crown secured a restraint over Mr Ali's

50% interest in the Property. This 50% interest was valued at £125,000. The restraint was protected by a restriction on the title to the Property at HM Land Registry.

10. The Respondents were very keen to avoid the sale of their family home. To avoid a sale, they needed to raise £125,000. Mr Ali had a friend, Mr Majeed, based in Brighton. He was a businessman and was willing and able to provide the sum of £125,000 required.
11. The terms upon which Mr Majeed was prepared to provide this sum are a matter of dispute between the parties.
12. Mr Majeed's solicitor at the time was Mr Hastilow of Bosley & Co. Mr Ali's solicitor at the time was Mr Swan of the Stokoe Partnership.
13. After an introduction by Mr Swan, Bosley & Co dealt directly with the Crown's lawyers and agreed with them that, upon payment of the £125,000, the restriction upon the Property in favour of the Crown would be discharged.
14. The money was paid in two tranches, comprising £60,000 and £65,000, to HMRC on 23 June 2015 and 1 July 2015. There is no dispute that these sums were paid. The Crown's restriction was discharged.

The 2015 correspondence

15. Bosley & Co did not draw up any documentation to confirm or evidence the basis upon which Mr Majeed paid the said sum of £125,000 to discharge the restriction on the Property. In fact, there is very little correspondence in evidence charting the dealings between Bosley & Co, the Stokoe Partnership and the CPS in relation to the payment of £125,000. Such correspondence as there is in evidence provides as follows.
16. By email dated 21 May 2015 from Mr Hastilow of Bosley & Co (Mr Majeed's solicitors) to Mr Swan of the Stokoe Partnership (Mr Ali's solicitors), Mr Hastilow wrote:

'Dear Mr Swan

Thank you for your emails ...

Having discussed the matter with my Clients we confirm we accept the position with regard to what the CPS say in the extremely unlikely event that any Confiscation Order was made against my Client and in the circumstances perhaps you would kindly let us know what the next step required is.

The money is to be sent to a Bank Account, we will of course need to know the full details and any references required for the funds being sent.

Kind regards

Mike Hastilow'

17. By email dated 22 May 2015 from Mr Swan to Mr Hastilow, Mr Swan replied (with emphasis added):

‘Dear Michael,

Please find enclosed confirmation from the Crown for you to proceed to make payment of £125,000 (your previous email indicated it was £150,000) on the terms previously set out.

The account details are HMCTS account number 27050084, Sort code 56-00-33 ref 130003120/ALI (you should also add reference Babington).

Once you make the payment and the Crown will release the restrictions on the property *and you will be free to protect your client’s investment /loan.*

Any problems please let me know

Many thanks

Brian’

18. By a further email dated 27 May 2015 from Mr Swan to Mr Hastilow, Mr Swan wrote

‘Dear Michael

Can you confirm when the money has been sent so I can chase from my end

Many thanks’

19. By email dated 23 June 2015 from Mr Hastilow to the CPS, Mr Hastilow wrote:

‘As you know we act for Shafqat Majeed and it has been arranged through Brian Swan that our Client will discharge the Crown’s Claim under the Confiscation Order in respect of [the Property] by paying the sum of £125,000. On that basis we understand that you will Discharge the Charge and remove the Restriction.

We have today transferred to your accounts the sum of £65,000 on account of this sum and will be sending the balance of £60,000 in the next day or two. We will also confirm to you when those monies have been sent to the credit of the account.

The payments have been marked with the reference 130003120/Ali-Babington.

Kind regards

Mike Hastilow’

20. Five minutes later, Mr Hastilow emailed Mr Swan as follows:

‘Dear Brian

Just to let you know that we have now transferred £65,000 of the £125,000 required to Discharge the Confiscation Order and written to the CPS accordingly (as per the attached).

I will let you know as soon as the balance is sent which I anticipate will be in the next two or three days.

Kind regards

Mike Hastilow’

21. By email dated 24 June 2015, Mr McDonagh of the CPS replied to Mr Hastilow’s email dated 23 June 2015, stating

‘Thank you for this. As soon as the monies have reached the HMCTS account, I confirm that we will remove the restriction.

Kind Regards

Peter McDonagh’

22. By email dated 1 July 2015 from Mr Hastilow to Mr McDonagh of the CPS, Mr Hastilow wrote:

‘Dear Mr McDonagh,

Further to my email of 25 June 2015 [which was not in evidence], I am pleased to confirm that I have now transferred the remaining £60,000 to the same account and reference

On receipt of that you will have received £125,000 and I should be grateful if you would then proceed to remove the restrictions etc. and provide evidence to me as to its removal .

Yours sincerely

Michael Hastilow’

The events of 2017

23. The Respondents maintain that by 2017, Mr Majeed had fallen on hard times himself and needed his money back. They say that in late 2017, he contacted them both and asked for the money to be repaid.
24. By 2017, Mr Ali had come out of prison and had gone to live in Dubai. He was granted residency in the UAE on 21 October 2017. He remained married to the First Respondent, Mrs Ali, but she and their children continued to live in the UK, visiting Mr Ali in the UAE from time to time. The Respondents felt that the UK would be

best for their children's education. The Property remained the home of Mrs Ali and her two children.

25. The Respondents maintain that they agreed between themselves that £125,000 would be borrowed in Dubai and paid to Mr Majeed. To that end, a loan of sterling equivalent £125,000 in dirhams (approximately 613,822.00 dirhams) was agreed with Easy Access Documents LLC ('Easy Access').
26. The Respondents' case is that, on 20 December 2017, they drove to the offices of Easy Access at the Al Barsha Mall in Dubai, that Mrs Ali signed a loan agreement at those offices, and that at the timing of signing that loan agreement, they collected the loan money in cash. I pause here to note that the loan agreement is in evidence. The Respondents say that having collected the loan money, they then drove to the Concord Tower, about 10 minutes away, to meet with Mr Majeed's appointed agent at the offices of DJD International, and handed over the cash. Mr Majeed gave evidence confirming that his appointed agent was handed the cash in Dubai on 20 December 2017. As far as Mr Majeed is concerned, the debt has been repaid.
27. The Applicants dispute that this repayment ever took place.

M & O Trading Limited's liquidation in 2018

28. On 12 December 2018, M & O Trading Limited, a company of which Mr Majeed was formerly a director, entered compulsory liquidation. William Antony Batty, Stephen Evans and Hugh Jesseman of Antony Batty & Co were appointed as joint liquidators of M & O Trading Limited the same day.

Mr Majeed's bankruptcy in 2019

29. On 22 May 2019, Mr Majeed was made bankrupt. The Applicants, Paul Allen of FRP Advisory LLP and Hugh Jesseman of Antony Batty & Co were appointed as his Trustees in Bankruptcy by a Secretary of State appointment on 23 May 2019 with immediate effect.

The BPIQ

30. On 29 May 2019, very shortly after being made bankrupt, Mr Majeed completed a bankruptcy preliminary information questionnaire (BPIQ) for the Official Receiver and attended an interview with one of the OR's examiners. The BPIQ contained a perjury warning and was signed and dated by Mr Majeed.
31. Section 2 of the BPIQ required details of assets owned by Mr Majeed. In section 2.1(f) of the BPIQ, in response to the question 'Money owed to you', Mr Majeed wrote 'none'. In section 2.1(j) of the BPIQ, in response to the question 'freehold land and property', Mr Majeed wrote 'only house 75B Dyke Road', a reference to his former matrimonial home. Section 7.1 of the BPIQ required Mr Majeed inter alia to list all properties that he owned or had an interest in. He listed simply 75b Dyke Road (his former matrimonial home in Hove), ticked the 'owned' box, gave the full address and added '4 bedroom'. At 7.4, Mr Majeed confirmed that 75b Dyke Rd was co-owned with his wife.

32. In section 13.1, Mr Majeed was required to list his liabilities. In addition to utilities and HMRC, he ticked 'guarantees'. From the list of creditors given in section 13, it appears that, by the time of his bankruptcy, Mr Majeed owed an estimated total of £460,000 in respect of personal guarantees.
33. In section 16.1, he listed his dependents as his wife and two children, then aged 8 and 2. In section 17.1, under 'salary or wages', Mr Majeed declared a currently weekly salary of £392, adding 'possible pay rise to 1k a week'. I pause here to note that this is an example of Mr Majeed volunteering information potentially helpful to the OR and his Trustees.
34. By the time of completing the BPIQ, Mr Majeed had left the former matrimonial home and was living with his girlfriend. In section 17.5, under 'partner's income', he wrote '£750 I think'. He gave details of his expenses in section 18. At section 25.1, when asked the reason for his insolvency, he wrote 'my bankruptcy is for P.G. on M & O Trading'.

The OR Interview

35. In addition to completing the BPIQ on 29 May 2019, Mr Majeed was also interviewed on that day by Ms Cackmore, one of the OR's examiners. The notes of the interview were in evidence before me. The interview notes again contain a clear perjury warning and each page of the notes is signed by both Mr Majeed and the examiner, Ms Cackmore. As their accuracy was not challenged, I shall take the interview notes to be an accurate record of Mr Majeed's responses that day. According to these interview notes, Mr Majeed confirmed that HMRC had served M & O Trading Limited with a freezing order in March 2018 which 'stopped our bank account'. Whether he was referring to an actual freezing order, or the presentation of a winding up petition, is unclear on the evidence before me, but makes little difference for current purposes.
36. Mr Majeed also confirmed in his interview with the OR on 29 May 2019 that shortly after M & O's entry into liquidation (December 2018), he had had a 'criminal case starting' in March 2019 which had affected his ability to work. It was clear from the interview notes that this had been a time of crisis for Mr Majeed. At this time, he was in mortgage arrears on his family home and, by March 2019, a mortgage repossession order had been made. The interview notes provide:

'I was in mortgage arrears. Repossession order 29/3. My wife and I got all money together + paid the mortgage co £20k to stop the repossession. The money came from my wife, her own bank acc. I had £4k in cash which was the last of my money + I borrowed some from friends + family – about £8k. This was my sister, she has written off the debt now.'

37. At a later stage in interview with the OR on 29 May 2019, Mr Majeed stated:

'My main asset is my property [in context, the family home]. I missed April + May's payment. I have paid this over the past few months with help from my wife, scooping together wages.'

Prior to this, I was paying the mortgage from my wage at M + O. My wife was not on the mortgage. We have always lived here together, I have 2 girls 8 + 2. We have separated, only recently, this year. I am staying with a girlfriend in Crawley but still able to get in at home in Hove, this is still the best contact address. I think there is about £750k equity in the property.

No car privately owed. My wife has her own car which I can use. No other assets’.

