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Case No: 1691-5631-9171-3733

Neutral Citation Number: [2024] EWFC 164 (B)

**IN THE FAMILY COURT SITTING AT BOURNEMOUTH AND POOLE  
FINANCIAL REMEDIES COURT**

**Courts of Justice  
Deansleigh Road  
Bournemouth  
BH7 7DS**

**Date: 19 June 2024**

**Before:**

**DISTRICT JUDGE VEAL**

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**B E T W E E N:**

**P (A WIFE)**

**Applicant**

**- and -**

**Q (A HUSBAND)**

**1<sup>st</sup> Respondent**

**-and-**

**R AND S (INTERVENORS)**

**2<sup>nd</sup> Respondents**

**Sarah Henstock-Turner** (instructed by **Williams Thompson**) for the **Applicant**

**Geoffrey Kelly** (instructed by **Paris Smith LLP**) for the **1<sup>st</sup> Respondent**

**Elizabeth Darlington** (instructed by **Major Family Law**) for the **2<sup>nd</sup> Respondents**

Hearing dates: 4 and 6 June 2024

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**JUDGMENT**

## District Judge Veal:

### Introduction

- 1) The court is concerned with financial remedy proceedings, in which the applicant is a wife, “P,” and the respondent is a husband, “Q.” Q’s parents, “R” and “S,” have been joined as intervenors to these proceedings.
- 2) The applicant commenced these proceedings on 25 August 2023, with a Form A.
- 3) In her Form E dated 30 November 2023, the applicant asserted that:
  - a) The respondent owned property, including at Property 1; and
  - b) She and the respondent each had a 50% beneficial interest in a property at Property 5.

The legal title in the former property is vested in the respondent and the intervenors, and of the latter property in the intervenors.

- 4) By orders dated 15 January 2024 and 8 February 2024, the intervenors were joined and directions given for the listing of a preliminary hearing in order to determine the applicant’s claims in respect of the properties. That preliminary hearing came before me on 4 and 6 June 2024, when I heard evidence, and then I gave directions for written submissions so that I could give a judgment.
- 5) The timescales have been quite tight, because a FDR has been listed for 24 June 2024.
- 6) It was not particularly clear during the hearing what the applicant’s case is. It would have assisted, particularly with the benefit of hindsight, to have had formal pleadings as contemplated by paragraph 36 of *TL v ML (Ancillary Relief: Claim against Assets of Extended Family)* [2005] EWHC 2860 (Fam). Some points were able to be gleaned from the applicant’s Form E dated 30 November 2023, her witness statement dated 22 April 2024 and an open offer made by her on 17 May 2024.
- 7) At the hearing on 8 February 2024, the applicant’s case in relation to Property 5 was recorded as a claim that *“she and the respondent each have a 50% interest in the property, and by implication the intervenors do not hold any beneficial interest.”*
- 8) The skeleton argument produced on behalf of the applicant for the start of the hearing was on the basis that she had a beneficial interest in Property 5 by way of common intention constructive trust. In respect of Property 1, her counsel told the court without more that it was the applicant’s case that the respondent had a legal and beneficial interest in the property.
- 9) I gave a ruling at the start of this hearing to allow into evidence statements from the intervenors and their accountant, and that ruling is to be considered alongside this judgment. The cross examination of the respondent proceeded on the basis that £178,000 of money had disappeared from the parties’ joint account and been spent on Property 5, and so I allowed into evidence, after he had been through the witness box, a bank statement produced by him showing where that money went which, I might

add, was a statement from a joint account held by the applicant and respondent which the applicant had referred to in her Form E.

- 10) I have read full bundles of documents, I have been assisted during the course of the hearing by the legal representatives of the parties, and I have heard evidence from the applicant, the respondent and both intervenors.
- 11) I have received written submissions from all parties. The applicant now appears to recognise that her argument for a constructive trust whereby she and the respondent each hold 50% of the beneficial interest in Property 5 may not succeed, and so she invites a quantification of her interest under the constructive trust. Somewhat surprisingly, it is also now submitted for the first time that, in the alternative, a resulting trust has been established. The court therefore finds itself in the position of having to grapple with a case which is something of a moveable feast.
- 12) The position of the respondent and intervenors is that the facts do not support the case which the applicant is advancing, and neither the applicant nor the respondent have any beneficial interest in either property. In addition, they say that the applicant should not be permitted to depart from the case which she had set out prior to the hearing. To do so, they say, would be unfair.
- 13) The fact that I do not mention something in this judgment does not mean that I have not fully considered it, but it is impossible to refer in this judgment to absolutely everything I have heard and read.

### **Legal framework**

- 14) When considering whether a constructive trust arises in this case, the starting point is that equity follows the law: *Stack v Dowden* [2007] UKHL 17. Therefore, the presumption in this case is that:
  - a) The beneficial ownership in Property 1 is shared between the respondent and the intervenors (all of whom are on the title); and
  - b) The beneficial ownership in Property 5 belongs in its entirety to the intervenors.
- 15) The law recognises that, in certain situations, the beneficial interest in a property may not follow the legal title.
- 16) The House of Lords set out that:

*“68. The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms...”*

*“69. In law, “context is everything” and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true*

*intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."*

*"70. This is not, of course, an exhaustive list."*

- 17) When considering constructive trusts, a beneficial interest in a property can be established by the applicant, in broad terms, in two ways (*Lloyds Bank plc v Rosset* [1991] 1 AC 107):
- a) By express common intention, in other words, establishing that there was some form of actual agreement, arrangement or understanding between the parties based on evidence of express discussions however imperfectly remembered and however imprecise their terms upon which the party alleging a beneficial interest has acted to his or her detriment; or
  - b) Where the conduct of the parties permits the court to infer an agreement to share the beneficial interests in the subject property.
- 18) So far as the latter is concerned:
- a) Direct contributions to the purchase price by the person who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust: *Lloyds Bank plc v Rosset*.
  - b) The applicant also relies on *Le Foe v Le Foe* [2001] 2 FLR 970, in which the court concluded that indirect contributions made towards the mortgage were sufficient for the court to infer a common intention of a beneficial interest in the former matrimonial home.

- c) In *Cooke v Head* [1972] 1 WLR 518, a small contribution to the mortgage repayments and a significant practical contribution to the construction of the property was found to amount to conduct from which a common intention to share the beneficial ownership could be inferred.
- d) The applicant submits that liability under a mortgage may not be treated in the same way as a cash contribution when assessing beneficial shares: *Stack v Dowden*; *Laskar v Laskar* [2008] 2 FLR 589.
- 19) The test is in two stages. Firstly, that which I have set out above in connection with establishing an agreement. Secondly, detriment in reliance on the common intention, in this case by the applicant.
- 20) If the applicant establishes a beneficial interest, her interest will be either that which was agreed or such interest as the court deems appropriate after reviewing the whole course of dealings between the parties: *Oxley v Hiscock* [2004] EWCA Civ 546.
- 21) In fact, the case of *Laskar v Laskar* is relied upon by the intervenors as authority for the proposition that, where property is purchased for development or letting, the principles in *Stack v Dowden* do not apply and the resulting trust analysis is applicable instead. In the Court of Appeal in *Laskar v Laskar*, Lord Neuberger stated in terms:
- “17. ... To my mind it would not be right to apply the reasoning in Stack to such a case as this, where the parties primarily purchased the property as an investment for rental income and capital appreciation, even where their relationship is a familial one.”*
- 22) In addition, the Court of Appeal’s comments at paragraph 62 of *Williams v Williams* [2024] EWCA Civ 42 about *Stack v Dowden* and *Jones v Kernott* [2011] UKSC 53 being confined to cohabiting couples in an intimate relationship are, on behalf of the intervenors, submitted to distinguish between two lines of authority.
- 23) The applicant invites the court to consider the resulting trust analysis by reference to any contribution made towards the purchase price of the property.
- 24) Whilst the applicant submits that the presumption of advancement does not apply as between cohabitants per *Lowson v Coombes* [1999] 1 FLR 799, I note also that, where the presumption of advancement does exist between parent and child, it is a relatively weak presumption which can be rebutted on comparatively slight evidence: *Pettitt v Pettitt* [1970] AC 777. I say that in order to provide context for that which is set out by the applicant in the event that there is a lack of discernible clear intention.

