



Neutral Citation Number: [2024] EWHC 2685(Ch)

**Case No:BR-2023-000512**

Rolls Building  
London  
EC4A 1NL

Date: 8 November 2024

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES COURT (ChD)**

**IN THE MATTER OF THE INSOLVENCY ACT 1986**

**RE SHAUN COLLINS (A BANKRUPT)**

**BEFORE DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE RAQUEL  
AGNELLO KC**

**BETWEEN:**

**(1) JULIE PALMER**

**(2) ANDREW HOOK**

**(in their capacity as joint Trustees-in-Bankruptcy**

**of SHAUN COLLINS)**

*Applicants*

*-and-*

**DANIEL SANS**

*Respondent*

**Mr Daniel Thorpe** (instructed by Lincoln & Rowe) for the Applicants  
**Mr Chris de Beneducci** (instructed by Villars Legal Limited) for the Respondent

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**JUDGMENT**

**Introduction**

1. By application notice dated 5 July 2023, the Applicants, as the Trustees in Bankruptcy of Shaun Collins ( ‘the trustees’) seek various orders and declarations including pursuant to section 339 of the Insolvency Act 1986 in relation to the transfer dated 20 December 2021 of the property, being Flat 2, Chestnut House, Whimbrel Close, London SE28 8JE ( ‘the Property’). As both Counsel agreed before me, the main issue for me to determine is whether the Bankrupt ( ‘Mr Collins’) held the Property on trust for the Respondent, Mr Sans as at the time that it was acquired in 2013 by the Bankrupt as appears from the Land Registry office copy entries.
2. As both Counsel agree, if I determine that a trust exists, then the challenge relating to the transfer of the Property from the Bankrupt as legal owner to Mr Sans dated 20 December 2021 falls away. There is one further issue relating to a charge which was placed on the Property said to secure Mr Sans’ lending to Bluegen Limited. The determination of this issue is equally unnecessary in the event that I determine that a trust exists. If a trust does not exist, then I will deal with the section 339 transaction at an undervalue claim and thereafter, in so far as necessary, the charge.

**Mr Sans’ non-attendance and the witnesses in general**

3. Mr Sans did not attend the trial and I dealt at the start of the trial with an application that Mr Sans’ evidence does not form part of the evidence before the Court by reason of his non-attendance. In accordance with the terms of the order dated 30 August 2023, by reason of his non-attendance, he requires permission from me to allow him to rely on the evidence. I dealt with that application and delivered a judgment at the start of the trial. Effectively, I allowed the evidence to be part of the evidence before me, but that I would consider carefully what, if any weight, was to be given to his evidence, or any part of it bearing in mind that he failed to attend the hearing and could not be cross-examined in his evidence. This is particularly relevant on the facts of this case where Mr Sans is relying upon an oral agreement as evidence of a trust

being created. Mr Collins, the Bankrupt attended and was cross examined on his evidence. I deal below with his evidence. One of the trustees, Mr Hook, attended but as his evidence was really reliance upon the documents he produced, it seemed to me that there was in reality no real need for him to be cross-examined. Mr de Beneducci sought to ask him a few limited questions which I allowed. In reality, the trustees' case relies upon the documents before me and in particular, on the lack of documentary evidence supporting Mr Sans' case. Ms Jodie Anne Grant attended. I will deal with her evidence below.

4. The evidence before me included an agreed valuation of the Property in the sum of £185,000.

#### **FACTUAL BACKGROUND**

5. Ms Norah Newby was the beneficial owner of the Property under a lease of 126 years which commenced on 12 October 2003 which had been granted to her by Gallions Housing Association Limited pursuant to the right to buy scheme created under Part V of the Housing Act 1985. According to the lease, a discount was provided to Ms Newby in the sum of £38,000 and the purchase price was the sum of £47,000. Ms Newby was the grandmother of Mr Sans. The Property was acquired with the assistance of a mortgage from Santander. According to the redemption statement dated 6 September 2013, the sum of £47,371.49 was outstanding as at the time of the sale of the Property by Ms Newby. Mr Sans' evidence asserts that in or around 2013, Ms Newby began to develop Alzheimer's disease and that a decision was taken by Mr Sans and his family to try and assist his grandmother in meeting the mortgage payments.
6. According to the evidence of Mr Sans, he was unable to obtain a mortgage in his own name because, he asserted, he already had a mortgage in his name. No further details or evidence is provided in relation to this assertion by Mr Sans. According to Mr Sans, Mr Collins was an active participant in the property market and agreed to help Mr Sans. What Mr Collins and Mr Sans assert is that it was agreed between themselves that the Property would be acquired by a company, Bluegen Limited and thereafter be transferred to Mr Collins, but that the beneficial interest would belong to Mr Sans who would be responsible for paying the mortgage repayments, and he

