



Neutral Citation Number: [2022] EWHC 1652 (Ch)

Claim No: PT-2019-000807

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

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Tuesday, 28 June 2022

**Before:**

**ROBIN VOS**  
**(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)**

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**Between:**

**Panminder Singh Bhabra**

**Claimant**

**- and -**

**(1) Makinder Suri**

**(2) Niku Suri**

**Defendants**

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**Michael Patchett-Joyce** (instructed by **New Media Law LLP**) appeared for the  
**Claimant**  
**Erin Hitchens** (instructed by **Tenet Compliance and Litigation Limited**) appeared  
for the **Defendants**

Hearing dates: 27-29 April 2022 and 3-6 May 2022

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## **Approved Judgment**

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

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**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 28 June 2022 at 10.30am.**

**DEPUTY JUDGE ROBIN VOS:**

**Introduction**

1. This claim is about the beneficial ownership of the shares in a company called Pinegrove Management Limited (“PML”).
2. Hardial Singh Bhabra and his wife, Harbans came to the UK in the early 1960s. Hardial built up a successful business connected to the television industry. He was joined in that business by his sons, Daljit (“Dahl”) and the Claimant, Panminder (“Pom”) in the 1970s. Together, they grew the business and other related businesses.
3. In the early 1980s, the family purchased two properties in Windsor, Claremont House (primarily an office development) and Houston Court (an apartment block built by the family on adjoining land). Claremont House was purchased by Hardial Products Limited, a company which carried on part of the family business and which was owned equally by Hardial and Harbans. Houston Court was purchased by Houston Developments Limited, a company which was owned equally by Dahl and Pom.
4. The first Defendant, Makinder Suri married Dahl in 1987. The second Defendant, Niku Suri is Makinder’s sister.
5. Unfortunately, due to an increase in interest rates and a fall in property prices, the Bhabra family businesses ran into financial difficulties in the early 1990s. Their lenders appointed receivers under the Law of Property Act 1925 in respect of the various properties over which they held charges, including Claremont House and Houston Court.
6. In response to this, the Bhabra family established new companies and, with the help of financing from HSBC, purchased the properties from the receivers. Claremont House and Houston Court were purchased by PML. The registered shareholders of PML are the Defendants, Makinder and Niku.
7. Pom’s case is that Makinder and Niku held the shares as nominees for his parents, Hardial and Harbans as joint beneficial owners.
8. Sadly, Hardial and Harbans have both passed away. Harbans died in May 2015 and Hardial in June 2019. Makinder’s husband, Dahl also passed away in July 2018.

### **The capacity in which Pom makes his claim**

9. Pom originally brought these proceedings as executor of his parents' wills. However, on 14 January 2020 letters of administration with will annexed in respect of Hardial's estate were granted to Dahl's and Makinder's son (Hardial's grandson), Amar Jagraj ("Jag") in respect of a will said to be made by Hardial on 25 August 2018 by which he left all of his assets to Jag.
10. As a result of this, in May 2020, the Defendants made an application to strike out Pom's claim on the basis that he had no standing to bring the claim. In response, Pom produced a deed of assignment said to be made by Hardial on 18 August 2016 (the "2016 Deed of Assignment") and in which he assigned to Pom any interest he may have had in the PML shares and any claim for the recovery of those shares. At the same time, Pom made an application for the claim to be made in the alternative capacity as assignee of the cause of action pursuant to the 2016 Deed of Assignment.
11. On 17 August 2020, a consent order was approved by Deputy Master Smith under the terms of which the strike out application was withdrawn and Pom was permitted to amend his particulars of claim to enable him to bring the claim in his personal capacity as well as in his capacity as executor of his parents' wills.
12. Pom has however now conceded that, as matters presently stand, he is not able to bring the claim as executor of his parents' estates. The claim is therefore pursued solely in his personal capacity and in reliance on the 2016 Deed of Assignment.
13. The relief that Pom seeks is a declaration that Makinder and Niku hold the PML shares on trust for him and an order requiring them to deliver to him duly executed transfers of the shares into his name.
14. Makinder and Niku are adamant that they are (and always have been) the beneficial owners of the PML shares.

### **Procedural issues**

15. Under paragraph 4 of an order made by Richard Farnhill, sitting as a Judge of the Chancery Division, following the PTR on 29 March 2022, it was left to the trial Judge

to determine whether, in the absence of agreement, permission should be given to rely upon additional witness statements of both parties.

16. Pom has agreed to the admission of the Defendants' additional witness statements. The Defendants have objected to various aspects of Pom's third witness statement on the basis that certain passages do not comply with PD57AC (primarily being commentary on documents disclosed by the Defendants or matters not within Pom's personal knowledge).
17. In the absence of any objection on Pom's behalf, I gave permission for him to rely on his witness statement on the basis that certain passages I identified (which broadly followed the objections made by the Defendants in their letter of 19 April 2022) should be disregarded.
18. During the course of the trial three applications were made, two by the Defendants and one by Pom.
19. Both parties applied to amend their pleadings. In Pom's case, the proposed amendment was to rely on the existence of an undocumented express trust in addition to his existing case which relies on an express trust evidenced by a document which cannot be found.
20. The Defendants' proposed amendment relates to the status of the 2016 Deed of Assignment. They say that it should be set aside on the basis of undue influence. However, as a result of doubts over their standing to ask the Court to set aside the 2016 Deed of Assignment on this basis, they now wish to include a counter-claim applying to set aside the 2016 Deed of Assignment, such counter-claim being underpinned by the assignment to Makinder by Jag (in his capacity as administrator of his grandfather's estate) of any interest he may have in the PML shares and any right he may have to rescind or apply to the Court to rescind the 2016 Deed of Assignment.
21. The final application, made by the Defendants, relates to unpaid costs. By paragraph 5 of the PTR Order, Pom was required to pay £14,625 to the Defendants by 12 April 2022. He has failed to do so. The Defendants have applied for an unless order which will lead to the claim being struck out if the costs are not paid by a specified date.

22. In the event, the parties have been able to reach agreement in relation to all three applications and I have approved an order in the terms agreed. Both applications to amend are allowed and both parties have permission to make further submissions in relation to the points raised by the amendments (as well as one or two additional points identified in the course of closing submissions). I am grateful to Mr Patchett-Joyce and to Ms Hitchens for the submissions which they have provided on 18 and 23 May and which I have taken into account.
23. In relation to the costs issue, Pom has agreed to an unless order requiring him to pay the outstanding costs by 16 May 2022.
24. Turning to the evidence, there are a few procedural points which I should note. The first is that both parties have filed a notice to prove documents. In Pom's case the notice to prove relates to four stock transfer forms said to be executed in 1995 and 1997 in favour of Makinder and Niku. As far as the Defendants are concerned, the notice to prove relates to the 2016 Deed of Assignment.
25. In accordance with paragraph 21.69 of the Chancery Guide, the Defendants have written to the Court on 20 April 2022 to put it on notice that they do not accept that a large volume of documents produced by Pom since approximately 2015 (after the dispute in relation to the ownership of the PML shares first came to light) should be treated as evidence of the facts stated in them. The reason they give for this is that they are simply self-serving documents created by Pom to bolster any claim. I have taken this into account in determining what weight should be placed on any statements made in such documents in the light of all of the other evidence.
26. The final point to mention is that Pom's first witness statement exhibits a number of statements from friends and family members in support of his case. These are not however formal witness statements. Some of the individuals involved have produced formal witness statements and have given evidence. Others have not. Ms Hitchens submits that the Court should give no weight to the statements produced by those individuals who have not been put forward as witnesses. In principle, I would accept this. In any event, Mr Patchett-Joyce has not sought to place any reliance on those statements in support of Pom's case.

### **Issues to be determined**

27. The first issue is the question of Pom's standing to bring this claim. He now relies solely on his rights under the 2016 Deed of Assignment. There are two aspects to this. The first is whether the 2016 Deed of Assignment is a genuine document. In this context, as I have mentioned, as a result of the Defendants' notice to prove, Pom is required to establish the authenticity of that document.
28. Even if Pom is able to overcome this hurdle, the Defendants say that the 2016 Deed of Assignment should be set aside on the basis of undue influence. This is a counterclaim made by the Defendants based on the assignment in favour of Makinder made by her son Jag (in his capacity as the administrator of Hardial's estate) of rights in relation to the PML shares and the 2016 Deed of Assignment. No objection has been taken by Pom to the Defendants' right to seek to set aside the 2016 Deed of Assignment as a result of the assignment of these rights. The only question therefore is whether the 2016 Deed of Assignment should be set aside based on what is sometimes referred to as presumed undue influence.
29. Assuming Pom has standing to bring the claim, the critical issue is whether Makinder and Niku held the PML shares on trust for Hardial and Harbans as joint beneficial owners. The first question is whether there was an express trust contained in a trust document which cannot be located. If there is no express trust based on a document, the next question to determine is whether there is nonetheless an undocumented express trust.
30. If I find that there is no express trust, I will need to consider whether there is a common intention constructive trust. In terms of the evidence, there is a significant overlap between this issue and the question as to whether there is an undocumented express trust as this will depend largely on circumstantial evidence rather than direct evidence of any agreement. I shall therefore deal with both of these aspects together.
31. In the absence of an express trust or common intention constructive trust, it will be necessary to consider whether Makinder and Niku received the PML shares for less than full consideration and, if so, whether this gives rise to a resulting trust in favour of Hardial and Harbans.

32. If the shares in PML were not held for the benefit of Hardial and Harbans as a result of any sort of trust, that is an end of the matter. However, if Pom is successful in establishing the existence of a trust, I will need to go on to consider whether there is any form of estoppel which prevents Pom from relying on his strict legal rights.
33. Makinder and Niku rely on both estoppel by representation and estoppel by convention. The evidential matters forming the basis for the different types of estoppel are similar and so, if it is necessary to consider these points, they can conveniently be dealt with together.
34. The final issue relied on by the Defendants is illegality. The issue is whether, if there was in fact a trust in favour of Hardial and Harbans, this had an illegal purpose such that Pom should not be entitled to rely on his rights arising as a result of that trust.
35. Before turning to consider the various issues, it is helpful to set out the background facts in respect of which there is no real dispute as well as to make some general comments in relation to the witness evidence.

### **Background facts**

36. Makinder and Niku own and operate a pharmacy business in Nottingham where Makinder's family live and where she also lived until she married Dahl. Initially this was just one pharmacy but they acquired a second in 1994 and a third in 1997. Since 1997, the business has been carried on through a company, Pharmplex Limited.
37. Hardial originally carried on his business through Hardial Products Limited, a company owned in equal shares by himself and his wife, Harbans. Hardial Products owned studio and workshop facilities in Redditch. It operated its business from those premises. As I have already mentioned, Hardial Products purchased Claremont House in the early 1980s.
38. Pom and Dahl were the equal owners of another company, Houston Developments Limited which, again in the early 1980s, purchased land adjacent to Claremont House and on which it built an apartment block known as Houston Court containing seven apartments.



39. Pom and Dahl were each given the use of one of the apartments. Pom has lived in his apartment as his main residence since 1991. Dahl vacated his apartment in 1988 when he moved back to the family home, Moram Lodge, where he and Makinder lived, together with his parents, Hardial and Harbans following his marriage to Makinder in 1987.
40. Claremont House was redeveloped into offices and, at the time, was used as the headquarters for the Bhabra family businesses. Pom took the lead in the redevelopment of Claremont House and the Houston Court construction project.
41. In the late 1980s, Houston Developments purchased a significant industrial complex in Hayes to create further studio and workshop facilities for the Bhabra family businesses but also with the intention of developing office and warehouse space which could be sold to third parties.
42. Significant loans were taken out from Lloyds Bank (which had been the bankers to the family and their businesses for many years) in connection with the Hayes purchase and redevelopment. The borrower was Houston Developments Limited but the bank took security not only over the properties owned by Houston Developments (the Hayes property and Houston Court) but also took a guarantee from Hardial Products secured by charges over the properties owned by that company (the Redditch studios and workshop and Claremont House).
43. In the early 1990s the redevelopment of the Hayes property was completed and the Bhabra family businesses relocated most of their offices from Claremont House to the Hayes site although retained some space at Claremont House. Claremont House was reconfigured to create separate offices which could be let out to third parties as serviced offices.
44. As a result of the financial difficulties I have already mentioned, the relationship between the Bhabra family businesses and Lloyds Bank became difficult. In June 1992, Makinder's family assisted by providing a guarantee which enabled approximately £300,000 to be paid to Lloyds to cover outstanding interest and service charges relating to the loans due from Hardial Products, Houston Developments and other Bhabra family businesses. Makinder took a charge over the Bhabra family's house, Moram Lodge, to secure this obligation.

