Neutral Citation Number: [2024] EWHC 3222 (Ch)

Claim No: BL-2023-BHM-000030

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BUSINESS LIST (ChD)

Priory Courts
33 Bull Street
Birmingham, B4 6DS

Date: 12 December 2024

HIS HONOUR JUDGE RICHARD WILLIAMS
(Sitting as a Judge of the High Court)

- -

Between:

MR MOHAMMAD USMAN BUTT

Claimant/Part 20 Defendant

- and –

MR MOHAMMAD ZARAR BUTT (1)
M&B PROPERTIES (NOTTINGHAM) LTD (2)

Defendants/ Part 20 Defendants

MR MOHAMMAD IMRAN BUTT (3)
MR MOHAMMAD URFAN BUTT (4)

Defendants/ Part 20 Claimants

- -

Ali Tabari (instructed by George Green LLP Solicitors) for the **Claimant**
Barry Cawsey (instructed by Charles Morgan Lawyers) for the **First Defendant**
Hugh Rowan (instructed direct access) for the **Third and Fourth Defendants**
The **Second Defendant** was not represented and not in attendance

Hearing dates: 13, 14, 15 and 16 August, and 12 December 2024

(Draft judgment sent to the parties' legal representatives by email on 4 December 2024)

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JUDGMENT

Introduction

1. This is my judgment to determine the beneficial ownership of the shareholding in and, perhaps more importantly, the ultimate control of M&B Properties (Nottingham) Ltd ("***the Company***"), which owns the freehold title of the Adco Business Centre, Bobbersmill, Nottingham, NG8 5AH ("***the Centre***").

2. C, D1, D3 and D4 are brothers ("***the Brothers***"). The legal shareholding in the Company is registered 50% to C and 50% to D1.

3. It is C's primary claim that the shares in the Company are beneficially owned in proportion to the Brothers' respective financial contributions by way of investments towards the purchase price of the Centre such that D1 beneficially owns 9% of the shareholding.

4. D1 does not dispute that D3 and D4 provided funds towards the purchase of the Centre, but he maintains that they were loans made to him personally and not investments such that the beneficial ownership of the shareholding reflects the legal ownership.

5. D3 and D4 in their acknowledgments of service did not contest the claim. Shortly before trial, D3 and D4 issued their own claims seeking the same declaratory relief as C.

Background

6. From around 2011, D1 and D4 were in partnership together operating a business known as 'Legends Gym' ("***the Gym***") from rented premises at the Centre.

7. In 2017, C and D1 agreed by words ("***the 2017 Agreement***"):

    a. to purchase the Centre for the sum of £800,000;

    b. to fund that purchase by way of –

        i. a mortgage of £400,000 secured against the Centre, and

        ii. C and D1 each contributing the sum of £200,000 towards the balance of the purchase price; and

    c. to acquire the Centre and raise the mortgage through a newly incorporated company with –

i. C and D1 being equal shareholders, and

ii. D1 being sole director, since C was living and working in Saudia Arabia.

8. The Company was incorporated on 29 June 2017. In accordance with the terms of the 2017 Agreement, C and D1 were registered as equal shareholders, and D1 was appointed the sole director of the Company.

9. On 22 January 2018, D3 paid into the Company's bank account the sum of £74,988, which was repaid on 6 April 2018.

10. On 13 February 2018, D4 paid into the Company's bank account the sum of £30,000, which was also repaid on 6 April 2018.

11. In May 2018, and after the Company had negotiated a 12 month period between exchange and completion, contracts were exchanged for the purchase of the Centre.

12. On 26 March 2019, D3 paid into the Company's bank account the sum of £75,000.

13. On 23 April 2019, D4 paid into the Company's bank account the sum of £25,000.

14. On 16 May 2019, the Company completed the purchase of the Centre ("***Completion***").

15. Also, on 16 May 2019, the Company executed a mortgage in favour of Lloyds Bank to secure the Company's borrowings against the freehold title of the Centre.

16. In June/July 2019, the Brothers attended the Centre. C, D3 and D4 described this as a business meeting, whereas D1 described it as a family gathering unrelated to the Company. For ease of reference only and to avoid any perception of having pre-judged the issue, I shall hereafter refer to it as "***the Meet-Up***".