asserted, other expenses of the Property. Bluegen Limited is a company in which both Mr Collins and his former partner, Ms Oberman, are directors and shareholders. The trustees deny that the Property is held on a trust on the basis of this agreement and assert that at all material times, the Property belonged to Mr Collins and effectively formed part of his estate in bankruptcy (subject to the avoidable transfer). As I have already stated above, there is no documentary evidence at the time of the acquisition which supports the existence of the alleged trust. This is the issue I need to determine.

7. The documents show the following. The conveyancing file has an agreement for sale as between Ms Newby and Bluegen Limited. The agreement for sale stated that the purchase price was £90,000. Ms Newby also entered into an agreement with Thamesmead Management Lettings Limited. I have not seen the terms of the agreement, but the documents include an invoice addressed to Mrs Newby for the sum of £1,200 being the fee due for that company having found Bluegen Limited as a purchaser. Mr Collins and Ms Oberman were directors of Thamesmead at the time.
8. Despite the agreement for sale stating that the agreement was between Bluegen Limited and Ms Newby, it was Mr Collins who obtained a mortgage offer from Woolwich (Barclays) by letter dated 28 May 2013 in relation to his proposed acquisition of the Property. The mortgage offer stated that the purchase price was £90,000 and the lending offered was in the sum of £55,999 (which included costs) with the amount released to the solicitor of £53,965. As I have stated above, the documents show that the redemption figure in relation to Ms Newby's mortgage over the Property from Santander was just over £47,000. The Barclays mortgage was a 'buy to let' type.
9. There are two signed TR1s in the documents. One of them states that the transferee is Mr Collins. It is dated 6 September 2013. It states that the purchase price is £90,000. The other TR1 states that the transferee is Bluegen Limited and it is also dated 6 September 2013. Both are signed by Ms Newby. The purchase price according to this TR1 is stated to be £50,000.

10. According to the documents contained in the conveyancing file, the exchange of contracts was for a purchase price of £50,000. In a letter dated 27 August 2013 from the solicitors acting for Mr Collins/Bluegen Limited to the solicitors acting on behalf of Ms Newby, the solicitors confirm exchange of contracts at the price of £50,000 with completion on 6 September 2013. The agreement dated 23 August 2013 states that the buyer was Bluegen Limited. The sale price of £50,000 is also confirmed in the financial statement which sets out a completion date of 6 September 2013. Those documents also show a commission paid by Ms Newby to Thamesmead Management Limited for introducing Bluegen Limited as the purchaser.
  
11. Despite these references to Bluegen Limited as the purchaser, the office copy entries of the Land Registry clearly state that the proprietor of the Property in September 2013 was Mr Collins personally rather than Bluegen Limited. Additionally, the charge registered at the same time against the Property was that of Barclays. Whilst both counsel before me sought to assert that at some stage the Property was acquired by Bluegen Limited, in my judgment, the evidence as a whole does not support that this was the case. Even though both Mr Sans and Mr Collins also asserted a transfer to Bluegen Limited and thereafter a transfer to Mr Collins, the documents do not establish this. In my judgment, based on the documentation I have referred to, but in particular upon the office copy entries, the Property was conveyed to Mr Collins. He acquired the Property with the financial assistance of the Barclays mortgage. It may well have been that the parties at the time considered the transfer would be to Bluegen Limited and thereafter to Mr Collins. In any event, I do not consider that the lack of transfer to Bluegen Limited and then to Mr Collins has a real bearing on what I need to determine, being whether I am satisfied that the acquisition by Mr Collins was on the basis of the agreement between him and Mr Sans that he would effectively only own the legal title and that Mr Sans would hold the beneficial interest as well as be responsible for the mortgage payments as well as other expenses in relation to the Property. Certainly, neither Counsel have made any submission relating to there being any material difference to their respective parties' case if the transfer was to Mr Collins and not to Bluegen Limited and then to Mr Collins.