45. However, in October 1992, Lloyds Bank called in their loans and in November 1992 appointed LPA receivers over all of the properties which had been charged to the bank.
46. Discussions took place between the Bhabra family (including Makinder) and Lloyds Bank as a result of which it was agreed that the Bhabra family would be able to purchase the various properties from the receivers at prices which would enable Lloyds to recover the amounts due to it.
47. Hardial was introduced to HSBC which, following discussions with the family (again including Makinder), agreed to provide the necessary financing. The structure agreed with HSBC was that new companies would be established in order to purchase the various properties from the receivers.
48. The new companies were acquired in around June 1993 from a company service provider (“Apex”) owned by the accountants used by the Bhabra family, Choudhary and Co. One of those companies was PML. The other new companies included Hardial Limited which took over the trading business previously carried on by Hardial Products and which was owned in equal shares by Hardial and Harbans and HDS Studios Limited (“HDSSL”) which was to become the holding company for the companies which held the Redditch and Hayes properties and the remainder of the trading companies and which was owned in equal shares by Pom and Dahl.
49. At that time, there were two shares in PML held by Apex. One share was transferred to Makinder and the other share was transferred to Niku. Makinder was appointed as the sole director of the company. Niku was appointed as the secretary.
50. Makinder arranged for her family’s accountant, Dilip Unarket at John Cumming Partners (later John Cumming Ross) to deal with the accounting for PML. She also changed the registered office of the company to her family’s address in Nottingham.
51. HSBC made a formal offer of loan facilities to HDSSL on 8 March 1994. The facility consisted of three tranches. Tranche A (£515,000) was to enable PML to purchase Claremont House and Houston Court. Tranche B (£450,000) was to enable another new company Hardial Productions Limited, to purchase the workshop premises at Redditch and tranche C (£75,000) was to enable HDSSL to purchase certain equipment from the administrative receivers of one of the existing Bhabra family companies.

52. The HSBC facility contained a condition that tranche A had to be repaid before tranche B (or Tranche C) could be released. Tranche A was repayable within three months. The idea was that it would be refinanced through longer term loans from other lenders or by selling flats at Houston Court.
53. It was a requirement of the facility that PML and Hardial Productions (the companies to which tranche A and tranche B would be on-lent by HDSSL) should be subsidiaries of HDSSL and that HDSSL was to be wholly owned and controlled by the Bhabra family.
54. The security for the facility included charges over Claremont House and Houston Court and personal guarantees from Hardial, Pom and Dahl as well as charges over other assets held by the new group.
55. Prior to the completion of the HSBC facilities, the following transactions took place in relation to the PML shares:
  - 55.1 Makinder transferred her share to HDSSL.
  - 55.2 Niku transferred her share to Hardial.
  - 55.3 Two new shares were issued, one to Hardial and one to HDSSL.
  - 55.4 Hardial executed a declaration of trust in favour of HDSSL in respect of one share in each of five companies which were intended to be subsidiaries of HDSSL, including PML.
56. As a result of the transfer from Niku and the allotment of one new share to Hardial, he in fact owned two shares in PML at the time the declaration of trust was entered into. The parties could shed no light on the reason why the declaration of trust only referred to one share in PML. Given the clear requirement of HSBC that PML should be a subsidiary of HDSSL and in the absence of any other explanation, my conclusion is that this was simply an oversight and that the declaration of trust should be read as if it referred to both of the shares in PML held by Hardial at the time he executed the declaration of trust.

57. The sale of the various properties and other assets to the new companies took place on 16 March 1994. The purchase price paid by PML for Claremont House and Houston Court was £530,000. There is little evidence as to how the £15,000 difference between the purchase price and the HSBC loan was funded. Based on the limited evidence available (and, in particular, an entry by Hardial in his notebook), it is in my view more likely than not that this was funded by Hardial.
58. In January 1991, Houston Court was valued at £639,500 and Claremont House was valued at £925,000, a total of £1,565,000. There is no documentary evidence as to the value of those properties at the time of the sale to PML in March 1994.
59. At some point after the purchase of the two Windsor properties by PML, Hardial or HDSSL provided a loan to PML of £60,000 to cover refurbishment works. This loan was subsequently repaid.
60. In July 1994, HSBC agreed to some amendments to the loan facility. Tranche B was increased to £965,000, HDSSL was permitted to draw down tranche B before repayment of tranche A and the date for the repayment of tranche A was extended so that £360,000 was to be repaid by 31 August 1994 and £155,000 by 31 March 1995. This was however on condition that a deposit of £60,000 was made which would be released when the first part of tranche A was repaid. This £60,000 deposit was provided by Makinder's father.
61. In August 1994, PML took out a loan of £365,000 with Northern Rock secured over Houston Court. The proceeds were used to make the first repayment of tranche A to HSBC. Makinder and Niku guaranteed the repayment of the loan. This was followed in June 1995 by a loan of £155,000 from NatWest secured over Claremont House. The proceeds of the loan were used to repay the remainder of tranche A of the HSBC loan.
62. On 14 June 1995, a board meeting of PML took place at which Hardial was present and which approved the transfer of one share in PML from HDSSL to Makinder. The remaining share in PML held by HDSSL was transferred to Niku on 12 May 1997. At the same time, one of the shares held by Hardial was transferred to Makinder and the other share held by him was transferred to Niku. The result of this is that, from this point on, Makinder has been the registered holder of two shares in PML and Niku has been the registered holder of the remaining two shares.

63. In May 1997, Mr Unarket's firm took over as auditors of HDSSL. The first set of financial statements for which they were responsible were those for the year ended 28 February 1996. These financial statements show HDSSL as having a 50% interest in PML at that date. Similarly, the financial statements for 28 February 1997 also show HDSSL as having a 50% interest in PML.
64. This is of course inconsistent with the cases put forward by both parties. On Pom's case, all the PML shares were owned beneficially by his mother and father. On the Defendants' case, the shares were held beneficially by them. It is also inconsistent with the documentary evidence which appears to show that, at this time, two shares were held by HDSSL, one share was held by Makinder and one was held by Hardial on trust for HDSSL. On that basis, HDSSL would have a 75% interest in PML.
65. Nobody was able to shed any light on this apparent discrepancy. In my view, the most likely explanation based on the available evidence is that the statement in the HDSSL accounts was based purely on the registered ownership of the shares and no consideration was given to the fact that the beneficial ownership might be different from the legal ownership.
66. In around 1999, the Inland Revenue (as they then were) opened an investigation into the affairs of Hardial Limited. At the outset of the investigation, Hardial and Hardial Limited were represented by Chowdhary and Co. The investigation expanded to cover matters related to HDSSL and PML. At some point in 1999 or early 2000, the responsibility for the investigation was taken over by Mr Unarket who sought assistance from a specialist tax consultant, Andrew Gotch.
67. The initial aspect of the enquiry relevant to PML was whether PML was associated with Hardial Limited and HDSSL for corporation tax purposes. If PML was not associated, it would pay corporation tax at the small companies rate of 20% rather than the normal rate of 31% which applied at the time.
68. The discussions relating to this aspect of the enquiry led on to a second issue which was whether, when the shares in PML were transferred by Hardial and HDSSL to Makinder and Niku in 1995 and 1997, this may have given rise to a taxable capital gain. This would of course only have been the case had there been a transfer not just of legal ownership but also of beneficial ownership.

69. Various representations relating to PML were made to the Inland Revenue during the course of the investigation. Given the importance of those representations to the issues which have to be decided and the inferences which should be drawn from them, I will deal with them separately as part of my consideration of the issues in question.
70. In September 2000, PML took out a further loan of £90,000 from NatWest. Part of this was used to repay amounts due from PML to Hardial Limited and Hardial. The balance was paid to Hardial Limited, partly in settlement of an invoice for refurbishment works and the balance by way of loan.
71. In 2001, PML declared a dividend of £6,000. On the Defendants' case, this should have been shared equally between Makinder and Niku. However, the funds were used by Makinder towards Jag's school fees.
72. In January 2002, Hardial and Harbans made mirror wills. The wills were very simple. They appointed the survivor, Pom and Dahl as executors. On the death of the first to die everything went to the survivor. On the death of the second to die, everything was then divided between Pom and Dahl.
73. In 2003, the Bhabra family businesses again encountered financial difficulties. They had set up a new television channel, East Asian Satellite Television ("EAST") with the assistance of a third party investor. This was a subsidiary of Hardial Limited. It became necessary for one of the companies in the HDSSL group to take out a loan in order to repay the third party investor.
74. Within a matter of months, the lender called in the loan based on an alleged default. This resulted in the insolvency and subsequent liquidation of the majority of the Bhabra family companies, although not PML given that it was a separate company and had no exposure to the relevant liabilities.
75. Hardial, Dahl and Pom subsequently made a claim against KPMG in connection with the loss of their businesses. PML, Makinder and Pharmplex provided assistance towards the Bhabra family's legal fees. However, ultimately, the claim failed. This led to Pom being made bankrupt in 2014. Dahl was made bankrupt in 2016.

76. Dahl's health deteriorated significantly from 2011 onwards. By 2014, both of his legs had been amputated and he was on dialysis three times a week. However, the evidence is clear that he remained mentally alert until he passed away in July 2018.
77. In 2011, PML refinanced the Northern Rock Loan by taking out a loan for £345,000 from Barclays. After paying off Northern Rock, there was a surplus of around £180,000 which was recorded in the accounts of PML as a loan to HDSSL but which was in fact used by Hardial towards legal fees for the KPMG litigation.
78. Further financing was taken out by PML in 2014, being a loan of £700,000 from Nationwide. This was used to pay off all of PML's existing loans. It is not clear exactly how the balance was deployed but it appears that approximately £60,000-£70,000 was used to partly repay loans which had been made from Pharmplex to PML and a similar amount was transferred to Hardial to enable him to pay off loans which he had taken out to finance the KPMG litigation.
79. As part of this refinancing, Houston Court and Claremont House were transferred into separate subsidiaries of PML. Security for the new loan was given only over Houston Court.
80. Makinder and Niku provided funds to PML through Pharmplex by way of loan as and when they were needed. On the basis of Makinder's evidence, these loans started in the 1990s although detailed records are only available from 2004 onwards.
81. From at least April 2014, PML made regular payments to or for the benefit of Hardial, Harbans, Pom and Dahl. In addition, Pom's car is paid for by PML.
82. The evidence from Mr Unarket and Makinder, which is supported by the relevant financial statements, is that the way the payments from PML for the benefit of family members were accounted for at the end of the financial year is that the payments were treated as reducing the amount of the loan due from PML to Pharmplex. In turn, the loan repayments received by Pharmplex were treated in the Pharmplex accounts as reducing the director's loan account due from Pharmplex to Makinder.
83. Shortly before Harbans died in May 2015, she and Hardial signed a letter authorising Pom to act on their behalf in relation to PML. In September 2015, Hardial executed a

lasting power of attorney in relation to his property and financial affairs in favour of Pom.

84. Following the death of Harbans, Hardial owned 75% of Moram Lodge and Dahl owned 25%. In April 2016, Hardial gave a 50% interest to Pom, retaining 25% for himself, and Dahl gave a 25% interest to Jag. However, at Makinder's instigation, a memorandum of agreement was signed on 16 May 2016 by Hardial, Dahl and Pom confirming Hardial's intention to transfer his remaining 25% to Dahl or, if Dahl died before Hardial, then to Jag.
85. As I have already mentioned, Hardial passed away in June 2019. As with Dahl, the evidence is that Hardial retained his mental faculties until his death. These proceedings were started in October 2019.

### **The witnesses**

86. As well as Pom, five other individuals provided witness statements on behalf of Pom. However, one of those witnesses (Sharad Bahagani) was not cross examined and no reference was made to his evidence.
87. Pom's evidence was troubling in a number of respects. He did not appear to have a clear recollection of events. Whilst this is not surprising given that some of the events took place 30 years ago, on key questions, such as the extent of any trust arrangements in relation to the PML shares in 1994, his answers were both internally inconsistent and well as being inconsistent with his witness statement. It also became apparent that he did not have first-hand knowledge of some of the events in question, for example, the initial allocation of the shares in PML to Makinder and Niku.
88. In addition, there is more than one occasion where Pom has made assertions in correspondence which, it is clear from the documentary evidence, are not true. For example, in a letter to Makinder when Pom was trying to get Makinder to release her charge over Moram Lodge, he told her that it was clear from correspondence he had received from the bank that the guarantee which had been given had never been called upon and that the relevant facility had therefore been settled. However, the reality is that the bank had simply refused to answer Pom's questions for confidentiality reasons as he was not their customer.