17. Relations between C and D1 deteriorated and, in May 2021, the Brothers met to discuss the nature of the payments that had been made by D3 and D4 ("***the 2021 Meeting***"). D4 recorded the 2021 Meeting, and a transcript of the recording ("***the Transcript****")* is contained in the trial bundle. It is clear from that Transcript that the 2021 Meeting became heated and personal as between C and D1.

18. C's claim was issued on 14 April 2023.

Summary of the Brothers' written evidence

19. It was the written evidence of C that:

a. A month or two prior to Completion, D1 via Facetime told C that he did not have his share of the cash and that he was thinking of bringing D3 and D4 into the business.

b. There was a subsequent meeting at C's house (where D1 and his family were then living) ("***the House Meeting***") between C, D1 and D3 when it was agreed that D3 would invest the sum of £75,000 for a shareholding in

the Company, a flat at the Centre, and D1 would help D3 to get his own property.

c. Just prior to Completion, D1 told C on the telephone that D4 was also putting in some money for the purchase in return for a shareholding, although C was not certain of the exact sum D4 was contributing.

d. During the course of the Meet-Up –

i. the Brothers discussed their plans for removing problem tenants, ensuring full occupancy, and renovating the units at the Centre;

ii. it was agreed that D1 would be paid £1000 per month for dealing with the day-to-day administration and management of the Centre; and

iii. D1 told the other Brothers what shares everyone held. C is unable to recall the precise percentages mentioned by D1, but he understood them to be the same as those recorded on a pie chart in a document named 'Shareholders contributtion' (sic) ("***the Spreadsheet***") and attached to an email D1 sent to C on 16 April 2020 i.e. 59% (C), 9% (D1), 17% (D3), and 15% (D4).

20. It was D3's written evidence that:

a. In 2018, he lent D1 the sum of £74,988, which was repaid the same week or the following week. He vaguely recalled that this was something to do with the Gym or the studio, but it was not related to the purchase of the Centre.

b. At some point before and in the build up to the purchase of the Centre, D1 told D3 that he wanted D3 to get involved for a share. D3 gave D1 £75,000 for a share and a further £10,000 when D1 asked for it to pay some sort of fee to purchase the Centre.

c. Later at the House Meeting, C asked D3 to lend the money to him and he would pay D3 back double. However, D3 made it clear that in return for investing in the Centre, he wanted a share in the site, a shower at the site, a flat in one of the units on the site, and support to buy a house. D1 said that these were just minor things and he agreed to them, although C said that they would need to come out of D1's share.

d. During the Meet-Up, D1 read out everyone's shareholdings. D3 could not remember the exact figures, but the figures recorded in the Spreadsheet appear accurate as they confirm that D3 has the second largest shareholding.

21. It was D4's written evidence that:

a. In or around March or April 2019, D1 told D4 that he needed D4's personal savings and his share of the profits retained in the Gym to purchase the Centre.

b. Before the purchase of the Centre, D1 on multiple occasions told D4 that he would be a shareholder, although he did not remember seeing or discussing the precise figures.

c. In April 2019, he transferred £25,000 from his Building Society. Having seen D1's defence, D4 can also vaguely recall transferring the sum of £30,000 back in 2018, which D1 then said he did not need and which was paid back. However, the only money D4 has ever sent in relation to the Centre was for a shareholding.

d. D1 told D4 that he was trying to get D3 involved in the purchase and needed to work on D3. He said he was offering D3 a flat, a shower facility, help to buy a house and a share in the business in return for D3's contribution. D4 was concerned that D3 was asking for a lot in return, but D1 said that D3 had agreed to contribute on this basis.

e. At the Meet-Up, D1 read out everyone's shares from a piece of paper. He said that D4 had a 15% share of the business, D3 had slightly more (somewhere between 17% and 20%) and C had a large majority share. D4 also recalls D1 saying that he was happy with a fee of £1,000 per month for running the site.