12. The payments that Mr Sans asserts he made to Mr Collins in relation to the mortgage repayments were made in cash for the period September 2013 until March 2016. There is no satisfactory documentation which demonstrates the cash payments made. Mr Collins has produced certain schedules which appear to refer to payments being received, but as became apparent during the cross-examination of Mr Collins, (1) he was not the author of these spreadsheets and has no real knowledge as to their compilation and (2) the author of these spreadsheets could alter them and therefore they are not a record of the cash payments made as asserted by Mr Collins and Mr Sans. Ultimately the issue relating to cash payments remains a matter of oral evidence from Mr Collins and Mr Sans.
13. According to Mr Collins and Mr Sans in around March 2016, they agreed that Mr Sans would sell to Mr Collins a car, being an Audi RS4, registration number LV13 LUL. This car's registered keeper at the time was Ms Grant who was the partner of Mr Sans, but Mr Sans asserts that he had paid for the car and that effectively it belonged to him. The agreement between Mr Sans and Mr Collins was that the balance of the mortgage payments due in relation to the Property would no longer need to be paid by Mr Sans and effectively the consideration for the purchase was the balance of the mortgage payments. The car was valued between them using motor trade references, at £44,000. There is no evidence relating to what was actually outstanding on the mortgage as at that date. The trustees question this arrangement and cross-examined Ms Grant as to the ownership of the vehicle and the transfer to Mr Collins. Thereafter, according to Mr Sans and Mr Collins, no further payments in relation to the mortgage were made by Mr Sans to Mr Collins, until 2021 as set out below.
14. From around 2018, Mr Collins was heavily involved in litigation brought against him and the company Bluegen Limited by his former partner, Ms Oberman, whereby Ms Oberman sought declarations as to the shared ownership of various properties and relief pursuant to section 994 of the Companies Act 2006. The trial took place before Mr Thomas Leech KC sitting as a Judge of the High Court and he gave judgment on 21 December 2020. The judgment determined that 20 properties were held on trust for the two of them as partners and the remaining 21 properties were held on trust for Bluegen Limited. The Property was not part of either of these declarations. It was

part of a category of properties which Mr Collins asserted he held on trust for others. The Judge provided to Ms Oberman the election to seek to pursue these properties and she elected not to do so. The trustees relied heavily on these proceedings as establishing that after the judgment, Mr Collins was facing bankruptcy and this led to the agreement in April 2021 transferring the Property to Mr Sans. Effectively this is a submission that Mr Collins was seeking to frustrate his creditors by the agreement in April 2021 and thereafter the charge. These issues do not assist in relation to whether a trust was created in 2013 when the Property was acquired by Mr Collins. The judgement does indicate that at that time, Mr Collins asserted that the Property was not owned by him beneficially and it was placed in a separate category of properties. Before the Judge, Mr Collins did not make an impressive witness. He did maintain consistently with the case he advances before me that he had not acquired the beneficial interest in the Property in line with his agreement with Mr Sans. There is no evidence which can really assist as to why Ms Oberman decided not to pursue the proceedings as against the Property.

15. On 12 November 2021, the judge heard further submissions relating to consequential matters and directed that Mr Collins purchase Ms Oberman's shares in Bluegen Limited and account for £440,155 in past rent and sale proceeds totalling £1,404,201. The trustees rely heavily on this judgment as I have already indicated above. The trustees submit that the reality was that Mr Collins was seeking to place the Property beyond the reach of Ms Oberman.

16. The agreement dated 15 April 2021 was entered into between Mr Collins and Mr Sans. The agreement cites the following:-

- (a) That Mr Collins obtained a mortgage to purchase the Property from Mr Sans' grandmother and enable the mortgage with Santander to be repaid
- (b) Mr Sans invested funds into Mr Collins' business and transferred the Audi to him without payment from Mr Collins
- (c) 'in return [Mr Collins] has held the property on trust for [Mr Sans] and has paid the mortgage repayments to Barclays Bank (Woolwich) and the service charge to the Landlord'
- (d) The Property is currently occupied by Mr Sans' niece, Taylor Sans