89. Subsequent to this, in correspondence again with Makinder, this time relating to Dahl's bankruptcy, Pom suggests that Makinder's charge should be relied on to resist any claim. The context for this is not clear but what is apparent is that having recently tried to persuade Makinder that any liability relating to the charge had been settled, he was now suggesting that the charge continued to support an outstanding liability.
90. As Ms Hitchens suggests, the picture which emerges is of someone who is willing to say what he thinks will help him get what he wants whether or not it is true.
91. Bearing these points in mind, I have approached Pom's evidence with a great deal of caution and have, where appropriate, preferred the evidence of other witnesses.
92. Keith Stewart's evidence related principally to the signature of the 2016 Deed of Assignment. He was, in my view, an honest witness. However, the weight I can give to the evidence in his two witness statements is limited given his explanation of how they were produced. His recollection was that he was simply sent the witness statement by Pom's solicitors and asked to sign them. He does not recall any conversations with those solicitors.
93. Whilst it is of course likely that there must have been some contact with the solicitors in order for them to prepare the witness statements, in the circumstances it is impossible to have any real confidence in their contents. For example, the last paragraph of his second witness statement ends half-way through a sentence. Mr Stewart could not recall what that sentence was intended to say.
94. In addition, in his oral evidence, it was clear that Mr Stewart had limited recollection of the events in question.
95. Manjit Bhabra-Sharma is Pom's sister. She and Makinder clearly have a very poor relationship. Indeed, Manjit was required to reformulate her witness statement given that large parts of it consisted of personal attacks on Makinder which had nothing to do with the evidence relevant to the claim. Given this personal animosity and the nature of many of the statements which still remain in her revised witness statement, the evidence which she gives about the actual facts which are relevant to the claim must be weighed in the balance with that background in mind.

96. Mr Slape is a long-standing friend of Pom. Whilst he appeared to be telling the truth, he chose his words carefully. For example, when asked whether he had provided any financial assistance to Pom, his response was that he had not provided any assistance to Pom personally. It was only when asked by the court whether he had provided any financial assistance to any entity connected with Pom that he revealed that he had made a loan to Pom's personal service company three weeks earlier.
97. Mr Slape accepted that any evidence he was able to give was based simply on what he had been told by Pom. In the circumstances, his evidence adds very little (if anything) to the evidence given by Pom.
98. Pom's final witness, Mr Hall, similarly had very little first-hand evidence to give about the matters to which he refers in his witness statement. Despite being required to amend his witness statement on the basis that a number of the statements made were clearly just Mr Hall's opinion, those statements remain in the witness statement but have now been presented as matters of fact. Mr Hall accepts that the only reason for changing the wording was because he was instructed to do so by Pom's solicitors.
99. In the circumstances, I can give Mr Hall's evidence very little weight in relation to the critical question as to the ownership of the shares in PML.
100. Turning to the Defendants, evidence was given by Makinder but not by Niku.
101. Mr Patchett-Joyce suggests that the court should make adverse inferences from the fact that Niku has not given evidence. He submits that the reasons given for her failure to give evidence (the fact that she works six or seven days a week and at the same time is looking after her very elderly father) are insubstantial and that there is no reason why she could not, for example, have given evidence remotely.
102. In terms of principles, Mr Patchett-Joyce drew attention to the review of the authorities carried out by Jacobs J in *Salt Ship Design AS v Prysmian Powerlink SRL* [2021] EWHC 2633 (Comm) at [406-409]. As Jacobs J observes at [409] the most up to date statement of principle was set out by the Supreme Court in *Royal Mail Group Limited v Efobi* [2021] UKSC 33 at [41] as follows:

“The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.”

103. Looking at the factors which the Supreme Court suggests may be material, Mr Patchett-Joyce has not identified any specific issues in relation to which adverse inferences should be drawn nor what relevant evidence Niku might be able to give which cannot adequately be covered by Makinder’s evidence.
104. In fact, it is apparent from the evidence which has been given that Niku had no real active involvement in relation to the affairs of PML, nor its ownership structure. Instead, her focus was on the pharmacy business carried on by Pharmplex.
105. In the circumstances I am quite satisfied that Niku would not have been able to provide any material evidence beyond the evidence that Makinder was in a much better position to provide and that, in the light of this, the explanation for her failure to give evidence is entirely reasonable. I therefore decline to draw any adverse inferences from the fact that Niku has not given any evidence.

106. As far as Makinder's evidence is concerned, she had clearly prepared explanations of certain events and had a tendency to launch into those explanations whether or not they provided an answer to the questions put to her. She was hesitant in answering some of the questions and chose her words carefully. Some of her explanations for points arising out of the documentary evidence were difficult to follow and at times unconvincing.
107. The overall impression was a witness more concerned with supporting her own case rather than answering the questions as simply and completely as possible. For example, she failed numerous times to confirm whether her work in relation to the pharmacy business or the letting business took up more of her time. She was also very unclear as to whether she believed that the shares in PML had any significant value following the purchase of the Windsor properties. In addition, she was unable to confirm whether, in her view, Pom had a relationship of trust and confidence with his father. It might be thought that these would be relatively straightforward questions to answer but Makinder appeared to be concerned that she might say something which would then be used against her.
108. Having said this, I am satisfied that Makinder was in principle an honest witness and where relevant, and taking into account the other evidence before the court, I have at times preferred her evidence to that of Pom.
109. Mr Patchett-Joyce described Mr Unarket as a poor witness. I am however satisfied that he was doing his best to answer the questions put to him. Not surprisingly, given the passage of time, there were some areas where he was not able to recall events in detail. In addition, he accepted that there were also matters (for example in relation to the ownership of the shares in PML in 1993/1994) where he had no direct involvement and so any evidence he could give in relation to this only came from his review of the company documents.
110. The final witness on behalf of the Defendants was Vicky Gardner. Ms Gardner was primarily involved in providing assistance to Dahl from about 2016 onwards. Her evidence related mainly to the preparation and execution of Hardial's 2018 will.
111. Despite some inconsistencies in her evidence, Ms. Gardner came across as someone trying to give honest answers to the questions she was asked. On a number of occasions

she accepted that, based on the document she was taken to, the evidence contained in her witness statement could not be correct. In my view, this resulted from a failure to recollect events clearly rather than a deliberate attempt to mislead.

112. I do not propose to say any more about the 2018 will. It will apparently be the subject of a separate challenge by Pom and Manjit and its validity is not directly relevant to this claim. Mr Patchett-Joyce relies on the events surrounding the will only in relation to Makinder's credibility. Given my conclusion that Ms Gardner was an honest witness there is in my view nothing in the circumstances relating to the 2018 will which should affect the weight I give to Makinder's evidence.
113. With that background in mind, I turn now to the issues which the Court must determine.

### **The 2016 Assignment**

#### Authenticity of the document

114. The Deed of Assignment is dated 18 August 2016 and purports to have been signed by Hardial and Pom in the presence of Mr Stewart. The Defendants have put the authenticity of this document in issue largely based on the fact that, as Pom accepts, the 2016 Deed of Assignment was not referred to or relied on by him prior to the application made by the Defendants in May 2020 to strike out Pom's claim on the basis that he did not have standing to bring it in his capacity as the executor of his parents' estates.
115. Pom's evidence as to the background to the 2016 Deed of Assignment is that his father had been upset at Makinder's insistence that a document be signed in May 2016 recording his intentions in relation to the remaining 25% of Moram Lodge. Pom says that Hardial was also upset by an incident in which Jag is said to have had an altercation with his grandfather.
116. There is some dispute as to whether that altercation was purely verbal or whether there was also physical violence. Based on the evidence relating to this incident, it is in my view more likely that the altercation was verbal although it clearly became extremely heated and no doubt would have been upsetting for Hardial. It appears that the incident took place in May, June or early July 2016. The precise date does not matter.

117. In addition, based on his correspondence with Makinder and Mr Unarket, Pom says that he had come to the conclusion that it might be necessary to issue legal proceedings to recover the PML shares from Makinder and Niku. He therefore suggested the assignment to his father as a way of giving Pom complete control over the shares and any litigation relating to them.
118. Pom's evidence is that he therefore prepared the draft deed of assignment based on a similar assignment used for another purpose in 2011 which had been drafted by the family's lawyers. Pom states that the Deed of Assignment was signed by his father on 18 August 2016 at Moram Lodge with Mr Stewart as a witness.
119. Pom's reason for not mentioning the 2016 Deed of Assignment at the time is that his father had asked him to refrain from taking legal proceedings and so he simply pursued matters with a view to seeking an amicable remedy. He says the original of the 2016 Deed of Assignment is in his safe.
120. As far as his reasons for bringing the claim as executor and not in his personal capacity are concerned, Pom suggested that continued ownership by his father had a better inheritance tax outcome than a lifetime gift by his father, although it is not clear why that should be the case. His second reason relates to litigation funding. Again, the explanation was not clear and no supporting evidence has been provided but the suggestion appears to be that it would be easier to get external litigation funding if the claim were brought as executor and also that Pom would not personally be responsible for any costs were the claim to fail should the claim be brought in his capacity as executor.
121. As well as his own evidence, Pom relies on Mr Stewart's evidence as to the execution of the 2016 Deed of Assignment. Mr Stewart's witness statement refers to his recollection of witnessing the document "now clarified to me as the deed of assignment".
122. The witness statement also refers to the fact that Mr Stewart had been a witness to numerous documents signed by members of the Bhabra family over previous years. In cross examination, Mr Stewart was taken to a number of other documents which he had witnessed. Whilst his evidence was clear that, if his signature appeared, he would have witnessed the person executing the document signing it in front of him, he could not

remember the specific document which was being signed nor the approximate date the signature took place.

123. As far as the 2016 Deed of Assignment itself is concerned, Mr Stewart's evidence is that he was asked about the 2016 Deed of Assignment by Makinder in 2020. In cross examination, Mr Stewart accepted that he could not recall the 2016 Deed of Assignment when Makinder asked him about it. He was only reminded that he had acted as a witness when Pom showed him the document later on.
124. Based on all of this, Mr Stewart's evidence does not in my judgment provide any independent corroboration to the authenticity of the 2016 Deed of Assignment. He clearly cannot recall witnessing the signatures on that specific document on the particular date in question. His recollection is more general. He simply remembers witnessing various signatures on various documents over a period of time. It is impossible to say that one of them was in fact the 2016 Deed of Assignment and that it was signed in August 2016.
125. Even taking account of Mr Stewart's evidence, I am not satisfied that the 2016 Deed of Assignment is a genuine document signed by Hardial on 18 August 2016. There are a number of reasons for this.
126. The first is that Pom originally brought these proceedings in his capacity as executor of his parents' estates. His clear evidence was that the 2016 Deed of Assignment was to be used should it ever become necessary to bring proceedings for the recovery of the PML shares. It would therefore have been expected that Pom would have made the claim in his personal capacity and not as executor.
127. Whilst Pom has provided some explanation as to why he nonetheless considered it preferable to bring the claim in his capacity as executor, as I have mentioned, it is not at all clear to me precisely what benefits Pom hoped to obtain either in relation to litigation funding or inheritance tax and there is no evidence supporting the existence of those benefits. I find Pom's explanations unconvincing.
128. This is particularly the case given that Pom is essentially saying that, in order to obtain those benefits he was prepared to mislead both his own legal team and the Court as to

the true position in relation to the ownership of any beneficial interest in the PML shares.

129. In his witness statement, Pom refers to his “understanding, advice and belief” that the executor route was more straightforward. The inference from this is that Pom had taken advice about the position, which might well be expected given the intricacies of inheritance tax and the complexities of litigation funding. However, it is in my view extremely unlikely that any adviser would encourage Pom to bring the claim as executor knowing that there was a deed of assignment which transferred any interest Hardial had in the PML shares to Pom and which therefore meant that Pom had no standing to bring the claim as executor.
130. The second point is that the 2016 Deed of Assignment only came to light after the Defendants’ application to strike out the claim on the basis that Pom had no standing to bring the claim in his capacity as executor. Had the 2016 Deed of Assignment been executed by Hardial as alleged by Pom, it is very surprising that he did not mention it in his voluminous correspondence with Makinder and Mr Unarket in order to demonstrate his authority to pursue the beneficial ownership issue in relation to the PML shares.
131. Ms Hitchens referred to the first letters sent by Pom to Makinder, Niku and Mr Unarket after the purported execution of the 2016 Deed of Assignment. These letters were dated 3 October 2016, approximately six weeks after Pom says the 2016 Deed of Assignment was executed by his father. The letters refer to the power of attorney signed by Hardial at the end of 2015 as the basis of Pom’s authority to deal with matters relating to PML. They also refer to Hardial as the ultimate beneficial owner of the shares. Pom’s explanation that his father had asked him not to start legal proceedings at that stage does not provide any reason why, in the light of the 2016 Deed of Assignment, he continued to rely on the power of attorney and to represent his father (and his mother’s estate) as the beneficial owner of the shares in PML.
132. Less than a month after his father’s death, Pom wrote to Makinder and Niku threatening legal action in relation to the PML shares. The letter is stated in terms to be written in his capacity as executor of his parents’ estates and names his parents as the ultimate beneficial owners of the shares. Given the threat of legal action and Pom’s evidence as



to the purpose of the 2016 Deed of Assignment there is in my view no credible explanation as to why this letter does not refer to the 2016 Deed of Assignment. Even if Pom had by then considered the inheritance tax and litigation funding aspects mentioned above (which seems unlikely given the proximity of the letter to his father's death), I do not accept that explanation for the reasons set out above.