Correspondence with FRP

38. Shortly after the OR interview of 29 May 2019, one of the Applicants, Mr Allen of FRP Advisory LLP, wrote to Mr Majeed by letter dated 31 May 2019. The letter of 31 May 2019 explained that Mr Allen had been appointed ‘as an independent Joint Trustee, in order to ensure that safeguards are in place to deal with any potential conflict issues that may arise as a result of Hugh Jesseman’s concurrent appointment as Joint Liquidator of M & O Trading Limited and ensure that the Joint Trustees’ objectivity is not prejudiced.’ I pause here to note that Mr Jesseman remained a joint liquidator of M & O Trading Limited until 30 October 2021.
39. FRP’s letter of 31 May 2019 gave standard information regarding the duties owed by Mr Majeed to his Trustees in Bankruptcy and sought standard information regarding his assets and liabilities.
40. Mr Majeed responded promptly. On 4 June 2019, Mr Majeed acknowledged receipt of FRP’s letter of 31 May 2019 and completed various forms for the Applicants (including consents for the Applicants to obtain information from HMRC and other third parties) on the same day. In a covering note, he explained that he had separated from his wife and had agreed to carry on covering the mortgage on the family home. He stated that he ‘still sees the kids most days’. He said that the mortgage was in arrears and that he was struggling to pay his own bills which, as he was staying at his girlfriend’s house, were fairly modest, comprising ‘phone bill and food’. He added: ‘*If you would like me to come to your office, I can*’, giving his mobile telephone number.
41. Mr Majeed’s Trustees in Bankruptcy (ie the Applicants herein) did not ask Mr Majeed to interview. As confirmed at trial, they have never interviewed him.

Mr Majeed’s conviction

42. Some months later, in November 2019, Mr Majeed was convicted of VAT and Excise fraud. He is currently serving a 10-year custodial sentence and has been the subject of confiscation proceedings.

Correspondence leading to current proceedings

43. By his second witness statement, Mr Jesseman explains that following Mr Majeed’s imprisonment, FRP made enquiries of and obtained papers from Mr Majeed’s solicitors, Bosley & Co. FRP’s correspondence with Bosley & Co was not in evidence. Nor was there any specific confirmation in evidence of what papers had

been obtained by FRP from Bosley & Co, save for a reference to the handful of emails spanning from 21 May 2015 to 1 July 2015 summarised at paragraphs 16 - 22 above, together with bank records confirming the payments of £65,000 and £60,000 referred to in such emails.

44. Mr Jesseman's evidence was that it was following FRP's receipt of papers from Bosley & Co that further enquiries were made with regard to the payment of £125,000. Certainly, it was shortly after Mr Majeed's imprisonment that FRP appear to have made enquiries of the CPS.
45. By email dated 20 February 2020, Ms Horgan of FRP wrote to the CPS regarding the discharge of the restriction on the Property in 2015. Her email provided as follows:

'Our enquiries into the Bankrupt's affairs suggest that in 2015 the Bankrupt made payments to the CPS via Bosley & Co solicitors totalling £125,000, in order to discharge a confiscation order that was made against an Imtaz Ali and to remove a restriction held over [the property]...

To assist our further enquiries into this matter, I should be grateful if you would provide the following information and documentation :

- . Confirmation that the £125,000 referenced above was received by the CPS;
- . Details of the reasons given to the CPS why the Bankrupt was making the payment to settle Mr Ali's confiscation order /restriction, if any;
- . Documentation relating to the payments made by the Bankrupt to the CPS;
- . Confirmation that the bankrupt was not a party to the confiscation order and had no personal liability to pay the sums to the CPS;
- . Details of the relationship between Imtiaz Ali and the bankrupt; and
- . Any other information that you consider will assist our investigation into this matter.

For the avoidance of doubt, this request is made pursuant to Section 366 of the Insolvency Act 1986'.

46. By email dated 19 May 2020, the CPS wrote to Ms Horgan of FRP:

'I write in response to your original email sent 6 March 2020 [I pause here to note that no email dated 6th March 2020 is in evidence]. We apologise for the delay in sending you a

substantive response - as your query relates to a historical case that is no longer active coupled with all the issues and delays caused by the current pandemic we have had to deal with the more urgent priority cases first.

We have made enquiries into this matter and can inform you as follows:

. Bosley & Co Solicitors contacted CPS in June 2015 to notify that they act for Shafqat Majeed in respect of [the Property]. They stated that the transaction was for £125,000 and that the funds would be sent into parts- £65,000 and £60,000.

. The HMCTS database (which logs all payments made to a defendant's confiscation order) confirms that two payments were made from Solicitors – 23/06/2015 on £65,000 and 01/07/2015 on £60,000 [sic]. Therefore, £125,000 was credited to Imtiaz Ali's confiscation order.

. We have no specific information about the reason given for why Shafqat Majeed made the payment towards the defendant's confiscation order. The only reference from Imtiaz Ali is in witness statements he made in connection with an application to vary his confiscation order under section 23 of POCA. We are not at liberty to disclose the full statement to you as it was prepared in connection with criminal/confiscation proceedings only. However, we can disclose the paragraph in which he refers to [the Property] and this reads as follows:

“At the time of the Order my interest in the property was said to be 50% of the proceeds which amounted to £34,113.50 with the remaining equity belonging to my wife Gazala Ali. Following my incarceration my share of the property, which due to the increase in value in the property in the interim period, had increased to £125,000. My beneficial interest in the property was purchased by for [sic] Mr Shafqat Majeed. The payment of £125,000 was made on the basis that I had relinquished any beneficial interest I had in the property and the Crown would release the property from the Restraint Order made on 22 August 2013. Now that the £125,000 has been paid I no longer have any interest in this property.”

. I'm afraid we do not hold any documentation relating to the payment made by the Bankrupt. The payment was not made to the CPS; it was made directly to the Court who in turn then credit the amount against the defendant's confiscation order account.

. We confirm that the Bankrupt was not a party to the confiscation proceedings and had no personal liability to pay the order.

. We do not know the nature of the relationship between the Bankrupt and Imtiaz Ali. We have asked a Financial Investigator to make some enquiries to see if they can ascertain any link /relationship between them. If we get any definitive or useful information on this point we will inform you.

. Perhaps the persons that might be able to expand on the relationship and the reasons for the transaction are Mr Ali's defence solicitor, Brian Swan of Stokoe Partnership and Bosley and Co Solicitors who dealt with the conveyancing transaction. The contact details for Mr Swan are – bswan@stokoepartnership.com; Tel: 0208 558 8884.

We trust this assists'.

47. It was common ground before me that the witness statement of Mr Ali in support of a variation of his confiscation order referred to in the CPS's email of 19 May 2020 was signed in October 2015. I was taken to no evidence to suggest that Mr Majeed's Trustees in Bankruptcy (the Applicants herein) or their solicitors ever did make follow up enquiries of Mr Majeed's solicitors, Bosley & Co, following receipt of the CPS' email of 19 May 2020. Enquiries appear to have been made after 19 May 2020 of Mr and Mrs Ali, and Mr Ali's old solicitor Mr Swan of Stokoe Partnership, but not of Mr Majeed or Bosley & Co.
48. The next correspondence in time in evidence (exhibited to Mr Jesseman's first witness statement) dates from June 2020.
49. By letters dated 9 June 2020, the Applicants' solicitors, Clyde & Co, wrote to each of the Respondents in materially identical terms. The letter to Mrs Ali stated:

'As part of the Trustees' ongoing investigations, it has come to light that the Bankrupt made payments in June and July 2015 totalling £125,000 to discharge a Crown Confiscation Order restriction against Mr Ali over the Property ('Restriction'). In consideration for the Bankrupt making the above payments to release the Restriction, Mr Ali transferred his beneficial interest in the Property ('Interest') to the Bankrupt. In that regard, we refer you to an extract from a witness statement prepared by Mr Ali in connection with an application to vary a crown confiscation order...

The extract quoted at paragraph 46 above is then quoted.

The letter continues:

'The Interest is therefore an asset of the Bankrupt that vests in the Trustees pursuant to section 306 Insolvency Act 1986.

Please confirm by return that you consent to the Trustees registering a restriction against the Property to reflect the Bankrupt's Interest, and that you will in due course consent to a

voluntary transfer of the Property to be held in your and the Trustees' names. Alternatively, if you have a proposal that you or a third party wishes to make to purchase the Interest please provide this within 14 days, i.e. by 23 June 2020 including proof of funds.

The Trustees reserve their rights to realise their Interest including if appropriate applying to court for an order for possession and sale of the Property. In these circumstances, you may wish to take independent legal advice on the contents of this letter.

We look forward to hearing from you.'

50. Clyde & Co sent chasers on 26 June 2020.
51. Clyde & Co also wrote to the Stokoe Partnership (Mr Ali's old solicitors) by letter dated 9 June 2020. The letter provided:

'We are instructed by the Trustees. We write further to previous correspondence between you, Stokoe Partnership, and the Trustees, copies of which we enclose for ease of reference...'

I pause here to note that the correspondence referred to was not in evidence. The letter continued:

'The Trustees are under a duty to investigate the affairs and dealings of the Bankrupt prior to his bankruptcy and to collecting and realise the assets of the Bankrupt with the intention of enabling a distribution to his creditors. As part of their investigations, it has come to light that during June and July 2015, the bankrupt made payments totalling £125,000 to discharge a Crown Confiscation Order restriction (Restriction) against your client, Mr Imtiaz Ali.. over [the Property].

The Trustees understand that, in consideration for the Bankrupt making the above payments to release the Restriction, Mr Ali transferred his beneficial interest in the Property ('Interest') to the Bankrupt....'

Reference is then made to the quoted extract from Mr Ali's statement in the confiscation proceedings, set out at paragraph 46 above. The letter continues:

'The Interest is therefore an asset of the Bankrupt that vests in the Trustees pursuant to section 306 Insolvency Act 1986. The Trustees are therefore of the view that, as you acted for Mr Ali at the relevant time, you may hold information concerning the circumstances in which it was agreed that the Interest would be transferred to the Bankrupt.

In order to further assist the Trustees with their statutory duties, we request that you provide us all the information and documents in relation to the transfer of the Interest in your possession, including but not limited to copies of your solicitor files on the above transaction and all matters that may have involved your client and the Bankrupt.

Please provide the above within the next 14 days, i.e. by no later than 4 PM on 23 June 2020. This request is made pursuant to section 366 Insolvency Act 1986. The Trustees reserve their rights to issue an application to order that delivery up of the requested information if it is not provided by the above dates.

We look forward to hearing from you.'

52. Mr Swan responded substantively by email dated 24 July 2020, stating (with emphasis added):

'I can confirm I have spoken to Mr Ali and he informs me that his wife, Gazala Ali, *settled the debt* owed to Mr Majeed, and therefore she will be asserting full equitable ownership of the said property.

I am informed she has instructed Mr Panesar from Rainer Hughes Solicitors to correspond with you in this matter and therefore I understand that they will be contacting you shortly.

Kind regards

Brian Swan'

53. By email dated 28 July 2020, Clyde & Co turned their attentions to Mr Panesar of Rainer Hughes, again asserting a claim to 50% of the equity in the Property. A further email dated 5 August 2020 was sent to similar effect. After an initial acknowledgement of receipt dated 28 July 2020, Mr Panesar responded substantively by email dated 19 August 2020, as follows:

'It is correct to say that our clients home was purchased on the 1st May 2002, as evidenced by the office copy entries that you have attached. This property is a home for our client and her two children.

Our clients did not play any part in the confiscation proceedings instituted by the Crown as against Mr Ali. It is correct to say that 50% of the property and equitable interest in the property belonged to Mr Ali. Our client is aware that in order to discharge the Crown Confiscation Order that Mr Majeed did purchase the 50% interest in the property that Mr Ali owned and in consideration of this the beneficial interest in the land as to 50% went to Mr Majeed. We note that you have cited Section 306 of the Insolvency Act 1986...