### *Evidence*

- 25) In resolving disputed issues of evidence in this court, where a person asserts a particular fact, it is that person who must generally prove it. The burden of proving her claims lies with the applicant, but the position is informed by the burden referred to in paragraph 68 of *Stack v Dowden* set out above when the court considers Property 1.

- 26) The standard of proof is the balance of probabilities. In other words, if it is shown that any particular fact is more likely than not to be true, then it is treated as having happened. The court is entitled to take into account inherent probabilities and improbabilities in deciding whether a fact is proved, but must base its findings on evidence, including reasonable inferences, and not speculation.
- 27) It is common for witnesses to lie in the course of an investigation or a hearing. They may do so for a variety of reasons, for example, shame, misplaced loyalty, fear or distress. It does not follow that, because they have lied about one thing, they have lied about everything: *R v Lucas* [1981] QB 720.
- 28) Witnesses may also be fallible, which goes to the reliability of their testimony rather than their credibility. I have in mind that a witness' recollection of events is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded perhaps also by the process of litigation, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Limited & another* [2013] EWHC 3560 (Comm).
- 29) I have heard direct evidence from witnesses during the hearing, of things that they have said, done and experienced themselves. There has also been original evidence, for example evidence of things said which are relied upon for the fact that they were said, rather than necessarily for the truth of what was said. I have also been taken to hearsay evidence, matters not experienced by the relevant witnesses directly but which are relied upon for the truth of their contents, to which the court will generally speaking attach less weight, in particular when hearsay is in competition with direct evidence.

### **Issues of fact and the evidence**

- 30) In this case, I have had regard to the following evidence:
  - a) The applicant's Form E dated 30 November 2023, her responses dated 18 January 2024 to the respondent's questionnaire, her statement dated 22 April 2024 and her oral evidence;
  - b) The respondent's Form E dated 1 December 2023, his responses dated 20 February 2024 to the applicant's questionnaire, his statement dated 29 April 2024 and his oral evidence;
  - c) The statements of S, the first of which is undated and the second being dated 21 May 2024, and her oral evidence;
  - d) The statements of R, the first of which is undated and the second being dated 21 May 2024, and his oral evidence; and
  - e) The statement of the intervenors' former accountant, "Mr A," dated 3 May 2024. He did not attend court to give live evidence, and so his evidence stands as hearsay.

- 31) A number of factual issues relevant to the decisions that I have to make are not, in fact, in dispute. Those include:
- a) Property 1 was purchased on 27 February 2004 by the respondent and the intervenors.
  - b) The applicant and respondent first met in the summer of 2008.
  - c) In April 2009, the respondent purchased a house, Property 2, and the applicant and respondent cohabited from that time.
  - d) The applicant and respondent married on 12 August 2011.
  - e) On 29 August 2012, the first child of the applicant and respondent, “T,” was born. He is now 11½ years old.
  - f) On 14 June 2015, the parties’ second child, “U,” was born. She is now 9 years old.
  - g) On 19 February 2016, Property 5 was purchased. The applicant, respondent and the children moved into that property shortly afterwards.
  - h) On 27 November 2019, the applicant made a proposal for an individual voluntary arrangement (“IVA”), which she confirms she then entered into.
  - i) The applicant and respondent separated on 19 April 2022, and the applicant moved out of the property.
  - j) The petition was issued on 7 April 2022.
  - k) The applicant is now 38 years old and works as a beautician, operating a skin clinic through [a limited company].
  - l) The respondent is 47 years old and works as a builder. It is relevant that R is also a builder, and originally trained the respondent and the respondent’s brother.
- 32) My overall impression of the applicant’s evidence is that she was articulate, being able to express herself easily and imaginatively. However, overall, I formed the view that she was not very financially aware, during the course of the marriage, about how the respondent and his family went about their work, or even about how the properties in which they were living were financed. Whether that was because she was not financially savvy, or that she had not made enquiries, is to some extent neither here nor there.
- 33) The respondent was not given to providing long explanations during his evidence, and many of the questions asked of him during cross examination were met with yes or no answers. He had a handle on the detail of how the property development projects were managed, and was able to give an overview in connection with the financing of them. He deferred to his mother on matters of detail when it came to the money.

- 34) S presented as a person who knew her own mind. She was extremely clear about the financial picture. Similarly, R was very clear about the nuts and bolts of the various projects with which he was involved, from a construction perspective. I had no doubt that they were an experienced team.

*Property 1*

- 35) In respect of Property 1, the applicant's case is that the respondent has a legal and beneficial interest in the property.
- 36) Presumably, she simply relies upon the presumption in *Stack v Dowden*. I say that because the applicant's statement dated 22 April 2024 does not address this element of her claim at all, and neither do her responses to the respondent's questionnaire. Her counsel produced a skeleton argument prior to the start of the hearing, which was silent about the claim. When I asked what the applicant's case was at the start of the hearing, I was told that it was simply that the respondent has a legal and beneficial interest in the property. The applicant's closing submissions continue to be on the basis that a constructive trust arises.
- 37) The applicant confirmed in evidence that she had no knowledge, at the time of her Form E, in November 2023, about the ownership of Property 1, and nor does she today. The applicant told the court that she had not been aware that the respondent's interest was bought out by the intervenors, and she did not think it had been.
- 38) The respondent accepted that he had not discussed the ownership of Property 1 with the applicant, but that his involvement in the property had ceased before they met.
- 39) The respondent's evidence, and that of the intervenors, is that Property 1 was owned in equal shares by them when it was purchased. I have seen a completion statement dated 1 March 2004 which confirms that the purchase price paid was £165,000, and a mortgage was obtained in the sum of £115,500.
- 40) The intervenors agreed to buy the respondent's beneficial interest in the property in 2005, after the property had been marketed in March 2005 but did not sell. The sum agreed was paid in three tranches: on 24 August 2005 in the sum of £5,500, on 25 August 2005 in the sum of £4,000, and on 24 November 2005 in the sum of £29,000. They have produced documentary evidence in support of their statements. They say that, because of potential difficulties in the respondent being released from the mortgage, he remained as one of the legal proprietors of the property.
- 41) The respondent accepted that there was no declaration of trust in respect of Property 1, but denied that he had any ongoing beneficial interest in it. He said that he bought other properties after his parents had bought out his interest in Property 1, before buying a share in a pub.
- 42) Between 2006 and 2022, the property was rented out. The evidence is that all rents were paid to the intervenors.
- 43) On 30 August 2022, the applicant's solicitors were told, in response to a question asked on behalf of the applicant, that the property had been purchased in 2004, and that the intervenors had agreed to purchase the respondent's beneficial interest in



2005. Detail was provided, with supporting documentation, which is consistent with the summary of the respondent's and intervenors' evidence which I have just set out.