22. It was D1's written evidence that:

a. He first approached D3 during late summer early autumn 2017 and asked if D3 would loan him some money. D3 was reluctant at first but agreed and in 2018 deposited the money (£74,988) without condition. D3 expressed that he wanted help to buy a house but never expressed this to be a condition of the loan. He told D3 that he wanted to borrow the money to buy the Centre and he didn't have all the money to hand.

b. During 2017, he also asked D4 to loan him some money to buy the Centre and D4 agreed without hesitation, without any conditions attached and subsequently deposited the funds (£30,000) in 2018.

c. Once he and C had provided proof of deposit, Lloyds offered the Company a mortgage subject to the condition that all rents be deposited in a Lloyds bank account in the name of the Company.

d. In around March/April 2018, he spoke to D3 and D4 to explain that because the Company would not be completing until the following year it was best to return their money until such time the following year when it was required. He paid back their money on 6 April 2018.

e. D3 re-deposited £75,000 on 26 March 2019. D4 re-deposited £25,000 on 23 April 2019.

f. No formal agreements were made to pay back the monies by a certain time. He believed that D4 was loaning the money in repayment of all the work that D1 had done in the Gym for no wages. D3 was trying to get housing from the council through housing benefits and this would have been affected if he had a large bank balance. That was the reason D3 was forthcoming with loaning his money to D1 so that he did not have to declare any savings and that he could claim benefits.

g. Despite knowing that D3 had loaned him the money, C persistently harassed D3 to lend C the money instead, even after it had been redeposited on 26

March 2019, so that C was not required to pull his own funds out of stocks and shares to facilitate the purchase of the Centre.

h. During the House Meeting, C proposed that D3 loan him his money for 100% return within a year of borrowing it. D3 tried to manipulate the situation to his advantage and started to place demands on D1 for the loan. At the time D3 demanded a share of the profits, a house bought for him, a flat on site and his money back. D1 never agreed to those demands, although he did offer to help house D3. D1 assured D3 that he would get his money back although no time frame was given, and as far as the flat on site was concerned it could not be done.

i. After Completion, C insisted that D1 present C with the Spreadsheet containing a breakdown of the funding. C told D1 that the Brothers' financial contributions should reflect the level of shares of the Company, but that was not something D1 agreed to. It became apparent that C was pushing this agenda to become majority shareholder and gain control of the Company.

j. After the fall out with C at the 2021 Meeting, he continued with the business plan of selling part of the Centre on Darley Avenue to relieve the Company of its debenture but realised that there would be shortfall of approximately £45,000. He approached D4 and persuaded him to take out a personal loan of around £25,000. It was agreed that this loan would be repaid from the rent of one of the units at the Centre. At this time, D4 also sent to D1 a written loan agreement as proof that he loaned the money back in 2019 without condition for the purchase of the Centre.

Applicable law

23. The applicable law is not in dispute. Ultimately, this is a dispute on the facts rather than the law. I refer to and adopt the helpful summary of the applicable trust law principles contained in the skeleton argument of Mr Tabari, counsel for C, as follows:

> "[15.] Equity is presumed to follow the law. Accordingly, it is for C/D3/D4 to prove that the position on the beneficial ownership of the Company's shareholding is different to that shown by its Companies House documents……
>
> ……..
>
> [17.] A **resulting trust** arises if the Court accepts that D3/D4 made their respective payments to the Company (or D1) as contributions to the purchase price of the….. Centre ……; it follows, as a rebuttable presumption, that those payments were made on the basis that they would acquire an equivalent beneficial interest in the Company[1].
>
> [18.] A **constructive trust** can arise, retrospectively, from the date of the circumstances giving rise to it, and can arise in several different ways:

[1] The Law of Trusts, Thomas and Hudson. 2nd ed. at 26.73; White v Vandervell Trustees Ltd [1974] Ch 269 at 288

a. Where there is a binding agreement in place between the parties, the Court will take the view that *"equity looks upon as done that which ought to have been done"*[2], i.e. that there will be specific performance of an agreement…

b. A proprietary constructive trust arises when the legal owner of property has knowledge of some factor which affects the conscionability of asserting title to it …….

c. A Pallant v Morgan[3] equity arises where (emphasis added):

