



Neutral Citation Number: [2019] EWHC 2214 (QB)

Appeal Ref No: QA-2018-000028
Case No: D4QZ1H84

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE COUNTY COURT
AT KINGSTON-UPON-THAMES
ORDER OF DJ ANDREW HOLMES

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 August 2019

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

STEPHEN COLLINS

Applicant,
Appellant and
Fourth Party

- and -

CAMILLA SIMONSEN

Respondent
and Claimant

- and -

(1) KNFH LIMITED
(2) NICOLA HILL

Defendants

Ms Stephanie Wookey (instructed by **Bower Cotton Solicitors LLP**) for the
Applicant/Appellant
Mr Geoffrey Goldkorn (instructed by **Goldkorn Solicitors**) for the **Respondent**
The Defendants did not attend and were not represented.

Hearing date: 19 July 2019

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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THE HONOURABLE MR JUSTICE MURRAY

Mr Justice Murray :

1. This is a “rolled-up” hearing of an appeal brought by Mr Stephen Collins, the applicant/appellant, against an order (“the Order”) made by District Judge Andrew Holmes (“the Judge”) in the County Court at Kingston-upon-Thames on or about 10 September 2018 (I say “on or about” for reasons explained below). I have before me two applications by Mr Collins, namely:
 - i) for an extension of time to lodge an appeal against the Order; and
 - ii) if the extension of time is granted, for permission to appeal against the Order, which, if granted, is to be followed immediately by the hearing of the substantive appeal.
2. The question raised by this case is whether Ms Camilla Simonsen, the respondent, is entitled to recover £42,000 that she transferred on 11 April 2017 to a client account of KNFH Limited trading as Carringtons (“Carringtons”), the first defendant. Carringtons operates an estate agency and lettings business.
3. Ms Simonsen says that the money transferred to Carringtons was intended as a gift for Mr Collins, for him to use toward rent on a property on Kingston Hill that he was considering renting. She changed her mind, however, about the gift and on 27 April 2017 asked Carringtons to return the funds. She says that she was entitled to do this as the gift was unperfected. Mr Collins disagrees and claims that he is entitled to the funds.
4. Although Carringtons had received no instructions from Ms Simonsen as to the purpose of the funds transferred to it, it eventually became aware that there was a dispute between Ms Simonsen and Mr Collins with regard to these funds, and therefore Carringtons did not return the funds when requested by Ms Simonsen.

The underlying claim

5. On 19 May 2017 Ms Simonsen issued a claim in the County Court against Carringtons and Ms Nicola Hill, the second defendant, seeking repayment of the funds plus interest. Ms Hill is a director of Carringtons and the person with significant control.
6. By order made on 12 September 2017 (sealed on 27 September 2017) District Judge Andrews ordered that Carringtons pay the sum of £42,000 together with interest into court by 4:00 pm on 19 September 2017 pending resolution of the dispute as to the ownership of the funds. Mr Collins was added as a party to the proceedings, and the claims against the first and second defendants were struck out, except that their claim for costs was reserved to the conclusion of the proceedings.
7. Case management directions were made for the claim on 13 October 2017 and 20 December 2017. On 16 January 2018 Mr Collins made an application to strike out the claim as against him, which was dismissed by Deputy District Judge Jacobs on 13 February 2018, who also ordered Mr Collins to pay Ms Simonsen’s costs of the application, summarily assessed at £2,634. DDJ Jacobs referred in his order to the

“Application dated 12/01/2018”, but that must be an error. There is no other application by Mr Collins about that time in the appeal bundle.

8. The trial of the claim was heard by the Judge on 10 May 2018 in the County Court at Kingston-upon-Thames. At the trial Ms Simonsen was represented by Mr Geoffrey Goldkorn, as she was at this hearing, and Mr Collins was represented by Ms Stephanie Wookey, as he was at this hearing.
9. On 2 July 2018, the Judge handed down his reserved judgment (“the Judgment”) in the absence of the parties, in which he gave his reasons for resolving the dispute in Ms Simonsen’s favour. It appears that he did not make a final order on that occasion (there is no copy of his order of that date in the appeal bundle), but, according to the third recital of the Order, on 2 July he ordered that the parties make written submissions on costs.

The Order

10. The copy of the Order in the appeal bundle is not clearly dated. I conclude that it was made *on or about* 10 September 2018 for the following reasons:
 - i) the only indication in the Order of when it is was made is given by the words “BEFORE District Judge Andrew Holmes sitting ... on 4th September 2018”;
 - ii) there is, however, a reference in the penultimate recital to an email dated 5 September 2018 that was considered by the Judge, which shows that the Order was not, in fact, made on 4th September 2018;
 - iii) there is an email message in the appeal bundle from the Judge to Mr Goldkorn and Mr Collins dated 4 September 2018 at 18:13 discussing the Judge’s intentions as to the final form of the Order, principally in relation to costs, and inviting the parties to make final submissions on costs by 4:00 pm on Friday, 7 September 2018, after which he said he would finalise the Order.
11. I assume, therefore, that the Judge finalised and issued the Order on 10 September 2018 or shortly thereafter. The timing of the making of the Order is potentially relevant to Mr Collins’s application for an extension of time to appeal, as discussed below.
12. In the Order, the Judge declares that the sum of £42,000 plus interest that was paid into court by the defendants on 11 October 2017 pursuant to the order dated 12 September 2017 is the property of Ms Simonsen. He also orders that the £42,000 together with accrued interest be paid forthwith to the Ms Simonsen’s solicitors, and he orders that Mr Collins pay Ms Simonsen’s costs, to be summarily assessed by the Judge, if not agreed, within 28 days of the final conclusion of Mr Collins’s appeal.
13. On 24 July 2018, Mr Collins filed his application seeking permission to appeal against the Order, on the assumption that the time for filing of the appeal ran from the date that the Judgment was handed down rather than from the date the Order was made. On that basis, he considered that his application was one day late.

14. CPR 52.12(2)(b) requires that, in the absence of a direction from the lower court, an appellant must file his appeal within “21 days after the date of the decision of the lower court which the appellant wishes to appeal”. As noted in the 2019 edition of the White Book at para 52.0.6, an appeal is against the decision made as reflected in an order, rather than against the reasons. An order takes effect “from the day when it is given or made or such later date as the court may specify”: CPR 40.7(1). As confirmed by the Court of Appeal in *Re Barrell Enterprises* [1973] 1 WLR 19 (CA), a judge may alter his or her order at any time before it is entered and perfected: White Book at para 40.2.1 (which also cites *Pittalis v Sherefettin* [1986] 1 QB 808 (CA) and the cases referred to in the case in support of this proposition). An order is perfected by being sealed pursuant to CPR 40.2(2)(b). Accordingly, the final decision was not made until the Order was sealed.
15. Arguably, therefore, Mr Collins’s application to the High Court for permission to appeal was in time (if not too early). The Judge’s substantive decision, however, was clear from the handing down of the Judgment despite the length of time it took to finalise the Order. On the basis that the time for filing his Appellant’s Notice ran from the date of handing down of the Judgment, rather than from the date the Order was sealed, Mr Collins’s application was only one day late.