We are instructed that the bankrupt's estate does not vest in the trustee as the transaction you refer to transferring the beneficial interest to Mr Majeed was thereafter purchased by our client

It is very clear that the property is a family home at which our client resides with her two children. Against this background our client agreed with Mr Majeed that she would purchase his interest in the property by payment of the sums that were advanced by Mr Majeed to a trading account that was operated by Mr Majeed in the United Arab Emirates. Our client obtained a loan in the United Arab Emirates and the monies were paid to Mr Majeed so that the beneficial interest in the property transferred to our client. In effect from this date our client was and is the beneficial owner of the property as to 100%. It is the case that as the interest of Mr Majeed was purchased by our clients that the bankrupt has no interest in the asset that rightfully belongs to Mrs Ali.

We can confirm that we have requested documents from the United Arab Emirates to assist you and we can also confirm that as Trustee you should seek this confirmation from Mr Majeed. In the circumstances our client does not agree to the entering of a restriction against her property as the Bankrupt has no interest in it. Further please note that our client does not and will not consent to a voluntary transfer of the property to be held by her in her name and the name of the Trustee. Please note that our client makes no offer to purchase any interest that the Trustees believe they have as there is no interest that they do have..'

54. By email dated 20 August 2020, Clyde & Co replied, seeking a copy of the requested documents from the United Arab Emirates 'by return', together with 'all other documentary evidence and information' in Mrs Ali's possession relating to the transaction.
55. By email dated 16 October 2020, Mr Panesar forwarded to Clyde & Co a copy of the loan agreement from the UAE. The loan agreement was dated 20 December 2017. Putting to one side the omission of a decimal point (which on the evidence as a whole I am satisfied was simply a typographical error), the amount of the loan was the Dirham equivalent of £125,000. The signatories to it were Mrs Ali of the one part and Junaid Kurikkala, acting on behalf of Easy Access, of the other part. The signatory section includes a company seal bearing the name Easy Access Documents Services LLC. Mr Panesar's covering email of 16 October 2020 stated that: 'The monies were paid to in cash to a company as instructed by the Bankrupt and therefore you should seek confirmation of this position from the Bankrupt directly.'
56. I was taken to no evidence to suggest that the Applicants did seek confirmation of the position from Mr Majeed directly, as suggested by Mr Panesar. In the absence of such evidence, I consider it legitimate to conclude that they did not.

57. Having been sent a copy of the loan agreement on 16 October 2020, Clyde & Co responded to Mr Panesar by email dated 20 October 2020. In addition to raising a somewhat opportunistic argument on the impact of clause 3 of the loan agreement, Clyde & Co demanded evidence that the loan monies referred to in the loan agreement were paid to Mrs Ali and that she had applied the same in purchase from Mr Majeed of Mr Ali's interest in the Property. Pausing there, it will be noted that Mr Panesar had already by his email of 16 October 2020 confirmed that the loan monies were received and paid on in cash. The email of 20 October 2020 went on to warn that if such evidence of receipt of the loan monies and their application was not provided by 3 November 2020, an application for declaratory relief and an order for possession and sale would be issued. This application was then issued in February 2021.

The Trustees' case

58. By their primary case, the Trustees maintain that the arrangements agreed between Mr Majeed and Mr Ali in 2015 and acted on by Mr Majeed gave rise to a constructive trust.

59. On behalf of the Trustees, Ms Carmichael submitted that:

(1) A constructive trust has been held to arise over land where a person acts to their detriment (including by performing an agreed act) in reliance upon an agreement, arrangement or common understanding reached with the owner of the land that they would obtain an interest in the land, and it would be unconscionable now to permit the landowner to resile from their representation. In support of this submission she relied upon four authorities, *Lloyds Bank Plc v Rosset* [1991] 1 AC 107, 132; *Yaxley v Gotts* [2000] Ch 162, per Robert Walker LJ at 177C-G, 179F and 180B-F, per Clarke LJ at 181E-F; per Beldam LJ at 192C-D, 193C-D; *Kinane v Mackie Conteh* [2005] EWCA Civ 45 at [32]; *Herbert v Doyle* [2010] EWCA Civ 1095 at [41], [57], [64]. Ms Carmichael further reminded me that *Yaxley*, *Kinane* and *Herbert* were each cases involving arrangements between the landowner and a third party rather than a cohabiting couple.

(2) In those cases it was held that it did not matter that the agreement between the landowner and the third party to the disposition of land fell foul of section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 ('the 1989 Act') by reason of being made orally rather than in writing, such that it was unenforceable; the saving provision in s.2(5) of the 1989 Act which exempts constructive trusts from the requirement that any agreement for the disposition of land be in writing was engaged.

(3) The constructive trust arises because it would be unconscionable for the landowner to insist on his strict legal rights under s.2(1) of the 1989 Act as a result of the agreement to transfer not being in writing: *Kinane* at [32].

(4) A constructive trust may arise over land without written formalities: s.53(2) Law of Property Act 1925.

(5) The Trustees contended that there was 'no suggestion' that the terms of the agreement between Mr Ali and Mr Majeed were incomplete, unclear or uncertain, or that the interest in the Property in respect of which the agreement was reached was unascertainable. As such, the constructive trust said to have arisen complies with the

certainty requirements in respect of constructive trusts confirmed by the House of Lords in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752, per Lord Scott at [18]-[28].

(6) It was therefore the Trustees' position that, by reason of Mr Ali's agreement with Mr Majeed to transfer him his equitable interest in the Property upon Mr Majeed's payment of £125,000 to discharge the confiscation order restriction registered against Mr Ali's share of the Property, once Mr Majeed had duly paid £125,000 to release the restriction, Mr Ali thereafter held his equitable interest in the Property on constructive trust for Mr Majeed. It did not matter that the agreement between Mr Ali and Mr Majeed was oral only.

(7) There was no credible evidence that Mrs Ali subsequently purchased from Mr Majeed the 50% equitable interest in the Property held on constructive trust for him.

(8) The Court could not be satisfied that it was more likely than not that Mr Majeed's 50% equitable interest in the Property transferred to Mrs Ali prior to Mr Majeed's bankruptcy, such that Mrs Ali became and remains sole beneficial owner of the Property.

(9) Mr Majeed's 50% equitable interest in the Property (held by Mr Ali on constructive trust for Mr Majeed as from 1 July 2015, once the £125,000 had been paid) vested in the Trustees upon their appointment in May 2019, pursuant to section 306 of the Insolvency Act 1986.

(10) Pursuant to their duty under s.305(2) IA 1986 to get in, realise and distribute Mr Majeed's estate for the benefit of his creditors, the Trustees accordingly apply for a declaration as to their beneficial interest in the Property and for an order for possession and sale pursuant to section 14 of the Trusts of Land and Appointment of Trustees Act 1996.

(11) The Trustees contend that a 50% share in the Property is currently worth approximately £200,000 to £300,000. They further maintain that the interests of Mr Majeed's creditors outweigh those of the Respondents, as more than one year has passed since the Trustees were appointed and there are no known or relied upon exceptional circumstance: s.335A IA 1986.

60. By their alternative case, introduced by agreed amendment part-way through trial, the Applicants maintain that the monies advanced by Mr Majeed to HMRC on behalf of Mr Ali comprised a loan repayable on demand. They maintain that demand was made in 2020 and that the said sum of £125,000 remains unpaid. They seek an order for repayment of the £125,000 together with interest.

The Respondents' position

61. Mr Warwick QC confirmed that it was common ground that payments totalling £125,000 were made by Mr Majeed for Mr Ali's benefit in 2015. The terms upon which those monies were advanced were however in issue. The Applicants maintained that Mr Majeed advanced the monies in return for Mr Ali's 50% share in the equity of the Property; an imperfect 'purchase' giving rise to a constructive trust. Mr Warwick QC maintained that the facts of the case lent themselves more readily to

a finding that the monies were advanced by way of a loan, with Mr Ali's 50% share of the Property being informally earmarked as security for the loan; an informal mortgage, akin to a deposit of title deeds or a notional 'conveyance and reconveyance' (in old parlance) without any of the formalities having been observed. In this regard he urged the court not to get 'too hung up on the language used by unsophisticated parties', but instead to look at the substance of what was agreed.

62. In relation to the law on informal mortgages, he referred me to Snell's Equity (34th ed and First Supp) at 37-021, where it is stated:

'Formerly the most important category of informal mortgages was equitable mortgages of land created by deposit of the title deeds. However, such mortgages, like defective legal mortgages, are based on a contract to create a mortgage and are therefore subject to the provisions of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989. Any such contract made after 27 September 1989 must be in writing signed by both parties thereto.'

63. Paragraph 37-021 of the First Supplement to Snell continues at 37-021:

'Some decisions suggest that the courts might be willing to give effect to security agreements, notwithstanding a failure to comply with s.2 of the Law of Property (Miscellaneous Provisions) Act 1989, in reliance upon the doctrine of proprietary estoppel. In *Cobbe v Yeomans Row Management Ltd*, Lord Scott expressed his view that proprietary estoppel could not be used as a means of circumventing s.2, on the basis that equity ought not to contradict a statute by rendering enforceable an agreement that statute has declared to be void where the statute does not contain an express exemption for proprietary estoppel. However, he made clear that this was an obiter comment, and whereas Lord Mance agreed with Lord Scott's speech, Lord Walker expressly considered it unnecessary and inappropriate to consider the issue relating to s.2. Lord Scott's view is analogous to that which obtains where a surety denies the enforceability of a guarantee which does not comply with s.4 of the Statute of Frauds 1677. Consistently with what the House of Lords has held in the surety context [a reference to *Actionstrength Ltd* [2003] UKHL 17], an informal agreement to create a mortgage which does not comply with s.2 ought not, by the mere fact of its existence, to generate a proprietary estoppel in favour of the mortgagee unless there is something further (beyond the mere fact of the mortgage or having agreed orally to create a mortgage) to found that estoppel. But s.2 should not rule out all possibility of an estoppel, if the facts genuinely support it. Facts which might found an estoppel, notwithstanding s.2, could include an express representation that the mortgagee would not rely on the failure to comply with s.2 coupled with detrimental reliance

on that representation, or “conscious engagement” by the mortgagor of the mortgagee’s belief that there is a valid contract. The context within which such representations are made will also be important....’

64. Mr Warwick QC also referred me to Chitty on Contracts (34th ed) at 7-047 to 7-049.
65. Mr Warwick QC submitted that, stepping back, if the Court was satisfied on the evidence that the sum of £125,000 had been repaid to Mr Majeed in 2017, all legal argument fell away and both the Applicants’ primary case and its secondary case must fail. In my judgment, in the circumstances of this case, on the evidence as a whole, that has to be right. Ms Carmichael did not seriously contend otherwise. On a constructive trust analysis, other arguments aside, if Mr Majeed had simply asked for repayment and had been repaid, the unconscionability threshold would not be cleared. On the loan and/or informal mortgage analysis, other arguments aside, if Mr Majeed had asked for repayment and had been repaid, nothing would remain due.
66. Mr Warwick QC went on to remind me that it was the Respondents’ case that the money had been repaid in 2017. He submitted that veracity lies at the core of this case. In considering veracity, he invited the court to distinguish between true contemporaneous documents and comments or descriptions used in later documents.
67. Ultimately, it was clear that much would turn on the evidence.