133. Finally, as Ms Hitchens has pointed out, Pom could of course have produced the original of the 2016 Deed of Assignment in order to prove its authenticity. Despite the fact that he is in possession of the original, he has not produced it. No explanation has been given for his failure to do so. I can only infer from this that producing the original is likely to be adverse to Pom's case that his father signed the 2016 Deed of Assignment on 18 August 2016.
134. For these reasons, I find that Pom has not discharged the burden of proving the authenticity of the 2016 Deed of Assignment. The result is that he has no standing to bring this claim.
135. Strictly, I need go no further. However, given that I have heard full argument on the merits of the claim, I will go on to consider the relevant issues. However, I first need to deal with the question as to whether, if I am wrong about the authenticity of the 2016 Deed of Assignment, it should in any event be set aside on the basis of presumed undue influence.

### **Undue influence**

136. Ms Hitchens refers to the well-known explanation by Lord Nicholls in *Royal Bank of Scotland v Etridge (No 2)* [2001] UKHL 44 at [13-14] of what must be proved and by whom. The person alleging undue influence must show that there is a relationship of trust and confidence between the parties to the transaction and that the transaction calls for an explanation. The Court will then infer that the transaction can only have been procured by undue influence unless there is a satisfactory explanation.
137. In this case, Pom accepts that there was a relationship of trust and confidence between himself and his father. The first question is therefore whether the assignment calls for an explanation.

138. Ms Hitchens submits that it does. It is clear that Hardial intended to treat his sons (which in Dahl's case includes other members of Dahl's family) equally. This is apparent for example in relation to the arrangements concerning Moram Lodge where, having given 50% of the property to Pom (where Dahl already held 25%, which he transferred to his son, Jag,) Hardial confirmed that he intended his remaining 25% interest to go to Dahl (or, if Dahl predeceased Hardial, to Jag). Pom accepts this.
139. However, the effect of clause 3 of the 2016 Deed of Assignment is that, after paying the expenses of any claim to recover the PML shares (including legal costs) any proceeds would be divided as to 90% to Pom and 10% to Hardial. Ms Hitchens submits that, on this basis, the 2016 Deed of Assignment calls for an explanation as it does not reflect Hardial's known wishes as to the disposition of his estate.
140. Mr Patchett-Joyce submits that, in the circumstances in which it took place, the transaction does not call for an explanation. However, in reality, the points he puts forward are more in the nature of an explanation for the transaction rather than reasons why it does not call for an explanation.
141. In my judgment, there is no doubt that the 2016 Deed of Assignment does call for an explanation. The evidence clearly shows that Hardial's intention was to split his assets equally between his two sons. The 2016 Deed of Assignment does not do that. Instead, it gives 90% of the value of any recovery relating to the PML shares to Pom. In addition Pom would get a further 5% (half of Hardial's 10%) under the terms of the will which Hardial had in place at that time and which Pom was aware of.
142. In cross examination Pom tried to explain the discrepancy by suggesting that the legal fees of any litigation would have to be paid out of his 90% share. However, it is quite clear from the terms of the 2016 Deed of Assignment that the legal fees are deducted before the 90:10 split.
143. In support of Pom's case that there was no undue influence, Mr Patchett-Joyce refers to a number of points. The first is Pom's evidence as to the background to the transaction which I have summarised in paragraphs [115-117] above.
144. Taking this background into account and bearing in mind that Hardial was elderly, that Pom already had a power of attorney from Hardial, that Dahl was not well and that

Hardial worked closely with Pom and trusted him, Mr Patchett-Joyce submits that Hardial's decision to enter into the 2016 Deed of Assignment is not a surprising one and provides a ready explanation as to why he decided to do so.

145. Mr Patchett-Joyce accepts that Pom did not suggest to his father that he should take independent legal advice in relation to the assignment. Pom's explanation for this is that the 2016 Deed of Assignment was very similar to the assignment executed by his father in 2011 in respect of which legal advice was taken. There was therefore no need for further legal advice in relation to this assignment.
146. I do not accept that these points provide an adequate explanation as to why Hardial would execute a deed of assignment giving Pom the vast majority of the value of any interest Hardial had in the PML shares when his intention was for his assets to be split equally between his two sons.
147. This can be demonstrated quite simply by reference to the deed of assignment which Hardial signed in 2011 and on which Pom says the 2016 Deed of Assignment was based. Clause 3.3 of the 2011 deed of assignment specifically provides for any recoveries to be split equally between Pom and Hardial. This would be more in keeping with Hardial's known intentions as it would then have been possible for Hardial to direct his 50% share of the proceeds to Dahl. There is no explanation as to why the 2016 Deed of Assignment provides for a 90:10 split rather than a 50:50 split and no evidence that Hardial was aware that this was the case.
148. Given that Pom already had a power of attorney from Hardial it was in any event unnecessary for Hardial to enter into the 2016 Deed of Assignment as the power of attorney would have allowed Pom to pursue matters on his father's behalf. I accept that, if it came to legal proceedings, Pom's position might be more straightforward had there been an assignment rather than just a power of attorney but that still does not explain why 90% of any recoveries were allocated to Pom rather than just 50%.
149. Similarly, none of this is explained by the agreement relating to Moram Lodge nor the altercation with Jag. Pom accepts that the agreement relating to Moram Lodge reflected Hardial's intentions as to who should benefit from his estate. There is no suggestion nor any evidence that the altercation with Jag caused Hardial to change his mind about the disposition of his estate.

150. Mr Patchett-Joyce also suggests that the matters prompting the 2016 Deed of Assignment had been extensively discussed by Hardial with Pom over an extended period of time. However, even if Pom's evidence of ongoing discussions with his father about the beneficial ownership of the PML shares is accepted, that is a very different matter to any discussion of an assignment by Hardial to Pom of almost the entirety of Hardial's interest in the PML shares and any rights of action in relation to those shares. Even on Pom's evidence, the proposed assignment had only been raised by him with his father in July 2016.
151. Taking all of this into account, in my view the only inference which can be drawn from the circumstances in which the 2016 Deed of Assignment was said to be entered into is that Hardial did so as a result of undue influence exercised by Pom. The assignment was Pom's idea and not Hardial's. It was said to be similar to a previous assignment executed by Hardial but in fact gave Pom a 90% interest in any recoveries rather than a 50% interest. This was clearly contrary to Hardial's intentions in relation to the disposition of his estate. Pom did not suggest that any independent legal advice was taken as to the terms or consequences of the 2016 Deed of Assignment.
152. In the circumstances, it cannot be said that Hardial acted of his own free will nor was he fully informed as to what he was doing. Instead, it is more likely than not that he was influenced by Pom as a result of their relationship of trust and confidence to act in a way which was contrary to his own intentions.
153. Therefore, had it been shown that the 2016 Deed of Assignment was an authentic document, my conclusion would be that it should be set aside on the basis of undue influence. The result would of course be that Pom would have no standing to bring the claim given his acceptance that he is unable to do so in his capacity as executor.

### **The beneficial interest in the PML shares**

#### Documented express trust

154. The evidential basis for this part of Pom's claim is very thin. Pom asserts that it was only in April 2010 that he first discovered that the PML shares had been transferred to Makinder and Niku in 1995 and 1997. He says that he immediately had a meeting with

Mr Unarket at which Mr Unarket reassured him that a trust deed existed establishing that Hardial and Harbans were the beneficial owners of the PML shares.

155. Mr Unarket's evidence is rather different. He denies any meeting in April 2010. He says that Pom raised the question of the existence of a trust deed at some point in 2015. Mr Unarket's response was that he would look through his files. On reviewing his files, he located the deed of trust signed by Hardial in March 1994 in favour of HDSSL but came across no evidence of any trust deed signed by Makinder or Niku in favour of Hardial and Harbans.
156. As far as the documentary evidence is concerned, the first mention of a possible deed of trust executed by Makinder and Niku in favour of Hardial and Harbans is in an email sent by Pom to Mr Unarket on 26 September 2014. It is clear therefore that Mr Unarket's recollection that Pom first raised this in 2015 is faulty. However, given the passage of time, I do not consider the discrepancy between September 2014 and sometime in 2015 to be material. That email does not answer the question as to whether it was Pom or Mr Unarket who first mentioned the possible existence of a deed of trust in favour of Hardial and Harbans.
157. The real problem with Pom's evidence is that, although he says that he had a number of meetings and telephone calls with Mr Unarket between 2010 and 2014 in relation to the ownership of the PML shares, there is no documentary evidence of this until it is referred to by him in his email of 26 September 2014 and in subsequent correspondence with Mr Unarket and with Makinder.
158. Pom has produced a table summarising the meetings and calls which he says took place between 2010-2014. However, no source documents (e.g. diary entries) have been provided which explain where the information has come from to create this table. Given the volume of correspondence generated by Pom after September 2014 it is in my view very unlikely that such discussions took place unaccompanied by any correspondence. Certainly, this lack of documentary evidence supports Mr Unarket's evidence that Pom first raised the issue of the ownership of the PML shares with him in 2014 and in my view it is more likely than not that this was the case.

159. In any event Mr Unarket's clear evidence is that, having searched his files, the only deed of trust which could be located was the deed of trust executed by Hardial in favour of HDSSL.
160. Mr Patchett-Joyce notes that Mr Unarket mentioned in his oral evidence that there had been a reference to a deed of trust in the context of the Inland Revenue investigation in 1999/2000. It is however clear from the contemporaneous documentary evidence that the declaration of trust which was mentioned at this time was, once again, the declaration executed by Hardial in favour of HDSSL.
161. I am satisfied that Mr Unarket has no knowledge of any declaration of trust executed by Makinder/Niku in favour of Hardial and Harbans. The only declaration of trust he is aware of is that executed by Hardial. In my view, it is more likely than not that Pom has simply misinterpreted what Mr Unarket told him. In the absence of any other evidence as to the existence of a declaration of trust signed by Makinder and Niku, I find that no such declaration of trust exists.

Undocumented express trust, constructive trust or resulting trust

162. These three aspects of Pom's case are, in my view, intertwined. The circumstances in which Makinder and Niku came to hold the PML shares in 1993 and again in 1995/1997, the representations made and the conduct of the parties are all relevant in determining the answer to the question as to whether, on one basis or another, the PML shares were held by Makinder and Niku on trust for Hardial and Harbans.

Legal principles

163. It is of course well known that, in order for there to be an express trust, there must be certainty of intention (an intention to create a trust), certainty of subject matter (the property held subject to the trust) and certainty of objects (the beneficiaries of the trust).
164. In putting forward the argument that there is an undocumented express trust, Pom is essentially saying that there was an express but unwritten agreement that satisfies these three certainties. However, he puts forward no direct evidence of any such agreement other than his sister, Manjit's evidence that her father approached her at the time PML was established with a request that she act as a nominee director and shareholder of

PML. Instead, his case is that these three certainties can be inferred from the surrounding circumstances. In substance, Pom's case in relation to an undocumented express trust is essentially the same as his case that there was a common intention constructive trust.

165. Mr Patchett-Joyce does not refer to any authorities in support of his submissions in relation to the existence of a common intention constructive trust. In setting out the relevant principles, Ms Hitchens refers to a number of authorities, all of which are in the context of properties acquired for the joint occupation of a husband and wife or unmarried partners.
166. No point is taken by either party as to whether the same principles should be applied in relation to the ownership of shares in a company which owns investment properties and where the dispute is not between married or unmarried partners.
167. It should perhaps not be forgotten that one of the reasons for the development of this area of law in relation to the ownership of such properties is that, as a result of s 53(1)(b) Law of Property Act 1925, a declaration of trust in respect of land must be evidenced by writing, subject to the proviso in s 53(2) that this requirement does not apply in the case of a resulting, implied or constructive trust. A common intention constructive trust was therefore necessary to give effect to the express or inferred intentions of the parties in circumstances where it was right that equity should intervene.
168. In broad terms, the relevant principles in relation to a common interest constructive trust are as follows:
  - 168.1 There must be an express or inferred agreement that the parties intended the beneficial ownership of the property to be different to the legal ownership (see for example *Lloyds Bank v Rosset* [1991] 1 AC 107 at [132E-F]). The starting point is therefore that the beneficial ownership follows the legal ownership (see *Stack v Dowden* [2007] 2 AC 432 at [54, 56, 68 and 109]).
  - 168.2 "An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements." (Lord Neuberger in *Stack v Dowden* at [126]).

- 168.3 In determining whether an intention that beneficial ownership should differ from legal ownership can be inferred, this should be approached by “undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended” (see *Stack v Dowden* at [61 and 145] approving the formulation of the Law Commission in *Sharing Homes*, a discussion paper (Law Comm No 278) at [4.27]).
- 168.4 The person claiming the beneficial interest must have acted to their detriment in reliance on the express or inferred intention (see *Lloyds Bank v Rosset* at [132F] and *Stack v Dowden* at [124]).
169. Mr Patchett-Joyce did not disagree with these broad principles although it does seem to me that it is difficult in transposing some of them from the context of the beneficial ownership of a family property to the ownership of shares in a company.
170. By way of example, in relation to a family home, there is normally a two stage process. The first stage is to determine whether the claimant has any beneficial interest at all in the property (particularly where the property is held in the sole name of the other party). Once this hurdle is overcome, the second stage of the enquiry is the extent of that beneficial interest. The inferred intention relates to this second stage.
171. In the present case, there is only really one stage in the enquiry as the question is whether Makinder and Niku are the beneficial owners of the PML shares or whether the beneficial owners are (or were) Hardial and Harbans. There is no suggestion that the beneficial ownership of the shares might be shared between Makinder and Niku on the one hand and Hardial and Harbans on the other.
172. Having said that, in my view, it is unnecessary for me to grapple with this particular issue. Given that, in the context of shares rather than land, the parties are operating free from the shackles of s 52(1)(b) Law of Property Act 1925, the process of inferring the existence of an undocumented express trust is, on the facts of this particular case, essentially the same as the process of inferring a common intention that the beneficial ownership of the shares should differ from their legal ownership given that the inferred intention is what is objectively deduced to be the subjective actual common intention of the parties (see paragraph [168.2] above). On this basis, the inference of a common



intention would be sufficient to establish an express trust so that there would be no need to rely on the existence of a constructive trust.

