



Neutral Citation Number: [2024] EWHC 1203 (Ch)

Case No: CR-2022-001667

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

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

Date: 24 May 2024

Before :

DEPUTY ICC JUDGE CURL KC

Between :

AMANDA WADE AND NICHOLAS NICHOLSON
(JOINT LIQUIDATORS OF MSD CASH AND CARRY PLC (IN LIQUIDATION))

Claimants

- and -

(1) MOHINDER SINGH
(2) SURJIT SINGH DEOL
(3) RAMINDER KAUR DEOL
(4) THE ESTATE OF BAKSHISH KAUR (DECEASED)

Defendants

CLARA JOHNSON (instructed by **Wedlake Bell LLP** for the **Claimants**)
DAVID E GRANT KC and **HELEN PUGH** (instructed by **Manak Solicitors**) for the **Defendants**)

Hearing dates: 16, 17, 18 April 2024
Draft judgment circulated: 20 May 2024

Remote hand-down: This judgment was handed down remotely at 10.30am on 24 May 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

Deputy ICC Judge Curl KC:

1. This is my judgment following the trial of proceedings to enforce charging orders over a number of properties owned by the Defendants. The Claimants are the liquidators of MSD Cash & Carry plc (“**Company**”). An order was made to wind up the Company on 16 January 2012 on a petition presented on 12 September 2011. David Ingram was appointed liquidator of the Company on 27 January 2012. Mr Ingram was replaced as liquidator by Amanda Wade and Nicholas Nicholson (“**Liquidators**”) on 1 December 2023.
2. The Defendants are members of the same family. They have been referred to throughout the proceedings by their first names and I will continue to do that in this judgment, with no disrespect intended thereby. The first, second and third defendants are, respectively, Mohinder Singh (“**Mohinder**”), Surjit Singh Deol (“**Surjit**”) and Raminder Kaur Deol (“**Raminder**”). Mohinder is the father of Surjit, and Raminder is married to Surjit. On the first day of trial, the estate of Bakshish Kaur (“**Bakshish**”), who died on 17 July 2023, was added as the fourth defendant in circumstances described below. Bakshish was the late wife of Mohinder, and the mother of Surjit. Other family members mentioned in this judgment are Kuldip Kaur Basi (“**Kuldip**”) and Baljit Kaur Kuman (“**Baljit**”), who are daughters of Mohinder and Bakshish, and Surjit’s sisters.
3. These proceedings were issued against Mohinder, Surjit and Raminder by Mr Ingram under Part 8 of the CPR on 14 June 2022 (“**Part 8 Claim**”). The Part 8 Claim sought to enforce a series of charging orders that secured a judgment debt of £996,494.61 owed to Mr Ingram by Mohinder and Surjit. That debt arose from misfeasance proceedings brought against them (and against Kuldip, Baljit and a connected company called Dale Wholesale Limited) in the liquidation of the Company. Following a trial ([2018] EWHC 1325 (Ch)), His Honour Judge Hodge QC (sitting as a deputy High Court judge) *inter alia* directed on 4 May 2018 that an inquiry take place into the loss suffered by the Company. That inquiry took place before Judge Jonathan Richards (as he then was, sitting as a deputy High Court judge) on 9 March 2021 ([2021] EWHC 639 (Ch)), following which judgment was entered on 14 April 2021 against Mohinder and Surjit for £996,494.61, together with interest at 4.75 per cent per annum from 5 November 2011 in the sum of £445,988.04 and continuing at the judgment rate thereafter.
4. The Part 8 Claim sought to enforce by way of an order for sale charges held over a number of properties, as follows:
 - i) The Oaks, Boxley, Maidstone (“**the Oaks**”): this is a residential property to which Mohinder and Raminder hold joint legal title. It comprises seven separate registered titles. At the time that the Part 8 Claim was issued, Mr Ingram held charging orders over only five of them (K263957, K274536, K548311, K695398 and K748779), and only those five were particularised in the Part 8 Claim.
 - ii) 37 Barleymow Close, Chatham (“**37 Barleymow Close**”): this is a residential property to which Mohinder and Surjit hold joint legal title. Mohinder resides there.

- iii) 152 Dale Street, Chatham (“**152 Dale Street**”): this is a tenanted residential property to which Mohinder holds sole legal title.
 - iv) 104 Dale Street, Chatham (“**104 Dale Street**”): this is a tenanted residential property to which Mohinder holds sole legal title (152 Dale Street and 104 Dale Street together “**Dale Street Properties**”).
5. A number of witness statements in opposition to the Part 8 Claim were served. First, statements were provided by Onofrio Sanfilippo (26 August 2022) and Ralph de Souza (1 September 2022), both of Leigh Carr Chartered Accountants, whose firm had acted for members of the Defendants’ family and associated companies for some years. Soon afterwards, statements dated 9 September 2022 were served for Mohinder, Bakshish, Surjit and Raminder. The statements served for Mohinder and Bakshish were the subject of applications on the first day of trial. For present purposes, three key points of significance were raised in this round of evidence. Firstly, it was asserted that Raminder was the sole beneficial owner of the Oaks, in support of which a three-page document headed “*Declaration of Trust*” and bearing the date 17 April 2017 (“**Declaration**”) was disclosed as an exhibit to Raminder’s statement. Secondly, Raminder drew attention to the fact that the Declaration covered the seven title numbers comprising the Oaks and that the Part 8 Claim had been brought only in respect of five of them, with no claim brought in relation to title numbers K493509 and K500566. Thirdly, Bakshish asserted that she was a joint beneficial owner (with Mohinder, her husband) of 37 Barleymow Close and the Dale Street Properties.
6. As a consequence of the disclosure of the Declaration, Mr Ingram issued a claim on 25 October 2022 under Part 7 of the CPR (“**Part 7 Claim**”). The Part 7 Claim alleged that the Declaration was either a sham or, alternatively, was a transaction defrauding creditors within the meaning of s.423 of the Insolvency Act 1986 (“**IA 1986**”). As issued, the Part 7 Claim was brought against Mohinder, Surjit and Raminder, although it was discontinued against Surjit once it became clear that he repudiated any beneficial interest in 37 Barleymow Close, despite his holding joint legal title to it.
7. On 27 October 2022, Deputy Master Teverson ordered that the Part 7 Claim should be transferred to the Insolvency and Companies List and consolidated with the Part 8 Claim. Particulars of Claim were filed dated 8 November 2022 (“**Particulars of Claim**”). A defence was filed on behalf of Mohinder and Raminder dated 6 December 2022 (“**Defence**”).
8. No action was taken by either side to engage with the consequences of Bakshish (a non-party to the proceedings) having asserted a beneficial interest in 37 Barleymow Close and the Dale Street Properties until the Defendants’ newly-instructed solicitors raised the point, apparently for the first time, by a letter dated 10 April 2024.

Preliminary matters

9. A number of applications were made shortly before trial. I summarise these as briefly as possible, together with a number of other preliminary matters, under this heading.

10. As mentioned at §4 above, at the time the Part 8 Claim was issued, Mr Ingram held charges over only five of the seven titles comprising the Oaks. Matters rested there until 20 March 2024, when applications for charging orders were made in relation to the two missing titles, being K493509 and K500566. Interim charging orders were made by Deputy ICC Judge Agnello KC on 21 March 2024. At the request of the Liquidators, the hearing of the application to make those orders final was relisted to be heard at the same time as the trial before me, although draft final charging orders were not available at the start of the trial. I ultimately made the two charging orders final on 18 April 2024, the third day of trial.
11. The Defendants applied on 10 April 2024 for permission to admit witness statements of Daniel Andrews dated 8 April 2024, Raminder dated 9 April 2024 (“**Raminder 3**”), and Baljit and Kuldip both dated 10 April 2024. Further applications had been filed by the Defendants (but not yet issued) to admit the first and second witness statements of Sanjay Panesar (the Defendants’ former solicitor) made on 11 and 15 April 2024. These statements were all long out of time, as the extended date for service of the Defendants’ witness evidence was 15 August 2023. By the commencement of trial, only the admission of Raminder 3 was resisted by the Liquidators. It was common ground between the parties that the Defendants required relief from the sanction imposed by CPR 32.10 and that the three-stage test in *Denton v TH White Ltd* [2014] 1 WLR 3926 applied.
12. The Liquidators applied on 12 April 2024 for:
 - i) an order under CPR 19 r.12(2)(b) for the addition of the estate of Bakshish Kaur (deceased) (“**Estate**”) as the fourth defendant and the appointment of a representative of the Estate; and
 - ii) permission to amend the claim form served in the Part 8 Claim dated 14 June 2022 to add the two further title numbers (K493509 and K500566) to the claim for an order for sale in relation to the Oaks and to make clear that each head of relief was sought under ss.14 and 15 of the Trusts of Land and Appointment of Trustees Act 1996 (“**TOLATA**”), by reason of the subject properties all being co-owned or allegedly co-owned.
13. No request to amend the claim form issued in the Part 7 Claim or the Particulars of Claim in support was included in the Liquidators’ issued application and an informal application for such relief was added during oral submissions.
14. As to the first part of the Liquidators’ application, there was no opposition to the joinder of the Estate but Mr Grant KC raised a number of practical difficulties that flowed from that in relation to the Dale Street Properties. These included the fact that the Estate did not yet have a representative and had not had an opportunity to answer the claim to which it was about to be joined at the Liquidators’ request. Mr Grant’s submissions in this respect were self-evidently well-founded and the Liquidators realistically recognised that the trial could not proceed immediately in relation to the Dale Street Properties. I made an order directing that that part of the claim be severed and proceed as if it had been

issued as a Part 7 claim, with consequential directions. No more need be said about that continuing claim in this judgment.

15. Mr Grant KC indicated that amendment of the proceedings would be opposed by the Defendants only if permission to admit Raminder 3 was refused. After hearing submissions, I granted the application to admit Raminder 3 for reasons I gave in an *ex tempore* judgment on 16 April 2024, which are not repeated here. Accordingly, the Defendants' opposition to the amendment of the proceedings fell away.
16. The Defendants then advanced an informal application foreshadowed for the first time in a letter from their solicitors dated 3 April 2024 to seek a preliminary determination that the judgments mentioned at §3 above are not admissible in these proceedings. This was based on the proposition that a judgment obtained by A against B is not evidence against C: *Hollington v Hewthorn* [1943] 1 KC 587. That was opposed by the Liquidators on the basis that such previous findings were admissible as between those who were parties to both sets of proceedings, i.e. as between the Liquidators and Mohinder, to show a propensity on the part of Mohinder to put assets beyond the reach of creditors. Having heard submissions, it was apparent that resolution of this question was not as straightforward as it might appear.
17. There were two immediate areas of difficulty. Firstly, the researches of counsel had been unable to find any authority to address the position where A obtains a judgment against B and then seeks to use findings from that first judgment against B in a subsequent action brought by A against B and C. This is perhaps surprising, given that sequential litigation in a form capable of giving rise to that or an analogous issue is not unusual. Nonetheless, that was the position. Secondly, although Mr Grant KC was prepared to accept that if the trial was concerned solely with the intentions of Mohinder (as "B" for these purposes) then such previous findings might be admissible against Mohinder, notwithstanding that Raminder (in the position of "C") was also a defendant, he submitted that this was not the situation here. That was because the Declaration was entered into by both Mohinder and Raminder, which meant that it was impossible to use previous findings going to propensity solely against Mohinder without also using them against Raminder.
18. I formed the view that, to decide the point conclusively, it would be necessary to hear fuller submissions and then take time to reach a view after proper consideration. Rather than jeopardise the effectiveness of the trial, I declined to make a formal ruling on admissibility for reasons contained in a further *ex tempore* judgment on 16 April 2024. I indicated my preliminary view, however, that it was extremely doubtful whether such propensity evidence would be of assistance and that if the Liquidators sought to rely on such evidence in submissions then I would consider the point further as it arose. In the event, it has not proved necessary to have regard to either previous judgment in determining this case.
19. In light of the matters contained in Mr Panesar's two statements, the Liquidators sought to have the witness statements of Mohinder and Bakshish ruled inadmissible on the ground that they were seriously defective. For reasons given

in a further *ex tempore* judgment on 16 April 2024, and directing myself according to the guidance given at [43] by Garnham J in *Correia v Williams* [2023] 1 WLR 767, I gave permission for the statements to be used under Practice Direction 32, paragraph 25.2, notwithstanding that those statements appeared to be defective. It remained open for the parties to make submissions as to the weight, if any, to be attached to the statements, and they duly did so. My conclusions on weight appear later in this judgment.

20. Finally, the parties agreed that the Liquidators' applications for orders for sale in relation to the Oaks and 37 Barleymow Close should be addressed at a further hearing at which other consequential matters arising from this judgment may also be dealt with.