The Evidence

68. For the purposes of this trial, I have read the following witness statements and their corresponding exhibits:
 - (1) The first witness statement of Hugh Jesseman dated 18 February 2021;
 - (2) The witness statement of Gazala Ali dated 24 May 2021;
 - (3) The witness statement of Imtiaz Ali dated 24 May 2021;
 - (4) The witness statement of Sanjay Panesar, solicitor for the Respondents;
 - (5) The second witness statement of Hugh Jesseman dated 8 November 2021;
 - (6) The witness statement of Steven Marshall dated 10 November 2021;
 - (7) The witness statement of Mr Majeed dated 1 February 2022;
 - (8) The second witness statement of Steven Marshall dated 10 February 2022.
69. I have also considered the other documents contained in the bundles agreed for use at the hearing, to which reference will be made where appropriate.
70. I heard oral evidence from Mr and Mrs Ali and Mr Majeed. Mr Jesseman was excused from attendance for cross examination.

71. Ms Carmichael invited me to exclude Mr Majeed from the hearing whilst Mr Ali gave oral testimony. I declined that invitation. If a court is sitting in public and an application is made to exclude a witness or witnesses, the court may exclude them. But it should only exclude them if the court is satisfied, on the facts and in the circumstances of the particular situation, that it would, for good reasons, be an appropriate step to take. If a court is sitting in public, no one who wishes to be present should be excluded, not even a witness, without some good reason for doing so: *Luckwell v Limata* 2014 EWHC 536. On the facts of this case, Ms Carmichael was unable to persuade me of any good reason why Mr Majeed should be excluded.
72. On the approach to be taken to the witness evidence, Ms Carmichael referred me to the factors summarised in *Phipson on Evidence* at paragraph 45-18 and 45-23, referred to more fully at paragraphs 148-149 below. I confirm that I have taken the same into account.

Mrs Ali's witness statement

73. Mrs Ali's witness statement dated 24 May 2021 was extremely short. Insofar as material, it provides as follows:

‘3. The Second Respondent is my Husband. We were married on 20 December 1998 and have two children. The Property was purchased by me and my Husband on 1 May 2002 and held as Joint Tenants. There is a charge on the Property in favour of Topaz Finance Limited. I can confirm that the amount outstanding on the loan is £500,000.

4. Mr Majeed is a family friend, and our families have known each other for a very long time.

5. My Husband was convicted of a criminal offence and sentenced to a term of imprisonment. Following his conviction, confiscation proceedings were concluded requiring him to make payments in settlement of the same. My Husband asked Mr Majeed to loan him a sum of money to assist him in discharging the amounts due. At the time my Husband had no financial assets, other than our matrimonial home.

6. My Husband agreed that Mr Majeed would loan him the monies, in exchange for his 50% beneficial interest in the matrimonial home. This was never registered at the Land Registry, and to the best of my knowledge no contract was signed to this effect. It was a verbal agreement only.

7. In 2017 Mr Majeed contacted my Husband asking him to repay the loan as he was in financial difficulties. As Mr Majeed had helped my Husband in his time of need, my Husband agreed to help Mr Majeed.

8. It was agreed that I would purchase the 50% beneficial interest from Mr Majeed, so that I would own the whole

beneficial interest. This was in repayment of the earlier loan to my Husband. No contract was signed to this effect. It was a verbal agreement only.

9. My Husband and I hand delivered the monies to DJD International in Dubai, at the request of Mr Majeed.

10. I am the sole beneficial owner in the Property. Mr Majeed no longer holds any interest in the property therefore I cannot see how the Trustee would be entitled to the claim that they have made.'

Mr Ali's witness statement

74. Mr Ali's witness statement dated 24 May 2021 was again, extremely short. Insofar as material, it provides as follows:

'3. It is correct to state that Gazala Ali is my wife. We were married on 20 December 1998 and have two children who are currently both aged 19. The property was purchased on 1 May 2002 and held as Joint Tenants by me and my Wife as the Office Copies will show. There is a charge on the property in favour of Topaz Finance Limited. I can confirm that the amount outstanding on the loan is £500,000.

4. Mr Majeed is a family friend, and our families have known each other for a very long time.

5. It is correct that I was convicted of a criminal offence and sentenced to a term of imprisonment. There were also confiscation proceedings that were concluded by my Solicitors at the time, the Stokoe Partnership, in which proceedings ended up in the Court of Appeal. At the time of this in June and July 2015 I needed to discharge sums of money pursuant to the confiscation order. Mr Majeed is a family friend, and our families have known each other for a very long time. I had known Mr Majeed for many years and confirm that I asked him whether he would be prepared to loan me a sum of money to assist me in discharging the amounts that were due. I confirmed to him that the only asset that I had at the time was my interest in the matrimonial home. Whilst it may be said that the interest in the property was greater financially than the sum of £125,000, at that stage I had no other asset that I could offer as security to Mr Majeed other than the interest that I had in the matrimonial home and this was all I could offer to him at the time. In lieu of the monies that were paid by Mr Majeed my 50% interest in the property was transferred to Mr Majeed. When Mr Majeed agreed to lend me the money it was done on trust, and not as a business deal. This transfer was done verbally, there was no contract or written correspondence. For

this reason no charge was ever registered with the Land Registry. It was a gentlemen's agreement.

6. Ordinarily I would accept that the 50% interest in the property therefore would vest in Mr Majeed, however for reasons that I will allude to below I can confirm that this is not the case.

7. As a result of what happened in the criminal proceedings and the confiscation proceedings, I left the United Kingdom on 20 August 2017. I decided that due to my age and also on the basis that I would be able to work in the United Arab Emirates I decided to start a fresh life and have been based in the UAE since the above date. I have come back to the United Kingdom on 2 occasions but confirm that I now have sought gainful employment in the UAE and also live here. I was granted residency in the UAE on 21 October 2017 and continue to live and work in this country. My wife and Children do come and stay with me in the UAE however it was felt that the United Kingdom would be best for the children's education therefore they live in the matrimonial home when they are in the United Kingdom.

8. Once I had set myself up in the UAE and it was the agreement between Mr Majeed and I that I would return the monies he had loaned to me. In 2017 Mr Majeed told me that he was having difficulties in his business and asked if I was in a position to repay it. He advised he needed the money quickly. It seemed to me that he had overcommitted on some payments he owed in UAE. As our families are very close friends, it was only right that I help him out when he needed it, as he had helped me previously.

9. From further discussions with him it was agreed that my wife would purchase the interest that Mr Majeed had in the property by paying him the sum that was due to him and subject to the earlier agreement that I had with him. After receiving confirmation of this I can confirm that Easy Access Documents LLC agreed to loan the monies to my Wife so that the interest could then be transferred to her as to 100% as I had no want to own property in the United Kingdom as I had made a new life in Dubai. Again, there was no contract or written correspondence in relation to this agreement. It was a gentlemen's agreement.

10. I note that there has been some criticism of the amount that was loaned. I can confirm that the sums of money equate to the sum of £125,000 in Sterling which was then converted into Dirhams and paid in the UAE in the manner stipulated by Mr Majeed. There is also criticism that the loan agreement was not

accompanied or supported by any evidence demonstrating that the monies had been paid. I can confirm that the monies were paid on the instruction of Mr Majeed to a company that I believe he had a trading account with called DJD International which is also based in Dubai and deals in wholesale FMCG items. As is common practice in the UAE the money was handed to my Wife in Dubai and then it was dropped to the Offices of DJD International for the benefit of Mr Majeed. I have never met the people he asked me to drop the money off to before or after the transaction, but they were aware I was going to drop off the money for Mr Majeed. At that stage Mr Majeed confirmed to me that he relinquished his interest in the property and that he agreed that my Wife was now the owner of 100% of the beneficial and legal interest in the property.

11. In the circumstances as Mr Majeed no longer held any interest in the property I cannot see how the Trustee would be entitled to the claim that they have made.'

Mr Majeed's witness statement

75. Mr Majeed's witness statement dated 1 February 2022 was prepared following a legal visit on 1 December 2021 undertaken at HMP Coldingley and attended by the Respondents' solicitors. Insofar as material, it provides as follows:

'3. I would like to make the Court aware that in November 2019 I was convicted by a Jury following a Trial of avoiding the payment of very large is amounts of VAT. I was sentenced to 10 years imprisonment. I am at this stage currently dealing with the confiscation proceedings in that case. Following the request made by Solicitors for the Respondents I make this statement to give the Court my account of my dealings with the Respondents, as to my loaned to them, and its repayment.

4. I have been a long-time family friend of Mr and Mrs Ali. In fact, our families have known each other for many years. However, I have not spoken to Mr and Mrs Ali for several years, and certainly not since I have been in prison.

5. It is my understanding that Mr Ali was subject to confiscation proceedings following a criminal conviction against him. Whilst Mr Ali was in prison I was contacted by his wife who asked to borrow the sum of £125,000 to discharge a restriction on her family home. I was aware at the time that when the request was made the monies were needed to pay funds so that Mr Ali could be released from prison.

6. I agreed with Mrs Ali that I would loan her the necessary sum and from memory the sum was £125,000. Mrs Ali had two children under 18 at the time and I was worried that if I were not to help her, she would lose her family home and be

rendered homeless. It was my understanding that Mr and Mrs Ali had no other financial assets other than their family home. I can confirm that the monies were paid to my Solicitors at the time. I can confirm that no documentation was drawn up by the Solicitors who dealt with the transaction. I was informed that the money was paid to the confiscation unit of the Crown Prosecution Service.

7. As stated, no official documentation was signed in relation to the loan agreement as it was merely an informal agreement. The entire premise of the agreement was based on the close nature of our relationship. As such, I did not charge Mr and Mrs Ali interest on the loan and we did not set a formal date for the repayment. I knew that the Alis were facing financial difficulty so felt it inappropriate to immediately demand repayment of the loan. I merely assured them that they could repay me when their circumstances improved.

8. I transferred the sum of £125,000 into separate instalments of £65,000 and £60,000 into the account of the Solicitors who then sent the payment forward to the confiscation unit.

9. In 2017, I contacted Mr Ali, who had taken up permanent residence in Dubai, because I wanted my loan to be repaid. This was because I had run into financial difficulty myself. Through companies that I was in control of I had a running account with DJD International and had done significant trade with them through my companies Sussex Water Ltd, M & O Trading Ltd and Palace Drinks Ltd. My credit limit with DJD International Ltd was £200,000. I was at my limit at the time and needed to get some payment to reduce this balance. The Liquidators and Trustee should be aware from looking at the companies that historically there was trade between the companies and DJD International Ltd.

10. As I needed the funds, I asked Mr and Mrs Ali if they could pay me back the monies, as I explained I was being put under pressure to pay. They said that they did not have the funds but would try and arrange a loan to them, which they could then pay me back.

11. I do not know about the specifics of the loan agreement taken out by the Alis but I told them to inform me once they had the monies in cash and I specified that it would need to be paid to a company in Dubai.

12. As I was not in Dubai at the time, I instructed Mr and Mrs Ali to drop off the monies to Dharmendra of DJD International at their offices. I spoke with the Ali's over the phone, whilst

they were dropping off the monies to DJD, so that I could ensure the delivery had taken place.

13. Once the cash had been received by DJD they applied this money to my ongoing ledger.

14. After receiving the repayment, I do not and never did consider myself to have an interest in the Property and relayed this to the Ali's.'