- 44) The intervenors told the court that they moved to Property 5 and then into Property 1 in 2022. They did so in order to help the respondent, because they wanted to be able to raise money, by way of a buy to let mortgage, on the property in which they were previously living. S explained that they raised £160,000 by way of mortgage, with the intention that the respondent could then move away from Property 5.
- 45) S confirmed that there is an outstanding mortgage on Property 1, the balance being about £160,000.
- 46) The applicant asserts in her written evidence that the intervenors have only now moved into the property because of these proceedings. She was asked for the factual basis for that assertion, and the reasons for the intervenors evicting the previous tenants, and could offer nothing. She said that her assertion was made on the basis that the timing was "*strange.*"
- 47) The applicant said that she has pursued her case in respect of Property 1 because the respondent remains on the mortgage and because the children need a roof over their heads.
- 48) I note that the applicant's open offer, sent by her solicitors and dated as recently as 17 May 2024, says this:

*"Whilst [the applicant] has noted the narrative put forward by [the respondent, R and S] relating to this property the fact remains that the property is owned legally by [the respondent] as well as [S and R] and no transfer of the title has been undertaken. [The respondent] remains liable on the mortgage. As such it is [the applicant's] view that [the respondent] is entitled to a one third share equity [sic] of that property..."*

The letter then went on to value that one third share at £101,400.

### *Property 2*

- 49) The property at Property 2 was purchased by the respondent and R on 28 April 2009 for £195,000. The respondent confirmed that there was no mortgage registered against the property, but that the purchase was funded with an unsecured loan from the intervenors' friend, "Mr B." S described that they paid interest to Mr B. I have seen the official copy of the register and the completion statement.
- 50) The applicant told the court that she did not know that R had an interest in the property until years later, although she did not ask at the time it was purchased who would own it.
- 51) The applicant accepted that she had no evidence to gainsay that the respondent had sold his interest in a pub which he had owned, or that a loan was obtained from Mr B, in order to fund the purchase or other outgoings in respect of the property. It was the respondent's evidence that the sale of the interest in the pub had left him with savings.

- 52) S confirmed that the way in which the family would undertake property development was that the work would be undertaken between them, and that they would each then look at, and reconcile, what they had spent at the end of the project before dividing the profit between them. It was the evidence of both S and R that S kept the finances under control.
- 53) The applicant's own evidence was that respondent paid the mortgage on the property, something which she maintained in cross examination. As I have said, the respondent's evidence is that there was no mortgage. That is consistent with the other evidence. The applicant also told the court that household bills, such as council tax, utility bills and the like, were paid by both the applicant and respondent.
- 54) The respondent undertook building work to the property, comprising a single storey extension and internal works, and the applicant accepted that the property had been bought for the purposes of redevelopment. The applicant said that the ideas about how to redevelop the property were the respondent's, and the respondent accepted that he did not undertake other work when redeveloping the property but that others were also involved in the work. The costs were met by the intervenors, and perhaps from the respondent's savings.
- 55) The applicant did not accept that R had a fundamental role in developing the property, saying that he would try and help where he could. She denied minimising the intervenors' role. R said that he did about 50% of the work in terms of the redevelopment of this property, and he denied ever merely "*dabbling*," as it was put to him, in the development of any of the projects which the family undertook.
- 56) The property was sold in May 2010.

### *Property 3*

- 57) The property at Property 3 was purchased 26 August 2010, prior to the parties' marriage. The registered proprietors were the respondent and R, and they paid £355,000, this time securing a mortgage of £400,000 from Mr B against the property.
- 58) Whilst the respondent did not remember signing a mortgage deed, he assumed that he did because it was arranged through solicitors. S told the court that Mr B had been separately represented in the transaction. I accept that evidence. The court does not have the loan documents, but the respondent recalled that the interest rate was around 8% for the first two years.
- 59) Again, the applicant said that she did not know that R had an interest in the property at the time, and her evidence was that she did not ask; she had no idea what interest R had in the property, and, she said, she left those sorts of matters up to the respondent. The applicant also accepted that she had not been involved in discussions about how the property would be purchased. She had viewed the property with the respondent, who had viewed it before her, and the intervenors had also viewed it.
- 60) The respondent's evidence was that he told the applicant that R had an interest in the property, and there would have been conversations over dinner about the redevelopment of it. That, it seems to me, is more likely than not to be true because the respondent's job was in undertaking property development work, and this was

work physically going on around the parties. There is no dispute that the applicant and respondent lived in property, and that the intervenors did not live permanently at the property.

- 61) The applicant accepted that Property 3 was purchased as an investment property and that she was not on the title. She accepted that she was wrong to have said in her statement that she had purchased the property with the respondent. The problem with that is that she had the completion statement by the time she produced her statement.
- 62) Substantial renovation was undertaken to the property between 2010 and 2012. The applicant said that respondent undertook the renovations, and contracted some trades. Her position is that R came to help, and “*did as much as he could,*” but she did not accept that his role was significant. She accepted that she was working and did not see everything which went on. The respondent’s position was that he project managed the works along with R, and that the intervenors spent extended periods at the property, totalling about 60% of the time during the 18 months or so it took to undertake the works.
- 63) The applicant accepted that she and the respondent would not have been able to afford the renovations, although she considered that the net proceeds of sale of Property 2 were used. She has adduced no corroborative evidence of that. The respondent said that he did not think that there was much money left over after selling Property 2, and he had not been able to afford to buy materials for the works at Property 3.
- 64) The applicant told the court that she did not know that the intervenors had funded a substantial proportion of the build until years later, and I have already commented on her evidence that she did not know the extent of R’s interest. When asked, she confirmed that she did not know at the time either that the respondent’s interest in the property was 45% , something which she asserted in her written evidence.
- 65) In her statement, applicant said that R said to her at some stage, “*Don’t see this as your home, it’s to be sold.*” She said that she felt hurt to have been told that, and it was only then that she appreciated that R had an interest in the property. She said she was told very little about the financial arrangements for the property. Frankly, I did not understand why she felt hurt, given that she knew that from the start that it was an investment property, in the sense that it was being renovated as a money making venture.
- 66) The applicant confirmed that she worked for a recruitment agency at the time. She said that the respondent paid the mortgage, but later accepted that she had no knowledge about any mortgage. The height of her evidence was that the respondent had told her he was paying money towards the house, without being specific as to how it was being applied.
- 67) The applicant had no evidence to gainsay what is set out in the accountant’s schedules, produced by S at exhibit S7, based on anything she knew or had been told at the time. Mr A, who was the intervenors’ accountant, confirmed in his statement that the schedules, which relate to the finances in the years ended April 2011 – 2014, were produced from his working papers, which in turn were prepared following his review of the intervenors’ bank statements, books and records for the relevant periods.

He confirmed the accuracy of the schedules. Although Mr A did not attend to give live evidence, S was asked about the underlying records, which were hers. S confirmed that the schedules produced by the intervenors' accountant were produced from the intervenors' contemporaneous records. Although the court has not seen those, I did not understand that disclosure of them had been sought.