Procedural history

16. On 4 March 2019 Sir Alistair MacDuff, sitting as a Judge of the High Court, ordered that Mr Collins’s applications seeking an extension of time to appeal and for permission to appeal be considered at an oral hearing and, if granted, for the substantive appeal to be heard thereafter. In other words, he ordered a “rolled-up” hearing.
17. On 4 April 2019 Goss J, on the papers without a hearing, granted Mr Collins an extension of time to file his appeal bundle. On 15 May 2019 (sealed on 18 May 2019) Andrew Baker J, on the papers without a hearing, granted Mr Collins a further extension of time to file his appeal bundle.
18. On 6 June 2019 Sir Alistair MacDuff, sitting as a Judge of the High Court, on the papers without a hearing, granted Mr Collins a further extension of time to file his appeal bundle and also dispensed with the “requirement for a transcript of the Judgment in respect of the Order of 4th September 2018”. He noted that:

“[i]n respect of the hearing of 4th September 2018, the parties may agree jointly a note of the reasons of the learned Recorder (insofar as not apparent from the recitals) such note to be sent to the learned Recorder for approval. NOTE: it is for the parties to decide whether such a note is necessary in view of the recitals.”
19. This is somewhat curious as it does not appear that there was, in fact, a hearing on 4 September 2018. Instead, after the Judgment was handed down on 2 July 2018, there was an exchange of email messages between the parties and the Judge, principally in relation to the issue of costs. A summary of that exchange is set out in recitals to the Order, including a reference in the penultimate recital to an email on 5th September 2018 at 4:36 pm. The Judge’s email of 4 September 2018, to which I

referred at [10(iii)] above, makes no mention of a hearing that day and speaks of the Judge's desire to avoid "further costs of an attended hearing to resolve these [costs] issues when there is an appeal outstanding", which would be an odd comment if there had, in fact, been a hearing that day where the only outstanding issue was costs.

20. I surmise that there was some lack of clarity in the papers accompanying Mr Collins's application dated 22 May 2019, and it may be that Mr Collins sought extensions of time to file his appeal bundle as he had been attempting, unsuccessfully, to obtain a transcript of the full hearing on 3 May 2018 to add to the appeal bundle. He wanted the transcript of the full hearing on the basis that, among other grounds of appeal, he was seeking to appeal against the Judge's findings of fact as being against the weight of the evidence. It appears that the orders obtained from Goss J and Andrew Baker J for extensions of time were based on Mr Collins's difficulty obtaining a transcript, and yet it could not have been a transcript of the Judgment, which, as acknowledged in his Appellant's Notice, Mr Collins had obtained on 18 July 2018.
21. In any event, the rolled-up hearing came before me. As set out in the Appellant's Notice, for reasons beyond his control Mr Collins had had difficulty, immediately after the hand-down of the Judgment, obtaining from the County Court at Kingston-upon-Thames a copy of the order made by the Judge on 2 July 2018 (which was not the final Order, but an interim order requiring submissions on costs) and of the Judgment. This hampered his ability to obtain legal advice and to prepare his Appellant's Notice. At the start of the hearing before me, having considered Mr Collins's detailed reasons for the delay and concluding that there was no prejudice to Ms Simonsen by virtue of it and that it would be in the interests of justice to do so, I granted the extension of time.
22. Having granted the extension of time, I also agreed with counsel at the beginning of the hearing that it would be more efficient for me hear all of the submissions of each of Mr Collins and Ms Simonsen on permission and on the substantive merits of the appeal, than it would be to deal with permission and the substantive merits sequentially.

Factual background

23. The facts were set out in some detail at [2] to [38] of the Judgment. The Judge noted at the outset of his summary of the factual background that neither Ms Simonsen nor Mr Collins "comes out of what follows with any credit". The Judge said at [2] of the Judgment that he:

"struggled to accept the evidence of either party and have done so only where it is supported by contemporaneous documents or is more consistent with other evidence"
24. The following summary of the facts will suffice for present purposes. Ms Simonsen and Mr Collins met in 2012 and in 2015 began an intimate relationship. It was a volatile, on-again-off-again relationship that appears finally to have ended in April 2017.
25. Ms Simonsen had a flat in Bina Gardens in South Kensington. Her two teenage children lived there with her, when not at boarding school or staying with their father,

Ms Simonsen's former husband, Mr Steven Paterson. At some point in the summer of 2015, Mr Collins began to stay in the flat in Bina Gardens, eventually moving in. He did not have his own property in London. His mother, Mrs Jean Collins, who lived in Florida, owned a property in Bournemouth, which Mr Collins sometimes used.

26. In 2013 Ms Simonsen had purchased a property in Henniker Mews in Chelsea. It required substantial renovation, however she made little progress in that regard until 2015. At the beginning of their relationship, Ms Simonsen and Mr Collins discussed the idea of living together in the property as their home. Mr Collins became involved in the project, for example, corresponding with surveyors about plans for the renovation. He had some design experience from work undertaken in California, but he was keen to undertake a project in London in order to establish a local track record.
27. As early as mid-August 2015, following an argument while on holiday in the south of France leading to their returning separately to London, Mr Collins found himself locked out of the flat in Bina Gardens. The following morning there was a further argument, as a result of which Ms Simonsen called the police. Mr Collins was arrested for using threatening, abusive or insulting words or behaviour and was subsequently granted bail. The next day Ms Simonsen passed a note under Mr Collins's door in the Cranley Hotel, opposite her flat, asking him to stay involved in the Henniker Mews project and emailed the police withdrawing her complaint. She then sent Mr Collins an email expressing her love and confirming her desire for him to work on the Henniker Mews property. She also referred, for the first time, to the possibility of finding a place for him to rent. Mr Collins moved back into Ms Simonsen's flat.
28. Some time toward the end of the 2015, Mr Paterson objected to his two children living with their mother in the flat at Bina Gardens while Mr Collins was there, given the volatile nature of the relationship between Ms Simonsen and Mr Collins and the arguments that the children were witnessing. Mr Collins moved out, to the Cranley Hotel. Ms Simonsen paid his hotel bills there. The stormy relationship continued.
29. In November 2015 Ms Simonsen and Mr Collins discussed investing in a property in Palm Springs. On 10 December Mr Collins asked for a signed agreement between them as to the Henniker Mews project and the Palm Springs project as a condition of his staying in the United Kingdom. The following day, the relationship had soured again. By 21 December, however, Mr Collins was happily working on the Henniker Mews project, communicating with surveyors and the local authority and undertaking some internal demolition work on the property, stripping it back to the load-bearing walls. At [12] of the Judgment, the Judge rejected Ms Simonsen's evidence that Mr Collins had done no work on the Henniker Mews property. At [13] he found that:

“Mr Collins was certainly involved [in the project] throughout December 2015 and January 2016 to a very significant degree. Mr Collins had an expectation that at some point he would be recompensed for the work he had undertaken.”
30. By early January 2016 the relationship was in difficulties again, but then improved to the point that they travelled together to Mexico on holiday, with Ms Simonsen paying the principal expenses, although Mr Collins paid for various presents and some expenses.

31. On their return to London, they considered renting the East Wing of Hardwick House at Whitchurch-on-Thames. Mr Collins gave evidence at the trial that Ms Simonsen had agreed to pay the first year's rent of £48,000 as a gift and to recompense him for the work he had already done on Henniker Mews. Ms Simonsen gave Mr Collins the sum of £11,312, for the agent's fees, deposit and first month's rent for a rental beginning in March 2016. Mr Collins then paid that amount to Savills on 22 January 2016.
32. In February 2016 Ms Simonsen and Mr Collins travelled to Palm Springs to visit Mrs Collins. On 28 February there was another serious rupture in the relationship, following which Ms Simonsen told Savills that she would not proceed with renting Hardwick House. She asked Savills to refund the monies that had been paid on 22 January 2016. On 16 March Savills' solicitors wrote to Mr Collins stating that given the dispute as to ownership of the money, they would hold the money pending agreement or court order. Ms Simonsen instructed solicitors to try to recover the money, however she said in evidence at the trial that her solicitors advised her that she was unlikely to recover the money, given that she had paid it to Mr Collins and not to the agent.
33. During the period from March to August 2016 for a variety of reasons, the relationship appears to have broken down almost completely. Following an exchange of WhatsApp messages in early August, Ms Simonsen agreed to call Savills the following day and release the Hardwick House money to Mr Collins. The relationship continued but remained troubled.
34. Mr Collins said in his evidence at the trial that he had a conversation with Ms Simonsen in January 2017 in which Ms Simonsen agreed to give him the first year's rent on another property in recompense for what occurred with Hardwick House.
35. In mid-March 2017 Ms Simonsen and Mr Collins met at a restaurant, and Mr Collins told Ms Simonsen about a property on Kingston Hill that he was keen to rent, for which the rent was £42,000 per annum. He did not reveal the address to her. It is disputed whether he asked her for the rent or whether she offered to pay the rent unasked. The Judge preferred Ms Simonsen's evidence that Mr Collins asked for the rent and that she neither agreed nor refused to pay it at the lunch.
36. Further unpleasantness ensued with, among other things, Mr Collins emailing Ms Simonsen's adoptive father, who was then ill, on 29 March 2017 asking him to "honour that debt on her behalf", the "debt" being the amount that Mr Collins considered was due to him for his work on Henniker Mews.
37. On 3 April 2017, while she was on holiday in Japan with her children, Ms Simonsen emailed Mrs Collins as follows:

"I am sorry to involve you but I need to settle the rental for Stephen which I agreed on even if we can't work it out

If he can call me tonight and I will settle the rental for the house he has fallen in love with and we both can be kind toward each other."

38. Mrs Collins responded that she would pass the message to her son. On 4 April 2017 she sent the following email to her son:

“Camilla telephoned me.

Money needs to be transferred to an agent – as it is for rent and this is ok

Check not possible or direct to you, as it would appear as a gift and therefore taxable, or money laundering.

All is necessary is name of agent, bank details – sort code and client account number. She does not need to know where the agent is.

She says she wants to transfer the money tomorrow morning.”

39. In her witness statement for the trial, Ms Simonsen denied saying, during her conversation with Mrs Collins, that the payment would need to be to the agent to avoid appearing to be a gift and therefore taxable and also denied that there would be a concern with money laundering. In her oral evidence, Ms Simonsen accepted mentioning money laundering, but not the payment appearing as a gift and being taxable if made directly to Mr Collins. The Judge accepted Mrs Collins’s evidence on this point.

40. Mr Collins emailed Ms Simonsen that same day, 4 April 2017, promising to send his bank details that evening and suggesting that they speak once she was back in London and her children back at school. On 6 April Mr Collins sent Ms Simonsen a message making it clear that the relationship was over, with little hope of rekindling. The Judge described her email response as “important”:

“Thank you for taking time out to send me advices and I will take it on board

Take care and will hear from you when you need to settle the rental

Anyway, it doesn’t sound very hopeful about us so will just have to accept that I threw something very beautiful away

I may be all the things you say and I have suffered to watch you so hurt as it hurts me to even if you think I try and turn it always toward myself

Unfortunately, I don’t have you talent to express myself

I wish it works out with the house and you can close the door and be happy with whom you chose to be with”

41. Over the next couple of days further email messages were exchanged that suggested the relationship might not quite be over. Then on 10 April 2017 Mr Collins sent bank details for Carringtons to Ms Simonsen and asked her to transfer the money. Ms

Simonsen arranged for the funds to be transferred on 11 April to a Carringtons client account with the reference “Camilla Simonsen Rental”, the funds to be available on 13 April.