173. One important implication of this of course is that, if the necessary inferences can be made as to the existence of an express trust, there would be no need to show any detrimental reliance on the part of Hardial or Harbans in relation to the inferred common intention.

174. In reaching a conclusion as to the intention of the parties, account must be taken of the possibility of the existence of a resulting trust. A presumption of a resulting trust may arise where property is held in the name of one person but has been paid for in whole or in part by another unless it can be shown that the contributor has a contrary intention (see *Stack v Dowden* at [59]). However, as Baroness Hale notes at [60] in *Stack v Dowden*:

“The presumption of resulting trust is not a rule of law. According to Lord Diplock in *Pettit v Pettit* [1970] AC 777, 823H, the equitable presumptions of intention are ‘no more than a consensus of judicial opinion disclosed by reported cases as to the most likely inference of fact to be drawn in the absence of any evidence to the contrary’. Equity, being concerned with commercial realities, presumed against gifts and other windfalls (such as survivorship).”

175. In a similar vein, Lord Neuberger in *Stack v Dowden* at [123] notes that the presumption of a resulting trust:

“...is no more than a presumption, albeit an important one. Lord Nicholls of Birkenhead said in *Royal Bank of Scotland Plc v Etridge (No.2)* [2002] 2 AC 773, para 16 that the ‘use of the term ‘presumption’ is descriptive of a shift in the evidential onus on a question of fact’, and that the ‘use... of the forensic tool of a shift in the evidential burden of proof should not be permitted to obscure the overall position’. Although said in the context of undue influence, those words apply equally to the resulting trust presumption, in my opinion.”

176. Ms Hitchens drew attention to the comments of Lord Upjohn in *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 at [312F-313D] that the presumption of a resulting trust:

“...is easily rebutted. All the relevant facts and circumstances can be considered in order to ascertain A’s intentions with a view to rebutting this presumption.

...

In reality the so called presumption of a resulting trust is no more than a longstop to provide an answer when the relevant facts and circumstances fail to yield a solution.”

177. In the light of these various principles, the common theme is the need to conduct a review of all the relevant facts and circumstances in order to determine the true intention of the parties.

What did the parties intend?

178. Mr Patchett-Joyce started by reviewing the position prior to the creation of PML. As he points out, there is no doubt that Claremont House and Houston Court were purchased before Makinder had any involvement with the Bhabra family by companies owned by Hardial and Harbans in the case of Claremont House and by Pom and Dahl in the case of Houston Court. Pom took the lead in redeveloping Claremont House into office space which was, at that time, primarily used by the Bhabra family businesses. He was also responsible for the construction of Houston Court. The Defendants do not dispute that this was, to a large extent, responsible for the creation of the value of those properties.

179. At the time of Makinder’s marriage to Dahl in 1987, she had little knowledge of the Bhabra family businesses, including Claremont House and Houston Court. She was occupied together with Niku with their pharmacy business as well as with her children who were born in 1989 and 1991.

180. By 1991, Claremont House and Houston Court were together worth almost £1.6m. The clear picture is that the properties were part of the Bhabra family business empire ultimately owned and controlled by Hardial, Harbans, Pom and Dahl.
181. Ms Hitchens however submits that matters changed in 1992 as a result of Lloyds Bank calling in its loans and the need to do whatever was possible to rescue the businesses and the assets. This strategy included a separation between the investment properties (Claremont House and Houston Court) and the trading assets (the studio and workshop businesses together with the properties from which they operated). In this context, she draws attention to the risk of losing Houston Court and Claremont House as a result of the charges given over those properties in favour of Lloyds Bank.
182. In his witness statement, Pom refers to the financial difficulties which Hardial Products and Houston Developments (the companies which owned Claremont House and Houston Court) were experiencing and explains that, as a result of this, the aim was to repurchase the properties from the receivers in order to prevent them being sold to third parties and to keep the “legal beneficial ownership” of the properties separate from the ownership of the Bhabra trading businesses.
183. In cross examination, Pom explained that what he meant by this was that the legal ownership should be kept separate but that it was always the family’s intention that the beneficial ownership should rest with Hardial and Harbans.
184. Makinder agrees that the intention was to keep the ownership of Houston Court and Claremont House separate from the trading businesses as a result of the financial difficulties experienced by those companies but her evidence is that, as a result of this, it was agreed that she and Niku would be the owners of PML both legally and beneficially.
185. In her written submissions, Ms Hitchens submits that keeping the beneficial ownership of PML separate from the Bhabra family trading companies was the clear aim. Mr Patchett-Joyce confirms that this is an accurate statement but suggests that this aim was achieved by separating the legal ownership of PML from the beneficial ownership of PML and not by separating both the legal ownership **and** the beneficial ownership of PML from the rest of the Bhabra family companies.

186. Not only is Mr Patchett-Joyce's explanation inconsistent with the statement which he has just accepted, neither he nor Pom were able to explain how a separation of legal but not beneficial ownership would achieve the aim of protecting the investment properties from potential future liabilities relating to the trading businesses which was the very risk that the family clearly intended to guard against.
187. Unless the family was intending to mislead creditors in the future by denying that Hardial and Harbans had any beneficial interest in PML, a situation which Pom adamantly denies, Hardial and Harbans would be no better protected as far as the value of PML was concerned by having the shares owned legally (but not beneficially) by Makinder and Niku than they would have been if the shares had been registered in their own names. The only way of achieving the protection they were seeking was for both legal and beneficial ownership to be held by Makinder and Niku.
188. Mr Patchett-Joyce gives a number of reasons why this cannot have been the intention of the family notwithstanding the asset protection objective. The first is that Claremont House and Houston Court were worth significantly more than the £530,000 paid to the receivers when they were purchased by PML. Having built up that value over a number of years, Mr Patchett-Joyce submits that the family would not have been content to give it away to Makinder and Niku.
189. In cross examination, Makinder accepted that she and Niku got a "good deal" although she did not accept that the properties were worth significantly more than the purchase price, referring to the significant fall in the property market in the early 1990s. Pom accepted that there had been a significant fall in values although his view was that the fall in value of commercial properties was greater than the reduction in value of residential properties.
190. Even allowing for any reduction in value, given the disparity between the purchase price and the value of the properties in 1991 and based on the limited evidence I have, it seems likely that, at the time of the sale, the value of the properties significantly exceeded the purchase price. In this context it is relevant to remember that the receivers were only interested in recouping sufficient to meet the secured liabilities rather than achieving the best price possible.

191. However, in my view, it does not follow from this that it was intended that Hardial and Harbans should be the beneficial owners of the shares in PML given that this would have defeated the very purpose of holding the properties in a company which was not owned by them.
192. Mr Patchett-Joyce refers to Sikh tradition, custom and culture. Makinder's evidence is that Sikh tradition is to look after the family both personally and financially. Mr Patchett-Joyce observes that Makinder goes on to say that acts of generosity do not result in a transfer of ownership of one family member's property to another. He also refers to Makinder's own comment that typically property will pass down the male line. Based on this, he submits that it is unlikely that the family intended Makinder and Niku to be the beneficial owners of PML.
193. I accept Makinder's description of Sikh family values. It was not challenged by Pom or by anybody else. Notwithstanding this, given the commercial imperative of protecting the investment properties from future liabilities, it is in my view more likely that, although the family knew that they were giving away significant value to Makinder and Niku, they were content to do this, despite the fact that Makinder and Niku were not blood family and were not male, on the basis that, should the need arise, the assets could still be used (in accordance with Sikh family values) to benefit the remaining family members. It should also be remembered, as Makinder was at pains to stress, that, by marrying Dahl, she became part of the Bhabra family.
194. This conclusion is supported by the fact that Makinder (and indirectly Niku) did in fact provide regular support to the Bhabra family and their businesses out of PML, her own resources and Pharmplex. Mr Patchett-Joyce suggests that where support was provided out of Pharmplex or out of Makinder's own resources, this was on the basis of a moral duty to look after family members whereas any support provided out of PML can only have been as a result of Hardial and Harbans being the beneficial owners of the shares of PML. In my view, there is no rational basis to make such a distinction. If the support provided by Makinder personally and by Pharmplex resulted from Makinder's adherence to Sikh customs, it is just as likely that any support provided out of PML is based on those same traditions.

195. Mr Patchett-Joyce's next point is based on the evidence of Manjit. In her witness statement, she states that Hardial asked her to act "as a nominee director and shareholder" of PML. Having discussed the position with her future husband she declined on the basis that the role of a nominee director came with substantial legal and operational responsibilities and that she had little or no business experience as well as other priorities.
196. Mr Patchett-Joyce notes that this statement was not challenged in cross examination. Ms Hitchens' explanation for this is that the evidence focusses on Manjit being a nominee director and does not state in terms that she was being asked to be a nominee shareholder.
197. If Manjit was indeed saying that her father asked her to act as a nominee shareholder, given the underlying reason for the separate ownership of the shares in PML, I cannot accept her evidence. Bearing in mind Manjit's clear personal animosity towards Makinder and her obvious desire to support Pom's case and to discredit Makinder's, it is in my view more likely that Manjit is simply saying what Pom has asked her to say. It is perhaps worth noting in this context that Pom's particulars of claim refer to Manjit being invited to be a director of PML (there is no reference to her being a nominee director) but says nothing about Manjit being asked to be a shareholder or nominee shareholder.
198. Looking at other events at the time PML was established, the fact that the registered office was changed to Makinder and Niku's family home in Nottingham and that Mr Unarket was appointed to deal with the accounting for the company reinforces the intention to keep PML completely separate from the other Bhabra family companies and in turn, supports the inference that Makinder and Niku were intended to be the beneficial owners of the shares.
199. It is right to mention that Pom was clear in his evidence that Makinder and Niku were not intended to be the beneficial owners of the shares at the time the company was acquired in 1993. However, it was also clear from cross examination that Pom did not have any first hand knowledge of the ownership of the shares in 1993. He accepted that his information relating to the ownership of the shares was derived solely from his review of the relevant Companies House documents. Indeed he admitted that he was

not aware that the initial shares in PML had been held by Makinder and Niku before they were transferred to his father and HDSSL. It is apparent therefore that Pom's evidence as to any intentions in respect of the ownership of the PML shares at this stage is not reliable.

200. As I have already explained, it was a requirement of the HSBC facility which was put in place in March 1994 that PML should be a subsidiary of HDSSL. Makinder transferred her share to HDSSL and Niku transferred her share to Hardial. In addition, two new shares were issued, one to Hardial and one to HDSSL. Hardial executed a declaration of trust in favour of HDSSL although, apparently by mistake, this only referred to one share in PML rather than two. For the reasons I have already explained, the declaration of trust should, in my judgment, be read as if it referred to both of the shares in PML held by Hardial.
201. Pom's case is that the PML shares were at all times owned beneficially by his mother and father including during the period whilst the shares were held by Hardial and HDSSL and the declaration of trust was in force. When asked about this in cross examination, Pom initially accepted that he may have misunderstood the trust document. He retreated from this later in his evidence but again was able to give no explanation as to how, in the light of the trust deed in favour of HDSSL, the shares could have been held on trust for his mother and father. He simply said that when he put his witness statement together, that was how he saw matters.
202. As I have already mentioned, Pom accepted that he had no first-hand knowledge of the share transfers in 1993 and 1994, his information being gleaned from the Companies House records. Taking all of these circumstances into account, Pom's evidence as to the beneficial ownership of the shares at this time carries very little weight.
203. Makinder's evidence was that, following the transfer of the shares by her and Niku to Hardial and HDSSL and the issue of the new shares in 1994, the PML shares continued to be beneficially owned by herself and Niku. Makinder's evidence was however somewhat equivocal in relation to this point. It was only when pressed by the court that she nailed her colours to the mast and confirmed her understanding that, following the transfers, the shares remained beneficially owned by her and Niku.