- 68) Again, the applicant said that household bills were paid by the applicant and respondent from their joint account, such as the council tax, utilities, and television subscriptions. The respondent accepted that the applicant would have contributed to those expenses, but that there was a period when she was pregnant and/or working part time. Of course, household bills are a fact of life, whether one lives in owner occupied property or in rented accommodation for example.
- 69) The parties moved out of Property 3 in 2012, prior to T's birth, to a rental property. The property at Property 3 was then rented out for just over a year. Rental payments went to intervenors and were used to pay the mortgage. The applicant confirmed that she was aware of that at the time.
- 70) The property was then remortgaged in 2013, and the applicant said that there would have been discussions about that at the property at the time. On 1 February 2013, the completion statement for the remortgage of the property confirmed that Mr B's mortgage was repaid in the sum of £410,000 and a new mortgage taken out from a high street lender which was in the sum of £420,000.
- 71) On the respondent's evidence, and that of the intervenors, it was agreed at the time of the remortgage that the respondent and intervenors together would each hold a 45% in the property, and the respondent's brother the final 10%. That was in consideration of the respondent's brother taking on a liability in respect of the new mortgage.
- 72) The applicant has expressed concern that she had not seen the mortgage documents in connection with the loan made by Mr B, and both the respondent and S were cross examined on the basis that they had failed to disclose the mortgage documents or S's business records. I queried that, and was told that the applicant had not in fact asked for disclosure of the business records, but that she had sought the conveyancing file but had been told that that had been destroyed by the solicitors concerned. I was assured that the applicant was not asserting any dishonesty in connection with the loan from Mr B.
- 73) In August 2013, the property was then sold. The applicant questioned where the respondent's share of the net proceeds of sale went, saying that they did not go into the joint account. Her exhibit P5 includes an email dated August 2013, in which the conveyancing solicitors confirmed that the net proceeds of sale would be divided in accordance with the holdings of Property 3, and so 45% would be used to fund the purchase of Property 4. That was also referred to in paragraph 7(b) of the applicant's witness statement. The applicant told the court that that was the first time that she knew that the respondent had a 45% share in the property.
- 74) The completion statement for the purchase of Property 4 stated clearly that "45% of sale proceeds of Property 3," namely £121,409.79, went into the purchase. What the applicant seems to say is that, because, together with the mortgage advance of

£85,000, there was a surplus over and above what was needed to purchase Property 4, only £87,463.20 went into the transaction and £33,946.59 was due to the respondent, and presumably it is that which she now says is unexplained. We are, however, talking about a point in time which was 8½ years before the parties separated and now 10½ years ago, during which time the applicant and respondent presumably had day to day living expenses, and since when they bought and sold Property 4.

- 75) The respondent's evidence was that, given the crash in the property market, and even after deferring the sale and renting it out, the profit from the sale of Property 3 was lower than expected. It was, on S's figures in exhibit S7, only £19,973.81, of which the respondent's 45% share was £8,988.21.
- 76) S's evidence is that 45% of the net proceeds of sale were indeed £121,409.79, but that was not the same as 45% of the net profits of the project. Her evidence was that the difference in the figures was agreed, between the parties to it, to be treated as a loan agreement from the intervenors to the respondent. She said that they reached that agreement in order to allow him to buy a house. The respondent denied that the loan was fabricated for the purposes of these proceedings, and S confirmed that the current balance outstanding on the loan is about £37,000. The respondent's evidence was consistent with that.

#### *Property 4*

- 77) The property at Property 4 was purchased on 16 August 2013 by the applicant and respondent. This was the only property bought by the applicant and respondent together.
- 78) The applicant stated that the property was purchased as the parties' family home. She also accepted that there would have been all sorts of discussions about how the property would be purchased or redeveloped, but she could not remember the details of those discussions. I found that surprising, given her evidence about how she had been upset when told that the previous property was to be sold; one would have thought that she would have wanted to take more of an interest.
- 79) The applicant accepted that there was some redevelopment of the property, but said that it was small. She said that she was not aware that the intervenors funded some of the expenses of the redevelopment. It appeared that the respondent had received about £34,000 into his account from the intervenors as a contribution towards the costs of the renovations. The respondent and S told the court that the respondent continues to owe the intervenors between £16,000 and £17,000 in respect of the work to Property 4. I note that that loan is not referred to in his witness statement or those of the intervenors.
- 80) When the property was sold on 22 January 2016, the bank statement of the joint current account held by the applicant and respondent confirmed that the net proceeds of sale of £209,071.16 were paid into that account.

#### *Property 5*

- 81) It is not in dispute that the legal title of Property 5 is vested in the intervenors, and was since the point at which it was purchased. The applicant accepted that, just

because someone occupies a property, it does not mean that they own it. The applicant's case was at the time of her Form E, and during the hearing remained, that the beneficial interest in the property is held by applicant and respondent in equal shares, and that the intervenors have no beneficial interest in it.

- 82) The applicant asserts that the property was going to be the parties' forever family home, and that the respondent knew that it was where she wanted to settle with the children. The respondent agreed with that latter point, but said that the parties could not afford to live in the area, that his parents wanted another project, and the idea was that the parties would live in the property, rent free during the course of the works, and have the opportunity to grow their respective businesses.
- 83) The applicant said that she and the respondent went to view the property. She told the court that, when they were visiting the applicant's sister, she recalled sitting in the back of the car and ringing the selling agents to put an offer forward. She denied making that point up in the witness box.
- 84) The intervenors subsequently went to view the property, a few days or weeks later, and then made an offer via the agents before instructing their solicitors after the offer was accepted. S's records confirmed that, on 25 November 2015, she then paid their mortgage brokers.
- 85) The property was purchased on 19 February 2016. Although the selling agents wrote to the applicant and respondent on 18 February 2016 to confirm exchange of contracts, the applicant accepted that she did not sign any documents at all in the context of the purchase, and so it is possible that the agent's letter was sent to the applicant and respondent, rather than the intervenors, in error. It appeared to be common ground that the applicant and respondent could not obtain a mortgage for the purchase of the property, and the applicant did not even know that the deposit for the purchase of the property was £150,703.27.
- 86) There is no dispute that the property was purchased on 19 February 2016 for £372,000, that the registered proprietors are the intervenors, and that they took out an interest only mortgage with a high street lender. S exhibits a mortgage completion statement confirming that the loan, at the point of drawdown, was £231,157.
- 87) The applicant's position is that this was the reality because the applicant and respondent could not afford to buy the property, but that it was intended that they would be the beneficial owners of it. The respondent's case, and that of the intervenors, is that it was always to be the intervenors' property but that, in consideration for the applicant and respondent living in it rent free, the respondent would undertake some building work there. The respondent said that the arrangement was to give the applicant and respondent somewhere to live and time to grow their respective businesses at the same time.
- 88) There is no contemporaneous record of the parties' respective positions. The court therefore looks at the evidence in order to try and establish what can be inferred from the conduct of the parties.
- 89) On 10 February 2016, £178,000 had been paid from the parties' joint current account to what initially appeared to be the respondent's personal account. However, when I

had been provided with the records introduced before the respondent was recalled, it became clear that the money had been transferred to a savings account held by the applicant and respondent jointly.

- 90) Also on 10 February 2016, after a transfer back from the joint savings account of £70,000, the applicant told the court that the respondent instructed her to pay £70,000 to S towards the deposit for the purchase of the property. That is a difference in terms of the way in which it was expressed in applicant's Form E, in which she stated:

*“Although I was not involved in the financial decisions of the marriage (these were controlled by the respondent) my research confirms that £178,000 was paid into our joint account when our previous home was sold and £70,000 was paid out to [S] I believe for the deposit for our home.”*

That said, the applicant stated that she therefore understood that Property 5 would be purchased in the names of the applicant and respondent.