The claims and the defence

21. In the circumstances of this case, it is convenient to deal with the positive claims raised by the Defendants by way of defence before dealing with the Liquidators' claim. This reflects the order in which the parties addressed matters in closing submissions. The following arose for determination:

- i) Was there an oral express trust of the beneficial interest in the Oaks in favour of Raminder at the time of its purchase in 2003? If so, is the Declaration (in particular recitals C and D) capable of satisfying the formal requirements of s.53(1)(b) of the Law of Property Act 1925 ("LPA 1925")? This is the primary way the Defendants put their case. It is common ground that the Defendants bear the burden of proof.
- ii) Alternatively, and if the express trust argument does not succeed, did a common intention constructive trust of the beneficial interest in the Oaks arise in favour of Raminder at the time of its purchase in 2003? This requires a common intention shared by Mohinder and Raminder, which may be inferred from conduct, together with detrimental reliance on the part of Raminder. This is the secondary way the Defendants put their case. It is common ground that the Defendants bear the burden of proof. The Liquidators argue that the Defendants are not in common intention constructive trust territory at all and submit instead that resulting trust principles should apply.
- iii) In the further alternative, and if the express and constructive trust arguments both fail, then did the Declaration create an express trust of the beneficial interest in the Oaks upon its execution? The Defendants say the Declaration was executed on 17 April 2017, although the Liquidators suggest it was done at some later time. This is the tertiary way the Defendants put their case. Again, it is common ground that the Defendants bear the burden of proof in showing that the beneficial interest in the Oaks differs from the legal title, although they rely on the existence of the Declaration to throw a burden onto the Liquidators to impugn that document.
- iv) Was the Declaration a sham? This is the first way the Liquidators put their case to impugn the Declaration. To establish that the Declaration

was a sham, the Liquidators must show that it was intended by Mohinder and Raminder to give to third parties or the court the appearance of creating between them rights and obligations different from the actual legal rights and obligations, if any, that they intended to create. It is common ground that the Liquidators bear the burden of proof.

- v) Alternatively, if the Declaration is not a sham, can it be impugned under s.423 of the IA 1986? This requires that Mohinder entered into the Declaration for the statutory purpose in s.423(3) of, in summary, putting assets beyond the reach or otherwise prejudicing the interests of a person who is making or may make a claim against him. It is common ground that the Liquidators bear the burden of proof.
22. As Mr Grant KC put it in closing, if the issues at either 21(i) or 21(ii) are concluded in the Defendants' favour then that is an end to the Liquidators' claims, as they are based solely on impugning the Declaration. If Mr Grant succeeds in his contention that the Declaration did no more than record and provide evidence of an express or constructive trust that arose in 2003, then it did not effect any disposition in 2017.
23. Although both sides made extensive submissions on the law, citing well over fifty cases and over a dozen extracts from learned textbooks, there was ultimately not a great deal between them on matters of law. The one exception was over whether this was a case where principles of common intention constructive trust applied (as the Defendants submitted) or those of resulting trust (as the Liquidators submitted). Ultimately, this disagreement has not made any difference to the outcome in this case.

The witnesses

Mr Ingram

24. Notwithstanding his retirement as Liquidator, Mr Ingram remained the Liquidators' trial witness. This was unsurprising given that Mr Ingram held office as liquidator from 27 January 2012 to 1 December 2023, signed the statement of truth on the Particulars of Claim, and made three witness statements dated 30 May 2022, 21 July 2023 and 31 August 2023.
25. As is usual with the witness evidence of insolvency officeholders, Mr Ingram was unable to give direct evidence as a witness to any of the underlying facts concerning the Oaks or 37 Barleymow Close, having not been a party to the material events. Mr Ingram was, however, more closely involved with the underlying facts than is common, albeit indirectly. This was because the Company had been in liquidation for some years by the time the Declaration was executed (whether that was on 17 April 2017 or some later date) and the commencement by Mr Ingram of the misfeasance proceedings on 27 September 2016 was itself a feature (among others) that was relied upon by the Liquidators as going to support the inference that Mohinder had the statutory "*purpose*" in s.423(3) of the IA 1986 when entering into the Declaration.

26. Mr Grant KC sensibly recognised the limited scope of matters on which Mr Ingram could usefully give oral evidence and cross-examination was brief. Mr Ingram paid close attention to the questions that were asked and made concessions where appropriate. For instance, he readily accepted that he had known from September 2022 that two titles relating to the Oaks were outside the scope of the Part 8 Claim. He accepted that he had no direct recollection of reading various documents in the proceedings, although he made clear that there was no reason for him to have deviated from his usual practice, which was to read such documents at the appropriate time. Mr Ingram conceded that there was “*loose language*” in a number of documents, such as where the term “*the Defendants*” is used in the context of the misfeasance proceedings, when only Mohinder and Surjit should have been identified. In a similar vein, the Oaks is referred to in the Part 8 Claim form and in Mr Ingram’s first statement as “*The First Defendant’s [i.e. Mohinder’s] property*”, when it ought to have been described, even on the Liquidators’ case, as belonging to Mohinder and Raminder. Elsewhere, Mr Ingram referred to Raminder as Mohinder’s wife, rather than Mohinder’s daughter-in-law. These were obvious slips, as Mr Ingram appropriately conceded.
27. In my judgment, only one aspect of the “*loose language*” was capable of giving rise to genuine uncertainty about the Liquidators’ case. This was Mr Ingram’s evidence that he had not been aware that Raminder was said to have a beneficial interest in the Oaks until the Declaration was disclosed in September 2022. Mr Grant KC put to Mr Ingram that he had obviously been aware that Raminder had a beneficial interest in the Oaks prior to September 2022. Mr Ingram initially denied that and insisted that it “*genuinely came as a surprise to me and everyone else involved in the case.*” That denial did not make sense in the context of the Liquidators’ case: while it may be right that disclosure of the Declaration and the consequent assertion that Raminder is solely beneficially interested in the Oaks came as a surprise in 2022, neither Mr Ingram nor the Liquidators appear to have contended at any time that Raminder has anything less than a 50 per cent beneficial interest in the Oaks. On being shown a letter from his solicitors dated 9 May 2022 (i.e. before the issue of the Part 8 Claim) that referred to Raminder holding a 50 per cent interest in the Oaks, Mr Ingram accepted that this was so. Following this exchange, I was satisfied that the inaccuracy in Mr Ingram’s witness statement was attributable to a lack of clarity in terminology, rather than any genuine confusion of thought. Taken in context, Mr Ingram’s witness statement deployed the words “*beneficial interest*” to refer to the assertion of a beneficial interest deviating from, and greater than, the beneficial interest that a joint legal owner would ordinarily have.
28. Mr Ingram was challenged on his comment at §7 of his third witness statement dated 31 August 2023 that “*My case is that the declaration of trust represents a cynical attempt by the Respondents to render themselves judgment proof.*” It was put to Mr Ingram that, having dealt with the family and their companies for many years, he was incapable of seeing any good faith in anything they might have done. Mr Ingram’s answer was that as a professional he is aware of both conscious and unconscious bias and that he was capable of acting independently and having an independent mind. While I have attached no weight to the “*cynical attempt*” comment, which is a submission rather than evidence, I have

no reason to doubt that Mr Ingram brought appropriate independent judgment to bear on this matter. Overall, my assessment is that he was an entirely satisfactory witness who answered all questions thoughtfully and candidly.

Mohinder and Bakshish

29. Hearsay notices were served for both Mohinder and Bakshish. The notice for Bakshish was dated 15 August 2023, which was not long after her death on 17 July 2023. Bakshish's evidence is mainly concerned with the Dale Street Properties and only touches indirectly on the issues that remain live in this trial.
30. The hearsay notice for Mohinder was dated 15 April 2024, i.e. the day before trial. It was accompanied by a short medical report from Dr Lucio D'Anna dated 11 April 2024 indicating that Mohinder is suffering from vascular dementia. The report indicated that as a consequence of this condition it was possible that Mohinder would be confused, disorientated and distracted giving evidence, his recollection might be confused, and it was possible that he would not be able to understand the proceedings.
31. An issue arose at the start of trial in relation to Mohinder's witness statements dated 9 September 2022 ("**Mohinder 1**") and 7 November 2023 ("**Mohinder 2**") not having been prepared in accordance with the Practice Direction to Part 32 of the CPR. The witness statements dated 11 and 15 April 2024 made by the Defendants' former solicitor, Mr Panesar, explained that the witness statements for Mohinder and Bakshish had been written by Mr Panesar in English based on instructions given by them to Mr Panesar in Punjabi, which were then orally translated back into Punjabi by Mr Panesar before being signed by the witness. Mr Panesar's statement dated 11 April 2024 explained that Mohinder could not read or write, which was taken by all parties to mean that Mohinder was unable to read or write in any language.
32. Ms Johnson submitted, and I accept, that Bakshish and Mohinder's statements are substantially defective. The correct procedure, as provided for by paragraph 20.1 of the Practice Direction to Part 32 of the CPR ("**PD32**"), is that a witness statement is the equivalent of the oral evidence the witness would, if called, give in evidence. A statement written in English by someone unable to speak English cannot comply with this. Further, the statement must include a statement of truth by the witness in their own language. The statement of truth appended (in English) to Bakshish and Mohinder's statements says "*This witness statement sets out only my personal knowledge and recollection, in my own words.*" It is common ground that the witness statements are not set out in Mohinder or Bakshish's own words, because their own words were words in Punjabi and the statements are written in English. Paragraph 23.2 to PD32 explains that where a witness statement is in a foreign language, it must be translated into English and both the statement and the translation must be certified by the translator and filed.
33. There is a further issue with Mohinder's statements, which is that the new evidence about the circumstances of their preparation demonstrates that the statements are not only substantially defective but that certain things they contain are untrue. Firstly, paragraph 5.1 of Mohinder 1 states that Mohinder

has read the statements of Raminder, Surjit and Bakshish, and confirms that evidence as true and adopts it as his own. Given that it is now common ground that Mohinder cannot understand English and cannot read in any language, the matters stated in paragraph 5.1 must be untrue. Mr Panesar appears to accept this in paragraph 6 of his statement dated 11 April 2024, where he says *“Whenever I have referred to him having read a statement of another, I confirm that I read the statements to him in Punjabi so that he understood them.”* I note in passing Mr Panesar’s use of the first person when referring in his own statement to the authorship of Mohinder’s statements.

34. Further, Mohinder 2 contains the following passage:

“9. In respect of the Declaration of Trust dated 17 April 2017 there are no further documents to disclose as I have previously stated in my 1st Witness Statement I recall signing this agreement on 17 April 2017 having just returned from India. There were no solicitors involved and I believe this was a document prepared by Raminder and Surjit following various meetings with HMRC and Leigh Carr, to reflect the trust position of the ownership of the properties.”

35. The Defendants’ case changed in the days before trial with the service of Raminder 3. Contrary to the foregoing assertion in Mohinder 2, Raminder 3 stated that:

“27. ...The Trust document [i.e. the Declaration] was put together by Sanjay Panesar of Rainer Hughes but not in an official capacity. He simply provided a template and helped us complete the gaps. As Rainer Hughes dealt with all of our family business and personal matters, we would be in their offices on a weekly basis...”

36. This discrepancy gave rise to an exchange at the start of Raminder’s time in the witness box that provided an insight into the Defendants’ general attitude towards Mohinder’s evidence. Raminder was asked by Mr Grant KC, in the usual way, whether there were any corrections she wished to make to her evidence in chief before it was admitted. Raminder indicated that there were and asked the court to go to paragraph 9 of Mohinder 2 (set out at §34 above). Raminder said *“What Dad meant was there were no solicitors involved at the time of signing.”* It was explained to Raminder that her ability to make corrections extended only to her own evidence. This exchange illustrated that, despite having been present in court during counsel’s submissions on the defective way Mohinder’s witness statements had been prepared, Raminder continued to regard Mohinder’s written evidence as an ambulatory document that could be altered without Mohinder’s involvement.

37. Ms Johnson submitted in closing that Mohinder’s witness statements were not reliable and should be accorded very little or no weight at all. I accept those submissions. While I deal below with what is said in those statements, given that I heard submissions on it, in my judgment the documents that purport to be Mohinder’s witness statements are not documents in which the court can have any confidence. There is no basis to think that they represent the evidence that Mohinder would have given in oral evidence in chief. Further, Mohinder is not

available to be cross-examined and, having regard to all the circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence (as s.4 of the Civil Evidence Act 1995 requires me to do), I conclude that I cannot attach any real weight to those documents on account of the irregular circumstances of their preparation and their demonstrably untrue contents in certain respects.

Raminder

38. The Defendants' primary and secondary cases depended on the recollection of things that may have been said over twenty years ago at the time of the acquisition of the Oaks. In my judgment, Raminder's evidence was clouded by her obvious commitment to retaining the Oaks and a strong degree of wishful thinking. Raminder's oral evidence advanced the truth as she now perceives it to be in general terms, and I have no doubt that she is convinced of the justice of her position, but I do not accept all her recollections of things Mohinder has said or the meaning she now attributes to them. In my judgment, general statements on the part of Mohinder expressing a long-term expectation about the way his property would ultimately devolve have been retrospectively reimagined into an immediate intention to dispose of his wealth with a formal legal effect that those statements were not intended by Mohinder to have, and were not understood by others to have, at the time they were made.
39. Raminder's evidence is addressed in detail later in this judgment. For present purposes, I record that significant aspects of Raminder's evidence were impossible to reconcile with the Defendants' primary and secondary cases that Mohinder had no beneficial interest in the Oaks. Where Raminder was required by counsel's questions to address specifics rather than generalities, her recollections as a whole were not consistent with Mohinder having had any intention that the Oaks should be held on trust for Raminder, or with Raminder having understood that to be the position.