"the arrangement or understanding on which it is based ***precedes the acquisition of the relevant property*** *by one of the parties to the arrangement: it is the pre-acquisition arrangement which colours the subsequent acquisition by the defendant and* ***leads to their being treated as a trustee if they seek to act inconsistently with it****. It is unnecessary that the arrangement or understanding should be contractually enforceable. Indeed, if it is, there is unlikely to be any need to invoke the Pallant v Morgan equity, since equity can act through the remedy of specific performance and will recognise the existence of a corresponding trust.* ***It is necessary that the pre-acquisition arrangement or understanding should contemplate that one party (the 'acquiring party') will take steps to acquire the relevant property, and that, if they do so, the other party (the 'non-acquiring party') will obtain some interest in that property.*** *Further it is necessary that (whatever private reservations the acquiring party may have)* ***they have not informed the non-acquiring party before the acquisition*** *(or, more accurately, before it is too late for the parties to be restored to a position of no advantage or detriment) that they no longer intend to honour the arrangement or understanding. It is necessary that, in* ***reliance*** *on the arrangement or understanding the non-acquiring party should* ***do (or omit to do) something which confers an advantage on the acquiring party*** *in relation to the acquisition of the property* ***or which is detrimental to the ability of the non-acquiring party*** *to acquire the property on equal terms. It is the existence of the advantage to the one, or detriment to the other, gained or suffered as a consequence of the arrangement or understanding, which leads to the conclusion that it would be inequitable or unconscionable to allow the acquiring party to retain the property for themselves, in a manner inconsistent with the arrangement or understanding which enabled them to acquire it."*[4]"

[2] Walsh v Lonsdale [1882) 21 Ch D 9; Attorney-General for Hong Kong v Reid [1994] 1 AC 324
[3] [1953] Ch 43 and its subsequent development in Banner Homes Group plc v Luff Developments Ltd [2000] Ch 372 at 397-399
[4] Halsbury's Laws of England, Vol. 98 (2024) at 129

24. There is an alternative claim in proprietary estoppel. In ***Thorner v Major*** [2009] UKHL 18, Lord Walker observed that proprietary estoppel:

> "[29.] …. is based on three main elements… a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance

25. As noted in ***Snell's Equity***, Thirty-Fourth Edition:

> "[24-040] ……. The basis of the [***Pallant v Morgan***] equity is distinct from proprietary estoppel. It does, however, share the limitation of estoppel that it cannot arise where [the claimant] knows that the agreement between himself and [the defendant] is not legally binding.[5] The practical effect of this limitation is that it is unlikely to apply between commercial parties dealing with each other at arms' length."

26. It cannot be properly argued that the Brothers were here dealing with each other at arms' length. It was on either case an informal business arrangement made between family members, which evolved over time by way of oral exchanges without the benefit of legal advice.

Standard of proof

27. This is not a criminal trial where the standard of proof is beyond reasonable doubt so that I must be sure before making a finding of fact. Rather, I must apply the lower civil standard of proof being the balance of probabilities. In other words, in making a finding of fact, I must be satisfied that more likely than not it is true.

28. However, the witnesses have radically different accounts of what was said, when it was said, for what purpose and with what effect. Ultimately, I must decide, on balance, which of the competing narratives I prefer on the available evidence as being more likely than the other.

Assessment of the reliability of the witnesses of fact in this case

<u>Indicators of unsatisfactory witness evidence</u>

29. In ***Painter v Hutchinson*** [2007] EWHC 758 (Ch), Lewison J (as he then was) identified a non-exhaustive list of indicators of unsatisfactory witness evidence including:

    a. Evasive and argumentative answers;

    b. Tangential speeches avoiding the questions;

    c. Blaming advisers for documentation;

    d. Disclosure and evidence shortcomings;

    e. Self-contradiction;

[5] ***Generator Developments v Lidl UK Gmbh*** [2018] EWCA Civ 396

f. Internal inconsistency;

g. Shifting case;

h. New evidence; and

i. Selective disclosure.

Interference with memory

30. Even honest witnesses can be genuinely mistaken in their evidence. It is a striking feature of this case that the witnesses were seeking to recall events and conversations that took place going back several years, which necessarily gives rise to particular problems. Apart from the fact that, quite understandably, it is often difficult for witnesses to remember accurately what happened or what was said so long ago, witnesses can easily persuade themselves that the accounts they now give are the correct ones.