- 91) In fact, what the respondent and the intervenors say about the £70,000 is that it was a payment on account of the loan due to be repaid following the sale of Property 3.
- 92) In her witness statement, the applicant appeared to take the net proceeds of sale of Property 4, deduct £70,000 and then reach the conclusion that the balance of about £139,000 was spent on redevelopment of Property 5. However, the applicant also accepted that £23,000 of the net proceeds of sale of Property 4 was used on 1 February 2016 to buy a car. That would have left about £187,000, and so it is obviously wrong that about £139,000 would then have been available to spend on renovation of the property, even on the applicant's logic.
- 93) Throughout the build, the applicant asserts that large chunks of money were paid to S which the applicant “held the view” were payments towards the mortgage, which she said was the responsibility of the applicant and respondent.
- 94) Looking at the bank statements, the first payment made to S was on 21 February 2017 in the sum of £5,000, then on 10 February 2018 for £250 and £105, and then payments on 27 June 2019 and 22 July 2019 of £3,800 and £7,600 respectively. S considered that, of the larger three sums, the first was for repayment for materials or subcontractors, and the second may have been in relation to the respondent's van. In any event, she repaid all three sums to the respondent's company.
- 95) The respondent was asked about the transactions in July 2019. He explained that he liquidated his business and sold his van to pay the fees associated with it. He denied that the payment ultimately made to S was for reimbursement of monies she had paid for the redevelopment of the property. He denied also that the payments were made towards the mortgage.
- 96) I observe that the monthly payments on the interest only mortgage were £757.99. Working on the basis that there were 41 months between the time when the property was purchased and the end of July 2019, the mortgage payments would have totalled £31,077.59. On that basis, the payments to S, of £16,400 or £16,755 as the case may be, in the same period do not obviously bear any relation to the mortgage liability.

- 97) From just before the property was purchased, the applicant was claiming child tax credit, and that continued for many months after the property was purchased in 2016. That was whilst the joint accounts showed significant positive balances. The applicant could not remember whether she had informed the DWP about those positive balances. Given that child tax credit, as opposed to child benefit, is means tested, it seems to me that, at the very least, a question mark is raised if the applicant says now that she either had a large interest in either the money or the property into which she says the money went.
- 98) The applicant's evidence was that the building works started in November 2016, but that a skip had been ordered prior to that to dispose of things left behind by the sellers and other little things. R confirmed that, in the intervening period, he was involved in work with the plans for the build and the like.
- 99) The respondent also confirmed that it was at the end of 2016 that the building works started. The photographs of the redevelopment show that this was an even bigger redevelopment than Property 3, something which the applicant accepted. I have seen that Building Regulations approval was given on 10 September 2018, and S told the court that the major works to the property were completed by end of 2017, perhaps early 2018, that landscaping was undertaken after that, and then everything signed off in September 2018.
- 100) The intervenors had the property valued by estate agents in August 2018, which confirmed that the property may achieve £850,000 - £875,000 if sold on the open market, or £2,500 per calendar month in terms of rent.
- 101) The applicant's evidence was that the majority of work undertaken on the house was done by the respondent or contractors paid for by the respondent, the applicant thought from the proceeds of sale of Property 4. Although she gave the impression that the respondent worked on nothing else, in fact he was drawing dividends from his company in 2017. The applicant ultimately accepted that the respondent did do work other than in relation to Property 5, which was also the respondent's evidence. He said that he would work on Property 5 in his spare time, and he has disclosed his tax returns which deal with the monies earned in his earnings from his own business, to which he said he would devote as much of his time as possible. He did not turn away work, he said, to work on Property 5. It did not seem to me that that evidence was inconsistent with the applicant's evidence that he was doing work on Christmas Eve in 2016, when presumably his paying customers would not have wanted him working on their properties.
- 102) R was able to describe extensively the sort of work which he was undertaking at the property and that he was there, broadly speaking, throughout the project. When the house was uninhabitable, he told the court that he lived in the summerhouse. Although she was reluctant to accept it, the applicant confirmed that R undertook work at the property sometimes too. Her view was that the intervenors would visit five times per year for a few weeks at a time. She denied that R lived in summerhouse in back garden to enable him to be available. S's evidence was that R undertook a lot of work at the property, and so did contractors, and, whilst the respondent undertook some work, it was by no means the majority of it.



- 103) The applicant accepted that, with the benefit of hindsight, she and the respondent could never have afforded to pay for the redevelopment of the property. She said that she was not involved in discussions about how the redevelopment would be funded at the time of the purchase, because her focus was on Maisy who had health needs. R said that the applicant did not seek to be involved in the discussions, and that the applicant “*never even did so much as pick up a sweeping brush.*”
- 104) The applicant accepted that she had never set out in detail precisely what she said had been paid by her and respondent towards the redevelopment of the property. In contrast, S has produced schedules as exhibits S10, S11 and S13. Exhibits S10 and S13 are schedules of transactions between the respondent (or his company) and the intervenors. The respondent confirmed the accuracy of the transactions. Exhibit S11 was produced by Mr A, the accountant, and is a summary of the transactions in respect of the redevelopment of Property 5 in the years ended April 2016 – 2020.
- 105) The applicant said that there would have been no reason for the respondent to pay for building materials from the parties’ joint account unless it was for this property, because he had a separate trade account. She did not know, however, whether S would put the respondent back in funds for anything paid out from the applicant and respondent’s account, but S’s evidence was that she invariably repaid any expenditure made by respondent in the first instance. An example is the contractor, paid from joint account on 25 April 2017 in the sum of £2,770, to which applicant specifically refers in her evidence and S includes within her schedule.
- 106) Despite being cross examined extensively, there was nothing obviously implausible in S’s evidence about the money paid by the intervenors for the build and how it was accounted for, and how the respondent was reimbursed for any outlay he had made. The production of schedules was consistent with S’s evidence about how she would tally up what was spent on projects and reconcile the figures.
- 107) It appeared to be put to S that, because the total costs of materials shown in the schedules at exhibits S11 and S13 was just over £100,000, it followed that that was paid by applicant and respondent, presumably from the £108,000 left in the account in February 2016. However, S denied receiving such sums from the applicant and respondent, and there is no evidence that she did. On the face of it, her business accounts and records are her own. She denied any suggestion that the applicant or respondent was ever to have an interest in the property. She said that, if it had been intended that the respondent was to have an interest in the property, his name would have been on the title. R said that he told the applicant at some stage specifically that she did not have an interest in the property.
- 108) An issue was raised in relation to the financing of the kitchen. The applicant ultimately accepted that S paid for it, and I have seen the record for 25 June 2018 about that.
- 109) The applicant refers to her own credit card debts, which she says were incurred in connection with the redevelopment of the property. However, the first debt that she specifically refers to was in 2015 and pre-dated the purchase of Property 5, and the latter two entries in 2019 relate to a holiday and a training course attended by S, and are therefore nothing to do with redevelopment either.

- 110) S said that she was unclear whether the remaining payments, incurred between April and November 2018 and totalling £2,044.30, related to the work at Property 5 as opposed to any of the respondent's projects but, as I understood her evidence, she would have been prepared to pay those if the applicant were to have provided the invoices to confirm that they related to Property 5.
- 111) When one therefore considers what happened to the £108,000 which remained in the savings account of the applicant and respondent on 10 February 2016, the respondent agreed that sometimes money was transferred back into the joint account and that sums were paid from one or the other account for contractors and for building materials, including in connection with the development at Property 5. However, his clear evidence was that S had repaid at his request anything which had been spent out by the respondent in the first instance for the work on the property, or that she would have paid up front if he knew what the cost was going to be.
- 112) The applicant asserts that the IVA entered into by her in late 2019 was as a result of credit card debts related to the redevelopment of the property. Other than those that I have just addressed, there is a lack of financial statements in support of that allegation. The applicant states that she was unable to obtain those because the accounts had been closed. I am unclear how hard she tried.
- 113) The applicant said that it was the credit card company, Barclaycard, who suggested that the applicant take advice about an IVA. The applicant confirmed that she understood that she had to be entirely truthful with the nominee, and that she was truthful. The applicant then went on to say that she was not required to list the property as an asset for the purpose of the IVA, because the IVA nominee was only interested in assets which she was named as owning. She told the court that she told the nominee or member of staff who interviewed her that she and the respondent were not on the mortgage, but that at the same time she said she knew that they had put money into the build.
- 114) Even assuming that it is right that the nominee would not have been interested in a property in which the applicant had a significant interest, which I consider highly unlikely, the applicant's explanation, in my judgment, does not explain why the IVA summary confirms that the applicant's residential status was that she was renting, and that the monthly expenditure figures included rent of £750. She did not accept that those were the assertions made at the time because they were true, and because the applicant always believed that she had no interest in the property.
- 115) However, payments were not in fact being paid to the intervenors for rent. No payments of rent of £700 or £750 were made at all, in the period after the parties moved into the property, until 11 May 2020. The applicant accepted that regular payments of £700 only started after four years of living at the property. At least one of those payments was referred to within the contemporaneous transactions as "rent," and the applicant said that that was because the respondent had told her to mark them as such for tax purposes. It was also described as rent in the applicant's Form E. It did not seem to be in dispute that the rent payments later stopped, prior to the parties' separation.