204. The Defendants' alternative case however is that, if the beneficial ownership of the shares passed to HDSSL in 1994 there was, in any event, always an understanding that the shares would be transferred back to Makinder and Niku once the HSBC loans relating to Claremont House and Houston Court had been refinanced given the underlying asset protection objective.
205. My conclusion is that I should be guided by the documentary evidence in relation to this point. It is quite clear that HSBC required PML to be a subsidiary of HDSSL. Whilst the facility letter does not refer to PML (and the other relevant companies) being wholly owned subsidiaries of HDSSL, looking at the overall arrangements and the terms of the facility, there seems little doubt that this was what was intended.
206. There seems equally little doubt that the deed of trust in favour of HDSSL was executed by Hardial in order to give effect to HSBC's requirement. I note in this context that Hardial appears to have owned 50% of the shares in each of the subsidiaries of HDSSL and not just PML. There was presumably some reason why it was thought preferable to have two registered shareholders coupled with a declaration of trust relating to the beneficial ownership rather than HDSSL owning all of the shares as a sole shareholder although it is not apparent from the evidence what this reason might have been.
207. In my view, the only inference that can be drawn from these documents is that HDSSL was indeed the beneficial owner of all of the PML shares following the transactions which took place in March 1994. The suggestion that HDSSL held its interest in the shares for Hardial and Harbans is in my view fanciful in the light of this evidence.
208. It is clear that all the arrangements were put in place with professional advice. The board minutes of PML for example show that the meeting held on 14 March 1994 approving some minor amendments to the HSBC facility were attended by representatives of the accountants and lawyers acting on behalf of the family. Those minutes also refer to HDSSL as PML's "parent". Had it been intended that HDSSL should hold its interest in the PML shares in trust for somebody else, whether that be Hardial and Harbans or Makinder and Niku, there is no doubt in my mind that this would have been documented in some way.
209. I do however accept Makinder's evidence that it was always intended that, once the loans relating to Claremont House and Houston Court had been refinanced, the shares



in PML would be transferred back to Makinder and Niku so that PML and the investment properties could be separated from the risks relating to the trading businesses.

210. In this context, it is relevant that Hardial, Dahl and Pom all gave personal guarantees in relation to the HSBC facilities. Mr Patchett-Joyce suggests that the fact that Hardial, Dahl and Pom gave these guarantees is an indication that Hardial and Harbans were intended to be the beneficial owners of the PML shares given that PML was benefiting from the HSBC facilities. However, in my view, this does not follow. It does not for example explain why there should be an inference that the beneficial owners were Hardial and Harbans as opposed to Hardial, Dahl and Pom.
211. In any event, there is no doubt that the HSBC facilities relating to Claremont House and Houston Court were intended to be very short term (three months) whereas the other facilities (tranche B and tranche C), which were unrelated to PML, were much longer term. The expectation therefore was that tranche A would be repaid in short order so that tranche B could then be drawn down. The guarantees given by Hardial, Dahl and Pom would continue in existence for as long as tranche B and tranche C remained outstanding. Hardial, Harbans, Dahl and Pom were of course the owners of the shares in the companies which operated the trading businesses and held the properties which were related to those businesses. In these circumstances, it is natural that Hardial, Dahl and Pom would be asked to give guarantees.
212. The existence of these guarantees of course gave rise to an ongoing risk in relation to the personal assets of each of the individuals who had given the guarantees. The result of this is that, had the shares in PML been beneficially owned by Hardial and Harbans, Hardial's share would have been exposed to these liabilities. This is a further factor which is in my view inconsistent with any intention that the PML shares should be held in trust for Hardial and Harbans.
213. The expectation that the PML shares would be transferred back to Makinder and Niku is also supported by the fact that, when the HSBC facility relating to Houston Court was refinanced through Northern Rock in August 1994, it was Makinder and Niku who gave the guarantees in relation to the new facility and not Hardial. It is also common

ground that Makinder identified Northern Rock as a potential lender and negotiated the facility.

214. Mr Patchett-Joyce suggested that it is not unusual for a nominee director to guarantee the liabilities of the company. I cannot accept this. I can see no reason why a director (let alone a nominee director) who had no ownership interest in the company would put their own personal assets at risk by guaranteeing the obligations of the company.
215. Turning to the transfer of the PML shares to Makinder and Niku in 1995 and 1997, Makinder's evidence is that the transfer of one share to her by HDSSL in 1995 was prompted by a requirement of NatWest, when the Claremont House loan was refinanced through them in June 1995, that Makinder should be a shareholder in PML. Pom's evidence is that he neither knew about nor authorised the transfer.
216. The 1995 stock transfer form appears to have been signed by Hardial and by Dahl despite the fact that the directors of HDSSL were Pom and Dahl. Hardial was not a director. The PML board minutes record that Hardial attended the meeting on 14 June 1995 which approved the transfer of the share to Makinder.
217. Makinder's evidence that NatWest required her to be a shareholder was unchallenged. Pom's own evidence is that it was his father who was originally introduced to NatWest. I infer from this that Hardial would have been aware of their requirements. It is clear from the documentary evidence that Hardial was present at the meeting at which the transfer of the share to Makinder was approved and so he must have been aware of the transfer. Given the evidence about the close working relationship between Hardial, Pom and Dahl and the regular discussions they had about their businesses, there is in my view a strong inference that Pom and Dahl must have been aware of the transfer and that the transfer was indeed authorised.
218. Based on this, I am satisfied that the Defendants have discharged the burden of proving the authenticity of the 1995 stock transfer form. I say nothing about the validity of the transfer if, as it appears, the stock transfer form has been signed by Hardial as opposed to Pom as it is no part of Pom's case that the 1995 or 1997 transfers should be set aside.
219. The circumstances surrounding the 1997 transfers to Makinder and Niku are more difficult to unravel. These transfers consisted of the transfer by Hardial of one share to

each of Makinder and Niku and the transfer by HDSSL of one share to Niku so that, as a result, Makinder was then the holder of two shares and Niku was the holder of the other two shares.

220. Pom's evidence is again that he was not aware of the transfers and did not authorise them. As far as the HDSSL stock transfer form is concerned which, on this occasion, does appear to have been signed by Pom, Pom's evidence in cross examination was that he could not recall signing the document although he did not state unequivocally that he did not sign it.
221. Makinder's explanation of the 1997 transfers is that it had always been intended that the shares should be transferred to Makinder and to Niku once the HSBC facilities had been repaid but that this had been overlooked. She says it was only in 1997 that Hardial raised the issue with Makinder which is what prompted the transfer of the remaining shares.
222. Makinder explains that, at Hardial's request, she asked Mr Unarket to prepare the documents relating to the transfers. Her recollection is that Mr Unarket's firm would have sent the documents direct to Hardial who would have arranged for them to be signed and sent back to Mr Unarket. She does not recall seeing the stock transfer forms signed.
223. The document relied on by the Defendants as evidencing the instructions by Makinder to Mr Unarket to arrange for the transfer of the shares is a very strange document. It takes the form of a PML compliments slip on which Makinder has made handwritten notes dated 12 May 1997 (the purported date of the transfers) explaining (inaccurately) the current shareholdings in PML, noting that the shares held by HDSSL should have been transferred in 1995 when HSBC was repaid and suggesting that the shares might be "reshuffled" to Makinder and Niku "next year" so that each of them then held two shares. The bottom of the document contains a note from Mr Unarket to his colleague (Shila Shah) who dealt with the company administration asking her to arrange the transfer of shares from Hardial and HDSSL to Makinder and Niku. This note is also dated 12 May 1997.
224. As Mr Patchett-Joyce points out, these "instructions" do not in fact ask Mr Unarket to arrange any immediate transfer but simply anticipate the possibility of future transfers.

225. Notwithstanding this, it is clear that Mr Unarket's firm prepared stock transfer forms, pro forma board minutes and an annual return evidencing the transfer of the shares and the new shareholdings. The board minutes and the annual return were signed by Makinder and dated 12 May 1997. The three stock transfer forms were purportedly signed by Hardial (in the case of the shares held by him) and by Pom and Dahl (in the case of the share held by HDSSL) and were also dated 12 May 1997.
226. In cross examination, both Makinder and Mr Unarket accounted for the discrepancy between the purported instructions and what actually happened by speculating that they must have had a telephone conversation to clarify the instructions although neither of them had a definite recollection of such a conversation taking place. In my view, there must have been such a conversation as there is no other explanation for Mr Unarket's firm preparing the relevant documentation.
227. As to the authenticity of the three stock transfer forms, I am satisfied on the balance of probabilities that these are genuine documents. As I have found, there was a clear intention on the part of the Bhabra family that PML should be separated from the trading businesses. It is therefore to be expected that, once the HSBC facilities had been repaid, the shares would be transferred back to Makinder and Niku.
228. The transfers also reflect the wishes and the expectations of Hardial, Pom and Dahl even leaving aside the question as to whether Makinder and Niku would then hold the shares beneficially or whether they would hold them as nominee for Hardial and Harbans. In addition, as I have already said, the intention to transfer the shares back to Makinder and Niku is reinforced by the fact that they gave personal guarantees in favour of Northern Rock.
229. I also consider it unlikely that Makinder would secretly arrange for the transfer of the shares to herself and Niku. As I have mentioned, the 1996 and 1997 financial statements of HDSSL recorded HDSSL's ownership of at least some of the PML shares. Following the transfers to Makinder and Niku, HDSSL would no longer be shown as the owner of any shares in PML. It would therefore be readily apparent to Pom and Dahl (as the directors of HDSSL) that the share transfers had taken place. It would therefore be a very high risk strategy for Makinder to arrange for the transfer of the shares without telling Hardial, Pom and Dahl.

230. As far as Hardial is concerned, it is clear from the documentary evidence that, in the context of the Inland Revenue investigation in 1999 (as to which, see further below), he was aware that Makinder and Niku owned the shares in PML. There is no evidence that he found out about the transfers after the event. Indeed, had he not been aware of the transfers and only found out later on, it is inevitable that this would have led to family discussions which, given his close relationship with his father, Pom would no doubt have been aware of. However, there is no evidence of any such discussions. Indeed, Pom confirmed in his evidence that his father had never told him that he had not signed the stock transfer forms.
231. Taking all of this into account, I have no hesitation in concluding that the transfers were indeed authorised and that the stock transfer forms were signed by Hardial, Pom and Dahl.
232. I accept Mr Patchett-Joyce's point that there must be some uncertainty as to whether everything which is said to have taken place on 12 May 1997 in fact took place on that date. However, it would not be the first time that documents have all been dated on a particular date, whether or not they were in fact executed on that date. As before, I am not asked to determine whether there is some defect which might invalidate the transfers.
233. I should record that there was some difference between Makinder's recollection as to how the documents relating to the transfer of the shares were signed and Mr Unarket's evidence. Mr Unarket could not give specific evidence as his colleague, Ms Shah would have prepared the documents and sent them out. However, he explained that normal practice would be to send the documents to Makinder (as the director of PML) and for her to arrange for signatures. This of course makes sense given that Makinder would need to be satisfied that the stock transfer forms had been executed and to sign the board minutes approving the transfers.
234. In my view, Makinder must have been mistaken in her recollection that the documents would have been sent direct to Hardial. However, given that the events took place over 25 years ago it is perhaps not surprising that Makinder cannot remember the precise details of the way in which the documents were signed. This does not however to my mind affect the conclusion that I have come to in relation to the authenticity of the stock

transfer forms given the clear inferences to be drawn from the other evidence which I have mentioned.

235. The key question of course for the purposes of this claim is whether, following the transfers in 1995 and 1997, Makinder and Niku held the shares in trust for Hardial and Harbans. In my view, they did not.
236. I have little doubt that, despite the borrowings taken out by PML, the shares in PML had a significant value at the time of the transfers in 1995 and 1997 as a result of the value of Claremont House and Houston Court being in excess of the amounts borrowed in order to fund the purchase price for those properties. On the face of it therefore, the transfers give rise to the presumption of a resulting trust as it is not disputed that Makinder and Niku did not pay for the shares.
237. Ms Hitchens suggests that Makinder and Niku did provide some consideration being the guarantees which they gave to Northern Rock, their father's £60,000 deposit with HSBC allowing tranche B to be drawn down and the fact that Makinder provided her services to PML free of charge. However, in my view, none of this is consideration for the transfer of the shares. The first two elements pre-date the transfer of the shares. Makinder's work for PML both before and after the transfer of the shares has no obvious link to the transfer itself.
238. I have already found that Hardial was holding his shares in PML on trust for HDSSL. If, as a result of the transfers to Makinder and Niku for no consideration, there were a resulting trust, that trust would be in favour of HDSSL and not Hardial and Harbans. It might perhaps be said that there could be a resulting trust in favour of Pom and Dahl as the shareholders of HDSSL but there is clearly no basis on which there could be a resulting trust in favour of Hardial and Harbans as they were not the people who had provided the value to Makinder and Niku.
239. In any event, in my view, the presumption of any resulting trust is rebutted by the clear evidence that the purpose of Makinder and Niku holding the shares was to separate PML from the other Bhabra family companies and the fact that the creditor protection which the family sought to achieve could only be assured if Makinder and Niku were both legal and beneficial owners of the PML shares.