42. On 15 April 2017 Mr Collins sent an email “in characteristically emotive and strident terms”, saying that the relationship was at an end. The message read in part: “You have honoured your debt to me. We are now free of one another.” It ended with the words, “do not contact me.”
43. They met again on Easter Monday, 17 April 2017, for lunch. Ms Simonsen alleges that during this lunch, Mr Collins assaulted her by biting her finger. Nonetheless, they went to view the property on Kingston Hill together. On 22 April 2017, Ms Simonsen’s birthday, they met again for lunch, during which Mr Collins told Ms Simonsen that the relationship was over and walked out.
44. Ms Simonsen then reported the alleged assault on Easter Monday to the police, who arrested Mr Collins and charged him with assault. Mr Collins sent a number of abusive messages to Ms Simonsen on 22 April, followed by one on 23 April that was copied to her father, Mr Robert Noonan.
45. On 27 April 2017 Ms Simonsen consulted her solicitor about recovering the money she had paid to Carringtons. Her father, Mr Noonan, telephoned Ms Hill, the second defendant, and asked for the money to be returned. Ms Hill said that she would do so if she received a request from a solicitor acting for Ms Simonsen. That same day her solicitor emailed Ms Hill asking for the £42,000 to be paid into his firm’s client account. Ms Hill replied by email saying that she would be in contact the following Tuesday, 2 May, however this did not happen. On 4 May Ms Hill emailed Ms Simonsen’s solicitor to say that the tenancy was proceeding, and she was waiting for instructions from Mr Collins. On 8 May Ms Simonsen’s solicitor emailed Ms Hill giving notice that legal proceedings would be issued. On 10 May Ms Hill confirmed to Ms Simonsen’s solicitor that she would hold the funds in a client account until the dispute was resolved.
46. On 19 May 2017, as I have already noted, this claim was issued against Carringtons and Ms Hill, with the Particulars of Claim filed on 23 May 2017.
47. On 26 June 2017 Mr Collins’s trial for assault was heard at a Magistrates’ Court, and he was acquitted. The District Judge refused an application by the prosecution for a restraining order.

The law relating to gifts

48. It was common ground that the Judge accurately summarised the law on gifts at [49] to [62] of the Judgment. We are concerned in this case with a gift between living persons (*inter vivos*). Other rules apply to gifts made in contemplation of death (gifts *mortis causa*) or by will. A gift of personal property involves the voluntary transfer of that property from the donor to, or for the benefit of, the donee, with the intention that the donee shall become the owner of the property. The donor must intend to make a gift. The donee’s intention in receiving the gift is only relevant to the extent that the donee wishes to reject the gift. It is not necessary that the donee even know that the

gift has been made. A donor can make a gift conditional. Whether or not a gift is conditional, until it is perfected or completed, it can be revoked by the donor.

49. As to the need for perfection of a gift, in *Milroy v Lord* (1862) 4 De GF & J 264, 45 ER 1185, Turner LJ said (at p 274):

“I take the law of this Court to be well settled, that, *in order to render a voluntary settlement valid and effectual, the settler must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him.* He may of course do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for those purposes; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol; but *in order to render the settlement binding, one or other of these modes must, as I understand the law of this Court, be resorted to, for there is no equity in this Court to perfect an imperfect gift.* The cases I think go further to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust.” (emphasis added)

50. These principles have been discussed, developed and refined in a number of subsequent cases, in particular in relation to the extent to which equity may, in certain circumstances, assist a donee in relation to a purported gift.
51. For present purposes, it is only necessary to note a few key points. First, the mode of transfer of ownership of the property must be appropriate to the nature of the property. Ownership of chattels, for example, may be transferred by delivery, including constructive delivery. Ownership of personal property in the form of a chose in action, as in this case, may be transferred by assignment.
52. Turner LJ in *Milroy v Lord*, in the passage quoted above, notes the following “modes” of transfer:
- i) with the intention to make a gift of the property, the donor transfers the property:
 - a) directly to the donee; or
 - b) to a trustee for the donee; or
 - ii) the donor declares that he or she holds the property in trust for the donee.

See also *T Choithram International SA v Pagarani* [2001] 1 WLR 1 (PC) (Lord Browne-Wilkinson) at p 11D.

53. Turner LJ also makes clear in *Milroy v Lord* that if the donor intends to transfer by one of those modes (for example, directly), but fails to do so effectively, equity will not assist the donee by treating the transfer as having been made by another mode (for example, by declaration of trust). This is an instance of the general principle that equity will not assist a volunteer.
54. As noted by Lord Browne-Wilkinson in *T Choithram International* at p 11D, relying on *Milroy v Lord* and other cases cited there, if a donor has not done everything necessary to be done that is within his own power to do in order to transfer a gifted asset to the donee, “the gift is incomplete since the donee has no equity to perfect an imperfect gift”. Moreover, Lord Browne-Wilkinson noted at p 11F, once again in reliance on *Milroy v Lord*, the court:

“... will not give a benevolent construction so as to treat ineffective words of outright gift as taking effect as if the donor had declared himself a trustee for the donee”
55. Lord Browne-Wilkinson tempered the foregoing, however, by cautioning at p 11H that:

“[a]lthough equity will not aid a volunteer, it will not strive officiously to defeat a gift.”
56. Lord Browne-Wilkinson then went on to analyse the particular facts of that case, which were said to be novel, namely, where the settlor used words that were capable of being construed as vesting a gift as trust property in one of the trustees of a foundation, namely, himself, whether it would be contrary to the principles of equity to allow him to resile from his gift. Their Lordships concluded in that case at 12F that:

“... in the absence of special factors where one out of a larger body of trustees has the trust property vested in him he is bound by the trust and must give effect to it by transferring the trust property into the name of all the trustees.”
57. Although the facts of *T Choithram International SA* were novel, their Lordships ultimately found that the gift was transferred by one of the modes identified in *Milroy v Lord*, summarised at [52] above, albeit with the factual twist described by Lord Browne-Wilkinson and with the assistance of equity.
58. The law relating to *inter vivos* gifts was further refined and developed by the Court of Appeal in *Pennington v Waine* [2002] EWCA Civ 227, [2002] 1 WLR 2075 (CA), a case concerning whether the donor, while still living, had made an effective *inter vivos* gift of shares by way of equitable assignment or whether the gift failed and the shares fell into the residue of her estate upon her death. The question raised by that case was: what is necessary for the purposes of an equitable assignment of shares by way of gift? *Pennington* at [52] (Arden LJ). In other words, in the context of an equitable assignment of shares purportedly by way of gift, the case tested the border line between completion and incompleteness in relation to a gift of shares.