Oral testimony

Mrs Ali

76. From Mrs Ali's oral testimony (taken with that of Mr Ali and Mr Majeed) it was clear (and I so find) that her written evidence was incorrect in stating that the arrangements agreed with Mr Majeed were a result of discussions between Mr Majeed and Mr Ali. On the evidence overall it was clear (and I so find) that the arrangements agreed with Mr Majeed in 2015 had been a result of discussions between Mr Majeed and Mrs Ali. Mr Ali was in prison at the time and asked Mrs Ali to approach Mr Majeed on his behalf. On the evidence as a whole, I am satisfied that this inaccuracy was an error and not the result of any deliberate intent to mislead the court.
77. By her initial responses in cross-examination, Mrs Ali accepted the language of purchase at times, when propositions employing that language were put to her by Counsel. Very shortly into her cross-examination, however, she corrected herself, stating that the monies advanced by Mr Majeed were advanced by way of loan. Ms Carmichael maintained that this was an example of Mrs Ali 'backtracking'. I disagree. It was consistent (or at the very least, not inconsistent) with Mr Swan's reference to an 'investment/loan' in his email of 22 May 2015 (see paragraph 17 above). It was also consistent with Mr Swan stating on instruction by email dated 24 July 2020, prior to issue of these proceedings, that Mrs Ali had '*settled the debt* owed to Mr Majeed' (paragraph 52 above). Mrs Ali's written testimony had also used the language of purchase and the language of loan at different points. As Mrs Ali put it in oral testimony: 'I actually asked for it as a loan, "I need to borrow this money"', adding, at a later stage, 'it is an interest but it's not like he's going to purchase it because at some point we had to pay that money back'. Considered as a whole, Mrs Ali's testimony was consistent with what lawyers would term an informal mortgage; that is to say, a notional 'conveyance and reconveyance' arrangement, with Mr Ali's 50% interest in the Property standing as security for a loan, in the context of arrangements agreed between close family friends.
78. Mrs Ali was subjected to rigorous questioning in cross examination on her claim to have repaid Mr Majeed in 2017. She accepted the limits of her own knowledge in relation to how the loan from Easy Access came to be arranged, stating that her husband had organised the loan and that Counsel would need to ask him about that. Ms Carmichael submitted that this was an example of Mrs Ali avoiding answering questions. I reject that submission. From the evidence it was clear (and I so find) that Mrs Ali had not been involved in setting up the loan. It was entirely proper for her to acknowledge that in her responses.

79. Mrs Ali was however clear that the lender was Easy Access, explaining that those running Easy Access knew her husband. She also readily recalled signing the loan agreement at the offices of Easy Access in Al Barsha, which she had attended with her husband, and picking up the loan monies in cash. She explained that she remembered the date clearly, because it was her wedding anniversary. She gave a vivid description of the bag that the cash was handed to her in, describing it as a small toiletry bag containing ‘five or six’ bundles of 1000-dirham notes (roughly equivalent to £200 each).
80. She described the ten-minute car journey to Media City to drop off the cash at the offices of DJD International as arranged in advance with Mr Majeed and stated that Mr Majeed was in telephone contact throughout the journey. She confirmed that the money was dropped off as arranged. When asked who they had handed the money to at DJD International, she stated:
- ‘We just went into the building. It was Concorde Tower, which is where it was and we just went in. There was the receptionist there. We said we’d come to drop off something for Mr Majeed... I don’t know which floor it was, but you know, they took a bit of time coming down in the lift. We didn’t go upstairs; we stayed downstairs in the reception area and a gentleman came down. We handed him the money. We were still on the phone to Mr Majeed, handed over the money and we left.’
81. When it was put to her that it was extraordinary to suggest that she had handed over that much money to a person whom she had never met before without even getting a receipt, she responded:
- ‘You don’t need to meet that person.... Our interest was that Mr Majeed had to be on the phone while his cash was going to be transferred to another person, and it was someone from his offices that he arranged. We never arranged it; Mr Majeed arranged it.... He’s the one who asked, ‘This is where I want it dropped off’ ... so it was that actual office where it was dropped off. So we’re not going to any stranger and handing over a bag of cash. Obviously Mr Majeed had to be aware that it’s coming and he was in full contact with us throughout the journey...’
82. In answer to my question, she acknowledged that she would not walk around in the UK with cash of that amount but stated that Dubai was different – it was a ‘very safe place’. She denied with some feeling any suggestion that she had colluded with Mr Majeed to concoct a story.

Mr Ali

83. Again, Mr Ali’s written evidence was incorrect in stating that the arrangements agreed with Mr Majeed were a result of discussions between Mr Majeed and Mr Ali. As previously found, the arrangements agreed with Mr Majeed in 2015 had been a result of discussions between Mr Majeed and Mrs Ali. On the evidence as a whole, I

am satisfied that this inaccuracy was not a result of any deliberate intent to mislead the court.

84. Mr Ali was clear and direct in his responses. As with Mrs Ali, he kept to what he knew. When it was put to him that Mr Majeed paid the £125,000 in 2015 because he thought he was getting Mr Ali's interest in the property, and that that was the common understanding and/or intention, he said:

‘I spoke to my wife and asked her to ask him to lend the money’.

85. When taken to the extract from his witness statement in the confiscation proceedings quoted at paragraph 46 above, which stated that the payment by Mr Majeed of £125,000 was on the basis that Mr Ali relinquished any beneficial interest in the Property, he explained:

‘I was in prison at the time. I asked my wife to ask him. When lawyers came back and said he is taking 50%, I was surprised but in prison at the time, I didn't speak to him. They told me, I didn't speak to anyone. My solicitors said. I just asked to borrow the money. I didn't have a basis to borrow the money on.’

86. I pause here to note that no contemporaneous transactional documents recording an agreement on the part of Mr Ali to relinquish his interest in the Property were adduced in evidence. Mr Ali later said of the statement quoted at paragraph 46 above:

‘This was the way it was worded. Lawyers did the statement. I just went along with it. ... At the time, I didn't know I would be sitting in court seven years later. I didn't read it word for word’.

87. When later referred to Mr Panesar's email of 19 August 2020 and the reference therein to Mr Majeed having purchased an interest in the Property, he replied (with emphasis added):

‘He loaned the money *against it*. Is it a purchase?’

88. As with Mrs Ali, it was put to Mr Ali in cross-examination that he had changed his story after issue of the proceedings. Again, however, for reasons already explored, Mr Ali's account of having *borrowed* the money from Mr Majeed was consistent (or at the very least, not inconsistent) with Mr Swan's reference to an ‘investment/loan’ in his email of 22 May 2015 (see paragraph 17 above). It was also consistent with Mr Swan stating on instruction by email dated 24 July 2020, prior to issue of these proceedings, that Mrs Ali had ‘*settled the debt* owed to Mr Majeed’ (paragraph 52 above). Mr Ali's witness statement had also used the language of purchase and the language of loan at different points. Notwithstanding rigorous questioning by Counsel, however, Mr Ali was consistent in his responses. As he put it in oral testimony, ‘It was always a loan’.

89. I accept Mr Ali's evidence of what he *asked* Mrs Ali to do on his behalf in the first place. He asked Mrs Ali to ask Mr Majeed to lend him £125,000. I so find.

90. In considering the weight to give Mr Ali's testimony on the issue of what was subsequently discussed and agreed in 2015 between Mr Majeed and Mrs Ali on Mr Ali's behalf, however, I must take into account the fact that Mr Ali was in prison over the material period and was not a party to the relevant discussions between Mr Majeed and Mrs Ali.
91. In relation to the events of 2017, Mr Ali's unchallenged evidence was that he had moved to Dubai in 2017 and had gained residency in October 2017. He had no assets in Dubai before he moved there. His evidence, which in this regard I accept, was that he had found gainful employment in UAE, running some souvenir shops in partnership with a member of the family which owned Easy Access.
92. Mr Ali gave evidence consistent with Mrs Ali to the effect that in 2017, Mr Majeed had told them that he was in financial difficulty and needed his money back. It was put to him that the references in his witness statement to 'helping' Mr Majeed made no sense if he was already obliged to repay him. He responded:
- 'but now I owe money and he needs the money – I didn't have the money at the time so I needed to get it. You're twisting it.'
93. He confirmed that he made the arrangements for a loan of the dirham equivalent of £125,000 from Easy Access. When asked why a company such as Easy Access would be lending out money, he explained that he knew the family who owned Easy Access and a number of other businesses. He was in partnership with a member of that family, who was a good friend.
94. When asked why a loan of this size would be made to Mrs Ali over a term of 10 years at an interest rate of 7% above base rate, with no interest payments in the meantime and no security, he explained:
- 'Easy Access is a big family. They have loads of businesses. Now I am running souvenir shops and partnering with one of the family members. So we have discussed between ourselves – do we grow the business/increase his share or sell one of the shops and pay the money back. '
95. When it was put to him that it was unlikely that the business would want to lend substantial sums of money to someone out of the jurisdiction, he stated that whilst the loan was in his wife's name, he was under an obligation to pay it back and that if necessary 'they would take the shops'.
96. When pressed to explain why he and his wife had only produced the loan agreement and no surrounding documents, such as background credit checks and emails confirming arrangements for the signing meeting, he stated that it was a 'different culture' in the UAE. He stated that the deal was 'not done in one day'; he had 'met the family loads of times before we entered this'. As he put it: 'I met them, I knew them, we sit together'.
97. I pause here to note that Mrs Ali had also given evidence that it had taken her husband some time to set up the loan.

98. Mr Ali's evidence on when and where the signing of the loan agreement took place was consistent with that of his wife. He confirmed that they had collected the cash from the offices of Easy Access and that he had driven his own car to deliver it to DJD International's offices with his wife on the same day as signing the loan agreement. He confirmed it was a ten-minute drive.
99. When asked why the loan was made in cash, he stated that Mr Majeed had asked for it in cash and wanted it quickly.
100. He accepted that he hadn't provided any documentation from DJD International confirming receipt of the money. He said:
- 'Mr Majeed asked me to drop it off. I was on the phone to Mr Majeed when I dropped it off, they were expecting the money. I was on the phone with Mr Majeed.'
101. It was put to him that he and his wife had developed the story that they had repaid Mr Majeed. He responded:
- 'It's not a story, it's the truth, it's exactly what happened.. we borrowed the money, we paid the money back.'

Mr Majeed's oral evidence

102. Mr Majeed gave evidence from prison. He confirmed that he had been convicted for fraud in 2019.
103. He accepted that he was a long-standing friend of Mr and Mrs Ali and that there was a strong bond between their respective families.
104. His evidence, which in this regard I accept, was that it was Mrs Ali who spoke to him in 2015 about the £125,000. As he put it:
- "Mrs Ali came to me and said Mr Ali is asking this favour "
105. Mr Majeed's evidence, which in this regard I accept, was that the sum of £125,000 advanced by him in 2015 was an interest-free loan with no set deadline for repayment.
106. He was referred to his witness statement. It was put to him that he did not say in it whether the loan was secured. He responded:
- 'The loan is unsecured. It was a loan for a friend. If I wanted it secured, I could have had it secured'.
107. He went on to explain that he had borrowed some of the money from a cousin in order to provide the loan to the Alis, saying:
- 'I rang him [his cousin] in the morning – he didn't even ask what it was for. We are friends, we are family. When we need each other, we'll be there'.
108. Addressing the events of 2015, he explained:

‘At the time, my friend needed help, I consulted Bosleys, told them my friend is in prison. Michael, who runs Bosleys, said leave it to him. I also rang Mr Ali’s solicitor to ask about a direct payment – they said no as they would need to do due diligence – the only way was through solicitors. I told my solicitors and said I needed to pay this money...