240. Mr Patchett-Joyce suggested that creditor protection was no longer a concern as the events of 1992-1994 were wholly exceptional and unlikely to be repeated. However, the clear picture from the evidence is that the family had a more general concern about liabilities relating to the trading businesses threatening the investment properties. The wisdom of this is apparent from the events which took place in 2003-2004 which resulted in the almost total loss of the trading businesses and the properties from which they operated.
241. As I have mentioned, Hardial had given a personal guarantee to HSBC which was certainly still outstanding at the time of the 1995 transfer. It is not clear whether the HSBC facilities to HDSSL remained outstanding in May 1997 as Pom's evidence is that, at some point, NatWest provided facilities to HDSSL which allowed HSBC to be repaid. The accounts of HDSSL show that, as at 28 February 1997, HDSSL had bank loans and overdrafts of almost £2.3m, up from just over £500,000 the year before. Whilst there is no evidence as to whether Hardial guaranteed the NatWest facilities, the significant increase in borrowings would no doubt reinforce the need to safeguard the Windsor properties.
242. There is no other contemporaneous evidence of any intention that the PML shares should be held by Makinder and Niku for the benefit of Hardial and Harbans. Pom's case rests mainly on his own evidence and on inferences which Mr Patchett-Joyce submits can be made from other surrounding circumstances which I will come to.
243. As far as Pom's evidence is concerned, there is of course a problem given Pom's assertion that he was not aware of the transfers in 1995 and 1997. The question Ms Hitchens asks is how Pom can give any evidence as to what the parties' intentions were at the time of the 1995 and 1997 transfers if he was not aware of them. To be fair to Pom, he does not specifically address the position at the time of the 1995 and 1997 transfers in his witness statement other than to say that the transfers are disputed. Instead, his case is based on the more general proposition that the shares in PML have always been beneficially owned by his parents.
244. I turn now to the discussions with the Inland Revenue in 1999-2001 which, Ms Hitchens submits, in my view correctly, strongly supports the Defendants' case that Makinder and Niku were the beneficial owners of the shares and not Hardial or Harbans.

245. As I have already explained, the relevant points arising out of the investigation which concerned PML were whether PML was associated with the other Bhabra family companies and whether any capital gains tax liability may have arisen on the transfer of the PML shares to Makinder and Niku in 1995 and 1997.
246. The initial meeting with the Revenue took place on 9 June 1999. It was attended by Hardial and by his accountant, Mr Chowdhary. Hardial made two important statements during the course of that meeting:
- 246.1 He confirmed that he had no business interests other than Hardial Limited.
- 246.2 He stated that PML was owned by his daughter-in-law and her sister (i.e. Makinder and Niku).
247. Mr Patchett-Joyce suggests that what Hardial said must be judged against his ability to understand the niceties of the distinction between legal and beneficial ownership as well as the fact that English was not his first language. On this basis, he submits that Hardial must have been referring to the legal ownership of the PML shares rather than the beneficial ownership. Pom's evidence was that, whilst his father was an experienced businessman, he needed to have points of detail explained to him. He also suggested that his father may not have understood what he was saying to HMRC.
248. These statements made by Hardial to HMRC are very telling. I do not accept that Hardial would have been ignorant of the distinction between legal and beneficial ownership. He had, after all, signed a declaration of trust in favour of HDSSL in 1994 in respect of the shares which were registered in his name in companies which were to be subsidiaries of HDSSL. He must therefore have been aware, at least in general terms, that it was possible to be the registered holder of a share but to hold it for the benefit of somebody else. As Ms Hitchens points out, Pom's entire case is predicated on Hardial understanding the difference between legal and beneficial ownership.
249. In any event, even if Hardial did not appreciate the distinction between legal and beneficial ownership, it is in my view more likely that, when asked about the ownership of an asset, somebody who does not appreciate that distinction would identify the beneficial owner as the owner of the asset rather than the person in whose name title happened to be registered. The strong inference to be drawn from what Hardial said at



this meeting is that he genuinely believed that Makinder and Niku were the beneficial owners of the shares in PML.

250. It is not suggested that Hardial was trying to mislead the Revenue. However, it is worth noting that a number of witnesses were at pains to stress that Hardial was a man of integrity. Hardial himself told the Revenue officers at the start of the meeting that his father had always stressed to him the importance of being truthful since any deceit would ultimately be discovered.
251. A further meeting with the Revenue took place on 14 December 2000. This time, Andrew Gotch was representing the Bhabra family and their businesses. Hardial, Pom, Dahl and Makinder were all present.
252. At that meeting, Makinder explained the circumstances leading to PML becoming a subsidiary of HDSSL and the transfer of the shares back to Makinder and Niku. Mr Gotch stated that it was always the intention of the parties that the ownership of PML would remain in the hands of Makinder and Niku and that the transfer to HDSSL was solely as a result of HSBC's requirements. No objection was raised by Hardial, Pom or Dahl to what was said at that meeting by Makinder or by Mr Gotch.
253. Pom's evidence is that he took a back seat at the meeting. Pom explained that this was the reason why he did not challenge anything that was said at the meeting (either at the meeting or subsequently) and why he would still not have been aware, as a result of the meeting, of the transfers to Niku and Makinder in 1995/1997.
254. This evidence is simply implausible. Whilst Pom may have taken no active part in the meeting, he is effectively saying that he paid no attention to what was being said. I cannot accept this. It is notable that a significant part of that particular meeting was taken up with the transactions relating to PML.
255. It is in my view more likely that Pom was well aware of the situation and that this was the reason that he did not raise any objection to what was being said. This conclusion is supported by Mr Unarket's evidence that he took instructions in relation to the Revenue investigation from Pom and the documentary evidence which shows that the correspondence with the Revenue and the notes of the meetings with them were sent to Pom.

256. Both Pom and Mr Patchett-Joyce sought to portray the version of events put forward by Mr Gotch as a “construct” invented by the professionals in order to achieve the right result for the tax investigation. There could be some truth in this in relation to the beneficial ownership of the PML shares whilst they were held by Hardial and HDSSL. This is apparent from a letter from Mr Gotch to Mr Unarket dated 24 October 2000 in which he explains that they are perhaps on weak ground in suggesting that Makinder and Niku were the beneficial owners during this period given the existence of a written declaration of trust by Hardial in favour of HDSSL whereas there was no written evidence that HDSSL held its interest in the PML shares as trustee for Makinder and Niku.
257. However, there is no evidence of any “construct” in relation to the suggestion that Makinder and Niku were the beneficial owners of the PML shares following the transfer of the shares to them in 1995/1997. Indeed, as Ms Hitchens points out, this was stated by Hardial to be the case in 1999 before Mr Gotch and Mr Unarket were even involved. It is also apparent from the correspondence with the Revenue that there was no dispute as to whether Makinder and Niku were the beneficial owners of the shares following the transfers to them. The only question was whether they were the beneficial owners of the shares immediately prior to those transfers.
258. Mr Patchett-Joyce notes that there is no evidence that HMRC ever reached a conclusion as to the beneficial ownership of the PML shares whilst they were held by Hardial and HDSSL. Whilst that may be right, it does not alter the fact that it was represented to the Revenue by Hardial and by the family’s advisers and, in the latter case, in the full knowledge of Hardial, Pom and Dahl that Makinder and Niku were, at the time of the investigation, the beneficial owners of the shares in PML without anybody raising any objection to those representations.
259. Looking at the other surrounding circumstances, Mr Patchett-Joyce asks the Court to draw inferences about the parties’ intentions in relation to the beneficial ownership of the PML shares from a number of other matters including the way which PML was operated, the benefits received by the Bhabra family from PML and assurances which Pom says he was given by Mr Unarket and Makinder from 2015 onwards.

260. Dealing first with the management and operation of PML, Pom identifies a number of occasions where he was involved in PML taking out loan facilities, the management and refurbishment of the properties and insurance claims relating to the properties. Pom also asserts that the business of PML was conducted in accordance with instructions from Hardial, Pom and Dahl although the only specific instance of this identified by Pom is a change to the code recorded at Companies House which identifies the nature of the business carried on by the company which took place in 2014.
261. I am unable to draw any inferences about the beneficial ownership of the shares in PML from the matters relied on by Pom in relation to the conduct of PML's business. I accept that Pom had a certain amount of involvement but it does not follow from this that Makinder and Niku held their shares on trust for Hardial and Harbans.
262. There is no doubt that Makinder was responsible on a day to day basis for the management of PML's business. Pom accepted this in his evidence. Contrary to Makinder's evidence, in my view this was not a full time job. Much of the work was done by letting agents. In addition, Makinder was spending 2-3 days a week on her pharmacy business. However, the fact is that Makinder ran the business.
263. Whilst it is true that Pom was involved in discussions relating to the various loan facilities entered into by PML, Pom accepts that Makinder was also involved. There are also other explanations for Pom's involvement. For example, in relation to the 2004/2005 refinancings, Pom was involved in answering the replies to the bank's enquiries about the properties as he was the person who had the historic knowledge of the properties given that they had only recently been transferred to PML and were previously owned by the Bhabra family companies. In 2011 and 2014 (Barclays and Nationwide), a large part of the purpose of the refinancings was to provide funds to help meet Hardial's, Pom's and Dahl's legal fees relating to their litigation with KPMG and so Pom of course had an incentive to assist in finding a lender and getting the facility in place.
264. As far as the management of the properties is concerned, Makinder's evidence (which was not challenged) was that all of the properties (including those used for the trading businesses) were insured under a single policy. This was therefore the reason why Pom

looked after that side of things and dealt with any insurance claims relating to the PML properties.

265. There is no evidence that Pom was involved in the day to day management of the properties. He did arrange for some of the maintenance of the properties through HDSSL but HDSSL sent invoices to PML to charge for this work.
266. Pom identifies two significant projects which he co-ordinated. One is the installation of air conditioning at Claremont House in 2007. The second is a refurbishment of Claremont House which took place in 2009. Makinder accepts that Pom oversaw this work and also mentions the fact that Dahl oversaw the installation of CAT 5 cabling in Claremont House. There is no suggestion that Pom or Dahl were paid for this work.
267. It does not however follow in my view that any inference can be drawn from this that Makinder and Niku were holding the shares in PML for the benefit of Hardial and Harbans. A more straightforward explanation and one which Makinder gave in her evidence is that these are just examples of family members helping each other out with their respective businesses. It is clear from Makinder's evidence for example that she also assisted from time to time with matters relating to the Bhabra family businesses including financing and matters relating to EAST.
268. As far as Hardial, Pom and Dahl giving instructions to Makinder is concerned, there is very little evidence of this. Ms Hitchens suggests that Pom has only identified three instances over the course of 30 years. Even taken at its highest, this hardly shows a pattern of Makinder operating PML in accordance with instructions given to her by others.
269. Pom's own evidence is that rather than issuing formal instructions, the family would hold discussions about the businesses, including PML and that actions might be taken as a result of those discussions. However, such discussions are very different to the giving of instructions and again, in my view, do not lead to the drawing of any inferences that the PML shares were held for Hardial and Harbans.
270. Turning to the benefits received by members of the Bhabra family out of PML, Mr Patchett-Joyce's submission is that these benefits are provided as a result of Hardial and Harbans being beneficial owners of the shares in PML. Mr Patchett-Joyce relies

principally on various regular payments which have been made out of PML to Hardial, Harbans and Pom since at least 2014. However it is clear from the evidence that PML has provided other benefits to the family and their businesses including:

- 270.1 Providing a flat at Houston Court rent free to Pom and paying the bills in relation to the flat.
- 270.2 Providing office space to the Bhabra family businesses. Following the redevelopment of the building in Hayes in 1992, this just consisted of the use of a desk in PML's office until 2004 when the Hayes building was no longer available at which point the business was given the use of one of the serviced offices.
- 270.3 PML pays the expenses of Pom's car.
- 270.4 PML has, over the years, provided loans to the Bhabra family businesses and had to write off one significant loan of approximately £180,000 as it could not be repaid.
271. Whilst I accept that the provision of these benefits could be consistent with Hardial and Harbans being the beneficial owners of the shares in PML, they are not in my view inconsistent with the beneficial ownership of the shares being held by Makinder and Niku.
272. Given the Sikh culture and traditions which I have already mentioned, I have no doubt that they would feel a moral obligation to provide for the family out of the assets which they had received. This was Makinder's explanation for the provision of benefits. For the reasons I have already explained in paragraph [194], I accept her evidence on this point.
273. In any event, given the way that the payments from PML to Bhabra family members were accounted for (as to which see paragraph [82] above), it is apparent that the cost of those payments was borne by Makinder personally by way of a reduction in her loan account with Pharmplex. Although the cash might have come from PML, the benefits were not therefore being provided in any real sense by that company.
274. This does not of course apply to Pom's occupation of the flat at Houston Court. However, this is a benefit which he was receiving prior to the transfer of the properties to PML. No evidence was given in relation to this but it would perhaps be surprising

if, following the transfer of the properties to PML, Makinder were to change this arrangement.