(e) Mr Collins does not receive any income or benefit from the Property

17. The trustees says that this agreement is one of a number of agreements executed by Mr Collins around April 2021 as according to the trustees evidencing disposal of his interest in properties to third parties. These are the properties which were placed in a separate category in the proceedings between Mr Collins and Ms Oberman. I will return to the agreement and its meaning in so far as necessary, depending on my determination of the trust issue.
18. After the execution of the agreement, steps were taken to transfer the legal title to Mr Sans. The documents establish that Mr DJ Sans and Mrs TA Sans transferred on 16 December 2021 to 'Sean' the sum of £15,000. The redemption statement in relation to the Property dated 29 December 2021 stated that the sum of £12,562.26 needed to be paid by way of redemption. Mr Sans and Mr Collins state in their evidence that the payment made of £15,000 was made to Mr Collins in order to discharge the outstanding mortgage on the Property. The documents show a sum of £15,000 being received and a sum being sent to Barclays to redeem the mortgage. Thereafter a TR1 was entered into between Mr Sans and Mr Collins and the legal title was then registered in the name of Mr Sans.
19. The trustees do not seek to challenge that a payment of £15,000 was made to Mr Collins and used to discharge the outstanding mortgage as well as related expenses to achieve the transfer of the legal title to Mr Sans. Upon my asking during the hearing, Counsel for the trustees accepted that, in so far as I declared that the Property did belong beneficially to Mr Collins at that time, the trustees would have to account to Mr Sans for the £15,000 paid in order to discharge the outstanding mortgage.

**Was a trust created?**

20. As both counsel accept, this depends upon whether I accept that there was an oral agreement between Mr Sans and Mr Collins so that a constructive trust arises. Mr de Beneducci relies as detrimental reliance upon the cash payments made by Mr Sans towards the mortgage, the transfer of the Audi car in return for no further mortgage



payments made by Mr Sans to Mr Collins and the discharge of the mortgage in 2021 by the payment of £15,000 made by Mr Sans' parents on his behalf to Mr Collins and used to discharge the mortgage. Mr Thorpe relies on the accounting records as showing that the Property belonged to Mr Collins as well as attacking what he submitted was vague language used in the alleged agreement. As to the latter, in so far as I consider that such an agreement exists, I am satisfied that the agreement was not vague as submitted by Mr Thorpe. The real issue is whether I accept the evidence of Mr Collins in this respect. Although Mr Thorpe set out in his skeleton well known passages about the requirement for writing in relation to the creation of a trust, it was accepted before me that this issue was one of whether a constructive trust existed rather than any other type of trust.

21. Mr de Beneducci cites a helpful passage from the decision of HHJ David Cooke in Thandi v Sands and Appleyard [2014] EWHC 2378 (Ch) which refers to Stack v Dowden, at paragraph 73 :-

*“Drawing all this together, the starting point is that the beneficial interest in the properties is the same as the legal interest, in the absence of evidence to show a different interest, and the onus is on the person asserting that interest to prove it by convincing evidence. In so far as an interest is said to arise by way of a common intention trust, the whole of the circumstances must be looked at to determine whether such an interest exists, and (if relevant) the extent of it. The relevant intention may be found from express words spoken or written, or by inference from the actions of the parties (as in the case of a resulting trust found on the basis of contribution to the purchase price). But in deciding what inferences are to be drawn from conduct, the Court must look at the relevant conduct as a whole. I do not think these general propositions were in dispute between the parties; although there are many cases in the field, for my purposes I need cite none other than Stack v. Dowden [2007] UKHL 17, [2007] 2 AC 432, [2007] BPIR 913”.*

22. Clearly there is also a requirement for the person asserting such a common intention to establish that he has acted to his detriment in reliance upon the existence of the common intention.

23. Mr Thorpe reminds me of the passage from Mr Justice Leggatt in Gestmin v Credit Suisse [2013] EWHC 3560 (Ch), in relation to cases where the defence relies upon the

memories of an oral agreement. The Judge stated that the Court should give greater credence to contemporaneous documentary material than the memories of witnesses. Specifically at [22], the Judge stated :

*“In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”*

24. This case is not one where there is any contemporaneous documentation relating to the alleged agreement so it is not really an issue of preferring the documentary evidence rather than the memory of witnesses. The only documentation which exists is the conveyancing file, the TR1 and the mortgage offer. However, as I will deal with below, the factual background is important. According to Mr Sans and Mr Collins, the Property was acquired by Mr Collins as the legal owner but he would hold it on trust for Mr Sans. What is important, in my judgment, are the factors surrounding this asserted oral agreement as well as the evidence from Mr Collins and Ms Grant.
  