Onofrio Sanfilippo

40. Mr Sanfilippo is an employee of Leigh Carr Chartered Accountants, who were at all material times accountants acting for the Defendants' family and their companies. He was an unsatisfactory witness in a number of respects. Mr Sanfilippo was evasive and appeared reluctant to give clear answers even to questions on matters that appeared to be uncontroversial. It was, in particular, difficult to pin down what searches Mr Sanfilippo had undertaken as part of the Defendants' disclosure exercise, or what categories of documents had been within the scope of any search, despite those searches being in the relatively recent past.
41. It was clear that Mr Sanfilippo is, and was at the material times, very much subordinate to Ralph de Souza, his supervising partner at Leigh Carr. My impression was that Mr Sanfilippo's primary concern in giving evidence was to avoid saying anything that might be perceived as the wrong thing either by the Defendants or Mr de Souza. Many questions were answered with words to the effect of "*I don't recall, you'd have to ask Mr de Souza*", particularly when Mr Sanfilippo was being asked about things Mr de Souza may have said to him or

instructed him to do. I am entirely satisfied that Mr Sanfilippo did not tell the truth in the witness box about, at least, the preparation of his witness statement: he repeatedly insisted that no one else had had any involvement with it, when it was obvious from its content and the surrounding circumstances that the statement had been drafted by a solicitor for Mr Sanfilippo's review, as Mr de Souza accepted his own had been. There is, of course, nothing unusual or untoward about a solicitor assisting in the preparation of a witness statement, as long as the statement properly represents the witness's evidence. What was both unusual and untoward was Mr Sanfilippo's untruthfulness about it.

42. Other than his oral evidence on disclosure, which I address further below, much of Mr Sanfilippo's evidence was either undisputed or not particularly probative: he confirmed that he attended the HMRC meeting on 24 November 2016 and sent a particular email to Raminder later that day. Neither of those things was challenged. Mr Sanfilippo also said that Mohinder was in India from November 2016 to April 2017, which I have no reason to doubt. To the extent Mr Sanfilippo gave evidence in the box that went further than this, in particular in relation to his role in the Defendants' disclosure, I do not attach any weight to anything contentious or uncorroborated that he has said.

Ralph de Souza

43. Mr de Souza is an experienced chartered accountant and a senior partner at Leigh Carr. He attended for cross-examination on the morning of the third day of trial at short-notice. Mr de Souza is clearly an intelligent and capable individual. In my judgment, Mr de Souza sought to give evidence that was generally accurate as he saw things, although his particular point of view was strongly informed by the fact that he has been heavily involved in the Defendants' financial affairs for a number of years, having been initially instructed in 2012 in the context of minimising their exposure to HMRC. It was clear that Mr de Souza is used to making decisions and is unaccustomed to having those decisions questioned. He agreed that he had been given a high level of autonomy by the Defendants to deal with the ongoing HMRC investigation and to act in what he considered to be their best interests. Mr de Souza's position is closely allied with that of the Defendants and in my judgment this coloured his recollection considerably.
44. I got the impression that Mr de Souza took care to repeat as often as he was able points supportive of the Defendants' position in this trial, particularly that he had been informed by Mohinder and Raminder very early on in his instruction that Raminder owned the Oaks and that this was always the position as far as Mr de Souza was concerned. Mr de Souza's approach reminded me of a politician whose adviser has encouraged them to hit the "*key messaging*" at every opportunity. Mr de Souza was clearly well aware of the line that the Defendants wanted him to take (he disclosed that he had spoken at least to Mr Sanfilippo, Raminder and Surjit about the case shortly before entering the box) and his evidence had, at times, the definite flavour of advocacy for the Defendants.
45. As with Raminder's evidence, I consider that recollections of the sayings of Mohinder have retrospectively been accorded a clarity of meaning that does not

reflect the way they were expressed, or the effect that they were considered by Mohinder and others to have, at the material time. It is doubtful in any event whether Mr de Souza's evidence really adds much to the Defendants' case: taking his evidence at its highest, Mr de Souza was a witness to oral statements made by Mohinder and Raminder in and after 2012 to the effect that the Oaks was Raminder's property. Mr de Souza does not claim to have been a witness to anything that happened in 2003.

Other witness evidence

46. There were also statements filed from Surjit (9 September 2022) and a late flurry of statements (see §11 above) from Daniel Andrews (8 April 2024), Kuldip and Baljit (both dated 10 April 2024). The Liquidators did not seek to cross-examine any of these witnesses. Only the evidence of Mr Andrews appeared to have any direct bearing on matters that are in issue in this trial.

Disclosure

47. I was invited to draw adverse inferences against the Defendants based on what the Liquidators submitted were serious deficiencies in compliance with their disclosure obligations. By a directions order dated 26 January 2023, the parties agreed that the Liquidators would give Model B disclosure and the Defendants would give Model D disclosure by 25 April 2023. The Liquidators made an application on 31 August 2023 seeking *inter alia* a declaration that the Defendants had failed adequately to comply with their disclosure obligations. This was ultimately dealt with by consent, with the Defendants admitting that they had failed adequately to comply with the disclosure order. A further disclosure certificate was served dated 7 November 2023, which indicated that searches for hard copy documents had been carried out at two locations (the Oaks and 37 Barleymow Drive) and that one computer (at the Oaks) had been searched.
48. Ms Johnson submitted that the Defendants' approach to disclosure had been wholly inadequate. For instance, there was no evidence in relation to the Partnership (defined below), including accounts for the Partnership, no disclosure to show how the payments of funds into the Partnership Account (defined below) broke down, or to show what payments into that account could be attributed to Raminder. Nor had Mohinder's will been disclosed, which would have shown whether or not Mohinder had purported to dispose of any interest in the Oaks by that will, and thereby either support or undermine the Defendants' case on beneficial ownership.
49. A particular area of dissatisfaction on the part of the Liquidators was the disclosure of documents held by Leigh Carr. Having heard Raminder, Mr Sanfilippo and Mr de Souza give evidence about this, I was left with no confidence whatsoever that there had been proper disclosure of documents held by Leigh Carr. A search of some sort certainly took place at Leigh Carr's premises but no documents were disclosed as a consequence and the fact that the search had taken place was not mentioned in the Defendants' disclosure certificate.

50. The evidence I heard on the question of Leigh Carr's emails, in particular, was not satisfactory. Mr Sanfilippo was evasive when asked whether a search had been made for emails, although he accepted that he had corresponded with Raminder by email and that there must exist emails between he and Raminder other than the one dated 24 November 2016 that was in evidence. Raminder's position on emails was somewhat different: she suggested that emails between her and Leigh Carr were infrequent and that she preferred instead to travel by train into central London from Kent whenever there was information to impart or receive between her and Leigh Carr. While I accept that there may well have been frequent face-to-face meetings given the importance and complexity of the HMRC investigation, in my judgment email was used to a considerably greater extent between Raminder and Leigh Carr than Raminder was prepared to admit. I draw this conclusion from the fact that Mr Sanfilippo accepted that there must have been emails with Raminder other than the one dated 24 November 2016, combined with the further fact that Raminder was clearly in the practice of using email to communicate (she described herself as having "*multiple*" email addresses), taken with the inherent improbability of Raminder's explanation for there not being a single email from her to Leigh Carr in evidence.
51. Although Mr Sanfilippo was reluctant to give clear evidence on the point, his ultimate position in cross-examination was that he had been instructed to search for documents at Leigh Carr's premises and had collated perhaps two or three lever arch files of such material, together with another box of correspondence, which he had handed over to Mr de Souza. Mr Sanfilippo did not know what had become of this material, repeating his customary refrain of "*you would have to ask him*", meaning Mr de Souza. Mr de Souza was cagey about what documents in the hands of Leigh Carr, beyond those before the court, might exist or have existed on the subject of the Oaks. When asked whether he would have created other documents where reference was made to the fact that Raminder was the owner of the Oaks, Mr de Souza answered vaguely "*I can't recall, I would have done something or other.*"
52. When Raminder was asked by Ms Johnson about the two or three lever arch files and additional box of documents that Mr Sanfilippo had collated, she explained that:
- "A: I already had the documents which I needed to provide, so I didn't need to take them from Leigh Carr.*
- Q: So although Noff [Mr Sanfilippo] says they went through that process of printing and filing, they weren't handed over?*
- A: I didn't ask for it. To put my case forward, the documents we needed we already had.*
- Q: You didn't ask Leigh Carr to search for documents because as far as you were concerned you already had the documents you thought were important?*
- A: Yes."*

53. Mr de Souza's evidence in the box was consistent with this. When asked whether Raminder had collected any documents from Leigh Carr, he replied "*Not to my recollection*". The Defendants' approach to disclosure was further exposed by the following exchange at the end of Ms Johnson's cross-examination of Raminder:

“Q: When you were searching for documents, were you looking for documents that supported your case?”

A: Yes.

Q: When you were looking through files, the way you approached it was you were looking for things that support your evidence.

A: Yes, that clarified it.

Q: The documents that you've chosen from your documents at home are those that support you.

A: Yes, that clarify my situation.”

54. Nothing I have heard or read suggests that the Defendants have properly complied with their obligation to make Model D disclosure, i.e. to "*disclose documents which are likely to support or adversely affect [their] claim or defence or that of another party in relation to one or more of the Issues for Disclosure.*" In fact, it is clear from Raminder's evidence that the Defendants have searched for, selected and disclosed documents solely according to whether they consider them necessary to support their case. Ms Johnson used the expression "*cherry-picking*" to describe the Defendants' approach to disclosure and I am driven to agree with that description. I also accept Ms Johnson's submission that the court can have no confidence that disclosure was carried out adequately by the Defendants or that a proper search for documents was made or that adverse documents have been properly disclosed. I find that there has been a significant failure on the part of the Defendants to comply with their disclosure obligations. Had it been necessary to do so, I would have been prepared to draw adverse inferences against the Defendants as a consequence of that failure. As it is, I have not needed to do so, as the evidence (even cherry-picked by the Defendants, as I find it to have been) is sufficiently clear without such inferences.

The facts and the evidence

55. I now set out, in broadly chronological order, the key facts drawn from the documents and the evidence heard at trial concerning the funding of the acquisition of the Oaks and its subsequent development, making necessary findings of fact as they arise.

Acquisition of the Oaks in 2003

56. The acquisition of the Oaks took place as long ago as March 2003. Some of the history advanced to explain why the Oaks was acquired in the way it was goes

back even further than that. There is almost no direct contemporaneous evidence of the parties' intentions in 2003. Their witness evidence is also limited on this aspect.

57. What is clear and common ground is that the Oaks comprises seven separate legal titles and was acquired in two tranches. On or around 13 March 2003, which was shortly before the first acquisition, Mohinder and Raminder formed a partnership for the purposes of the development ("**Partnership**") and opened a bank account with Lloyds TSB Bank plc ("**Bank**") for the Partnership ("**Partnership Account**"). The Partnership was either called "*Singh & Deol*" (according to the bank statements) or "*Deol & Singh*" (according to Raminder 3 and spreadsheets prepared by Leigh Carr). On 19 March 2003, the first tranche of the Oaks (which comprised three titles: K748779, K263957 and K274536) was purchased by Mohinder and Raminder as joint legal owners for £262,000 ("**Tranche 1**"). It is common ground that Tranche 1 was acquired for cash provided by and belonging to Mohinder with no need for any borrowing and no grant of any security at that time. The second tranche comprised a further four titles (K548311, K695398, K493509 and K500566) and was purchased by Mohinder and Raminder as joint legal owners for £475,000 on 9 May 2003 ("**Tranche 2**"). Tranche 2 was acquired with the assistance of a commercial business loan from the Bank in the sum of £303,750 pursuant to a written loan agreement dated 3 April 2003 ("**Loan 1**") and two banker's drafts in favour of Mohinder and Raminder's conveyancing solicitors dated 1 May 2003 in the sums of £110,885 and £80,000 respectively.
58. Loan 1 was taken out pursuant to what appears to be the Bank's standard "*Business Loan agreement (non-corporate)*". It is clearly an instrument intended for a commercial loan. Immediately under its heading it says "*To be used only with sole traders and partnerships (other than limited liability partnerships) carrying on business in England & Wales and/or in Scotland*". It records Mohinder and Raminder as "*carrying on business under the name of Singh & Deol*". The repayment terms for Loan 1 were 60 monthly instalments commencing one month from drawdown. A section headed "*SECURITY SCHEDULE*" shows that first legal charges were to be granted over, it appears, both Tranche 1 (of which Mohinder and Raminder were already joint legal owners when they signed the application for Loan 1 on 3 April 2003) and Tranche 2 (which was to be acquired using, among other funds, the proceeds of Loan 1).
59. Completion of the acquisition of Tranche 2 happened on 9 May 2003. The statements for the Partnership Account show the transfer in from the Bank of £303,750 on that day, with £300,000 paid straight out to the Defendants' conveyancing solicitors.
60. The witness statements for both Mohinder and Raminder discuss the acquisition of the Oaks. Mohinder 1 was made in answer to the Part 8 Claim and addresses "*...the issues of the ownership of...properties [including the Oaks] and the relevant circumstances.*" As I have already explained, I cannot place weight either on Mohinder 1 or Mohinder 2. A number of passages from Mohinder 1 were, however, much referred to in submissions, and so I set it out in order to contextualise the Defendants' position:

“The Oaks

5.2 *In summary due, to the issues that my son [Surjit] had with HMRC over a considerable period of time starting in 1999 which resulted in him receiving sentences of imprisonment, forfeiture orders, restraining/freezing orders and particularly seizure of assets and property that were not my sons (for example properties that belonged to my wife and myself for years previously) and were nothing to do with any of the businesses, I decided that the property that I was developing at the Oaks would be beneficially owned by my daughter in law for the ultimate benefit of my grandchildren.”*

61. Ms Johnson put to Raminder in cross-examination that this made no sense as an explanation for Mohinder’s acquisition of joint legal title to the property. Raminder insisted that it did make sense, because Mohinder wanted to protect his assets. In my judgment, there was considerable force in the premise underlying Ms Johnson’s questions: if Mohinder was concerned to avoid the possibility that HMRC would (whether as a consequence of wrongdoing by Surjit or for any other reason) pursue assets belonging to Mohinder, then acquiring joint legal title to the Oaks would do nothing, without considerably more, to address that concern, because the Oaks would appear to creditors and other third parties to be a jointly-owned asset of his. Any oral arrangement with Raminder or anyone else would not change that appearance. It is also noteworthy that the paragraph appears to refer to a decision reached by Mohinder at some point once the development of the Oaks was underway (“...I decided that the property that I was developing at the Oaks would be...”), which implies that Mohinder’s decision was reached post-acquisition. Other than that, there is nothing in Mohinder 1 to suggest when the decision was reached and nothing to suggest that Mohinder communicated his decision to anyone at the time he reached it or did anything to put it into action. Mohinder 1 continues:

“5.3 I made this clear to both my son and daughter in law and to Leigh Carr who were representing us in respect of tax issues with HMRC that was resolved in January 2018.”