- 116) Although the applicant sought to give the impression that every penny that the applicant and respondent had spare was spent on the house, it is common ground that the applicant had cosmetic surgery at a cost of £3,500, and from the bank statements it appears that the parties were spending money on non essential items as well.
- 117) The respondent remains in the property. He does not pay rent to his parents, but he pays the utility bills except for council tax, which he could not afford. Although the applicant invites the court to infer from the fact that the respondent is still there that that supports her case that the property was bought for him, I do not recall that being put to the witnesses. It may be that the property has not been sold for other reasons, for example, market conditions or because this litigation has been looming.

### **Analysis and findings**

- 118) Stepping back and considering the evidence holistically, the applicant's vague and unparticularised claim in relation to Property 1 may have been amenable to strike out, notwithstanding the burden on the respondent. However, I have considered the evidence and determined the claim on its merits. The short point is that respondent has shown on balance that his beneficial interest was disposed of, and so the applicant's claim fails.
- 119) It is more than that, however. In my judgment, the claim made by the applicant in respect of Property 1 was and is hopeless. Aside from the fact that the property appears to have been bought for redevelopment and was later rented out, and so it is unclear that the constructive trust approach was the correct one at all, it was misleading for applicant to have told the court that she was unaware that the respondent's interest in the property had been bought out, in circumstances in which the evidence was provided to her in August 2022, before these proceedings even began.
- 120) It is neither here nor there that no trust deed was put in place when the respondent's interest was bought out; from an evidential point of view, he and the intervenors had between them kept records of the monies paid to him, which were aligned with the value of the proportion of the property which was held on trust for him. From there on in, rental income was paid to the intervenors alone, and not the respondent.
- 121) The applicant appears to accept that the law would not readily leave the respondent with a beneficial interest in the property by reason of his having a potential residual liability under the mortgage. That must be right, given my finding that his equity was bought out.
- 122) The situation was explained to the applicant again in the respondent's Form E. The open letter on 24 May 2024 appears to completely ignore the evidence previously provided, mischaracterising the respondent's evidence about it as a "*narrative*." The applicant has failed to show that the facts positively described by the respondent and intervenors, about the circumstances in which they say the respondent ceased to be a beneficial owner of the property, were wrong. It was quite wrong of the applicant, in my judgment, to have pursued her claim, which was always fanciful and no more than a fishing expedition.

- 123) The evidence in respect of Property 1 is also instructive in other ways. The fact that S has been able to produce copies of completion statements, estate agents' letters, cheques and credit card statements from 2004 and 2005, in my judgment, makes her evidence that she made and kept records entirely credible. When she told the court that she tucked relevant documents into cash books, I believed her. That, in turn, undermines the suggestion made on behalf of the applicant that documents produced now have been reverse engineered in some way to suit the case of the respondent and intervenors.
- 124) The hopelessness of the applicant's case is also underlined by the contemporaneous evidence. This all happened three years before the parties even met. It is inherently unlikely that the intervenors and respondents would have been generating records on the off chance that the respondent may one day marry someone who, years later, might claim an interest in the property. Far more likely is that documents were created as a record of what was happening at the time, of intention. That logic, it seems to me, is capable of being extrapolated and applied to the later projects too, given that they were all completed by the time the relationship between the applicant and respondent broke down.
- 125) The evidence of the respondent and the intervenors, and S in particular, was entirely credible when they spoke of how they went about property development. They undertook multiple development projects in the same way, as a partnership, whereby they knew, at the start of each project, who would work on the project, and who would therefore receive a share of the profits at the end of it. The identity of the registered proprietors at the outset gave a consistent indication of who could expect to receive a share of profits at the end, the exception being Property 3, in respect of which the respondent's brother's input came part way through and so he was then added to the title. In that way, the equitable interests in the properties were aligned with the legal interests.
- 126) I accept their evidence that the lender would not release the respondent from the mortgage at Property 1 when the intervenors bought his interest out, but that S documented what happened. S was keeping contemporaneous records of the outlay for each of the other projects, too, and was no doubt instrumental in terms of keeping the projects profitable. Although Mr A has not been available to be cross examined, the records which underpinned his professional work came from S, and she did give live evidence. As such, Mr A's evidence does not carry a great deal less weight than it would have done had he also been available to give live evidence.
- 127) The degree of involvement of the respondent and intervenors in each project was in sharp contrast to that of the applicant. Her evidence was that she had no real idea about the arrangements between her husband and his parents. That is not a criticism of her *per se*: she had her own work in a different field and, no doubt, other interests and a growing family to think about.
- 128) However, the evidence is relevant to common intention, and where the court is critical of the applicant is in connection with the rather imprecise or hyperbolic evidence given by her. I have set out some of the inconsistencies in her evidence, which are also drawn together in the respondent's submissions. She has also minimised R's involvement in the development projects in a way which I have concluded was untrue.

That is because he was able to describe with some clarity exactly what he did, whereas the applicant was not involved day to day and she resorted to describing him as a “*gopher*.” There was nothing incredible in the evidence which R gave, whereas the applicant’s evidence was peppered with inaccuracy.

- 129) The applicant had no idea that there was no mortgage on Property 2, and no idea that R had an interest either in that property or, initially at least, Property 3. The fact that her own evidence was that she felt hurt when R told her that that property was to be sold was, itself, telling. I would have thought that, if she had understood by then that the homes she was living in were likely to be building projects, if she had wanted Property 5 to be the family’s forever home, she would have ensured that that was expressly agreed. As it is, her claim is run on the basis that the court has to infer intention from the parties’ conduct.
- 130) Fundamentally, in my judgment and on balance, each and every property which I have referred to in this judgment was purchased as an investment. That finding is consistent with the evidence, not only in connection with the particular properties with which I am concerned, but also looking at the history I have set out in connection with the other properties too. The applicant now relies on a statement made by S in support of the idea that the respondent always received from the intervenors, when they have been involved in property development together, his legal entitlement. That is despite the familial connection.
- 131) On the face of it, that would tend to suggest that the resulting trust analysis is to be preferred to a *Stack v Dowden* type of common interest constructive trust. The factual matrix is however relevant to both.
- 132) The central plank of the applicant’s case now appears to be that the payment of £70,000 to S on 10 February 2016 was a payment towards the purchase price of Property 5. To look at that, the court needs to rewind the clock.
- 133) The court has not seen a completion statement for the sale of Property 3, which might assist the court to cross check the difference between the figures on the completion statement for the purchase of Property 4 and the figures now provided by S and Mr A.
- 134) However, what the court does know is that the property was marketed after the work was completed for £795,000. S says that the price achieved was in fact substantially less, namely £710,000, less costs of sale of £7,631. The property had been purchased for about £366,590, but there was a liability to pay to pay back at least the original mortgage advance of £400,000. The difference between those figures is therefore £302,369.
- 135) In order to achieve a 45% share of profits for the respondent of £121,409.79, there would have needed to have been overall profit in the property of £269,799.53. In turn, that would have required the total cost of the works to have been only £32,569.47, even ignoring the costs of the remortgage and the interest payable under the mortgage to Mr B. In my judgment, that is wholly unrealistic given the scale of the redevelopment which can be seen in the photographs before and after the work was undertaken. I do not need any expert witness to tell me that. I do not see that the schedules produced by or on behalf of S are unrealistic in any way, in particular given

the impact of the recession, and I accept her evidence that the profit on the property ended up being modest.