59. In *Pennington*, counsel for both sides took the court through the authorities in detail, including *Milroy v Lord* and *T Choithram International SA*, and the authorities are given extensive consideration by Arden LJ and Clarke LJ in their respective judgments, both agreeing that the appeal should be dismissed. Schiemann LJ also agreed, for the reasons given by Arden LJ.
60. Arden LJ noted that since *Milroy v Lord*, “equity had tempered the wind to the shorn lamb (i e the donee) ... on more than one occasion and in more than one way”: *Pennington* at [54]. She gave the following examples (at [55], [56], [59] and [60]):
- “55. First it was held that an incompletely constituted gift could be upheld if the gift had been completed to such an extent that the donee could enforce his right to the shares as against third parties without forcing the donor to take any further step. ...
56. That exception was extended in *Rose v Inland Revenue Comrs* [1952] Ch 499 and other cases by holding that for this exception to apply it was not necessary that the donor should have done all that it was necessary to be done to complete the gift, short of registration of the transfer [of shares]. On the contrary it was sufficient if the donor had done all that it was necessary for him or her to do.
- ...
59. Secondly equity has tempered the wind (of the principle that equity will not assist a volunteer) to the shorn lamb (the donee) by utilising the constructive trust. This does not constitute a declaration of trust and thus does not fall foul of the principle ... that an imperfectly constituted gift is not saved by being treated as a declaration of trust. ...
60. Thirdly equity has tempered the wind to the shorn lamb by applying a benevolent construction to words of gift. As explained above an imperfect gift is not saved by being treated as a declaration of trust. But where a court of equity is satisfied that the donor had an intention to make an immediate gift, the court will construe the words which the donor used as words effecting a gift or declaring a trust if they can fairly bear that meaning and otherwise the gift will fail. ...”
61. In relation to Arden LJ’s second example at [59] of *Pennington*, Her Ladyship relied on of *T Choithram International SA*, where the Privy Council had found that the donor’s oral words of gift to a foundation of which he was a trustee did not amount to an express declaration of trust but gave rise to a constructive trust adjunct to it (pursuant to which he, as the trustee in whom the gift was vested, was required, as I have already noted, to transfer the gift into the name of all of the trustees of the

foundation). Arden LJ also relied on *T Choithram International SA* in support of her third example at [60] of *Pennington*.

62. Arden LJ sums up the foregoing analysis at [61] of *Pennington* as follows:

“Accordingly the principle that, where a gift is imperfectly constituted, the court will not hold it to operate as a declaration of trust, does not prevent the court from construing it to be a trust if that interpretation is permissible as a matter of construction, which may be a benevolent construction. The same must apply to words of gift. An equity to perfect a gift would not be invoked by giving a benevolent construction to words of gift or, it follows, words which the donor used to communicate or give effect to his gift.”

63. The following three additional observations made by Arden LJ are of potential relevance to this case (at [62], [63] and [69]):

“62. ... There must ... be, in the interests of legal certainty, a clearly ascertainable point in time at which it can be said that the gift was completed, and this point in time must be arrived at on a principled basis.

63. ... [T]here is nothing unconscionable in simply (without more) changing your mind. ...

...

69. ... Nothing in this judgment is intended to detract from the requirement that a donor should comply with any formalities required by the law to be complied with by him or her, such as, in the case of a gift of shares, the completion of an instrument of transfer or, in the case of a gift of land, the requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 or, in the case of a gift of a chattel, delivery of the chattel. ...”

64. In the Judgment at [61], the Judge noted the following comment by Clarke LJ in his judgment in *Pennington* at [116]:

“I would accept [counsel’s] submission that equity will intervene only where the donor has done everything in his power to perfect the gift cannot be absolutely true since there is always something more that the donor could have done.”

65. In the same passage at [116] of *Pennington*, consistently with the view of Arden LJ, Clarke LJ cited *T Choithram International SA* as a case in which the court held that enough had been done to enable equity to assist the donee.

The Judgment

66. Having reviewed the factual background, the Judge summarised the terms of the lease for the property on Kingston Hill at [39] to [41] of the Judgment. For the purposes of this appeal, the key point to note is that although he had entered into negotiations with the landlord of the property on Kingston Hill (“the Landlord”) prior to Ms Simonsen’s decision to request a return of the £42,000 from the defendants, Mr Collins did not sign an assured shorthold tenancy agreement for the property until 9 June 2017, several weeks after Ms Simonsen had requested a return of the £42,000 from Carringtons.
67. The Judge summarised the submissions made on behalf of Ms Simonsen and Mr Collins at [43] to [48] of the Judgment. He then set out a summary of the applicable law at [49] to [62] of the Judgment. Ms Wookey accepts that that the summary is accurate but submits that the Judge failed to apply the law properly to the facts of this case.
68. The Judge at [64] of the Judgment set out the following as the issues he needed to resolve:
- i) Did Ms Simonsen intend to make a gift to Mr Collins of the £42,000 she transferred to Carringtons on 11 April 2017?
 - ii) If so, was the transfer to Carringtons a perfected gift?
69. In relation to the first issue, the Judge concluded that Ms Simonsen did intend to make a gift to Mr Collins of the monies transferred to Carringtons, however the gift was conditional on the monies being used for rent: [65] and [67] of the Judgment. The Judge relied on references in correspondence to the monies being used to “settle the rental” and in Ms Simonsen’s telephone conversation with Mrs Collins as to its being “for rent”. He also noted that the monies were transferred to Carringtons with the reference “Camilla Simonsen Rental”.
70. The Judge also relied on the 2016 transaction with Savills in relation to Hardwick House, where, ultimately, she had not been able to recover the monies transferred despite, at one stage, wishing to do so. At [69]-[70] of his Judgment, the Judge said:
- “69. It is impossible to view the payment to Carringtons without considering the 2016 transaction. If the money was to be a free and unconditional gift, it would have been paid direct to Mr Collins, as Ms Simonsen had done in 2016: she still had his banking details. Despite what I accept was said to Mrs Collins by Ms Simonsen in the call on 4 April 2017, the only reason why the monies would be paid to Carrington’s would be to avoid them being paid to Mr Collins. I conclude that Ms Simonsen’s intention was that until the rental agreement had been signed, that she could seek return of the money, just as she had sought to do in 2016: Ms Simonsen was not just ensuring that the monies were

used for the rent, but also leaving open the opportunity to change her mind.