62. Again, there is nothing about when or how Mohinder “made this clear” and nor is there any mention of how Surjit or Raminder responded, if at all, either at the time or subsequently. There is nothing to suggest that anything was “made...clear” to Surjit, Raminder, Leigh Carr or anyone else at or around the time when the Oaks was first acquired in 2003. I note that Leigh Carr was not instructed in relation to the HMRC investigation until 2012. Mohinder 1 continues:

“5.4 On 18 October 2016 I travelled to India to visit family and friends and did not return until the 14 April 2017. I remember being told that we had to confirm in writing the beneficial ownership of the Oaks, including the land with it and on my return, I recall signing a document confirming that the ownership was entirely Raminder Deol’s...”

63. The use of the words “confirm” and “confirming” in the context of the execution of the Declaration implies that the Declaration was in terms that reflected how the Oaks was already owned, rather than effecting a new disposition, although this is not spelt out explicitly. The paragraph does not, however, say when or how the beneficial ownership position said to be subject to such confirmation by the Declaration was arrived at.
64. Mohinder 2 is mainly concerned with the disclosure application (see §47 above) but touches on the Oaks in the passage set out at §34 above.
65. The material I have summarised at §60 to §63 above is the full extent of Mohinder’s evidence of how the Oaks was held both legally and beneficially. Although it refers to the Oaks being beneficially owned by Raminder, it does not provide any evidence to show when or how that position came about. Even if, contrary to my earlier finding, Mohinder’s witness evidence could be accorded full weight, in my judgment it would not provide evidence of any express declaration of trust by Mohinder at the time of the acquisition of the Oaks and nor does it identify any common intention reached between Mohinder and Raminder in relation to the Oaks.
66. I turn now to the evidence of Raminder, as the other party to the alleged arrangements. Raminder 1 states as follows:
- “4.3 It is right that on the title register for [the Oaks] I am registered jointly with the First Defendant; however, this does not correctly reflect the true beneficial ownership. When [the Oaks] was purchased, it was the intention of Mohinder Singh that this was to be beneficially owned solely by me and ultimately for the benefit of his grandchildren.*
- 4.4 The reason for this was my husband’s history of issues, disputes and offending in respect of HMRC. This had resulted in periods of imprisonment, seizure of stock and property, freezing/restraint orders, forfeiture and fines. I believe that Mr Ingram is aware of this history having been initially proposed to be appointed by HMRC as administrators of [the Company]. It is also a matter of public record.*
- 4.5 The impact on Mohinder Singh of these events was that on occasion properties (wholly unrelated to any transactions of my husband) and assets would also be subject to restrictions and risk of forfeiture.*
- 4.6 These issues continued from the late 1990’s into August 2011 when there was further action from HMRC (including seizure of property and assets and Surjit Singh’s passport). After two years of further investigation and bail restrictions the case was not proceeded with, and no further action was taken.”*
67. These paragraphs are broadly consistent with paragraph 5.2 of Mohinder 1 and disclose the same incongruence as that identified by Ms Johnson and summarised at §61 above. Although paragraph 4.3 of Raminder 1 refers to an intention on the part of Mohinder at the time of purchase, it does not say how

Raminder knows about that alleged intention. In particular, it does not say whether it was communicated to her at the time or at some subsequent time, by whom, or how that was done. Raminder 1 continues:

“4.7 Although everyone knew that [the Oaks] were beneficially mine, including informing Leigh Carr, our accountants, we did not take steps to confirm this in writing until late 2016 when Leigh Carr were dealing with tax matters on our behalf with HMRC.”

68. Again, there is nothing to say when or how “everyone knew” that Raminder beneficially owned the Oaks. In this respect, Raminder 1 shares the same basic shortcoming as Mohinder 1 and Mohinder 2, in that it identifies later references to an allegedly pre-existing state of affairs, but without explaining how or when that antecedent state of affairs is said to have first come about. Further, the passage does not identify who is said to be caught by the word “everyone”, which clearly cannot be taken literally.
69. In subsequent paragraphs, Raminder 1 uses the same language of “confirmation” of the position by way of the Declaration, with the same implication as that identified at §63 above.
70. Raminder 2 does not address ownership of the Oaks.
71. Following the instruction of the Defendants’ current legal team in the month before trial, Raminder 3 was filed and served in the circumstances discussed at §11 above. Raminder 3 deals with the acquisition of the Oaks as follows:

“20. In or around the 2000s we were looking for a property or land to build a house. This plot came about as one of our friends suggested it was for sale and would be suitable. This was land with derelict bungalows on it. My father-in-law said he wanted to purchase it for me to be my family home, with the intention that one day it would belong to my sons (who were only very young at the time).”

72. In contrast with the evidence of Mohinder (which refers to a decision that was apparently reached once the development was in progress), Raminder’s evidence here appears to refer to something Mohinder said in advance of acquisition. The language used is not explicitly to the effect that Mohinder wanted to gift the Oaks beneficially to Raminder outright; it is in my view at least equally consistent with Mohinder wanting to purchase a property for Raminder and her family to occupy as their family home, without carrying any implications about beneficial ownership. In any event, the question for the court is not about any proposal Mohinder made to buy a property for Raminder but whether he actually went on and did that by means of an express or common intention constructive trust. Accordingly, paragraph 20 of Raminder 3 does not take matters much further.
73. Mohinder’s intentions in relation to the Oaks was further explored with Raminder in the box. Under re-examination by Mr Grant KC, Raminder gave the following evidence of exactly what Mohinder had said on the first viewing of the Oaks:

“Q. You have said a few times that Mohinder said this was always meant for you. Can you recall when was the first time he said this?”

A. When we’d gone to see the land, going to buy it, and said it was going to be in the grandkids’ names.”

74. When asked immediately after this whether Mohinder had really said it was going to be bought in the names of his grandsons (Raminder’s sons), Raminder equivocated and said it would “ultimately” be in their names but was then unable to give a coherent or settled account of Mohinder’s contemporaneous statements. At most, this was evidence of Mohinder having contemplated making a gift, but a gift to his grandsons rather than to Raminder. On any view, this evidence did not support the contention that Mohinder had declared a trust in favour of Raminder. Any contemplated gift to the grandsons was, in any case, not put into effect. This exchange in re-examination was consistent with Raminder’s earlier evidence given under cross-examination, where she had said that Mohinder was “...not going to give it to them [his grandsons] until he knows they’re going to be stable in life”, which would seem to carry with it an understanding on Raminder’s part that Mohinder had held an ongoing ability to dispose of the Oaks, again inconsistent with the proposition that Raminder had been the sole beneficial owner of the Oaks from the time of its acquisition.

75. At the end of Raminder’s time in the box, the following exchange took place:

“Q. ...why was Mohinder on the title to the property?”

A. We just decided to do it that way.

Q. But why?”

A. Because dad was paying for it and I was happy to do it that way. The other thing in his mind was I was the daughter-in-law, maybe I would take it and go; he will have his safety or security over the property.”

76. This exchange indicated an understanding on Raminder’s part that Mohinder had not intended that Raminder should be the absolute beneficial owner of the Oaks. Had Raminder been the sole beneficial owner, then any bare legal interest on Mohinder’s part would have given him no right to stop Raminder doing what she liked with the Oaks (including the right to “take it and go” if she chose to). Raminder’s recognition that Mohinder intended to retain sufficient rights over the Oaks to prevent her applying it as she pleased, and that this was why the Oaks was not conveyed her sole name at law, provides a plausible explanation for Mohinder’s decision to become a joint owner at law, and one that is inconsistent with the Defendants’ case.

77. Raminder suggested in her oral evidence that she and Mohinder had to be joint borrowers under Loan 1, as the Bank would not have granted such a loan to her alone, by reason of Mohinder’s greater income. That may have been so, but there was no evidence before the court to suggest that this had anything to do with Mohinder taking joint legal title to Tranche 1 on acquisition. Loan 1 was not an ordinary residential mortgage with a lender requirement that the property

offered for security must be owned by the same person(s) as the borrower(s), but was instead a business loan made to the Partnership for the acquisition of Tranche 2. Although the Oaks appears in the security schedule to Loan 1, there is no requirement in the loan documentation for it to be held in any particular way and there was no other evidence before the court to suggest that the Bank had required both borrowers to be on the legal title to the Oaks. Further, Loan 1 post-dated the acquisition of Tranche 1 and was associated only with the acquisition of Tranche 2. The acquisition of Tranche 1 in the joint names of Mohinder and Raminder, despite there being no borrowing associated with it at that time, suggests that the decision for the legal title to Tranche 1 to be conveyed into Mohinder and Raminder's joint names was independent of any subsequent borrowing arrangements. There is certainly no contemporaneous evidence to suggest any connection between the way legal title was structured and any borrowing.

Funding on acquisition

78. Raminder 3 states:

“21. The property was purchased in auction. [Tranche 1] was purchased and was paid for in full by my father-in-law to the sum of £262,000. [Tranche 1] was put in the joint names of Mohinder and me and the funds came from his personal TSB account. We then purchased [Tranche 2] some three months later for £475,000. This second purchase was funded by a loan from Lloyds which was in the name of me and my father-in-law in the name of The Partners Singh and Deol to the sum of £303,750 and also savings which were mine and my husbands to pay the balance including lawyer fees which amounted to £190,885. We paid cash into the Deol and Singh Partnership account and then obtained two bankers drafts to our solicitors at the time for the conveyance being Dakers Green and Brett...Any contributions to [Tranche 1 and Tranche 2] by Mohinder were a gift to me.”

79. Copies of the two banker's drafts of £110,885 and £80,000 both dated 1 May 2003 formed part of the additional material exhibited to Raminder 3 very shortly before trial. The Defendants maintained the position in closing that both banker's drafts were funded by the Partnership Account. This appears to be accurate in relation to the draft for £110,885, which was clearly drawn on the Partnership Account on 1 May 2003 following a series of lump sum deposits paid in at the Gillingham branch of the Bank using giro credits during March and April 2003. The same cannot be said for the draft for £80,000, however, and the suggestion is positively contradicted by the bank statements for the Partnership Account, which do not show any corresponding transaction on 1 May 2003. Accordingly, I reject the suggestion that the £80,000 banker's draft was drawn on the Partnership Account. How the £80,000 was funded is unclear and it is odd that the Defendants maintained a position at trial that was demonstrably falsified by their own contemporaneous bank statement evidence.

80. Further, and in relation to both banker's drafts, there is no evidence other than Raminder's unparticularised assertion that these were derived from “savings”

to show where the funds came from. Had it been necessary for the Defendants to prove that the £110,885 and £80,000 had come from Surjit and Raminder's "savings", then on the balance of probabilities I would have rejected that suggestion, in light of (a) the lack of particularity as to where the "savings" had been before they were used to fund either of the banker's drafts; (b) how such "savings" are said to have been generated at a time when the Defendants' case is that Surjit had been fending off action to enforce over his assets for a number of years by 2003; and (c) the plainly wrong insistence that the £80,000 banker's draft was drawn on the Partnership Account.

81. Raminder 3 continues:

"22. [Loan 1] was paid for by 2008 through [the Partnership Account]...I also attach Dividend analysis showing payments within the [Partnership Account]...It was explained to HMRC at the time during the investigation that some of Mohinder's dividends would have ended up in the [Partnership Account], especially as sometimes he used the account to transfer monies to his Spanish account to pay the mortgage on his Spanish property..."