- 136) I therefore accept the evidence of the respondent and the intervenors that the sale of Property 3 left the respondent with only a very modest profit. The financial outlay on the project was not in shares equivalent to the parties' shares in the property, and so S reconciled the figures. The respondent's parents were willing to help him out, in circumstances in which he wanted to buy another home, which left him with a debt due to be paid to the intervenors.
- 137) On the trust analysis, there is no evidence that the intervenors wished to give the respondent a gift of equivalent value and, lest it be suggested that that loan might be a soft loan, I have considered also the factors in *P v Q* [2022] EWFC B9. Although the loan is not from a commercial lender but from the respondent's parents, the obligation to repay it arises out of business arrangement and the sums concerned have not been insignificant. The intervenors have given the respondent some latitude in terms of repayment, and they have clearly wanted to help their son, but nonetheless there does appear to have been an expectation that the respondent would repay his debts, and he has taken steps to do so. Therefore, in my judgment, the loans are towards the harder end of the scale, albeit not the hardest.
- 138) I do not consider that the applicant has proved that that debt did not remain outstanding at the time of purchase of Property 5, or that further debt had not arisen by the point of the sale of Property 4.
- 139) In relation to Property 5, the starting point is that the property was bought by the intervenors. They are the registered proprietors, and they raised the mortgage. Even if the applicant did speak to the selling agents and view the property, the applicant did not sign any of the legal documents. There is no evidence of any express agreement that the applicant and respondent would have an interest in the property.
- 140) The respondent's evidence is that he repaid £70,000 of his liability in respect of the loan to his parents when he realised some money from the sale of Property 4, at a time when the intervenors presumably would have wanted to improve their cashflow because they were themselves buying a house shortly afterwards. The applicant's case was that that £70,000 was the deposit for Property 5. She did not know that the total deposit was more than twice that, which of course then created some difficulty with her case that the intervenors had no interest in the property, and emphasises her own evidence that she did not really have a handle on the arrangements for the purchase of the property. The "*research*" conducted by the applicant when producing her Form E suggests that she took the end result and worked backwards, making assumptions as she went.
- 141) I accept the respondent's evidence, and that of the intervenors, that the payment of £70,000 on 10 February 2016 was a part repayment towards the loan. The applicant does not prove that it was even a part payment *towards* the deposit, which is the submission now being made to me, and which is different to the case advanced by the applicant in her own evidence. Her case has shifted. I have reached the conclusion I have because of what I have already said in connection with the way in which the loan arose, because the applicant had no involvement in the detail of the purchase

transaction, because she signed no documents and there is no other evidence of an express agreement, and because £70,000 bears no relation to the deposit actually paid on the purchase of Property 5. Although it is submitted that she would never have agreed to move to Property 5 if it was not to be her forever home, it was of course the respondent's work which had led to them living in properties while they were being developed on three previous occasions, and so I do not accept the applicant's evidence in that respect. I find that Property 5 was bought as a further investment property, like those which went before it.

- 142) I have given myself a *Lucas* direction because, however one looks at it, the biggest problem in my judgment with the applicant's case, when viewed holistically, is that she has lied. Either the applicant was economical with the truth in her dealings with the DWP when claiming child tax benefit, in that her case is now that she had a beneficial entitlement to the cash in the bank or a substantial interest in property, and she lied to her creditors in breach of Section 262A of the Insolvency Act 1986 when arranging her IVA three and a half years later when she said that she was renting and had no assets other than her car. The alternative is that she is being untruthful to the court now when asserting that she did not occupy the property as a mere tenant or licensee. Remarkably, I note, no attempt has been made, in the applicant's submissions, to address this particular conundrum.
- 143) There is no attempt either at forensic analysis by the applicant as to what happened to the money which was in the joint account in February 2016, or even what happened to the money which she says was unaccounted for in August 2013. The respondent told the court that he thought his bank statements had been disclosed and he had nothing to hide. Although he appeared to be criticised for not providing his personal bank statements, there is nothing to suggest that his disclosure has previously been identified as deficient, including in the applicant's questionnaire. Indeed, the respondent submits positively that the applicant did not seek relevant directions for disclosure from the parties or third parties.
- 144) The court has heard about numerous other accounts held by the applicant and respondent, but the court has only been provided with copies of the joint current account statements, a few pages of the applicant's credit card statements and, after the applicant and respondent had been through witness box and before the respondent was recalled, the joint savings account statement. The latter could have formed part of the applicant's evidence, but did not. That, in itself, is significant. Whilst the applicant complained in her evidence that her credit card statements were not obtained because the account was closed, she did not explain that she had taken any steps to obtain them.
- 145) What the joint savings account statement shows is that the £108,000 or so, which had been available to the parties in February 2016 after the £70,000 had been paid to S, had been paid out, by and large, to one or other or both of the applicant and respondent by 5 July 2016. The majority was transferred in large chunks by the end of April 2016.
- 146) It was common ground that the building work did not start until the end of 2016. I struggle therefore to see how the applicant says that those monies were applied to the costs of renovation of Property 5, as she appeared to assert. I have commented on the

credit card payments incurred by the applicant in 2018. If S is right that the internal works were all complete by the end of 2017, it seems unlikely that they related to Property 5 at all. However, S states, and I accept, that she repaid the respondent for what he spent at the property, and there is no reason to believe that she would not also have repaid the applicant had the expenses related to the project.

- 147) I have commented already about the applicant's assertion that the lump sum payments made to S between February and July 2017 were payments towards the mortgage, and do not resile from my view that that was highly unlikely given the lack of correlation between the mortgage liability and the sums paid. If they had been payments towards the mortgage, they could have been paid directly to the mortgagee.
- 148) The applicant now submits that these were repayments towards the costs of the purchase of the property. That is a new case, and it was not the evidence. In any event, S's evidence is entirely credible, and supported with contemporaneous documentary evidence, and the applicant does not discharge the burden of proving that these were payments towards the value of the property at all.
- 149) In my judgment, that the occupants of a property pay the outgoings associated with living in it, such as council tax and the utility bills, is unlikely, of itself, to mean that they have an interest in the property in consequence. Tenants of rented property would also be expected, usually, to meet similar sorts of expenses. This is not a case akin to *Le Foe v Le Foe*, in that the payment of the household bills on the evidence had, on the face of it, no connection whatsoever to the intervenors' ability to afford any of the other outgoings.
- 150) Although the applicant appears to have abandoned these points which were pursued in her evidence, the applicant did not adduce evidence which, in my judgment and on balance, proved that the £108,000 was spent on the property as opposed to other things, including the general outlay that the family had in living day to day, over a period of five years, on holidays, on repayment of the loan from the intervenors, on her own cosmetic surgery, and those sorts of things. This is far from a case of the applicant and respondent devoting every spare penny to the costs of their home.
- 151) In contrast, S's analysis of how the purchase and development of Property 5 was funded is detailed and, on balance, stands up to scrutiny. I accept S's evidence that, had the respondent been meant to have an interest in the property, his name would have been on the title, and the respondent's evidence that he worked on the house in his spare time but that he was, generally speaking, working through his business for paying customers.
- 152) In my judgment, on balance the applicant does not prove that the intervenors did not fund all of the initial costs of purchasing Property 5, the costs of the mortgage repayments, or the costs of the development. The arrangement between the respondent and the intervenors, whose evidence I accept given the applicant's apparent lack of knowledge of it, permitted the applicant, respondent and their children to live in an area in which they could not afford to buy, in a house which they could not afford to buy, with the better local schools, and with a rent free period which permitted them to put themselves in a better financial position than that which they were in previously. That included repaying some of the debt due to the intervenors.