70. Ms Simonsen did not communicate the ability to change her mind to Mr Collins or indeed to anyone else, but I can find no authority that suggests that she needed to do so. She did not at any stage communicate to anyone that it was irrevocable. Both parties accepted that if the tenancy agreement had been signed, before Ms Simonsen had changed her mind, that she would at that stage have lost the opportunity to reconsider. Whether that is because the conditions attached to the gift would by then have been completed, or a question of that being the stage after which it would have been unconscionable for Ms Simonsen to change her mind does not require my determination.”
71. The Judge considered the second issue, whether the gift was perfected, at [71] to [76] of the Judgment. He began his analysis by stating at [71] that the payment to Carringtons “must have created a trust”. The monies were paid into a client account and therefore did not belong to Carringtons. The potential beneficiaries of the trust, according to the Judge at [71] of the Judgment, were Ms Simonsen, Mr Collins and the Landlord. The Judge did not, however, after that point pursue the trust analysis.
72. At [72] of the Judgment, the Judge noted that although Carringtons was the Landlord’s agent, he was “far from satisfied” that the Carringtons could have paid the monies to the Landlord without further instructions from Ms Simonsen. He noted at [72]:
- “72. ... Even without considering the money laundering procedures, money which simply arrived in Carringtons’ account without further explanation or order from the [payer], could not have been used without confirmation from Ms Simonsen as to what purpose the monies were to be used. The confirmation of the purpose for the payment would need to be given by Ms Simonsen. It was a step which she was required to take for the gift to be perfected as a matter of law.”
73. At [73] it is clear that the Judge relied on the fact that Ms Simonsen had paid the money to Carringtons without having made any other contact with them prior to requesting a return of the money on 27 April 2017. At [74]-[75] of the Judgment, he goes on to conclude as follows:
- “74 ... Ms Simonsen had not done everything required of her to complete the gift. There was a clear need for her to take a further step before the money could be used to pay the rent. ...[T]he gift was not complete until instructions were given to Carringtons and the monies used for the purpose for which it was given.

75. If the payment had been made, accompanied by clear and unequivocal language to Carringtons, that the landlord or his agent was to use the monies for the benefit of Mr Collins and or that the monies were a gift to Mr Collins, or some such similar formulation, then the gift might well have been complete when the monies were paid over. Ms Simonsen would then have done all that was required of her to complete the gift. However, that is not the issue which arises in this case.”
74. During the course of his analysis, the Judge considered alternative scenarios such as:
- i) at [72] of the Judgment, if Carrington, despite the lack of instructions from Ms Simonsen, had nonetheless paid the monies to the Landlord; and
 - ii) at [74] of the Judgment, if Mr Collins had signed the tenancy agreement before Ms Simonsen had demanded the funds back from Carringtons.
75. The Judge noted that in these alternative scenarios, estoppel or unconscionability might have arisen for consideration. He noted, however, at [76] that these issues do not arise in this case, nor do similar principles such as whether equity comes to the aid of a volunteer or whether equity will not strive officiously to defeat a gift.
76. The Judge then went on to note at [76] that “[n]either party deserves the assistance of equity” and to give reasons for that conclusion. It is clear, however, that his comments on the alternative scenarios and his reasons why neither party deserved the assistance of equity are *obiter dicta*.

Grounds of appeal

77. Mr Collins appeals against the Judge’s decision on the following grounds:
- i) the Judge’s finding of fact that Ms Simonsen’s gift was revocable and conditional was perverse;
 - ii) further or in the alternative, the Judge’s finding that the Ms Simonsen’s intention was not unconditional or irrevocable was unjust because of an irregularity, namely no or inadequate reasons were given for it;
 - iii) the Judge erred in law in finding the gift was incomplete;
 - iv) the Judge erred in law in finding as a matter of law that arguments of estoppel were not open to the parties, until after the tenancy agreement was signed; and
 - v) the Judge erred in law in relying on irrelevant considerations in determining that Mr Collins did not deserve the assistance of equity.

First ground: the Judge's finding of fact that the gift was conditional and revocable was perverse

78. In relation to the first ground, Ms Wookey acknowledged at the outset of her submissions that the Judge had struggled to accept the evidence of either party. She also acknowledged the high hurdle that must be overcome when attempting to challenge on appeal a first instance judge's findings of fact. Nonetheless, she was confident that the hurdle could be surmounted in this case.
79. In relation to this ground, Ms Wookey made four principal submissions:
- i) the Judge was wrong to accept Ms Simonsen's evidence on her intention to make a conditional gift, given his findings as to her credibility as a witness;
 - ii) the Judge was wrong to accept Ms Simonsen's oral evidence as to her intention, which was undermined by the majority of her written and contemporaneous communications at the time of transfer;
 - iii) the Judge's flawed finding as to Ms Simonsen's intention was of central importance to his final decision and, as such, ought to be set aside and/or the case retried; and
 - iv) the Judge's finding that Ms Simonsen's intention was conditional lacks clarity, defies common sense and is contrary to equitable principles.
80. To make good these submissions, Ms Wookey directed my attention to various places in the Judgment where the Judge had rejected Ms Simonsen's evidence. She submitted that the fact that Ms Simonsen transferred the monies to Carringtons without any further communication, including without any safeguards to protect her interest, was clear evidence of her intention to make an unconditional gift. Ms Wookey submitted that Ms Simonsen showed "utter indifference" to what happened to the money. Ms Simonsen knew nothing about the destination of the funds beyond the fact that they were going to the account of an estate agent. She did not even know where the estate agent was located.
81. Ms Wookey also criticised the Judge for relying on the 2016 transaction involving Savills to support his conclusion that she had intended to make a conditional gift. She said that the 2016 transaction was a "red herring". The circumstances were different, and the matter was resolved by Ms Simonsen instructing Savills to pay the funds to Mr Collins. If Ms Simonsen were relying on payment to Carringtons to protect the revocability of her gift, she would not have transferred the funds unconditionally. Ms Wookey also submitted that there was no support in the documentary evidence for the Judge's finding that the 2016 incident motivated her decision to transfer the £42,000 to Carringtons rather than to Mr Collins.
82. As I broadly agree with Mr Goldkorn's submissions in response to these submissions, I will not summarise them, but simply give my views on this ground of appeal. In my view, it has no real prospect of success, and I therefore refuse permission to appeal on this ground for the following reasons. As noted by Burnett LJ (as he then was) in *Watson Farley and Williams (a firm) v Ostrovizky* [2015] EWCA Civ 457 at [8], quoting with approval the head note in the official report of the Supreme Court's

decision in *McGraddie v McGraddie* [2013] UKSC 58, [2013] 1 WLR 2477, it is a long-settled principle that an appellate court should not interfere with a trial judge's conclusions on primary facts unless satisfied that he or she is plainly wrong. Burnett LJ also quoted at [8] of *Watson Farley* the summary given by Lewison LJ in "vivid" terms in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114] of the reasons for this long-settled principle.