82. The dividend analysis referred to is a single page spreadsheet that appears to be derived from a much longer analysis (also in evidence) of the Partnership Account prepared by Leigh Carr for the HMRC investigation. Leigh Carr's analysis identifies receipts and payments on the Partnership Account and, of relevance for present purposes, breaks down different sources of funding. Many of the receipts into the Partnership Account were attributable to bank giro credits, which were described as in-branch payments over the counter; it is not possible to tell whether any particular deposit was made by cash or cheque. The dividend analysis includes these bank giro credits, together with other payments that are categorised either as "deposits received" or "cash deposits". According to the analysis, £782,128.20 was paid into the Partnership Account between 2003 and 2014. During that time, Mohinder is said to have received £583,282 in dividends. Although it is not spelt out, it is implied that these dividends were paid into the Partnership Account and are included within the figure of £782,128.20. Accordingly, on the Defendants' case, the majority of the bank giro credits and other deposits into the Partnership Account were attributable to Mohinder's dividends. This was the primary source of repayment for Loan 1, the final payment for which appears to have been made on 9 May 2008.

Events post-acquisition

83. A residence was constructed at the Oaks from 2008 onwards. Raminder explained in cross-examination, and I accept, that the gap between acquisition and the commencement of work is attributable to the fact that it took several years to get planning permission. According to Raminder 3, the "renovation costs" were around a further £1 million, which was paid through the Partnership Account. According to Raminder 3 (which is supported by correspondence sent by Leigh Carr to HMRC during the investigation), the actual costs were £825,967, with the deemed value for tax purposes of self-build costs being a further £261,033. The Defendants' case is that the costs were largely funded by loans taken out jointly by Mohinder and Raminder. While the figures in the

Defence do not quite match those in Raminder 3 in certain respects, it is clear that the Defendants' case is that there was joint borrowing from a number of sources (three named private individuals, a bridging loan, and two further loans from the Bank) in a total sum well in excess of £900,000.

84. Raminder 3 particularises the various joint borrowing and mentions that the development costs "*included wages and dividends*". As a consequence of this, paragraph 23 of Raminder 3 suggests that "*Mohinder's contribution to the overall costs [of development] was therefore minor. In terms of the property expenses, he paid £17,625 which is demonstrated on page 586 of the bundle.*" The reference to £17,625 is to costs that can be shown to have been paid directly from Mohinder's own bank account. At paragraph 24, the point is developed:

"I committed a significant part of my life to find the land, obtain planning permission in my name and build the house. This property was designed by me for my family. My father-in-law played no part in this and only jointly contributed to the repayments on the land only. The majority of the funds to build the property came from my family and friends. I am liable to make those repayments to them."

85. I reject the suggestion that Mohinder's contribution to the development was minor. This suggestion is plainly wrong by reference to the Defendants' own documentary evidence: it ignores both that Mohinder contributed significant sums to the Partnership Account by way of dividend income during the years when the development project was ongoing and that he was jointly liable with Raminder for the various sources of borrowing. Further, Raminder's evidence in the witness box was that Mohinder, who was a builder by trade, was very much involved in the construction and organisation of the development.
86. The two further loans from the Bank were each under terms set out in a standard commercial partnership form similar to that described at §58 above in respect of Loan 1. Mohinder and Raminder agreed to borrow £50,750 from Lloyds under an agreement signed on 15 April 2011, ("**Loan 2**") and a further £172,550 under another agreement signed on 17 November 2011 ("**Loan 3**"). Loan 3 was drawn net of arrangement fees on 16 February 2012 (£170,000) and Loan 2 was similarly drawn on 22 February 2012 (£50,000). Both Loan 2 and Loan 3 were secured over *inter alia* 37 Barleymow Close and the Dale Street Properties, to each of which Mohinder held sole legal title and in which Raminder had no interest. The Liquidators rely on this as a further pointer towards Mohinder continuing to have an interest in the Oaks: why else, they ask, would Mohinder offer his properties as security for works being undertaken eight years after acquisition if he was not a joint owner? In my view, Mohinder's conduct in offering these properties as security probably takes matters no further either way: if Mohinder intended to make significant gifts to Raminder, then his decision to grant security over other properties, including his own home, would not be inconsistent with this and would accordingly be explicable. It does not, however, assist the Defendants in establishing the premise that Mohinder had such an intention, as the point is no less consistent with Mohinder having had a beneficial interest in the Oaks and is accordingly explicable on that basis too.

87. At the start of trial, the Defendants' case was that Raminder had contributed the proceeds of sale of her former home at 41 Barleymow Close, Chatham ("**41 Barleymow Close**") to the costs of the development at the Oak. At paragraph 19 of Raminder 3, Raminder's evidence is that: "*We sold 41 Barleymow to fund The Oaks*". Separately, it is pleaded at paragraph 14.1 of the Defence that:

"Additionally Raminder used the sale proceeds of 41 Barleymow Close of £165,000 in 2012..."

88. In my judgment, this aspect of the Defendants' case was based on an accounting sleight of hand that did not involve any net contribution to the Oaks by Raminder. The position appears to be that Raminder had resided at 41 Barleymow Close with her family since 1998. Until September 2012 (which, on Raminder's evidence, was several months after she and her family had moved from 41 Barleymow Close to the Oaks), 41 Barleymow Close was owned by a family company called Drumyard Limited ("**Drumyard**"). On 4 December 2011, Raminder caused Drumyard to be paid £165,000 in tranches of £90,000 and £75,000 using money drawn on the Partnership Account, which was overdrawn at the time. Some months later, the overdraft was repaid by Loan 3 and Loan 2, which were drawn on 16 and 22 February 2012 respectively. This payment was treated as the consideration payable by Raminder on her acquisition of 41 Barleymow Close, which completed (nearly nine months later) on 7 September 2012. Almost exactly a year later, on 3 September 2013, Raminder completed the sale of 41 Barleymow Close to Kuldip for £165,000; the consideration of £165,000 having been paid by Kuldip to the Partnership Account on 14 July 2013.
89. Irrespective of how the two transactions are to be characterised, in my judgment it is completely unreal to suggest that Raminder contributed £165,000 or any amount to the development of the Oaks as a consequence: the acquisition was funded at the expense of the Partnership and the proceeds of sale were duly remitted back to the Partnership. This could be characterised either as an interest-free loan of £165,000 by the Partnership to Raminder between December 2011 and July 2013 to enable her to acquire 41 Barleymow Close, or an acquisition of 41 Barleymow Close by Raminder on behalf of the Partnership for a period of about a year. Given the lack of any interest or profit element on the transaction, at a time when Loan 2 and Loan 3 (which as a matter of substance had funded the acquisition) were having to be serviced by the Partnership, the net economic effect on the Partnership would appear to have been negative. Mr Grant sensibly did not press the pleaded point in closing that Raminder had contributed the proceeds of sale of 41 Barleymow Close to the development of the Oaks. I note that the Liquidators were nonetheless put to the task of showing by reference to the contemporaneous evidence that this was what had really happened, as a consequence of the way the Defendants' case had been pleaded.
90. Overall, the evidence shows that Mohinder contributed somewhat more than half of the overall cost of the acquisition of the Oaks: he paid for the whole of Tranche 1 outright and contributed the lion's share of the repayments for Loan 1 (which had largely paid for Tranche 2) between 2003 and 2008. This remains the case even if one gives Raminder maximum credit for the two banker's drafts,

despite there being insufficient evidence, in my judgment, to justify such a finding. As to the development costs from 2008 onwards, it is common ground that Mohinder was jointly liable for the debts incurred to pay for the development, continued to contribute significant dividend income to the Partnership Account, and was heavily involved personally in the development work. Although the evidence shows that Raminder certainly contributed to the acquisition and the development, in my judgment the Defendants cannot identify anything done by Raminder that is not readily explicable on the hypothesis that Raminder was a joint beneficial owner of the Oaks, consistent with her status as a joint legal owner with Mohinder.

Tax investigation: involvement of Leigh Carr

91. HMRC commenced an investigation into Mohinder, Raminder, Bakshish and a family-owned company called Lionhart Ltd in 2012. It appears that, initially at least, over £2.4 million was claimed in penalties and tax. Ultimately relief was only pursued against Mohinder. It was in the context of this investigation that the Declaration was drawn up and executed. Raminder 3 states as follows:

“25. ...It [the Oaks] was first liveable in 2012 which is when Surjit, our children and I moved in. Nobody else lived there before. I had always thought of it as mine for my sons, so we did not think to put it in writing. Even when we dealt with our advisers, I would refer to the property as mine as would my father-in-law who made it clear to them that this property was mine.

92. Pausing here, there is once again nothing here to identify when or how Mohinder is said to have “made it clear” to any advisers that the Oaks belonged to Raminder. Further, I do not think that Mohinder or Raminder making reference to the Oaks being Raminder’s in discussions with their advisers is something that has, of itself, significance. The Oaks was Raminder’s home and Mohinder lived elsewhere and, in that context, I would not interpret references in meetings by Raminder or Mohinder to the “the property as mine [Raminder’s]” as necessarily connoting anything, of themselves, about property rights; as they stand, they are consistent with no more than describing where people lived. Raminder 3 continues:

26. *In December 2012, HMRC began an investigation into how the development of the Oaks was funded. The Declaration of Trust was put together once we were advised by our accountants, Leigh Carr, who were dealing with the tax investigations by HMRC. This was done as we were all concerned that my father-in-law was becoming older and so we wanted to make it clear this this belonged to me. This advice from Leigh Carr was given in writing and verbally...*

27. *I was named on the Declaration of Trust as I was meant to be the owner from start. We were told by Leigh Carr in November 2016 that we had six weeks to resolve matters... ”*

93. This evidence is clearly to the effect that the Declaration was executed in the shadow of the HMRC investigation. That view is consistent with the oral evidence of the relevant witnesses at trial.
94. It is part of the Liquidators' case that HMRC's action against Mohinder informs the background against which the Declaration was executed: the Liquidators submit that HMRC was "a person who is making, or may at some time make, a claim against" Mohinder within the meaning of s.423(3) and that this is one aspect from which the court should infer that Mohinder had the statutory "purpose" in that subsection. From the start of the investigation, Leigh Carr was instructed to assist the Defendants. Mr de Souza was the Leigh Carr partner with conduct. Mr Sanfilippo was also involved from 2012 to assist in particular with "benefit in kind issues". A specific part of the investigation was the development at the Oaks: HMRC suggested that Mohinder and Raminder's income did not appear to account for the total costs of the development.
95. A meeting took place between representatives of HMRC and Leigh Carr at the latter's offices on 24 November 2016. This meeting was the subject of a detailed note made by HMRC and sent to Leigh Carr some weeks later ("Note"). No one challenged the accuracy of the Note at trial. Mr de Souza and Mr Sanfilippo attended from Leigh Carr, along with Brian White, whose status was in some doubt at the start of trial. Mr de Souza had described Mr White in his witness statement dated 1 September 2022 as "Agent for the Defendants". In the witness box, however, Mr de Souza was emphatic that Mr White was acting for Leigh Carr and not for the Defendants. In their oral evidence, Mr de Souza and Mr Sanfilippo each separately described Mr White as being a leading tax expert with extensive experience of investigations with whom Leigh Carr had worked in the past. The Note describes Mr White as "Acting for agent", which implies he was acting for Leigh Carr, but records in paragraph 1 that Mr de Souza had "advised that he had asked [Mr White] to attend the meeting on behalf of his clients." Mr de Souza, Mr Sanfilippo and Raminder were consistent in the box that Mr White had not met any of the Defendants and had not received any instructions from them.
96. So far as relevant, the Note records as follows ("BW" is Mr White, "MS" is Mohinder, "RD" is Raminder and "IL" is an HMRC representative):
- "28. BW then advised that in order to raise the funds necessary, the clients were looking to raise a mortgage on The Oaks. MS was therefore transferring his interest in the property to RD as this would make the mortgage application easier. BW wanted to make the point that although the house was in joint names, MS had never thought of him being a joint owner of the property. He had always intended for the property to be solely RD's and that the money he had spent had been a gift to RD. The transfer of title was, accordingly to BW, merely a correction of Land Registry records and should not be seen as MS disposing of the property.
29. IL asked BW if he was making this point to avoid any issues concerning capital gains tax which BW confirmed."

97. The Defendants sought to put weight on this as corroborating the existence of a trust under which Raminder was sole beneficial owner of the Oaks at the date of the meeting with HMRC on 24 November 2016.
98. Conversely, the Liquidators also sought to rely on the Note. Ms Johnson pointed to the reference to a mortgage being secured over the Oaks in order to pay off a liability of Mohinder's. This, said Ms Johnson, was consistent with Mohinder having a beneficial interest in the Oaks; why else would it be available to fund a settlement of his liabilities to HMRC? The idea of transferring title to Raminder (which in the event did not happen) was proposed in the context of making it easier to raise money against the Oaks for Mohinder, not because Raminder was the owner. Ms Johnson further submitted that Mr White's comment about Raminder's sole ownership had been said off the cuff, without instructions, and within the specific context of avoiding capital gains tax on the proposed transfer of title. Having been given no instructions to this effect, no weight could be attached to anything Mr White had said as evidence of any intention on the part of Mohinder or Raminder.
99. Raminder's evidence in the witness box was vague and ambiguous on the contents of the Note. Her position changed several times on the question of whether or not it had ever been proposed that a mortgage over the Oaks would be taken out, as the Note suggested it had. Under questioning from Ms Johnson, Raminder initially said that she had not told Mr de Souza at any point that she and Mohinder proposed that a mortgage should be taken out against the Oaks to raise funds to pay HMRC. Moments later, on being shown the Note, Raminder changed her position to suggest that she "*would have maybe pointed out*" to Mr de Souza that a mortgage might be sought. The position was then changed once more to an apparently unequivocal position that it was never contemplated:

"Q...the reason that's given there [in the Note] is to get a mortgage.