31. In ***Gestmin SGPS SA v Credit Suisse (UK) Limited*** [2013] EWHC 3560 (Comm), Leggatt J, as he then was, made the following observations about the interference with human memory introduced by the court process itself:

> "[19.] The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.
>
> [20.] Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events."

The Brothers

32. In my assessment, the witness evidence of all the Brothers was tainted to a significant and material extent by indicators of unsatisfactory witness evidence. I set out below some specific examples.

C

33. Internal inconsistencies:

    a. C stated in his written evidence that -

        "[18.] …..I think it was on this [Facetime] call that [D1] mentioned potentially bringing [D4] and [D3] into the Business.

        [19.] I wasn't keen on this suggestion because I thought that there would be a conflict and that I would have to fight with multiple people to get things done. I wasn't on speaking terms with [D4] at the time and he didn't trust me, and I was worried that [D3] would feel like he was being used for his money.

        ……..

        [22.] …… At the [House M]eeting… I proposed that [D3] did not invest in the Business but loaned the money to me and I would pay him back double within 12 months. I posed this in a few different ways to [D3], but he refused to loan the money.

        [23.] [D3] said that he would invest in the Business…….. It was not really discussed in any detail, but my assumption was whatever we contributed would be reflected in our shareholdings, as I would not invest a large amount for a small share. I agreed that [D3] could have a share of the Business at the meeting on this basis.

        [24.] Just before we completed…. D1 told me on a phone call that [D4] was also on board and was putting in some money for the purchase in return for a share of the Business. Until we completed, I did not know for certain the exact sum D4 was contributing….."

    b. In his oral evidence, C –

        i. confirmed that at that the time of Completion he had not spoken to D4 for 10 years following the death of their father; and

        ii. said that he was "not bothered" about purchasing the Centre as he "had his eye on other commercial units."

    c. It makes no sense that C was simply willing to agree to D3 and D4 having proportionate shares in the Company without knowing or even apparently being curious to know what those shareholdings actually were in circumstances when –

i. C was "not keen" that they be involved at all in the business because of the potential for conflict particularly in relation to D4, whom he had not spoken to for some 10 years; and

ii. C was so concerned to avoid D3 having a shareholding that he had even been willing instead to take a loan from D3 and to pay interest on that loan at the eye watering rate of 100% per annum and in the context of a property transaction that C said he was "not bothered" about.

34. Shifting evidence/self-contradiction:

a. Initially in his oral evidence C said that the issue over unequal contributions was first discussed close to Completion "possibly February or March."

b. When it was pointed out that, in his written evidence, C had made no mention of any such discussion, C said –

> "Yes, correct never came about. The conversation never arose because assumed 50/50. Never contemplated unequal contributions. No discussions at beginning when [D3] and [D4] came into purchasing the site. Had meeting in house March/April 2019 between me, [D1] and [D3]. Not specifically discussed unequal contributions but discussed [D3] getting a share for his contribution. Didn't need to have specific discussions about unequal contributions between brothers."

D3

35. Internal inconsistencies:

a. D3's Part 20 Claim expressly adopts paragraphs [15], [16] and [17] of C's Particulars of Claim.

b. The Particulars of Claim allege as follows:

> "[15.] In or around April 2019, [D1] invited [D3] to [C's] home to seek to persuade [D3] to invest in the purchase of the ..Centre. At the meeting were [C], [D1] and [D3].
>
> [16.] During the meeting, [D1] asked [D3] to loan him and/or the Company £75,000. [D3] refused the offer and said, "I want a share in the business." [C] then asked [D3] to lend him £75,000, which [C] would repay double (£150,000) within 12 months. [D3] again refused the offer and expressed that he wanted a share in the business.
>
> [17.] The meeting concluded with [C], [D1] and [D3] verbally agreeing ….[D3] would provide £75,000 in funds to assist with the purchase of the … Centre in exchange for a share of [the Company].

c. However, in his written evidence D3 stated that -

i. he gave D1 "£75,000 for my share of the Site"; and

ii. the payment pre-dated the House Meeting when the oral agreement was allegedly made.

d. In his oral evidence, D3 again said that he "became involved in the deal when handed over the money", which was on 26 March 2019 and therefore before the House Meeting when the alleged oral agreement was made.