My solicitors said he was worried about the business – how can I get it back. I said I’m not worried about that – he’s a friend. There is nothing in my solicitor’s files suggesting I was looking for a charge. My intention from day one was never to have a charge. If I had wanted one, I could have asked my solicitors to put a charge on. Then they wouldn’t have released funds without a charge. I know about charges’

109. He was taken to the letter from Mr Swan to Mr Hastilow of Bosley dated 22 May 2015 and in particular to the reference to Mr Hastilow being free ‘to protect [his] client’s investment/loan’ once the Crown’s restriction was removed. It was put to him that this was premised on him having an interest to protect. He responded:

‘My solicitor warned me ... I told my solicitor, I don’t need a charge...’

110. He maintained that there was ‘no intention for me to have an interest’, adding,

‘if my intention was to do it, I would have completed it. Throughout these emails from Bosley/Swan, there is no talk about buying any share in the property...’ My solicitor never wrote to say my client wants to purchase a 50% share. I am not instructing Mr Swan... There was no conversation about taking 50% of his house. If you want, why not get Mr Hastilow to come to court and give a statement’.

111. When the quote from Mr Ali’s witness statement in support of a variation of the confiscation order was read to him, he responded:

‘What I say is what *my* intentions were and what I did do and didn’t do. I didn’t register anything. I didn’t have no interest. I loaned the money, I didn’t buy no interest in his house’.

112. He later added: ‘I don’t know what Mr Ali was trying to explain to the CPS as I wasn’t there’.

113. When taken to the email dated 19 August 2020 from Mr Panesar to Clyde & Co, in which he spoke of Mr Majeed having purchased Mr Ali’s 50% interest in the property, he responded:

‘I am really sorry – I don’t understand – if I didn’t register anything, didn’t take anything, how can that be mine. I don’t know what he instructed his solicitors. I don’t know what he believed. I am telling you what *I* believed.’

114. When he was taken to Mr and Mrs Ali's witness statements and to the language of 'purchase' used at times in the same. He responded: "Miss, I can't say what they're thinking", adding, in relation to paragraphs 5 and 6 of Mr Ali's statement, 'At the time, Mr Ali was in prison. It's up to him what he thought, but I never done that'.
115. He also queried why his Trustees in Bankruptcy had never asked him about any of the matters in issue in these proceedings, pointing out that several months had elapsed between the time that he was made bankrupt and the time that he went to prison and that, even since his imprisonment, they had written to him on several other matters, but not this.
116. In relation to the events of 2017, Mr Majeed was asked why the Alis borrowed money in Dubai rather than the UK. He kept to the bounds of his own knowledge in this regard, confirming that he didn't know, suggesting simply that it was probably a question of where they could raise a loan.
117. Mr Majeed also made clear that he was not privy to the arrangements surrounding the loan agreement entered into between Easy Access and Mrs Ali. He refused to be drawn into discussing terms of the loan agreement. As he put it: 'this is their contract, their loan. I had no say in it'
118. Mr Majeed confirmed in both his written and oral testimony that the £125,000 had been repaid. Mr Majeed's evidence regarding the repayment was broadly consistent with that of Mr and Mrs Ali.
119. It was put to him that he had only firmed up on the detail of his account of how and when the £125,000 had been repaid after proceedings were issued. In this regard reference was made to an email from a Mr Morrison of HMRC dated 10 November 2021, which summarised two occasions on which Mr Majeed had responded to HMRC FIS regarding the Property, the first being on 8 February 2021 and the second on 10 April 2021. Mr Morrison had indicated in his email that Mr Majeed had given a more detailed account, tallying more closely with the account of repayment set out in the Ali's witness statements, on 10 April 2021, after issue of these proceedings.
120. In my judgment little can be drawn from this without more information on precisely what Mr Majeed was asked for on each of the two occasions and what he said or wrote in response. The broad summary set out in Mr Morrison's email of 10 November 2021 is of little probative value without such detail. Mr Majeed's evidence was that, as far as he was concerned, he had been saying the same thing throughout. As he put it in cross-examination,
- 'I got served a s.16 and s.17 notice. When I first arrived in prison. I was asked if I had assets. I said no. I have been saying that since I came into prison, that I don't have any interests in any other property. I've been saying the same thing'.
121. I pause briefly to note that Mr Majeed had said much the same thing in his bankruptcy questionnaire and bankruptcy interview a few days after being made bankrupt: see paragraphs 30-37 above.

122. It will also be noted from the summary of correspondence set out previously in this judgment that the Applicants' solicitors, Clyde & Co, had nailed their colours to the mast in correspondence long before issue of proceedings. They had put the Respondents on notice of their claim in June 2020 (paragraph 49 above) and had made clear their intent to issue proceedings in October 2020 (paragraph 57 above). Had the Alis wished to concoct a story with Mr Majeed concerning the repayment, as suggested by the Applicants, on a balance of probabilities they would have set about that task considerably earlier than the date of issue of proceedings.
123. When asked why he was not in Dubai in December 2017 to collect the money from them himself, Mr Majeed explained that he could not get over to Dubai at the time as he was under investigation and HMRC had just raided his shops in the UK. Ms Carmichael complained that he had not mentioned this in his witness statement. In fairness however, the witness statement was prepared whilst he was in prison and he may not have been asked that question during the course of its preparation. Moreover having declined to interview Mr Majeed about the events forming the subject matter of these proceedings at any time prior to issue of the same, the Applicants were hardly in a position to complain if they learned of some details only at trial. On the balance of probabilities I accept Mr Majeed's evidence that by December 2017 he was under investigation and that HMRC had just raided his shops in the UK. It is clear from Mr Majeed's interview with the OR's examiners on 29 May 2019 that by March 2018, HMRC had taken steps against M & O Trading Limited that resulted in the company's bank account being frozen. Intensive investigations three months prior to March 2018 is consistent with that timeline.
124. Mr Majeed's evidence was that on the day of repayment on 20 December 2017, he had spoken to Dharmendra of DJD by telephone, had told him that his friends were downstairs with the cash and had asked him to go downstairs to collect it. He stated that Dharmendra had then gone downstairs to collect the cash and that he had checked with Dharmendra to ensure that the monies had been received.
125. It was put to him that there was no documentary evidence exhibited to his witness statement as to the receipt by DJD of the money. He responded that he could not himself get evidence of receipt as he was in prison. (I pause here to note that he was only asked for a witness statement in or about December 2021, some time after the date of his incarceration). He observed that Clyde & Co (the Applicants' solicitors) could have asked DJD International to confirm receipt, adding 'Money was paid. I don't see why they didn't do that'.
126. When it was put to him that Mr and Mrs Ali had provided no texts/whatapp messages regarding the repayment arrangements said to have been set up in 2017, he responded: 'that's my fault; I threw away my phone and told them to delete all texts – not for this trial, for my criminal case.'
127. When asked why the repayment was made in cash rather than by bank transfer, he stated that it had been coming up to Christmas and that if he hadn't repaid the £125,000 he owed under a guarantee, he would have been charged 'extortionate interest rates'. His evidence was muddled at points on the issue of whose debts he had guaranteed, but ultimately in oral testimony he named Southern Drinks Wholesale Limited, trading as Palace Drinks. He said that Southern Drinks supplied his shops

with alcohol and had not paid bills owed to DJD. Southern Drinks Wholesale Limited had gone into liquidation in 2016.

128. It is fair to state that Mr Majeed's account of why he needed a sum of £125,000 in cash in 2017 and the use to which he put such monies to was far from satisfactory. The account he gave in cross-examination did not tally with the account given in his witness statement. He named several different companies as the company whose debts he had guaranteed before settling on Southern Drinks Wholesale Limited. His suggestion that he had mentioned his guarantee liabilities to DJD in his disclosures to POCA was not corroborated by any documentary evidence before me. His claim that Mr Batty (one of the liquidators of M & O) 'had this information' was not corroborated by any documentary evidence before me. In correspondence, Mr Batty had stated that he had 'no direct communications or dealings with HMRC, regarding the confiscation process'.
129. None of the liquidators' progress reports for M & O exhibited to Mr Marshall's second witness statement condescended to specifics on the trading relationships which M & O enjoyed or addressed in specific terms the ongoing investigations being undertaken, although they did make mention in generic terms of a number of transactions, including unexplained cash transactions, which were under investigation.
130. Within the context of the bankruptcy, Ms Horgan of FRP Advisory confirmed by email dated 9 February 2022 that having reviewed Mr Majeed's bankruptcy file, she could not see any evidence of a trading relationship between Mr Majeed and DJD or any Dubai based entities and that a review of Mr Majeed's bank statements from 2008 to 2019 had not disclosed any evidence of payments to DJD.
131. That said, an HMRC Report, exhibited to Mr Marshall's second witness statement, concerning the conviction of Mr Majeed and several other members of the crime gang of which he was part, confirms that the gang smuggled large quantities of illicit alcohol into the UK, using 'a sophisticated network of fictitious businesses' and 'a trail of false paperwork on an industrial scale' to cover up 'the supply of smuggled alcohol goods' and a 'multimillion-pound VAT and excise fraud'. The Report states that Mr Majeed 'tried to distance himself from the fraud by naming gang members as company directors or using stolen identities' but that 'HMRC proved that he had control over the companies and their trading activities'. One of the other gang members charged alongside Mr Majeed had admitted to cheating the public revenue and excise fraud and was given a custodial sentence together with a Serious Crime Prevention Order which, among other things, included provisions restraining him from 'carrying large amounts of cash without permission, or associating with Majeed in any way'.
132. Against that backdrop, it is perhaps unsurprising that Mr Majeed indicated in oral testimony that he often traded in cash. It is also unsurprising that the issue of who he might be trading with or owe money to at any given time might not be readily apparent from his bank statements or accurately documented in any other way. In my judgment this is a factor to take into account when considering the documentation available in relation to repayment of the £125,000.

The Loan Agreement

133. The loan agreement was dated 20 December 2017. Putting to one side the omission of a decimal point (which I have found to be simply a typographical error), the amount of the loan was the equivalent in Dirham to £125,000. The signatories to it were Mrs Ali of the one part and Junaid Kurikkala, acting on behalf of Easy Access of the other part. The signatory section includes a company seal bearing the name Easy Access Documents Services LLC.
134. The loan agreement is not a perfectly drafted document. I have already referred to the omission of a decimal point. In addition, whilst the front sheet bore the names of Mrs Ali and Easy Access Documents Service LLC, as did the signatory section, the opening ‘parties’ section of the agreement stated the parties to be Mrs Ali and Inspired Technology FZE. On the evidence as a whole, I am satisfied that this was simply a drafting error. In this regard I accept the evidence of Mr and Mrs Ali that the loan agreement was entered into with Easy Access. I also accept Mr Ali’s evidence of how this came to be; that he worked in the UAE with members of a family who ran a number of companies, including Easy Access, and that following discussions with him, they had agreed to set up a loan through Easy Access. In my judgment the most likely explanation for the drafting error in the parties section of the loan agreement was that an earlier precedent was adapted and this detail was overlooked. Ultimately however, it matters not why the error occurred; suffice it to state that I am satisfied that it was an error and that the true parties to the loan agreement were Mrs Ali and Easy Access Documents Services LLC.
135. Clause 3 of the loan agreement was a little confused but in context its meaning was tolerably clear. This provided that:
- ‘The Borrower will use the Loan to pay for the purchase of an interest in a share in property that was originally owned by the Borrower however such interest in property was transferred to a third party who therefore owned the Borrowers beneficial interest in the property. The purpose of the loan is to assist in the purchase of the beneficial interest back to the Borrower.’
136. The remainder of the loan agreement followed a fairly conventional structure. Clause 4 provided for repayment of principal and interest in 10 years. It also made provision for early repayment. Clause 5 provided for interest at the rate of 7% per annum above the base rate of Mashreq Bank in the UAE, such interest accruing monthly and payable on the repayment date. Clause 6 made provision for the Borrower to pay on demand the Lender’s costs in recovering the Loan. Clause 7 prohibited the Borrower from assigning or transferring any rights or obligations under the agreement. Clause 8 set out events of default, including the death or insolvency of the Borrower, or the application of the Loan for any purpose other than that specified in the loan agreement. Clause 9 set out agreed provisions relating to notices or other communications given under the agreement. Clauses 10 and 11 dealt with governing law and exclusive jurisdiction. The agreement concluded with a signature section in conventional form.