A. That's not right.

Q. That's not something that came from you?

A. No."

100. On being informed that she had just given inconsistent answers on the same point, Raminder reformulated her position again and said:

"Yes, it [the idea of taking out a mortgage over the Oaks] did come from me; Brian White got it from Ralph [de Souza], Ralph got it from me, I maybe pointed that [the mortgage idea] out to him."

101. I think the likeliest explanation is that Raminder's changing answers were driven by a wariness on her part to avoid saying something that may have had unhelpful implications for her case, but without a firm grip on what would be the best answer (in the sense of the answer most helpful to her case) to give. I also suspect that Raminder cannot really remember exactly what was said by her or others at around the time of the meeting between Leigh Carr and HMRC.

102. According to the Note, the meeting finished at 1.30pm. Mr Sanfilippo's evidence in the box was that he and Mr de Souza must have had a discussion after the meeting about what further information was needed. At 18:17 that day, Mr Sanfilippo sent an email to Raminder. The email contains five numbered points, the first four of which have been redacted by the Defendants. In so far as unredacted, it reads:

"Hi Raminder

Further to our meeting today with the Inspector below is a breakdown of the info we require you to obtain:

...

5) Confirmation of the ownership of the Oaks – we require a statement/declaration of trust witnessed by a solicitor stating the beneficial ownership, signed by you and Mohinder.

We have a 6 week window to turn this around."

103. Mr Sanfilippo agreed in cross-examination that there was no suggestion at the meeting on 24 November 2016 that HMRC required evidence to show that Raminder was the sole beneficial owner of the Oaks. He eventually agreed, after some evasive back-and-forth that was difficult to follow, that the inclusion in the email of a request for a declaration of trust can only have been as a result of an instruction to Mr Sanfilippo by Mr de Souza and that the reason for it was "*predominantly...to reaffirm the ownership*". When asked why it was necessary to "*reaffirm the ownership*", Mr Sanfilippo said "*because it was discussed in the meeting; in case anyone asked about it.*" Pressed on whether it was to do with the possibility that HMRC might ask questions about CGT, Mr Sanfilippo accepted "*...it might be a CGT issue, so it goes hand-in-hand.*"
104. In my judgment, Mr Sanfilippo's observation that the Declaration was required "*in case anyone asked about*" ownership of the Oaks is the likeliest explanation for its creation. At that time, the main candidates for "*anyone*" included, most immediately, HMRC and, in parallel, Mr Ingram, who had commenced the misfeasance proceedings on 20 September 2016, i.e. about two months prior to the meeting between HMRC and Leigh Carr. There is nothing in the Note or in any related correspondence to suggest that HMRC asked for or gave any other express or implied indication that they required evidence of the beneficial ownership of the Oaks. Accordingly, this appears to have been a pro-active step taken by Leigh Carr to protect the Oaks as an asset, at a time when Mohinder had recently become exposed to Mr Ingram's claim, in addition to the longer-standing HMRC investigation. It was submitted by the Defendants that HMRC accepted that Raminder was the beneficial owner of the Oaks. I reject that submission on the evidence before me. There is nothing to suggest that HMRC was particularly interested in the point, or had required any corroboration of the Defendants' position, or had expressed a view one way or the other as to whether or not it was accepted. Even if HMRC had done so it would not be conclusive of the issue as between the Liquidators and the Defendants.

105. As noted earlier, it is now accepted by the Defendants that Mr Panesar of Rainer Hughes was responsible for drafting the Declaration. The Declaration was executed both by Mohinder and Raminder, who are defined together as the “Owners”. It is expressed to be made on 17 April 2017, although the Liquidators contend that it should be inferred that it was made after issue of the Part 8 Claim in 14 June 2022, because it only emerged in answer to those proceedings. All seven titles comprising the Oaks are identified in a schedule and are defined as the “Properties”. So far as relevant, the Declaration provides as follows:

“WHEREAS

- C. *At the date of transfer it was the common intention of the owners of the Properties that Raminder Kaur Deol shall be the sole beneficial owner of the Properties.*
- D. *This Declaration of Trust confirms in writing the common intention of the Owners*

...

NOW THIS DEED WITNESSETH as follows:-

1. *The Owners shall hold the net proceeds of sale of the Properties upon Trust for the benefit of Raminder Kaur Deol.*
2. *Until the sale of the Properties the Owners agree:*
 - a. *At all times to observe and perform the terms and conditions of all covenants and restrictions affecting the Properties.*
 - b. *To keep the Properties in good and tenantable condition at all times.*
 - c. *To pay for essential repairs and maintenance to the Properties in equal shares*
 - d. *To keep the Properties fully and comprehensively insured to the full reinstatement value of the Properties*
3.
 - a. *If any Owner wishes to bring this Declaration of Trust to an end they must give four months notice (the **Notice**) to each of the other Owners.*
 - b. *At the end of the Notice (or earlier if agreed in writing by all Owners) the Properties will be offered for sale and the Owners agree to use their best endeavours to sell the Properties as quickly as possible UNLESS within to months of the Notice any of the Owners (and if more than one in equal share) the value to be agreed or in default of agreement to be determined by the*

Present for the time being of the Royal Institution of Chartered Surveyors." (all sic)

106. The Declaration has a number of notable features. Firstly, Ms Johnson drew attention to the fact that it is a trust for sale and suggested that this is inconsistent with the Defendants' contention that the Oaks was intended as a permanent home for Raminder's family. In answer to that, Mr Grant KC pointed out that, prior to the introduction of TOLATA, co-owners only had an interest in the proceeds of sale (rather than in the land itself) and suggested that whoever had prepared the Declaration had used a very old precedent. I suspect that Mr Grant has hit on the correct explanation and I attach no weight either way to the fact that the Declaration is expressed as a trust for sale.
107. Next, Ms Johnson submitted that the onerous and continuing obligations imposed on Mohinder by clause 2 are inconsistent with his having no further interest in the Oaks after the execution of the Declaration and are certainly inconsistent with Mohinder having had no interest since 2003. There is considerable force in those submissions. They are, perhaps, explicable in the context of Mohinder's continuing interest in the Oaks pursuant to clause 3, to which I refer next.
108. Clause 3(a) provides for either Mohinder or Raminder to have a right to revoke the Declaration on notice to the other. Although it is badly drafted and appears to have words missing, clause 3(b) can only be an attempt to draft a clause providing, upon revocation, for one owner to buy out the other; Mr Grant KC accepted that this was so. As drafted, the recitals are inconsistent with the operative parts of the Declaration: the recitals refer to a historic common intention going back to 2003 that Raminder should be the sole beneficial owner of the Oaks, whereas clause 3 is in terms that Mohinder will once again have a joint beneficial interest in the Oaks in the event that the Declaration is revoked. These cannot both be correct: if Mohinder would have a joint beneficial interest in the Oaks but for the existence of the Declaration, then it cannot also be the case that the Declaration merely recorded a settled arrangement dating back to 2003 and did not effect a disposition in 2017.
109. Mr Grant KC recognised in closing that at least clause 3 of the Declaration is inconsistent with the express trust dating back to 2003 for which the Defendants argued as their primary case. His primary way of putting his case, as discussed in more detail below, was that recitals C and D were sufficient for the 2003 express trust to be "*manifested and proved by some writing*" for the purposes of s.53(1)(b) of the LPA 1925 and that, if the court accepted that there had been an express declaration of trust in 2003, then there was no need to look further at the terms of the Declaration that this. In particular, Mr Grant KC submitted that the Declaration could not "*countermand*" the terms of the 2003 trust, which was, he suggested, irrevocable.
110. The real difficulty Mr Grant KC faces in this submission, it seems to me, is that his analysis requires the court to look only at two recitals, and then only for the narrow purpose of satisfying the requirements of s.53(1)(b) of the LPA 1925, rather than to consider the Declaration as a whole. In my judgment, the operative parts of the Declaration are plainly inconsistent with Mohinder and Raminder

being any thing other than joint beneficial owners immediately prior to their entry into it. If it were otherwise, then the inclusion of clause 3 would be inexplicable. In my judgment, the evidential significance of the fact that they entered into a professionally-drafted document in those terms cannot be ignored.

111. Turning to the date when the Declaration was executed, the Defendants relied on the short witness statement of Daniel Andrews, an employee of MSD Wholesale Limited, one of the Defendants' family companies, who says he has known the family for 16 years. Mr Andrews' evidence was that he witnessed the execution of the Declaration by Mohinder and Raminder on 17 April 2017. Mr Grant KC submitted that it is not open to the court to reject Mr Andrews' evidence in circumstances where the Defendants were given the opportunity to cross-examine him and declined to do so. In the circumstances of this case, I accept that submission. The Liquidators did not put forward any reason why the court should not accept Mr Andrews' evidence and in my judgment they should have cross-examined him if they wanted to run a case to the contrary.
112. I have also taken into account the fact that, if someone had been inclined to backdate a document such as the Declaration, 17 April 2017 is unlikely to have been a date anyone familiar with the case would have chosen. By that time, Mohinder was demonstrably subject to high-value claims both from HMRC and from Mr Ingram. Further, there was a perceptible difference between the affronted way in which Raminder reacted to the suggestion that the Declaration had been executed in 2022 rather than 2017, which had the appearance of being a genuine and spontaneous response, compared with her much more muted reaction when challenged on the accuracy of other parts of her evidence, such as when it was put to her that the Declaration had been executed in order to protect the Oaks from Mr Ingram. While I remind myself that demeanour in the box is not an invariable guide to accuracy or truthfulness, Raminder's live evidence on this point supported a conclusion that I would in any event have reached on the balance of probabilities. In my judgment, the Declaration was executed on 17 April 2017, which is the date it bears on its face.

Other findings of fact

113. A surprising amount of time was spent at trial on two allegations of fact that did not ultimately seem to go very far, if anywhere. Firstly, the Liquidators alleged that Raminder and her family did not occupy the Oaks as their home from 2012. Secondly, the Defendants submitted that Mr Ingram knew about the allegation that Raminder was the beneficial owner of the Oaks prior to the Declaration being disclosed to him in these proceedings in 2022. To the extent it matters, I find that Raminder and her family had moved in to the Oaks by September 2012 at the latest: the address on the Partnership Account bank statements changed from 41 Barleymow Close to the Oaks at this time and the council tax was being billed to Raminder at the Oaks from then onwards. There is nothing going the other way other than Mr Ingram's professional scepticism. I further find that neither Mr Ingram nor his staff knew about the allegation that Raminder was the sole beneficial owner of the Oaks before the Declaration was disclosed under cover of Raminder 1, which was dated 9 September 2022. There is no evidential basis to infer that HMRC told them (as was suggested) or to go behind Mr Ingram's clear statement that neither he nor his staff were told.

Analysis and conclusions

The parties' positions on the Oaks

114. The Defendants' pleaded case is relatively brief. It makes clear a number of times that the Defendants' case is that the Oaks had been held on trust for Raminder since it was acquired in 2003. It also relies on the Declaration and denies that it was either a sham or a transaction within the meaning of s.423 of the IA 1986. Although the Defence is short on particulars, no point was taken by Ms Johnson that it did not disclose a case both of express trust and, in the alternative, common intention constructive trust. It is evident from §10, §14.2, §14.4 and §20 of the Defence, §49 of the Defendants' skeleton argument, and issue 3 of the defendants' list of issues for trial that the Defendants' case is that the alleged trust either arose on acquisition in 2003 or, alternatively, on execution of the Declaration in 2017. There is no allegation that any express or constructive trust arose at some other time.
115. Mr Grant KC submitted that the financial information about who paid for what at the Oaks was irrelevant or, at most, was relevant only to the "*ancillary context*". Ms Johnson, on the other hand, described the way in which the Oaks was funded as "*the key issue*", both as to its acquisition and the construction costs. Building on that submission, Ms Johnson's position was that the evidence showed that both acquisition and development had been mostly funded by Mohinder. In my judgment, the question of who paid for what has a greater significance than Mr Grant suggested, but does not have the absolute primacy for which Ms Johnson contended.
116. On the question of whether or not there was an express trust, it would not, of itself, affect the validity or enforceability of a properly constituted express trust even if it were shown that Raminder did not contribute a penny to the Oaks. An express trust may be created by deed entirely gratuitously by a settlor. But given how thin the evidence going to the existence of an express trust is in this case, it is inevitable that the court will have to have regard to matters of surrounding conduct, such as how the Oaks was funded, and assess the extent to which that evidence is consistent or inconsistent with the Defendants' case, in the course of determining whether or not the Defendants have made out their case that Mohinder made an express declaration of trust in 2003.
117. Evidence of who paid for things is further to the fore when deliberating on whether or not there was a common intention constructive trust. Matters of conduct in relation to a property (including contributions to purchase price and subsequent expenditure) are relevant both to the issue of whether or not a common intention may be inferred and to the distinct issue of whether or not the party making a claim has established detrimental reliance, on which I say more below.
118. Finally, if Ms Johnson is correct that the circumstances here are such that we should not be concerned with a common intention constructive trust at all and should instead focus on the principles of resulting trust, then the funding of the Oaks is plainly highly relevant to that exercise.