83. In this case, in my judgment it cannot be said that the Judge was "plainly wrong" to conclude that Ms Simonsen's intention was to make a conditional gift at the time she transferred the funds to Carringtons. Ms Wookey carefully developed arguments that might have led another trial judge to a different conclusion on that point, but it was a conclusion that was open to the Judge in this case on the evidence. Ms Simonsen's lack of instructions to Carringtons as to the purpose of the funds transfer does not inevitably lead to the conclusion that the gift was "irrevocable and unconditional" at the time of the transfer. It was open to the Judge to draw an inference from the 2016 transaction and to rely on it in support of his conclusion.
84. Ms Wookey makes a number of submissions in relation to this ground along the lines that the Judge paid insufficient regard to a particular piece of evidence or placed too much weight on another piece of evidence, and therefore came to the wrong conclusion on the question of Ms Simonsen's intention at the time she transferred the £42,000 (which, it was common ground, was the relevant time to assess whether her intention was to make a conditional or unconditional gift). Matters of weight are, of course, pre-eminently matters for the trial judge when assessing evidence. The trial judge's assessment of the relevance and weight to be given to a particular piece of evidence can only be set aside if plainly wrong.
85. It is uncontroversial that it is possible for a judge to reject a witness's evidence on many, if not most issues, and still to accept their evidence on certain points. The Judge set out his approach to the evidence of each party at [2] of his Judgment, as I have noted at [23] above. Ms Wookey relied on the case of *AA v NA* [2010] EWHC 1282 (Fam), a decision of Mostyn J, as an example of a case where, on appeal from a fact-finding decision of a family district judge, the appellate court set aside primary findings of fact. That case, however, is in a wholly different context and simply establishes that, in an appropriate case, an appellate court can set aside primary findings of fact. Otherwise, it is of no assistance on this appeal.
86. The foregoing reasons are sufficient, in my view, to dispose of the first three of Ms Wookey's principal submissions in relation to the first ground. As to Ms Wookey's fourth principal submission, there is, in my view, no substance in the submission that the Judge's finding that Ms Simonsen's intention was conditional lacks clarity, defies common sense and is contrary to equitable principles. The Judge makes it clear at [68] of the Judgment that the gift is conditional on the money being used for rent. That is sufficiently clear. It is hard to see how that "defies common sense". As to the Judge's finding being contrary to equitable principles on the basis that it is unconscionable for a donor to "interfere" with a condition that she has set when making a conditional gift, the Judge considered at [76] that the issue of unconscionability does not arise in this case. I agree with the Judge, for reasons that I will expand upon in relation to the fourth and fifth grounds.
87. Permission to appeal on the first ground is refused.

The second ground: the Judge gave no or inadequate reasons for his finding that Ms Simonsen's intention was not irrevocable and unconditional

88. In relation to the second ground, Ms Wookey submitted that the Judge gave insufficient reasons for preferring one account over another where there were disputed facts. For example, at [69] of the Judgment, which I have set out at [70] above, she relied on the fact that the Judge had found Mrs Collins to be the more credible witness and yet accepted Ms Simonsen's evidence as to her intention in paying the monies to Carringtons.
89. The immediate answer to that, of course, is that there is no inconsistency. The Judge could accept Mrs Collins's evidence that Ms Simonsen had said to her that she was transferring the monies to Carringtons rather than directly to Mr Collins to avoid its appearing "as a gift and therefore taxable, or money laundering", and yet still find, on a balance of probabilities, that she had alternative or additional reasons for transferring the money to Carringtons.
90. This ground does not, in my view, take matters any further than the first ground. It is not arguable, and therefore I refuse permission to appeal on the second ground.

Third ground: the Judge erred in law in finding the gift was incomplete

91. Ms Wookey made a number of submissions in support of the third ground of appeal, namely, that the Judge had erred in law in finding that the gift of the £42,000 paid to Carringtons was incomplete. Her principal submissions were as follows:
 - i) Carringtons being the Landlord's agent, the payment of the money by Ms Simonsen to Carringtons was payment to the Landlord. The lease could have proceeded immediately upon receipt by Carringtons of the funds. Ms Simonsen was not entitled, in equity, to benefit "opportunistically" from the delay in finalising the tenancy between Mr Collins and the Landlord. Accordingly, there were only two possible beneficiaries of the £42,000 paid into Carrington's client account, Mr Collins or the Landlord.
 - ii) It was not necessary for Ms Simonsen to pay the monies directly to Mr Collins in order to perfect the gift to him. Her payment of the monies to into the Carringtons client account was sufficient "delivery" of the sum to him, perfecting the gift. Ms Simonsen had done all that was within her power to complete the gift to Mr Collins. In support of this submission, Ms Wookey referred to *Pennington* and *Re Letts v Inland Revenue Commissioners* [1957] 1 WLR 201 (Ch), another case involving an *inter vivos* gift of shares. She also referred to *Thomas v Times Book Company Limited* [1966] 1 WLR 911 (Ch), a case where the poet Dylan Thomas made a gift of the original manuscript of his play "Under Milk Wood" to a Mr Cleverdon at a time when he had lost the manuscript, telling Mr Cleverdon that if he could find the manuscript, he could keep it.
 - iii) The Judge was wrong to conclude at [72] and [74] of the Judgment that the gift was not perfected because Ms Simonsen had failed to give Carringtons any instructions in relation to the £42,000 transferred into its current account.

- iv) Ms Simonsen made it clear through her plain words and her conduct, from August 2015 to April 2017, and particularly during the days leading up to the transfer on 11 April 2017, that she intended the £42,000 to be an unconditional and immediate gift to Mr Collins. She had no intention to revoke the gift at the time of transfer, and equity was not, therefore, required to intervene to perfect the gift.
92. Ms Wookey also made a number of pleading points. She submitted that:
- i) Ms Simonsen failed to plead that she retained any legal or equitable interest in the £42,000 after transferring the money into the Carringtons client account;
 - ii) Ms Simonsen failed to plead that some sort of trust had been created between Ms Simonsen and Carringtons, and no evidence in support of there being a trust was adduced; and
 - iii) Ms Simonsen failed to plead that she had a right to return of the £42,000 on the basis of unjust enrichment or restitution.
93. In reply, Mr Goldkorn made the following submissions:
- i) Mr Collins’s argument depends on Ms Simonsen’s having the intention to make an unconditional gift to him by paying the £42,000 into the Carringtons client account. This ground should therefore fail on the basis that the Judge made an unassailable finding of fact that the gift was conditional.
 - ii) Leaving that aside, however, the Judge’s analysis was not wrong in law. The £42,000 was paid into a client account of Carringtons. Mr Collins called no evidence from the defendants and gave no evidence as to what he told the agents. At para 45 of his witness statement dated 2 March 2018 Mr Collins said that the defendants “had no idea that the Claimant existed”. Accordingly, the funds when paid into the Carringtons client account without any instructions or further information must have been unallocated. Carringtons would have had no basis on which they could have paid the £42,000 to any of their clients, much less Mr Collins, who was not then a client. Accordingly, paras 73 and 74 of the Judgment are “unimpeachable”.
94. I agree with Mr Goldkorn that the Judge’s analysis was correct. Leaving aside money laundering or any other regulatory issue, when Carringtons received £42,000 into its client account from an unknown payer with no instructions, it had no authority to allocate those funds to the Landlord, to Mr Collins or to anyone else. Although Mr Collins appears to rely on it as a point in his favour, the absence of any communication from Ms Simonsen to Carringtons about the purpose of the funds she transferred to it is, in my view, fatal to his case.
95. Of course, Carringtons was not entirely without information. The reference for the payment, as already noted, was “Camilla Simonsen Rental”. But there is no reference to Mr Collins, to the Landlord or to any more specific purpose for the payment, other than “Rental”. In the absence of further instructions from Ms Simonsen, a resulting trust of the £42,000 arose upon the transfer of the money into the Carringtons client

account, with Carringtons as the trustee and Ms Simonsen, as the transferor, as the beneficiary: *Snell's Equity* (33rd edn at 25-019).