137. The Applicants did not formally challenge the authenticity of the loan agreement. They did not give notice that they wished for the document to be proved at trial. Whilst, in the absence of an order for disclosure, there may be some scope for debate as to whether the Applicants can properly be said to be deemed, by virtue of CPR 32.19, to admit authenticity, under the Chancery Guide para 21.69, the Applicants should in any event have put the court and the Respondents on written notice of any documents contained in the trial bundles the authenticity of which they wished to challenge. No such notice was given. In closing Ms Carmichael confirmed that the Applicants were not inviting the court to conclude that the loan agreement was inauthentic. She maintained that they did not have to go that far.
138. For the sake of completeness, I confirm that on the evidence which I have heard and read, I am satisfied on a balance of probabilities that the loan agreement is authentic.

Discussion and Conclusions

139. This was a somewhat ambitious application. The Applicants were office-holders with no direct knowledge of any of the material events. At no material time did they question Mr Majeed about the same, whether by letter or in interview, whether before or after issue of these proceedings. In this regard it will be recalled that Mr Majeed had readily engaged with the OR and with the Trustees at the time of being made bankrupt: see paragraphs 30-40 above. He had offered by letter dated 4 June 2019 to attend FRP's offices to provide any further information they required and had given them his mobile telephone number. He was not taken up on that offer.
140. FRP wrote to Mr Majeed's solicitor, Mr Hastilow of Basley & Co, at some point prior to February 2020 to ask for his files but do not exhibit any of their correspondence with Mr Hastilow. They do not state in evidence what Mr Hastilow's files contained, save for the handful of emails and banking documents referred to at paragraphs 16-22 above. They do not state in evidence that they raised any questions with Mr Hastilow about the basis upon which Mr Majeed made £125,000 available for Mr Ali in 2015 or, if they did raise such questions, what Mr Hastilow's responses were. They adduced in evidence very little in the way of contemporaneous documentation.
141. Having on their own evidence taken delivery up of Mr Hastilow's files, the Applicants have adduced no document from those files recording an agreement reached in 2015 for the disposition of an interest in land, notwithstanding that there were lawyers acting for both Mr Majeed and Mr Ali at the material time.
142. Moreover, ultimately, for reasons touched on at paragraph 65 above, the Trustees could only succeed on their application if the court rejected the evidence of Mr and Mrs Ali (and following the filing of his witness statement, Mr Majeed) on the issue of repayment in 2017.
143. For reasons which I shall come onto, on the evidence which I have heard and read, I am satisfied that Mr Majeed *was* repaid in 2017. With due respect to the efforts of Counsel, however, I shall set out the arguments on the evidence below.
144. Somewhat unsurprisingly, Ms Carmichael launched a sustained attack on the credibility of the Respondents and Mr Majeed.

145. Ms Carmichael argued that none of the witnesses were ‘independent’. She submitted that Mr and Mrs Ali were the Respondents to this application, clearly interested in achieving a given result. Mr Majeed was a long-standing friend. She reminded the Court that Mr Majeed had been convicted of offences of dishonesty/fraud and submitted that he had nothing to lose by lying.
146. Naturally I take into account that Mr and Mrs Ali have an interest in retaining the Property. That of itself, however, is only one of many factors to consider when assessing the weight to attach to their evidence.
147. I also take into account Mr Ali’s conviction of smuggling drugs and Mr Majeed’s convictions of offences of dishonesty/fraud. The fact that both Mr Ali and Mr Majeed have been convicted of criminal offences (in Mr Majeed’s case, involving dishonesty/fraud), however, does not of itself lead inexorably to the conclusion that their evidence on the issues before this Court must be rejected. Moreover, I was taken to no evidence to suggest that Mrs Ali had ever been convicted of a criminal offence and in the absence of any such evidence I consider it legitimate to conclude that she has not. The mere fact that Mrs Ali is the wife of Mr Ali and a good friend of Mr Majeed, both of whom do have criminal convictions, clearly does not lead inexorably to the conclusion that her evidence must be rejected. The testimony of each of the Respondents and of Mr Majeed must be considered in the context of the evidence as a whole.
148. In closing, Ms Carmichael again took me to Phipson at 45-18, which lists a series of factors which the editors suggest that the court should take into account when determining whether a witness is lying. These are said to be:
- (1) the consistency or otherwise of the witness’s evidence with what is agreed, or clearly shown by other evidence, to have occurred;
 - (2) the internal consistency of the witness’s evidence;
 - (3) consistency with what the witness has said or deposed on other occasions;
 - (4) the credit of the witness in relation to matters not germane to the litigation;
 - (5) lies established in evidence or in the context of the proceedings;
 - (6) the demeanour of the witness;
 - (7) the inherent probabilities of the witness’s account being true....
149. On the issue of inherent probabilities, I was also taken in closing to Phipson at 45-23, which states:
- ‘As to (7), the inherent probability of a witness’s account is always an important consideration, alongside the documentary and other evidence in the case, in assessing both credibility and reliability. Often the court is confronted with two conflicting but plausible accounts, but a witness’s account may in some cases be inherently unlikely. What may be inherently

improbable may not look so when one considers other evidence, such as in the case of fraud where one can start with a general position that it is unlikely a person may have committed a fraud, but once it has been proven he has committed past dishonesty or given material lies, then a judge may be entitled not to work from any assumption that a fraud in the present case is improbable.’

150. Ms Carmichael argued that the Respondents’ case had shifted over time, from purchase to loan. She contended that
- (1) pre-action, they had stated that the 2015 transaction was a purchase, that Mr Ali’s 50% interest had transferred to Mr Majeed and that Mrs Ali’s payment in 2017 resulted in Mr Majeed’s interest being transferred to her. For this purpose Ms Carmichael relied upon the extract from Mr Ali’s statement of October 2015 and Mr Panesar’s email dated 19 August 2020, quoted at paragraphs 46 and 53 respectively;
 - (2) at the witness statement stage (May 2021), the Respondents had suggested for the first time that the transaction was a loan, that the loan was repaid and that Mrs Ali was now sole beneficial owner;
 - (3) at the skeleton argument stage, the Respondent’s Counsel had contended that the transaction was a loan and that even if security had been intended, on a legal analysis, no equitable mortgage arose; that the loan had been repaid and that Mr and Mrs Ali held equitable title to the Property in equal shares;
 - (4) on the introduction of Mr Majeed’s witness statement, that the transaction was an unsecured loan and was never intended to be secured or to give rise to a transfer of beneficial interest to Mr Majeed. The monies had been repaid and Mr and Mrs Ali are the equitable owners.
151. In my judgment this is not an entirely accurate or fair summary of the evidence.
152. The language of loan was employed prior to issue of the proceedings: see email dated 22 May 2015 from Mr Swan to Mr Hastilow quoted at paragraph 17 above. See too the reference in Mr Swan’s email dated 2 July 2020 to Mrs Ali having ‘settled the debt owed to Mr Majeed’, quoted at paragraph 52 above.
153. The extract from Mr Ali’s statement in support of his application to vary the confiscation order (quoted at paragraph 46 above) must be considered in the context of the evidence as a whole. Mr Ali was not party to the discussions between Mr Majeed and Mrs Ali which gave rise to the advance of £125,000 in 2015. He was in prison at the time of those discussions and remained in prison at the time that the statement in support of his application to vary the confiscation order was prepared. Whatever Mr Ali stated in the statement was based on second-hand information rather than his own knowledge. In this regard I accept Mr Ali’s evidence that in signing the statement, he relied on what his solicitors told him had occurred and that he did not read the statement prepared for him ‘word for word’.
154. I reject Ms Carmichael’s suggestion that this demonstrated that Mr Ali would ‘sign anything’. His lack of attention to this aspect of his statement must be seen in context;

the confiscation unit had already been paid the monetary equivalent of the value of his interest in the Property. Save on exceptional prescribed grounds (which there was no evidence to suggest were made out, or were likely to be made out, at any material time in this case) the Crown could not resort again to that 50% interest, having been paid its value.

155. Mr Panesar's email of 19 August 2020 is, as Mr Warwick QC put it, something of a curate's egg from the Applicants' perspective; whilst it refers to Mr Majeed having 'purchased' Mr Ali's 50% interest in the Property, it also refers to Mrs Ali obtaining a loan in the UAE and buying back that interest.
156. With regard to (2), it is not correct that a loan was mentioned for the first time at the witness statement stage; as stated above, there had been references to the transaction being a loan prior to issue of proceedings. The witness statements of Mr and Mrs Ali do use the language of both purchase and loan. On one reading the language of purchase and loan may appear conceptually confused. On another reading however, leaving formalities to one side, it is entirely consistent with a notional, informal mortgage of the 'conveyance and reconveyance' variety.
157. Whilst the informal mortgage analysis, on a stand-alone basis, would leave both Mr and Mrs Ali as joint beneficial owners, rather than Mrs Ali as sole owner (even allowing for subrogation, following payment by Mrs Ali, on this analysis Mr Ali would still retain the equity of redemption), it is important to consider the evidence as a whole.
158. In this regard I accept Mr Ali's evidence that, on repayment of Mr Majeed in 2017, he wanted his wife to enjoy the entire beneficial interest in the Property. His evidence, which in this regard I accept, was that Mrs Ali had paid the deposit on a property which had been registered in Mr Ali's sole name and that Mrs Ali had lost her beneficial interest in that property when it was sold as a result of the confiscation proceedings. Partly in light of that, and partly out of a desire to ensure that Mrs Ali and the children had a safe roof over their heads in the UK, Mr Ali wanted Mrs Ali to be sole beneficial owner of the Property.
159. Ultimately that is a matter between Mr and Mrs Ali; if Mr Ali wishes to formalise the position by a written assignment of his beneficial interest in the Property, it would be simple enough. It does not concern the Applicants. It is of no concern to the Applicants whether the Property is now owned as to 100% by Mrs Ali or as to 50% each by Mr and Mrs Ali. They are only concerned if as Trustees of Mr Majeed's estate in bankruptcy, they have an interest in the Property. On the evidence which I have heard and read, I am satisfied that they do not.
160. With regard to (3), the legal analysis introduced by counsel at the skeleton argument stage is entirely understandable. For reasons explored in paragraph 157 above, considered in vacuo, and formalities aside, the informal mortgage analysis does lead logically to Mr and Mrs Ali being beneficial co-owners following repayment of Mr Majeed, rather than to Mrs Ali being 100% beneficial owner. The introduction of such legal analysis does not undermine the Respondents' credibility as witnesses. On present facts Mr Ali's evidence summarised at paragraph 158 above must also be taken into account.