Express trust

119. The Defendants' primary case is that there was an express declaration of trust in 2003. They recognise that such a trust was not enforceable at that time because it did not satisfy s.53(1)(b) of the LPA 1925, which requires that "*a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.*" It became enforceable, they submit, upon the execution of the Declaration in 2017, because the 2003 trust was referred to in recitals C and D: see §105 above.
120. It was common ground that there must be three certainties for a trust to be valid and enforceable by the court, namely certainty of (a) intention to create a trust; (b) subject matter; and (c) objects. The latter two do not appear to be capable of much dispute: the subject matter is the Oaks and the object is Raminder, although before moving on from (c) I observe that evidence of an intention to benefit someone other than Raminder would not support the Defendants' pleaded case that the Oaks is beneficially owned solely by Raminder.
121. Of the three certainties, it is certainty of intention to create a trust that is primarily in issue in this trial. Mr Grant KC referred me to *In re Kayford* [1975] 1 WLR 279, in which Megarry J held at 282 that:
- "As for the requisite certainty of words, it is well settled that a trust can be created without using the words "trust" or "confidence" or the like: the question is whether in substance a sufficient intention to create a trust has been manifested."*
122. Mr Grant KC and Ms Pugh also referred in their skeleton argument to *Bellis v Challinor* [2015] EWCA Civ 59, in which Briggs LJ (as he then was) summarised the position as follows at [57]:
- "There must be an intention to create a trust on the part of the transferor. This is an objective question. It means that the transferor must have intended to enter into arrangements which, viewed objectively, have the effect of creating a trust..."*
123. Briggs LJ added at [59]:
- "...A person who does subjectively intend to create a trust may fail to do so if his words and conduct, viewed objectively, fall short of what is required..."*
124. The Defendants also made reference in their skeleton argument to the commentary on *Bellis v Challinor* in *Underhill & Hayton, The Law of Trusts and Trustees* (20th edn). At §10.7, the learned editors submit that:
- "As is the case with the interpretation of contracts, in deciding whether a settlor intended to create a trust, his words and actions are interpreted objectively. The question is whether a reasonable person would conclude that the settlor intended to create a trust."*

125. In my judgment, there is nowhere near enough evidence to support the view that Mohinder had the requisite intention to create an express trust in relation to the Oaks in 2003. There is really no evidence at all that he made an express declaration of trust at that time. At most, the evidence shows that Mohinder and Raminder intended from the outset that the Oaks would be purchased and developed into a family home for Raminder and her family; there is also support for the view that Mohinder hoped and expected that one day Raminder's sons would come to own the Oaks. That does not come close to proving an express declaration of trust in 2003. I am driven to the conclusion that through a combination of wishful thinking and a desire to protect assets from Mohinder's creditors, the Defendants' witnesses have retrospectively given a clarity and effect to general statements by Mohinder about his present and long-term aspirations for the Oaks that they were not intended by Mohinder to have, and were not understood by others to have, at the time when they were made.
126. I have regard in particular to the following factors:
- i) There is no particularity in any of the Defence or the Defendants' numerous witness statements about the alleged express declaration of trust, such as the words used, their timing, who was present, or where Mohinder was when he made any express declaration. I have already said that I can attach no real weight to Mohinder 1 or Mohinder 2 but, in any event, nothing in those documents comes close to articulating an objectively discernible intention to create a trust of the Oaks in favour of Raminder or particularising when such a trust was expressly declared.
 - ii) Raminder's evidence, both written and oral, did nothing to firm up any of the missing particulars (including when, where, words used, who was present, etc) necessary to prove an express declaration of trust. In particular, as mentioned at §73 and §74 above, when Raminder was invited in re-examination to identify the first time that Mohinder had said that the Oaks was meant for Raminder, the answer given to this very specific question from her leading counsel (which was plainly directed towards filling the gap in the Defendants' case just identified) was that Mohinder had said, when first viewing the Oaks, that the purchase would "*be in the grandkids' names*". Accordingly, when given an opportunity to give evidence supporting an express declaration of trust on the part of Mohinder, Raminder identified a different intention that involved neither the creation of a trust nor any benefit to Raminder. Such a prospective intention to acquire the Oaks in the grandchildren's names was demonstrably not put into effect, providing further support for the view that Mohinder was inclined to make general statements of long-term aspirations for his property to which he did not subsequently give legal effect.
 - iii) The Defendants place considerable reliance on the Note but, in my view, that document is not capable of doing any more than, at most, recording what the Defendants' instructions to Leigh Carr were by late 2016. By that time Mohinder was facing separate high-value claims brought by each of HMRC and Mr Ingram. It does not, of itself, provide positive evidence of an express declaration of trust in 2003. The holding out to

third parties of Raminder as the beneficial owner of the Oaks (which is what the Note is, at the very most, evidence) might corroborate the existence of a trust but cannot on its own fill the gap in the evidence to show how a trust came into existence in the first place.

- iv) Further reliance is placed by the Defendants on the Declaration, but in my judgment this is inconsistent, construed as a whole, with the Oaks having been held on trust for Raminder prior to 2017. That is because the inclusion of clause 3 is to the effect that, but for the existence of the Declaration, Mohinder was entitled to a beneficial interest in the proceeds of sale of the Oaks. Clause 3 specifically provides that Mohinder would again become entitled to such an interest if he exercised his power to revoke the Declaration. The onerous obligations imposed on Mohinder by clause 2 are also inconsistent with his never having had any beneficial interest in the Oaks, or at least not having had such an interest since 2003, which was by the time of the Declaration fourteen years in the past.
127. My conclusion is supported by the evidence of Mohinder's surrounding conduct towards the Oaks, all of which is inconsistent with his having had any intention that Raminder should be its sole beneficial owner. The following two aspects are particularly significant:
- i) Mohinder decided to have the legal title to Tranche 1 conveyed into his name on its acquisition in 2003, despite his having paid for it outright for cash. That decision is rationally inexplicable if Mohinder had intended Raminder to be the sole beneficial owner and Mohinder was to have no interest in the Oaks. It is, however, entirely explicable if Mohinder was to be a joint beneficial owner with Raminder. Loan 1 was not taken out until some weeks later and there was, in any event, no evidence to support any suggestion that it was a requirement of the Bank that Mohinder should be on the legal title to the Oaks.
 - ii) Raminder's evidence in the box was that she thought that Mohinder went on the legal title to the Oaks in order to ensure that she did not "*take it and go*". That evidence provides powerful support for the view that Mohinder did not intend for Raminder to be sole beneficial owner of the Oaks. Had Mohinder had such an intention, then whether or not he held legal title to the Oaks, it would have been open to Raminder to "*take it and go*" had she been inclined to do so: the Oaks would have been hers to do as she would with it; *ex hypothesi* Mohinder would have been a bare trustee and as such he would not have been able to resist any directions Raminder gave as to the application of her property. Mohinder's concern to order ownership in a way that averted such a possibility is entirely rational. It is, however, quite inconsistent with any intention on the part of Mohinder that Raminder should be the sole beneficial owner of the Oaks.
128. Having concluded as a fact that there was no express trust declared by Mohinder in 2003, it is unnecessary for me to decide whether recitals C and D of the Declaration would have been sufficient for such a trust to have been

“...manifested and proved by some writing signed by the person creating or conveying the same...” within the meaning of s.53(1)(b) of the LPA 1925 if I had found to the contrary. Given that I have decided that the Declaration, taken as a whole, is inconsistent with the existence of an express trust declared in 2003, and that such inconsistency is one of a number of features that I have taken into account in coming to my primary conclusion that there was no trust declared in 2003, it would be artificial for me to attempt to determine whether, had I not reached that primary conclusion, certain parts of the Declaration taken in isolation from other parts would have proved the existence of a trust declared in 2003. For that reason, I decline to decide whether, on the counterfactual assumption that there was an express declaration of trust in 2003, recitals C and D of the Declaration would have satisfied s.53(1)(b) of the LPA 1925. This makes no difference to the outcome, by reason of my finding that there was no express trust declared in 2003.

Common intention constructive trust

129. Having rejected the contention that there was an express trust in 2003 that was later evidenced in writing in 2017 by the Declaration, I must now consider whether there was a common intention constructive trust. I accept Mr Grant KC’s submission that a common intention constructive trust arises where one person detrimentally relies upon a common understanding that they are to have a beneficial interest in a certain property, relying on the summary in *Lewin on Trusts*, 20th edn, at §10-062.
130. This case is not in the class of *Grant v Edwards* [1986] Ch 638 or *Lloyds Bank plc v Rosset* [1991] 1 AC 107, where only the alleged trustee held legal title and a non-legal owner asked the court to infer that they both shared a common intention that the latter should have a beneficial interest. This is a case in the class of *Stack v Dowden* and *Jones v Kernott*, where a claim is made by a joint legal owner to a beneficial interest greater than half. The general approach is the same in both classes of case, as Nugee LJ explained in *Amin v Amin* [2020] EWHC 2675 (Ch), at [32]:

“In each case what needs to be found to displace the presumption that equity follows the law is a common intention that the beneficial ownership should be something different from the legal ownership; and (save for the case where there is evidence of express discussions as referred to by Lord Bridge in Lloyds Bank v Rosset) that is to be deduced objectively from their conduct.”

131. Section 53(2) of the LPA 1925 provides that *“This section does not affect the creation or operation of resulting, implied or constructive trusts.”* Accordingly, the requirement in s.53(1)(b) of the LPA 1925 that in order for an express trust to be enforceable it *“must be manifested and proved by some writing”* does not apply to a common intention constructive trust. Instead of a writing requirement, however, there is a need for the person seeking to rely on the existence of a common intention constructive trust to show that they relied to their detriment on the common intention.

132. On the question of detriment, Mr Grant KC referred me to the recent Court of Appeal decision *Hudson v Hathway* [2022] EWCA Civ 1648. Lewison LJ, giving the only reasoned judgment, held at [128] that there remains a requirement for detrimental reliance on the part of the claimant if they are to establish a beneficial interest that differs from that which the legal title would suggest. Lewison LJ added, at [153], that the “*overwhelming weight of authority both before and after Stack v Dowden and Jones v Kernott*” is to the effect that detrimental reliance is required and that “*to hold that an oral agreement, disposition or declaration of trust was binding without more would directly contradict*” *inter alia* s.53(1) of the LPA 1925. In terms of the kind of detriment required, Lewison LJ cited the following passage from Robert Walker LJ’s judgment in *Gillett v Holt* [2001] Ch 210, 232:

“The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.”

133. There are accordingly two aspects that I must consider: did Mohinder and Raminder share a common intention that the Oaks should be held on trust solely for Raminder; and, distinctly, did Raminder rely to her detriment on that common intention? In my judgment, the evidence plainly shows that both aspects must be answered in the negative.
134. Given my rejection of the Defendants’ primary case that there was an express declaration of trust in 2003, which involved findings about Mohinder’s intentions towards the Oaks at that time, I can deal with the common intention point briefly. Essentially for the same reasons as those given at §126 and §127, I find as a fact that Mohinder and Raminder did not share a common intention that the Oaks should be beneficially owned solely by Raminder. Mohinder certainly did not have such an intention and, further, the evidence indicates that Raminder’s understanding of Mohinder’s intention was inconsistent with the Oaks being solely beneficially owned by Raminder. The Defendants’ case on common intention constructive trust fails because there was no common intention that Raminder should be the sole beneficial owner of the Oaks.
135. Turning to the requirement for detriment, in my judgment the Defendants’ case on common intention would fail independently on this aspect even if there had been a common intention. Based on the evidence before me, I have reached the clear conclusion that there is nothing to suggest any detrimental reliance on Raminder’s part when regard is had to the fact that, absent any trust, she is in any event a joint legal and beneficial owner of the Oaks. As to acquisition, Mohinder paid considerably more towards the Oaks than Raminder and so Raminder enjoyed a gain, rather than suffered a detriment, in her joint acquisition of the Oaks with Mohinder. As to the subsequent development, this was funded by loans for which Mohinder and Raminder were jointly liable. While I accept that Raminder did a great deal of work towards the development of the Oaks, including extensive work on planning permission and the design of

the property constructed at the Oaks, Mohinder also did a considerable amount of work during the development. In my judgment, Raminder has not identified anything that could be described as “*detriment*” that goes beyond, or is not readily explicable by, or is inconsistent with, her being a joint legal and beneficial owner of the Oaks.