25. The following issues are relevant. The mortgage was taken out with Barclays with a valuation on the Property of £90,000. At the time of the transfer from Ms Newby to Mr Collins, the Property must have been valued at £90,000 as is set out in the Barclays offer letter. In 2003, Ms Newby had acquired the Property for a value of £85,000. This takes into account her discount under the right to buy and the purchase price of £47,000. It is difficult to imagine that the Property dropped in value to £50,000 which was the price at which apparently she agreed to sell it to Mr Collins. No evidence was before me of any dramatic fall in the Property value or evidence which contradicted the valuation placed on the Property in the Barclays offer letter.

26. Mr Collins' evidence that he agreed with Mr Sans that he would acquire the legal title but that Mr Sans would hold the beneficial interest is of course an assertion without any documentary evidence as to that agreement. However, in my judgment, it is extremely relevant to consider the value of the Property at the time as well as the price paid by Mr Collins, if any. In fact, as the evidence of Mr Collins establishes, he paid nothing towards the purchase but he did make himself liable to repay the mortgage of £50,000. The trustees' case relies on me being persuaded that despite the Property being valued at £90,000, Ms Newby had agreed to sell it to Mr Collins at a significant undervalue. There is, in my judgment, no rational explanation for her to have done so when the actual value at the time was £90,000. The evidence which is not really in issue is that Mr Collins and Mr Sans were friends. I accept the evidence of Mr Collins on this point. Moreover, whilst I have placed little weight on the evidence of Mr Sans relating to the actual oral agreement, there are parts of his evidence which are supported by Mr Collins, which I accept. There was no credible challenge to the following evidence: (1) at the time of the transfer of the Property, Ms Newby was in poor health, having the onset of Alzheimer's; (2) at all times before and after the acquisition of the Property by Mr Collins, members of the Sans family lived at the Property; (3) there is no evidence that the Sans family who lived at the Property were charged any rent by Mr Collins; (4) Mr Collins stated, and I accept, that he did not charge rent on the Property despite taking out a buy to let mortgage.

27. Taking all these factors into account, it is clear that there was some further agreement as at the time of the acquisition by Mr Collins of the Property. It is incredible to imagine that Mr Sans and his family would have allowed Ms Newby to sell her Property at such a significant undervalue to a friend of Mr Sans without there being some further agreement or arrangement between the parties. This is re-enforced by the fact that Mr Collins confirms that he did not rent out the Property at any stage and that members of the Sans family lived there and continue to live there. I accept these points which arise from the documents relating to the value of the Property at the time and the evidence of Mr Collins.

28. I heard evidence from Mr Collins. He was asked about the litigation with Ms Oberman and it was clear he had difficulty accepting the outcome of that judgment.

When asked about the arrangement between himself and Mr Sans, he confirmed, as is set out in his witness statement, that Mr Sans was a friend and that Mr Collins agreed to help him by acquiring the Property with the assistance of a mortgage taken out by Mr Collins. He explained that he paid nothing towards the Property's acquisition. He said the value of the Property was set at £90,000 and this enabled the entire transaction to be funded by the mortgage offer he received as a buy to let. He stated that he had done transactions like this in the past. However questionable this type of business appears, that is not the issue before me in this case.

29. He said he did not question Mr Sans' statement that he was unable to get a mortgage. He stated that Mr Sans agreed to pay the mortgage payments and property expenses. He had exhibited to his witness statement various spreadsheets, but it was obvious when he was asked about these, that he had not compiled them. I place little weight on these spreadsheets. The author of the same was not called and they were clearly compiled a considerable time after the events took place. Issues as to whether these spreadsheets were used by Mr Collins for declarations of tax etc took the issues no further. The trustees, as the trustees in bankruptcy of Mr Collins, could have provided details as to his tax declarations but no such evidence was before me. What was clear from Mr Collins' evidence was that he did not rent the Property out to the Sans family and make them pay rent. He is adamant that this Property was not a property, unlike others, where he located tenants and charged rent. He explains that this is why the Property fell into a different category than the others under the Oberman proceedings. I accept his evidence which is consistent with members of the Sans family continuing to live in the Property after its acquisition by Mr Collins. Both Mr Collins and Mr Sans assert that Mr Sans made payments in cash in relation to the mortgage payments. As I have stated above, the spreadsheets do not assist in this regard. However, regardless of how much was paid in cash by Mr Sans to Mr Collins, there are further aspects of this case which support the existence of the common intention, based on the agreement between the two of them in 2013.
30. Mr Collins confirmed the agreement he had made in March 2016 with Mr Sans in that Mr Collins would acquire the Audi car in consideration for Mr Sans making no further payments towards the mortgage on the Property. This is, in my judgment, a further factor supporting there being an agreement between Mr Sans and Mr Collins