275. In the circumstances, I do not consider that the existence of the benefits provided to the Bhabra family from PML gives rise to any inference that Hardial and Harbans were the beneficial owners of the PML shares.
276. The next point relied on by Mr Patchett-Joyce is the alleged acceptance by Makinder in correspondence after 2015 that she and Niku were holding the shares for Hardial and Harbans.
277. The background to this correspondence is that, on 26 September 2014, Pom emailed Mr Unarket suggesting that the time was right to “clarify matters on behalf of the beneficial owners”. The email refers to telephone conversations and meetings going on since April 2010. As explained above, I do not accept that such conversations and meetings took place. This is therefore the first record of Pom questioning the beneficial ownership of the PML shares, despite, as I have found, him knowing throughout that the PML shares were held by Makinder and Niku since 1995/1997.
278. Ms Hitchens notes that this email comes shortly after the family had lost the litigation against KPMG and Pom had been made bankrupt on 30 July 2014. As Ms Hitchens suggests, it is hard to escape the conclusion that this is a new version of events put forward by Pom in order to try and gain control over the Windsor properties.
279. It is notable that the email of 26 September refers to the beneficial owners of PML as being Hardial, Harbans and Dahl and not just Hardial and Harbans. In cross examination, Pom explained this as a mistake but, if so, it was a mistake which he repeated in a further email on 17 October 2014. I accept Ms Hitchens submissions that the more likely explanation is that Pom had simply named Hardial, Harbans and Dahl but had deliberately omitted his own name given that he had recently been made bankrupt.
280. The email of September 2014 was followed up by a continuous stream of further correspondence written by Pom to Makinder, Niku and Mr Unarket in relation to the beneficial ownership of the PML shares. Makinder described this as a campaign of harassment. Looking at the terms of some of the correspondence which included

complaints to Mr Unarket's regulator, threats of litigation and allegations about the effect of Makinder's conduct on Hardial's health, it is easy to see why Makinder describes the correspondence in this way.

281. More important though is whether Makinder accepted in the course of that correspondence that she and Niku were holding the PML shares for the benefit of Hardial and Harbans. It is clear to me that this is not the case. There is certainly correspondence in which Makinder indicates that she and Niku might be prepared to transfer the shares to Hardial and Harbans. Makinder's evidence is that one of the main reasons for mentioning this as a possibility is to indicate to Pom the implications of such a transfer.
282. In particular, the correspondence makes it clear that, in Makinder's view, there would be a liability to capital gains tax for Makinder and Niku if they were to transfer the shares to Hardial and Harbans. This could of course only be the case if Makinder and Niku were the beneficial owners of the shares. If Hardial and Harbans were already the beneficial owners, there would be no capital gains tax consequence.
283. Amongst the correspondence are emails from Pom to Makinder and/or Mr Unarket which record previous assurances said to have been given by them that the PML shares are held for the benefit of Hardial/Harbans. Some of those emails purport to be from Hardial although come from Pom's email address. Pom confirmed in his evidence that he wrote the emails on behalf of his father after discussions with him.
284. However, it is clear from Pom's evidence that the emails were not written in response to a specific instruction by his father but were written at Pom's discretion based on more general discussions which he says took place. It is however notable that, other than the documents which Pom accepts he created, there is no evidence of Hardial himself questioning the beneficial ownership of the PML shares.
285. Given the self-serving nature of this correspondence, the fact that there is no evidence of any questioning of the beneficial ownership of the PML shares prior to 2014 and the fact that all of the correspondence from Makinder makes it clear that she does not believe that Hardial and Harbans are the beneficial owners of the shares, I do not accept that the assurances which purport to be recorded in Pom's emails were ever given.

286. I should also mention that, in her evidence, Manjit states that she overheard Makinder confirming to her parents and her brothers that PML was owned by her parents. However, for the same reasons as set out above, I reject this evidence. There is no reason why Makinder would have acknowledged verbally that Hardial and Harbans were the beneficial owners of the shares when she was making it clear in correspondence that she did not believe that they were. As I have already stated, my impression of Manjit's evidence is that she was saying what she thought would assist Pom's case rather than what she genuinely remembered.
287. It is right to note that, in the correspondence identified by Mr Patchett-Joyce, there is reference to an occasion where funds were transferred to Pharmplex from PML in part repayment of Pharmplex's loan to PML. This derived from the proceeds of the £700,000 loan made by Nationwide in early 2015. Makinder's response in the correspondence was that she had asked Hardial before making the transfer to Pharmplex.
288. Mr Patchett-Joyce asks why Makinder would bother asking Hardial unless he was a beneficial owner of PML. Makinder's explanation for this was that she simply told Hardial what she was proposing to do rather than ask his permission. This was of course relevant to Hardial given the understanding that the balance of the proceeds of the loan would be paid to Hardial to allow him to repay some of the borrowings he had taken out in the context of the KPMG litigation.
289. In a similar vein, Mr Patchett-Joyce calls attention to the dividend paid by PML in 2001. When providing PML's accounts to Hardial, Dahl and Pom in April 2002, Makinder explained that the dividend had been used to pay Jag's school fees. Again, Makinder's evidence was that she simply wanted to explain the position rather than there being any need to ask permission. This is of course borne out by the fact that Makinder did not seek permission from Hardial, Pom or Dahl before arranging for PML to pay the dividend.
290. These sorts of examples are, again, in my view consistent with the cases put forward by both parties. They certainly are not sufficiently material to give rise to an inference that Hardial and Harbans were the beneficial owners of the PML shares.



291. There are two other pieces of evidence which I should mention. The first is the inheritance tax return for Harbans' estate. Whilst the main form, signed by Pom, Dahl and Hardial as executors does not refer to the PML shares, a separate schedule (which is not signed by the executors) sets out the jointly owned property and includes the PML shares. It is suggested that this provides evidence that Hardial and Dahl (having signed the return) considered the PML shares to be beneficially owned by Hardial and Harbans.
292. However, it is clear that Pom took the lead in arranging for the inheritance tax documents to be produced. They were prepared by Affinity Associates, the same firm as Pom had arranged to prepare a report on the ownership of the PML shares which was provided in August 2015. The IHT return was prepared in October 2015. Hardial and Dahl would not therefore necessarily have been familiar with the detail of the return and, in particular with the schedule setting out the jointly owned property which was not part of the document which they signed.
293. Of course, including the PML shares as part of Harbans' estate had no relevance for inheritance tax purposes given that the estate qualified for the spouse exemption as Harbans had left her entire estate to Hardial. It is therefore more likely in my view that this was simply part of Pom's efforts to build up a picture of his mother and father being the beneficial owners of the PML shares.
294. Perhaps more telling is the second piece of evidence which is a form filled in by Pom on behalf of Hardial as part of an application for assistance towards the cost of social care. Hardial was required to list his assets. No mention is made of the shares of PML. The form is signed by Pom on behalf of his father and is dated 1 September 2015 – i.e. approximately the same time as the inheritance tax return was prepared.
295. If anything, these documents support the case that Hardial and Harbans were not the beneficial owners of the PML shares. The inconsistency between the documents certainly adds weight to the conclusion that Pom is willing to say what he thinks is most likely to get him what he wants. This is perhaps emphasised by the fact that Pom wrote the local authority a follow up letter in December 2015 which listed monthly loan repayments to PML as a liability of Hardial with, again, no suggestion that Hardial had any beneficial interest in that company.

296. Taking all of the surrounding facts and circumstances into account there is, in my judgment, no evidence of any agreement that the shares in PML would be held by Makinder and Niku on trust for Hardial and Harbans; nor can any inference be drawn that this is what was intended.
297. On the contrary, the only reasonable inference to be drawn from the underlying objective of separating PML from the other Bhabra family companies, is that Makinder and Niku were indeed intended to be the beneficial owners of the shares as the objective would otherwise not have been achieved. Strong support for this conclusion is provided by the statements made by Hardial himself and by the family's advisers to the Inland Revenue as part of the tax investigation in 1999/2001.
298. These findings are more than sufficient to displace any presumption of a resulting trust which might otherwise arise although, as I have already said, there is no basis on which a resulting trust could arise in favour of Hardial and Harbans in any event.

### **Estoppel and illegality**

299. Given the conclusions which I have reached both in relation to Pom's standing to bring the claim and the existence of any trust, there is no need for me to deal with the Defendants' alternative arguments based on estoppel and illegality. I will therefore confine myself to some very brief comments. These comments are of course made on the assumption (contrary to my actual findings) that I had concluded that Makinder and Niku did in fact hold the shares on trust for Hardial and Harbans.

### Estoppel

300. The Defendants rely on estoppel by convention and/or estoppel by representation or acquiescence. The representations, acquiescence or convention relied on all arise out of the statements made to HMRC and the fact that nobody challenged those statements.
301. Without going into the detail of the legal principles, my initial view is that those representations, being made to the Inland Revenue and not to Makinder or Niku, even when coupled with a failure by Hardial or Pom to challenge any of the statements made, are unlikely to have been made with the necessary intention, expectation or understanding that they would be relied on by Makinder or Niku.

302. Even if they had been, all of the forms of estoppel require some sort of detrimental reliance by Makinder and Niku in order to justify the intervention by equity and to prevent Pom from relying on his strict legal rights.
303. The detrimental reliance identified by Ms Hitchens on behalf of the Defendants is that Makinder continued to work full time for PML and that she and Niku allowed Pharmplex to provide significant financial support to PML.
304. I am not persuaded that either of these matters resulted from any representations which were made to the Inland Revenue. As far as Makinder's work for PML is concerned, there is no difference between the work which she did for PML before the representations were made and the work which she did for PML after the representations were made. She cannot therefore have been induced to do that work as a result of the representations.
305. In relation to the support provided to PML, there are two points. The first is that the payments from Pharmplex to PML were not made to enable PML to meet its liabilities. On the contrary, it is clear that PML is a profitable company given its rental stream from Claremont House and Houston Court. Instead, the payments were used to fund benefits to Bhabra family members or loans to other Bhabra family businesses.
306. Makinder's evidence is that these benefits were provided as a result of the moral obligation deriving from Sikh customs and traditions to support family members. This is supported by the fact that payments to family members are accounted for by reducing the loan due from PML to Pharmplex and correspondingly reducing the directors loan due from Pharmplex to Makinder. The result is that, in substance, Makinder is herself providing benefits to Bhabra family members. It follows from this such support would have been provided whether or not Makinder and Niku were the beneficial owners of PML as PML was essentially just a conduit.
307. The second point is that, based on Makinder's own evidence, some financial support had been provided to PML and benefits had been provided to Bhabra family members prior to the tax investigation. This supports the conclusion that such benefits would have been made available whether or not the representations in question had been made.

308. In my view, the Defendants have not established the necessary detrimental reliance in order to resist Pom's claim based on estoppel.

### Illegality

309. The illegality doctrine is based on public policy. The precise nature of the policy was examined in detail by Lord Toulson in *Patel v Mirza* [2016] UKSC 42. Lord Toulson's conclusion at [101] was that it is necessary for a court to look at a range of factors in order to determine whether allowing the claim would cause damage to the integrity of the legal system but that the Court should keep in mind the possibility of overkill unless the law is applied with a due sense of proportionality.

310. In *Patel v Mirza* itself, Mr Patel provided funds to Mr Mirza in order to carry out transactions which would constitute insider trading. In fact, the transactions never happened. Lord Toulson approved the Court of Appeal's decision that Mr Patel should be able to recover the funds he had paid to Mr Mirza. This was a "just and proportionate response" as Mr Patel was "seeking to unwind the arrangement, not to profit from it."

311. In my view, the position here is no different. If it had been the case that the PML shares were held on trust by Makinder and Niku for Hardial and Harbans, this might have demonstrated an intention to defraud creditors by falsely representing that Hardial and Harbans were not in fact the owners of the shares. However, there is no evidence of this. In addition, the circumstances did not arise where it was necessary to test the proposition. There is no evidence for example that Hardial had any personal liabilities in respect of the problems encountered in 2004. Neither was he made bankrupt after the KPMG litigation, unlike Pom and Dahl.

312. Ms Hitchens also refers to the potential for misleading the Inland Revenue. On the assumption that Hardial was a beneficial owner of shares in PML, this may well have happened as the Revenue were told that PML was not associated with Hardial Limited, although this depends on whether common ownership was a sufficient association.

313. However, there is no suggestion that, when the PML shares were transferred to Makinder and Niku, any thought was given as to whether presenting PML as an independent company might in some way improve the tax position either of PML or the other Bhabra family companies. This should be contrasted with the position in

*Abdullah Al-Dowaisan v Imad Abdul Al-Salam* [2019] EWHC 301 (Ch) where the entire rationale for the transaction was to conceal taxable profits from the Revenue.

314. Taking these factors into account, it would in my view be disproportionate to deny Pom's claim. This is not a situation where allowing Pom to recover the PML shares (on the basis that they are now held on trust for him) would damage the integrity of the legal system. I accept that the position might be different if it were shown that the purpose of the transactions was to defraud the Revenue but, as I have said, there is no evidence that this was the case.

### **Conclusion**

315. Pom's claim is dismissed. He has no standing to bring the claim as I am not satisfied as to the authenticity of the 2016 Deed of Assignment. Even if I were, my conclusion is that it should be set aside on the basis of undue influence.
316. If I am wrong in those conclusions, Pom has, in any event, failed to establish that Makinder and Niku held the PML shares in trust for Hardial and Harbans and therefore now hold the shares in trust for Pom.