161. With regard to (4), it is correct to state that Mr Majeed took a more unequivocal stance in his witness statement than Mr and Mrs Ali do in theirs. Mr Majeed's evidence was that his advance of £125,000 in 2015 was a straightforward loan. In oral testimony he stated that it was an unsecured loan. In my judgment however this does not undermine the credibility of Mr and Mrs Ali. Mr Ali was in prison at the time that discussions took place in 2015 between Mr Majeed and Mrs Ali. He made clear in his oral testimony that he had simply asked Mrs Ali to ask Mr Majeed for a loan. He was not directly involved in the discussions between Mr Majeed and Mrs Ali and was dealing with all of it second-hand. Mrs Ali was confused at times in her testimony but overall it was clear from her oral testimony that she believed the arrangement to have been a loan. Ultimately, all three witnesses are entitled to their own varying recollections and perceptions of the situation. If anything, the very fact that their recollections and perceptions do differ in certain respects serves to undermine the Applicants' case that the Respondents and Mr Majeed have conspired together in preparing their evidence.
162. On the evidence overall, I am satisfied on a balance of probabilities that the arrangement agreed orally between Mr Majeed and Mrs Ali (acting on her husband's behalf) in the run-up to the two advances made in 2015 was that Mr Majeed would grant Mr Ali an indefinite, interest free loan of £125,000. I am further satisfied that Mr Majeed and Mrs Ali orally agreed that Mr Ali's 50% share in the Property would stand, informally, as security for the loan. To the extent that Mr Majeed asserted otherwise in oral testimony, I reject his evidence. Whilst he was undoubtedly correct in stating that he did not take a formal charge over the Property, I am satisfied that in the run-up to the loan advances made by Mr Majeed in 2015, Mr Majeed and Mrs Ali orally agreed that Mr Ali's 50% share in the Property would stand informally as security for the loan. It was an entirely informal, unwritten arrangement between family friends. I so find.
163. I accept that the extract from Mr Ali's statement in support of a variation of his confiscation order (quoted at paragraph 46 above), considered in vacuo, points in favour of a purchase rather than a loan. The fact that only an isolated extract of the statement has been adduced in evidence is however unsatisfactory. Moreover the statement was made some months after the agreement reached between Mr Majeed and Mrs Ali. In this regard I accept Mr Warwick QC's submission that when determining the weight to give to any given piece of evidence, a distinction must be drawn between truly contemporaneous documents and comments contained in documents after the event. Mr Ali's statement in the confiscation proceedings is not a truly contemporaneous document. Mr Ali was not a party to the discussions which led to the agreement reached between Mr Majeed and Mrs Ali. I accept Mr Ali's evidence that he relied on what his solicitors told him at the time. There is no evidence as to who drafted the statement or the circumstances which led to the inclusion of the quoted extract.
164. In closing Ms Carmichael suggested that Mr Ali's 50% interest in the Property had to be assigned in order to free it from the confiscation order. This suggestion, however, was not supported by any documentary evidence before me and in fact was inconsistent with what little contemporaneous correspondence there was in evidence: see correspondence quoted at paragraphs 16-22 above. In this regard I note that the

CPS had confirmed by their email dated 24 June 2015 (quoted at paragraph 21 above):

‘As soon as the monies have reached the HMCTS account, I confirm that we will remove the restriction’

165. There was no suggestion in the contemporaneous correspondence that the removal of the restriction was in any way conditional upon the 50% beneficial interest being transferred to a third party.

166. Similarly, I note that when later asked for any information on why Mr Majeed had made the payment, the CPS confirmed by email dated 19 May 2020 (quoted at para 46 above):

‘We have no specific information about the reason given for why Shafqat Majeed made the payment towards the defendant’s confiscation order’

167. Again, this suggests that removal of the restriction on Mr Ali’s 50% share in the Property was not conditional upon that share being transferred to a third party. If it had been conditional, one would expect the CPS records to be set up in a way which made provision for recording satisfaction of the condition. The CPS would then have been able readily to reply ‘Mr Majeed made the payment as he was buying Mr Ali’s share in the Property’. Instead, the only information that the CPS could find was Mr Ali’s witness statement, prepared several months after removal of the restriction.

168. The passages relied upon by the Applicants in Mr Panesar’s email of 19 August 2020 and in clause 3 of the loan agreement in relation to the terms agreed in 2015 were again, comments after the event. This affects the weight which may properly be attached to them. Indeed, it is entirely possible in context that the extract from Mr Ali’s statement quoted at paragraph 46 above played some part in each of the later passages relied upon.

169. In the absence of evidence establishing that Mr Ali’s 50% share in the Property could only be freed of the confiscation order by being transferred to a third party, the Applicants have proffered no good reason why Mr Majeed, as a long-standing friend of Mr and Mrs Ali, would have insisted on purchasing a 50% share in their family home, rather than lending Mr Ali the sum required. That is a factor which I take into account when weighing up inherent probabilities.

170. For all these reasons, on the evidence which I have heard and read, the Applicants have not made out their case of an informal purchase in 2015 giving rise to a constructive trust. To the contrary: on the evidence which I have heard and read, I am satisfied on a balance of probabilities that the arrangement agreed orally between Mr Majeed and Mrs Ali (acting on her husband’s behalf) in 2015 was that Mr Majeed would grant Mr Ali an indefinite, interest free loan of £125,000. I am further satisfied that Mr Majeed and Mrs Ali orally agreed that Mr Ali’s 50% share in the Property would stand, informally, as security for the loan.

171. On the evidence which I have heard and read, I am further satisfied that the loan was repaid in 2017.

172. Ms Carmichael submitted that none of the three witnesses had provided any corroborative evidence of the repayment of £125,000 alleged to have taken place in Dubai in 2017. I reject that submission. The loan agreement clearly corroborates the Respondents' account of Mrs Ali having borrowed the dirham equivalent of £125,000 in 2017 in the UAE in order to pay back Mr Majeed. The authenticity of that loan agreement was not challenged and in any event I have found it to be authentic.
173. The timing of the loan agreement and the amount of the loan are entirely consistent with the Respondents' account of events. The Applicants proffered no alternative explanation for Mrs Ali borrowing in 2017 a sum identical to that advanced by Mr Majeed in 2015. Clause 3 of the loan agreement states that the purpose of the loan is to buy back a beneficial interest in a property originally owned by the borrower but transferred to a third party. Whilst Clause 3 is in somewhat confused terms (the reference to the borrower's interest having been transferred to a third party, for example, being inaccurate), the overall meaning of the clause is tolerably clear when considered in context.
174. Ms Carmichael submitted in closing that it was 'inherently implausible' that a company which is not in the business of lending money would lend such a substantial sum of money to an individual who works part-time, is not resident in the jurisdiction and has no assets in the jurisdiction. She also pointed to the number of errors in the loan agreement and the lack of any evidence of credit checks or security, although she did not submit that the interest rate of 6.5% was out of line. In my judgment the Applicants are in some difficulty in running this line of argument, as they did not dispute the authenticity of the loan agreement. It seems to me that they cannot have it both ways. Either the loan agreement is authentic or it is not.
175. Even leaving the lack of challenge on authenticity to one side, however, on the evidence which I have heard and read, I accept Mr Ali's evidence on the circumstances in which Easy Access came to enter into the loan agreement with Mrs Ali. I also accept Mr and Mrs Ali's evidence regarding execution of the loan agreement and collection of the loan monies.
176. Ms Carmichael went on to attack the evidence given by the Respondents and Mr Majeed on the drop-off of the cash at DJD International's premises on 20 December 2017. She pointed out that Mr Majeed was not a director of DJD International and that no written receipt for the monies had been adduced in evidence. She was also critical of the explanation given for the repayment having been made in cash.
177. The evidence of the drop-off at DJD International's premises, however, must be considered in the context of the evidence overall. It is clear from the liabilities listed in Mr Majeed's BPIQ that his modus involved the provision of personal guarantees in significant sums. I also take into account the matters addressed in the HMRC report, considered at paragraphs 131-132 above. From that report, the accuracy of which was not challenged before me and which I shall therefore take to be accurate, it is clear that Mr Majeed was involved in an opaque manner with numerous businesses over the material period. I also take into account the fact that by December 2017, Mr Majeed's trading operations were the subject of serious investigations by HMRC. Against that backdrop, it is unsurprising that Mr Majeed requested repayment in cash. It is also unsurprising that the issue of who he might be trading with or owe money to at any

given time might not be accurately documented. A further factor to take into account, as noted previously, is that the Applicants have proffered no alternative explanation for Mrs Ali having entered into a loan agreement in the UAE on 20 December 2017 for a sum identical to that advanced by Mr Majeed in 2015.

178. Both Mr and Mrs Ali were unshakeable in their testimony when describing their ten minute drive from Easy Access's offices to DJD International's premises on 20 December 2017 and their drop-off of the monies at DJD's premises. I accept their evidence of that journey and of the drop off. I accept their evidence, which was supported by that of Mr Majeed, that they were in telephone contact with Mr Majeed throughout the journey and at the time of the drop off. I further accept their evidence that the drop off was by prior arrangement with Mr Majeed.
179. For all these reasons, I am satisfied that on 20 December 2015, Mr Majeed was repaid the sum of £125,000 which he had advanced in 2015. I so find.
180. I accept that the evidence which Mr Majeed gave as to the reasons why he required the sum of £125,000 so urgently and in cash was opaque. Why Mr Majeed needed the money back so urgently and what he did with it once it was repaid, however, are issues distinct from the issue of whether he was repaid at all. On the evidence before me, I am satisfied that he was.
181. I am fortified in my conclusions in this judgment by the BPIQ completed by Mr Majeed on 29 May 2019. At a time prior to any indication of the claim brought in these proceedings, Mr Majeed confirmed in his BPIQ that he was not owed any money and did not have an interest in any property other than his former matrimonial home. In this regard I refer to paragraphs 30-37 of this judgment.
182. I am further fortified in my conclusions on repayment by the evidence given under a perjury warning by Mr Majeed in his interview with one of the OR's examiners on 29 May 2019 (see generally paras 30-37 above). From that evidence it was clear that by March 2019, Mr Majeed had been in financial crisis. A mortgagee repossession order had been made and he was at imminent risk of losing his family home. He had two children, one of who was only two years old at the time. He was clearly fond of his children; in his later letter to FRP dated 4 June 2019, he stated that notwithstanding being separated from his wife, he 'still sees the kids most days'. From the notes of the interview on 29 May 2019, it is clear that he spoke with some feeling of his efforts to get together monies sufficient to stop the repossession going ahead. Had Mr and Mrs Ali still owed Mr Majeed £125,000 at this time, he would undoubtedly have asked them to repay the same. On the evidence as a whole, I am satisfied that the reason he did not do so was because they had already repaid him in 2017.
183. In the light of my conclusions on the facts, it is unnecessary for me to address the law. In the interests of brevity, I shall therefore decline to do.
184. For all the reasons given, I shall dismiss this application. I shall hear submissions on costs on the handing down of this judgment.

ICC Judge Barber