that at the time that the Property was acquired by Mr Collins, Mr Sans had the beneficial interest. The Audi car was then valued at £44,000. This valuation was not challenged by the trustees. In March 2013, the Audi car was transferred to Mr Collins. Unless this was a gift from Mr Sans to Mr Collins, the transfer for no payment must have been linked to another purpose. I accept the evidence of Ms Grant that the Audi was a family car even though it was registered in her name as she was the person who used it the most. I also accept that the car must have been paid for by Mr Sans. Ms Grant does not assert that she paid for it but states that it was paid for by Mr Sans. I accept her evidence on this point. She stated that she was a housewife and there is no evidence from her, or was it put to her in cross-examination, that she had any independent means available to her to buy the car at the time. She also confirmed that it was Mr Sans who gave the car to Mr Collins, not her.

31. In so far as the transfer was not, in my judgment, a gift, then the transfer must have related to some agreement between the two of them. Mr Collins states that he took the car in exchange for agreeing that Mr Sans no longer had to pay the mortgage payments. The car held significant value at the time of the transfer. I am prepared to accept the evidence of Mr Collins. The alternative is that Mr Sans gave the car to Mr Collins as a gift which is simply not supported by any evidence. The trustees do not put their case on the basis that the transfer of the Audi was a gift from Mr Sans to Mr Collins. The trustees clearly questioned this transaction but beyond seeking to persuade me to find that the car was owned by Ms Grant, they put forward no further case relating to why, if it was owned by Ms Grant, she would have made such a gift to Mr Collins. Accordingly, the transfer of the car to Mr Collins constitutes detrimental reliance as well as supporting the existence of an agreement and the constructive trust.

32. Mr Collins was asked about the agreement in April 2021, and he said this was to seek to regularise the position as Mr Sans had the beneficial interest in the Property. He accepted that the agreement was incorrect when it referred to Mr Sans investing in the business of Mr Collins but he confirmed that he had acquired the car in consideration of Mr Sans making no further payments in relation to the mortgage on the Property.

33. He also confirmed that the sum of £15,000 was received from Mr Sans' parents which was paid by them on behalf of Mr Sans in order to discharge what remained of the mortgage so that title could be transferred to Mr Sans. The evidence shows that Mr Collins received a car in consideration of him thereafter discharging the mortgage and subsequently, further sums were received on behalf of Mr Sans which discharged the balance of the mortgage. As a witness, I accept Mr Collins was truthful in relation to issues surrounding the acquisition of the Property as well as the car transaction and the payment made by Mr Sans' parents.
34. Despite the submissions made on behalf of the trustees, it is difficult to see what Mr Collins gains from his evidence before me and as set out in his witness statement. If the Property belongs beneficially to Mr Sans, then Mr Collins does not benefit. The trustees assert that Mr Sans benefits because as a creditor of Bluegen Limited, he stands to recover nothing. Mr Collins asserted that he was not a creditor of Bluegen Limited. In my judgment, it is hard to see that Mr Sans stands to benefit in the way set out by the trustees. I accept that it is of course in Mr Sans' interest to be able to assert that he is the owner of the Property, but I have carefully placed little to no weight on his evidence and considered carefully the evidence of Mr Collins. I have taken into account what was said by the judge in the Oberman proceedings, but in my judgment, that is not a reason to reject the evidence of Mr Collins in the case before me on the issues highlighted above.
35. Ultimately, as I have set out above, there are extremely relevant factual matters which support the creation of the trust by reason of the existence of an agreement. The value of the Property at the time of acquisition is highly relevant. Equally, the transfer of the car and the transfer of £15,000 are, in my judgment, evidence of detrimental reliance. Accordingly, in my judgment, the Property is held on a constructive trust for the benefit of Mr Sans.
36. On the basis of this determination, there is no reason for me to consider the section 339 application based on the transfer to Mr Sans or the charge. The Property belonged to Mr Sans beneficially and therefore the transfer of the legal title from Mr

Collins to Mr Sans is not relevant. Equally the charge is not relevant based on the findings which I have made. I will hear the parties in relation to costs.