Resulting trust and presumption of advancement

136. I address this issue for completeness and in deference to the arguments I heard on the point. In the Defendants’ list of issues and in their skeleton argument, reference was made to Raminder having the benefit of a presumption of advancement. This submission required some unpacking at trial, as it was not clear to me what relevance any presumption of advancement could have where neither side suggested that Mohinder had an interest under a resulting trust.
137. Where A makes a gratuitous transfer to B, or A acquires property in the name of B, then there is a rebuttable presumption of a resulting trust in favour of A. Where A is the spouse or parent of B, or in a similar relationship, then a rebuttable presumption of advancement may arise to rebut the presumption of a resulting trust: see *Lewin on Trusts (20th edn)*, §10.003. The presumption of advancement is a weak one in modern times and there are long-standing proposals for its abolition. As the law stands it nonetheless continues to apply, albeit weakly, including in cases of adult children who are not financially dependent on their parents: *Wood v Watkin* [2019] EWHC 1311 (Ch), [2019] BPIR 1265. Ms Johnson accepted on behalf of the Liquidators that the presumption of advancement could apply in principle between parents-in-law and children-in-law, which is the relationship between Mohinder and Raminder.
138. Although the Defendants’ written submissions relied on a presumption of advancement in favour of Raminder, they did not address how the presumption of advancement was said to operate in Raminder’s favour in this case. That question appeared to be significant, given that this was not the typical case of an acquisition by parent A in the name of child B, but rather a joint acquisition in the names of parent A and child B, where A had contributed more to the acquisition of the property than B, but where there was no challenge to B’s entitlement to an equal share of the property with A, in accordance with the legal title.
139. In closing, Mr Grant KC submitted that the presumption of advancement was of “*diminished importance*” in this case, adding that neither party asserted that a resulting trust arose in this case. The Defendants’ retreat from their opening suggestion of a presumption of advancement may have been a reaction to Ms Johnson’s submission that the principles of resulting trust, not constructive trust, fell to be applied in the circumstances of this case, and that this did not work in Raminder’s favour. Ms Johnson’s submission was based on *Wodzicki v Wodzicki* [2017] EWCA Civ 95, *Laskar v Laskar* [2008] EWCA Civ 347 and the discussion in *Lewin*, §10.085. The editors of *Lewin* suggest that:

“...It is therefore now established that the resulting trust approach has not been completely emasculated by the common intention principles laid down in *Stack v Dowden* and *Jones v Kernott*. A resulting trust may also still

arise where a parent makes a contribution towards a property purchased in the name of a child, provided it does not provide a home for them both. A resulting, as opposed to a common intention, trust will most likely arise where direct financial contributions to the purchase price are made only at the point of acquisition, and no direct or indirect contributions are made later. Where the purchase is in joint names, the position is no different, as the above quotation from Stack v Dowden makes clear... ”

140. Ms Johnson submitted that the circumstances identified in *Lewin* clearly prevailed in the current case, i.e. a joint acquisition funded by a parent-in-law that was not to provide a home for them both. If this was right then, on the face of it, a presumption of resulting trust in the instant case would work to the advantage of Mohinder, not Raminder, because Mohinder contributed more to the acquisition of the Oaks than Raminder. Ms Johnson went on to submit that even if Raminder could invoke to the maximum possible extent a presumption of advancement in her favour, then this would, at most, work to prevent Mohinder from establishing a beneficial interest greater than the half share to which he is *prima facie* entitled as a consequence of being a joint legal owner. But that, submitted Ms Johnson, got Raminder nowhere because no one, including the Liquidators, suggested that Mohinder's interest should be greater than half. Further, on no view could any presumption of advancement assist Raminder in increasing her beneficial interest beyond her corresponding *prima facie* entitlement to a half share under the legal title, with which the Liquidators took no issue: see *Laskar v Laskar* [2008] EWCA Civ 347, [2008] 1 WLR 2695, [20], per Neuberger LJ (as he then was). Accordingly, Ms Johnson submitted, on the hypothesis that the presumptions of resulting trust and advancement were both applied and not rebutted, then Mohinder and Raminder would be in exactly the position that the Liquidators are in any event content to accept that they are in, i.e. legally and beneficially entitled to the Oaks in equal shares.
141. In my view, Ms Johnson is correct to submit that, if a presumption of advancement applied, it would not be capable of operating to improve Raminder's position beyond her *prima facie* entitlement under the legal title. Mr Grant KC did not press any argument on presumption of advancement in closing and instead put the Defendants' case squarely on the basis of express trust or, alternatively, common intention constructive trust.
142. In the present circumstances, where the Defendants fail whether their case is put on the basis of common intention constructive trust or resulting trust, I decline to decide whether the Liquidators are correct in their suggestion that this case is susceptible to a resulting trust analysis to the exclusion of a common intention constructive trust analysis. That interesting question would be better left to be determined in a case where it would make a difference to the outcome. It is likely that fuller argument than I have heard would have been required, particularly on the significance, if any, of the fact that the residence at the Oaks was constructed some years after the land on which it stood had been acquired in joint names, and that both Mohinder and Raminder were involved in that development.

The Declaration

143. Having rejected the Defendants' primary and secondary cases, which both characterised the Declaration as simply recording Raminder's long-standing beneficial ownership of the Oaks, it is necessary to consider their tertiary case, which is based on the Declaration having been effective to declare an express trust in favour of Raminder on 17 April 2017.
144. This engages the two challenges to the Declaration made by the Liquidators in the Part 7 Claim: firstly, that the Declaration is a sham; and, secondly, if it is not a sham, then it is a transaction defrauding creditors under s.423 of the IA 1986. These are addressed in turn below.

Sham

145. The requirements for a document to be a sham were identified by Diplock LJ in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, at 802C-D, as follows:

"I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create."

146. In *JSC Mezhdun Arodnii Promyshlenniy Bank v Pugachev* [2017] EWHC 2426 (Ch), to which both parties made reference, Birss J reviewed the authorities and concluded at [150] that in the case of a trust alleged to be a sham, the unilateral intentions of the settlor are not enough and there must be a common intention between settlor and beneficiary, but that reckless indifference on the part of someone "going along" with the shammer is sufficient to make out such a common intention.
147. I am satisfied that the Declaration was not a sham. My principal reason for reaching that conclusion is that the Declaration was drafted in such a way that there was no possibility that the parties to it might need to give the appearance to third parties or the court of having rights and obligations different from those created under the Declaration. This is because the power of revocation given to Mohinder by the Declaration meant that Mohinder and Raminder could present the Oaks to the world as Raminder's beneficial property (which on the face of the Declaration it was for the time being) but that Mohinder could nonetheless call his joint beneficial interest back if he chose to do so under the power of revocation. Mohinder's power under the Declaration is plainly non-fiduciary, meaning it has always been open to him to exercise it selfishly, without regard for the interests of anyone else. The effect of the Declaration, absent any sham, is for Mohinder to swap one beneficial interest (a vested joint beneficial interest in the Oaks) for another (a non-fiduciary power to revoke the Declaration and re-vest his previous interest in the Oaks in himself). In other words, the Declaration did not need to be a sham for Mohinder to retain powerful rights in relation to the property; the Declaration already provided for that.

Section 423 of the IA 1986

148. Section 423 of the IA 1986 provides as follows:

“This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if –

- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;*
 - (b) ...*
 - (c) he enters into a transaction with the other for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by himself.*
- (2) Where a person has entered into a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for –*
- (a) restoring the position to what it would have been if the transaction had not been entered into, and*
 - (b) protecting the interests of persons who are victims of the transaction.*
- (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose –*
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or*
 - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.*

...”

149. As I have rejected the Defendants’ primary and secondary cases that the Oaks was already held on either an express or a constructive trust by the time the Declaration was executed, the Defendants must rely on the Declaration as effective to have disposed of Mohinder’s interest in the Oaks in 2017. Accordingly, the requirement for a transaction at undervalue in subsection 423(1) is made out on their own tertiary case. The argument at trial therefore focused strongly on subsection (3), namely the statutory purpose to put assets beyond reach or otherwise prejudice the interests of certain others. It was common ground that it is sufficient for the statutory purpose to be a purpose of the transferor entering into the transaction; it need not be the only purpose or the dominant purpose. As Leggatt LJ (as he then was) held in *JSC Bank v Ablyazov* at [14]:

“...It is sufficient simply to ask whether the transaction was entered into by the debtor for the prohibited purpose. If it was, then the transaction falls

within section 423(3), even if it was also entered into for one or more other purposes. The test is no more complicated than that.”

150. In my judgment the Liquidators’ claim under s.423 of the IA 1986 is readily made out. I have reached that conclusion for the following reasons.
151. Firstly, there is the power of revocation. The same matters that have led to my conclusion that the Declaration was not a sham point powerfully towards Mohinder having acted for the purpose in s.423(3) of the IA 1986: the presence of the power of revocation means that the Declaration has no real purpose other than to exclude Mohinder’s interest in the Oaks from his estate, until such time as Mohinder decides to revoke the trust and call it back. While it vests the Oaks in Raminder for the time being, Raminder is afforded no real protection by the Declaration during Mohinder’s lifetime, because her ownership is always susceptible to being defeated by Mohinder’s exercise of the power of revocation.
152. Mr Grant KC made the valid point in closing that until clause 3 of the Declaration is exercised, if it ever is, the operative provision is clause 1, pursuant to which Mohinder has given up his vested beneficial interest, albeit that he has obtained another beneficial interest in the form of a power of revocation. I accept that point as correct but it does not strike me as one that is helpful to the Defendants: it simply underlines that the Declaration operates to get the Oaks away from Mohinder’s estate (and accordingly from his creditors), but subject always to Mohinder’s ability to get it back later on. Given the power of revocation, on the hypothesis that the Declaration effected a new disposition in 2017, it is difficult to identify any purpose for the Declaration other than the statutory purpose in s.423(3) of the IA 1986; none was suggested to me. As I have said, it certainly provides no security to Raminder, who is always exposed to Mohinder’s ability to re-vest the Oaks in himself.
153. Secondly, the Declaration was undeniably conceived, drafted and executed in close proximity to actual claims being brought against Mohinder. At the time the Declaration was proposed in November 2016 and executed in April 2017, Mohinder was facing an investigation by HMRC. Further, the idea of the Declaration came hard on the heels of the issue of the misfeasance claim by Mr Ingram in September 2016. Raminder accepted in the box that, although Mohinder was resisting Mr Ingram’s claim, Mohinder was nonetheless exposed to a potential liability that he could not have satisfied, had that claim succeeded. Exactly that scenario has now happened. There are powerful grounds for drawing the inference that Mohinder entered into the Declaration with the statutory purpose in s.423(3) by reason of the existence of claims.
154. Thirdly, the evidence of the Leigh Carr witnesses was clearly to the effect that the Defendants were advised to enter into the Declaration in contemplation of the HMRC investigation. Their evidence was that the Declaration was recommended in case anyone should ask about ownership of the Oaks. The likeliest people to ask about it at that time were those bringing claims against Mohinder, i.e. HMRC or Mr Ingram. Accordingly, the evidence is clearly to the effect that the Declaration was intended to act as answer to those parties should

they ask about the Oaks. This further points towards the presence of the statutory purpose in s.423(3) on the part of Mohinder.

155. Fourthly, there is really nothing going in the opposite direction to dispel the inference that the Declaration was entered into for the statutory purpose in s.423(3) to which the basic chronology powerfully gives rise. The only competing explanation put forward at trial for the Declaration was to bring clarity to the position in case Mohinder passed away. That explanation depends on the Defendants succeeding on their primary case or secondary case that the Declaration simply regularised a longstanding informal trust and I have rejected those. Given that the Oaks was not held on trust prior to the execution of the Declaration, the Declaration effected a disposition, which cannot be explained on the basis that it was bringing clarity to an existing state of affairs.
156. In the circumstances, I am entirely satisfied that the Declaration was entered into for the purpose of putting an asset (Mohinder's beneficial interest in the Oaks) beyond the reach of a person who was making a claim against him. Those persons, in my judgment, were either or both HMRC and Mr Ingram.

Conclusion

157. I find that the Oaks was legally and beneficially jointly owned by Mohinder and Raminder immediately prior to the execution of the Declaration. The Declaration was a transaction within the meaning of s.423(1) of the IA 1986 and Mohinder acted for a purpose in s.423(3)(a) in entering into it. Accordingly, the Declaration is susceptible to an order under s.423(2) to restore the position to what it would have been had the Declaration not been entered into. I was not addressed at trial in any detail on relief but note that the Liquidators have sought in the Particulars of Claim both a money judgment and, alternatively, the setting aside of the Declaration. In my judgment, the appropriate order is one setting aside the Declaration and vesting the beneficial interest in the Oaks in Mohinder and Raminder in equal one-half shares.
158. As mentioned at §20 above, a further hearing will be required at which the Liquidators' applications for orders for sale of the Oaks and 37 Barleymow Close can be determined, together with any costs and other consequential matters arising from this judgment.
159. I invite the parties to agree an order giving effect to these conclusions.
160. Before departing from this judgment, I should like to pay tribute to the way both sides' current legal teams dealt with this trial. It was clear that a great deal of urgent work had been done on both sides in the days preceding the hearing to ensure that an effective trial could take place and the parties' focus remained on that goal as the hearing commenced. The matter was impressively and economically argued by counsel on both sides. Although I recognise that the outcome in this judgment will come as a considerable blow to the Defendants, they can be assured that their case could not have been advanced at trial to better effect than it was by Mr Grant KC, Ms Pugh and their current solicitors.