- 153) I am told that the applicant now relies upon the statement of S that the payment of £38,500 made to the respondent between August and November 2005 “*was calculated to satisfy Q’s one-third share in the equity [of Property 1] based on a valuation of £220,000.*” That submission is made in support of the idea that the respondent always received precisely what he was entitled to at the end of a project.
- 154) There are, I think, at least four problems with that submission. Firstly, it seems to me that the proposition by no means inexorably flows from the particular evidence relied upon. Secondly, even if it is right that the respondent did receive that which he was entitled to, my findings are that he did, but that the intervenors, as his parents, were also on occasions willing to help him out financially and reached agreements separate to those which dealt with the profits or losses from the projects. Thirdly, the submission completely undermines the applicant’s case in respect of Property 1. And fourthly, the submission also smacks of the applicant having her cake as well as eating it.
- 155) In my judgment, and on balance it is manifestly wrong that the intervenors have no beneficial interest in the property, which was the applicant’s case. She now appears to say that either she and the respondent have an interest under a constructive trust and the court needs to value it, or that it is the payment of £70,000 which gives her and the respondent an interest in the property under a resulting trust.
- 156) However, in my judgment, on either analysis, she does not prove that she or the respondent have any interest in the property at all. I find that, on balance, she was truthful with her creditors in 2019 when she said that she had no assets other than her car. It is obvious that the IVA nominee would have been interested in all of the applicant’s assets, whether in her name or not. Her creditors would otherwise have been misled. By the time of the IVA, the development of Property 5 was complete and she was asserting no interest in it, and the proceeds of sale of Property 4 were gone.
- 157) So, returning to the conundrum which I set out earlier, and although the respondent relies on *Gestmin* to make good the point that the applicant’s evidence was unreliable, in my judgment it is more than that. Although it is right that the applicant did not know precisely what the arrangements were, she had sufficient knowledge to know that the case which she has advanced in these proceedings was *not* what they were. In that sense, she has, in my judgment, been dishonest in pursuing her claims. She told her creditors the true position. She has minimised the involvement of the intervenors despite overwhelming evidence, in order to claim a 50% share in their property now worth (on her figures, which I understand are not agreed) up to £1.25 million which she occupied, for the most part rent free, for years. That must feel like a real slap in the face for the intervenors in particular. In my judgment, there was never a common intention that she would have an interest in that property, she did not even think she had an interest, let alone rely on the idea that she did, and she has suffered no detriment.
- 158) Given the conclusions I have reached on the evidence, I do not need to determine whether the applicant should be prevented from pursuing a resulting trust claim at the eleventh hour. The claims fail whichever way I analyse them, and I dismiss them. However, the nebulous way in which the applicant has pursued her case does underline the need for proper pleading in similar sorts of cases, given the principles in

*TL v ML*, the parties' duties under Rule 1.4 of the Family Procedure Rules to assist the court to further the overriding objective in Rule 1.1, and the expectation of fairness which rightly arises from Article 6 of the European Convention on Human Rights. In my view, it is incumbent on parties involved in this type of claim to raise with the court, at the case management stage, the need for directions to be given of the sort contemplated in *TL v ML*.

*Footnote: transparency decision given on 2 July 2024*

- 159) Finally, it is really a reminder of the latter point of procedure which, in my view, may merit the publication of this judgment, aside from any general interest about the sort of business which is considered in the Family Court.
- 160) I invited, and have received, written submissions in relation to anonymisation, having in mind the "*intense focus*" on relevant human rights in the light of the facts of this case required by *Re S (Identification: Restrictions on Publication)* [2004] UKHL 47, and re-emphasised relatively recently in *Tsvetkov v Khayrova* [2023] EWFC 130. The applicant and respondent seek that this judgment be anonymised if it is published. The intervenors submit that the parties' names can be published but the children's names anonymised, subject perhaps to referring the matter to Peel J to consider the issue in accordance with the FRC Notice issued on 13 May 2022.
- 161) The starting point is a presumption in favour of open justice, consistent with Article 10 of the European Convention on Human Rights, and the parties do not themselves have a right to anonymity: *R (C) v Secretary of State for Justice* [2016] UKSC 2; *A v M* [2021] EWFC 89.
- 162) This is a case which was, in effect, a civil case brought within the context of financial remedy proceedings. That is essentially the argument in favour of publication of the parties' names advanced on behalf of the intervenors. It is suggested that the case needs to be reported to highlight the need for a party in a similar position to the applicant to set out their case, and the court is invited to draw analogies from *Uddin v Uddin* [2022] EWFC 75.
- 163) Considering the intervenors' Article 10 rights, what is not submitted on their behalf is that there is a need for them to be able to tell their story. When I invited the submissions, I had in mind the potential for them to perhaps want to be able to tell prospective purchasers of Property 5 one day that, whilst there had been a dispute in connection with the ownership of the property, that had been finally resolved.
- 164) I do not see that the Article 6 rights of the parties would be impacted by publication of the judgment notwithstanding that the hearing was heard in private; this element of the proceedings was self contained and is complete.
- 165) Although Section 12(1) of the Administration of Justice Act 1960 does not mention financial remedy proceedings, this case does have, at its heart, the private lives of a family, including two children, all of whose Article 8 rights fall to be taken into account: see *K v L* [2011] EWCA Civ 550. Publication of the details of this case in a way which identifies them is liable, in my judgment, to impact their right to respect for their private and family lives. Although the applicant and respondent both live and work locally, I am not on balance convinced by the submission, however, that their

financial futures would be likely to be adversely affected if the judgment is published, at least to a greater extent than cases heard in open court would.

- 166) However, I do have greater concern for the Article 8 rights of the children. They are 11 and 9 years old respectively. They have a significant and important part of their minorities ahead of them. I see it as their parents' job to shield them from any parental acrimony to the extent practicable, and naming the parties is therefore counterintuitive. As it is, the argument was whether their grandparents own the property which they might see as home, and my findings are that neither of their parents has an interest in Property 5. Publication of the judgment will be unlikely to assist them, and the detrimental impact of publication is difficult to predict in circumstances in which the family, at present, has little or no public profile.
- 167) When I weigh up the competing rights, in my judgment, there is no sensible basis for saying that the judgment should not be published at all. However, this is a decision at Family Court level which has attracted no outside interest as far as I am aware. So, when the Article 8 and 10 rights are considered together, in my judgment the proportionate approach is to place greater weight on the parties' rights, and for the court to anonymise the names of the parties, the children and the addresses referred to, in order to protect the children in particular, and the risk of jigsaw identification of them. That would still permit publication of the judgment, so that the principles of open justice can, to a great extent, be honoured, and my view that cases of this sort should be clearly pleaded underlined.
- 168) That concludes this judgment.