96. A resulting trust is rebuttable, but the possibility of the resulting trust being rebutted by a presumption of advancement does not arise as between Ms Simonsen and Carringtons, nor is there any suggestion, must less evidence, that Ms Simonsen intended Carringtons to be the beneficiary of the transfer.
97. Any disposal by Carringtons of the money without authority from Ms Simonsen would have been a breach of trust. Although the Judge did not analyse the effect of the transfer in these terms, his own statements at [72] and [74] are consistent with this.
98. It was not necessary for Ms Simonsen to have pleaded that a resulting trust arose. It arose on the facts as found by the Judge, by operation of law. It does not depend on whether Ms Simonsen intended to make a gift to Mr Collins or whether her intention was absolute or conditional.
99. As the Judge noted at [75] of the Judgment, the transfer having been made, it would have taken very little for Ms Simonsen to have completed the gift. She could have emailed or telephoned Ms Hill or some other responsible employee at Carringtons and indicated that the money was for the benefit of Mr Collins. Had she done so, it is likely that she would have further stipulated that it was to be used for rental for the Kingston Hill property, but that was not strictly necessary to complete the gift. In any event, she did not do that. Arguably, if she had included Mr Collins's name in the reference for the transfer of the £42,000 to Carringtons, that would have been sufficient indication of intent. But the mere use of the word "Camilla Simonsen Rental" without more in the payment reference could not have that effect.
100. Note that, on this analysis, it is irrelevant whether, at the time she made the transfer, Ms Simonsen intended to make a conditional or an unconditional gift. The key point is that she had not done everything that it was in her power to do to complete the gift. The thing she needed to do was to tell Carringtons the purpose of the transfer. Until she did that, Carringtons held the funds on resulting trust for her, and she was entitled to return of the funds on demand.
101. It follows from this that there is really only one issue raised by this case, namely, whether the gift of £42,000 that Ms Simonsen intended to make by transferring it to the client account was perfected.
102. In *Milroy v Lord*, Turner LJ noted that a donor may make a gift of property in one of the three ways (or modes of transfer) that I have noted at [52] above. In this case:
 - i) Ms Simonsen did not transfer the £42,000 directly to Mr Collins;
 - ii) Ms Simonsen did not transfer the £42,000 to a trustee for Mr Collins; and
 - iii) Ms Simonsen did not declare that she was holding the £42,000 in trust for Mr Collins.

103. In relation to (ii) at [102] above, there is no basis in the facts found by the Judge for asserting that Carringtons was holding the £42,000 as a trustee for Mr Collins, in the absence of any communication of any description between Ms Simonsen and Ms Hill or any other responsible employee of Carringtons beyond the payment reference “Camilla Simonsen Rental”.
104. Considering, briefly, Ms Wookey’s submissions outlined at [91] above:
- i) As there was no allocation of the funds transferred to Carringtons to Mr Collins or the Kingston Hill property, Carringtons’ agency for the Landlord is irrelevant. Carringtons had no authority from Ms Simonsen to hold the funds for the Landlord or Mr Collins or anyone else, absent specific instructions from her.
 - ii) Ms Simonsen’s payment of £42,000 to Carringtons was not sufficient “delivery” of the gift to Mr Collins absent her authorising Carringtons to hold the funds for the benefit of Mr Collins. It is common ground that she did not give Carringtons that authority. Neither *Pennington* nor *Re Letts* supports Ms Wookey’s submission that the simple transfer of cash to Carringtons without instructions was sufficient to perfect a gift of the cash to Mr Collins. Each of those cases involved transfers of shares where donor had done all that he needed to do to give rise to an equitable assignment of the shares. The case of *Thomas v Times Books Company Limited* also does not assist Mr Collins’s case, as the gift to Mr Cleverdon of the lost manuscript was not perfected until Mr Cleverdon obtained possession of it. Mr Collins never obtained “possession” of the cash in the sense of its having been credited to an account in his name, nor was the cash ever held on trust for him by Carringtons or anyone else.
 - iii) I have set out already my reasons why the judge was not wrong to conclude as he does at [72] and [74] of his Judgment.
 - iv) Ms Simonsen’s words and conduct during the period from August 2015 to April 2017 indicating that she intended to make a gift of £42,000 to Mr Collins do not assist on the question of whether she had done all that was in her power to perfect the gift when she transferred the £42,000 to Carringtons. For the reasons I have given, she had not done so.
105. As to the pleading points that I have summarised at [92], they do not take Mr Collins’s case any further forward.
106. Accordingly, I find that the Judge made no error of law in his Judgment in finding that Ms Simonsen’s intended gift was incomplete.
107. In my view, this ground of appeal is arguable, and so I give permission to appeal. However, for the reasons I have given, this ground of appeal fails.

The fourth and fifth grounds: the Judge erred in law in relation to the issues of estoppel and whether Mr Collins was entitled to the assistance of equity

108. Although Ms Wookey made a few submissions in support of the fourth and fifth grounds of appeal, I can deal with these briefly by noting that the Judge, at [76] of the Judgment, had made it clear, in my view correctly, that the questions of whether equity will aid a volunteer or whether it will not strive officiously to defeat a gift or whether it will uphold an imperfect gift on the grounds that it would be unconscionable not to allow a donor not to make good on the gift, do not arise in this case. His further comments were clearly *obiter*. There is nothing in these grounds, and therefore I refuse permission to appeal.

Conclusion

109. Having granted Mr Collins's application, I refuse permission to appeal on the first, second, fourth and fifth grounds. On the third ground of appeal, I grant permission, but find that the third ground fails. Accordingly, the appeal is dismissed.