36. Shifting evidence/self-contradiction:

a. In his written evidence, D3 stated that, during the Meet-Up, D1 read out everyone's shareholding, although he could not confirm if C was reading from the Spreadsheet or recall the exact figures. However, the Spreadsheet appeared to be accurate as it confirmed that D3 was the second largest shareholder.

b. In his oral evidence, D3 said for the first time that, prior to the Meet-Up and on a couple of occasions, D1 had in fact shown D3 either on paper or a laptop the pie chart recording everyone's shareholding.

c. Again in his oral evidence, D3 said for the first time that he recalled D4 calling him about C's letter of claim dated 24 November 2021 and expressing his surprise that his shareholding was only 17%, which didn't sound much for £75,000. However, the 17% figure was of course the same figure recorded in the Spreadsheet, which D3 had stated in his written evidence was accurate because he was the second largest shareholder.

D4

37. Internal inconsistencies:

a. In his written evidence, D4 stated:

> "[42.] I consider my current shareholding in the Business to be 15%. I invested my £25,000 (plus the money owed to me from my position of [the] Gym) in return for a share in the Business, and as far as I am concerned, the amounts on the [Spreadsheet] …… are accurate.

b. However, in his oral evidence, D4:

i. said that prior to Completion, he did not ask what his shareholding was as he "didn't need to know."

ii. admitted that he remained silent throughout the 2021 Meeting when there were discussions between C and D1 over the extent of D4's interest, if any, in the Company.

iii. accepted that initially he assisted D1 in defending C's claim. For example, he lent D1 the sum of £750 to pay towards D1's solicitors' fees; and

iv. he did not know when he decided to switch sides and bring a claim against D1 for a shareholding in the Company.

D1

38. Evasive answers – D1 was unable to explain why, if D3's and D4's contributions were treated as loans, the pie chart contained in the Spreadsheet prepared by D1 recorded the Brothers' % shares reflective of their financial contributions.

39. Shifting evidence and argumentative answers over the text message sent by D1 to D4 on 27 August 2020 regarding a proposed sale of the Centre. I will return to this text message later in this judgment.

40. Disclosure shortcomings –

    a. D1 disclosed and sought to rely upon documents titled 'After Completion Figures', 'Current Figures' and 'Purchase Figures' (together the "***Account Documents***"), which he claimed accurately recorded the loans D3 and D4 made to the Company.

    b. There is a striking internal inconsistency arising from D1's reliance upon the Account Documents, since it is D1's pleaded case that the alleged loans by D3 and D4 were made to him personally, and not to the Company, to help fund D1's capital contribution towards the purchase of the Centre. In any event, by letter dated 7 March 2024, C's solicitors asked D1 –

        > "Please set out for each of the three [Account Documents]:
        >
        > a) Who created it;
        >
        > b) When it was created;
        >
        > c) Who (if anyone) you allege and/or understand saw it; and
        >
        > d) when (if at all) it was passed and/or sent to each person who allegedly saw it.
        >
        > A copy of each document/page is enclosed with this letter for your ease of reference in answering the above points.
        >
        > If we do not hear from you by midday on 18 March 2024 confirming that you agree that documents 1-3 above were not sent to or seen by our client, Imran and Urfan, then our client will serve you with notice under Part 32.19 of the Civil Procedure Rules to prove the authenticity of each of these documents.
        >
        > Pursuant to 32PD.27.2(b), our client will also object to those documents being admissible at trial as evidence of their contents."

    c. D1 failed to respond to this letter, and so C's solicitors served upon D1 a notice dated 20 March 2024 requiring him to prove the Account Documents at trial. D1's non-explanation for failing to provide the requested information was that he was seeking legal advice in respect of another matter.

41. New, missing and shifting evidence –

a. In his oral evidence, D1 said for the first time that he did try to help D3 to buy a house as promised by getting a mortgage lined up, but which C then stopped.

b. D1 then suggested that he could phone Tony Summerfield, the mortgage broker, to confirm this. However, if Mr Summerfield were able to provide relevant evidence he could and should have been called as a witness.

c. When asked why D1 had never suggested that D3 use the £75,000 to pay a deposit on a house, rather than making a loan, D1 changed his evidence to say that D3 did not want to get a mortgage, which is wholly inconsistent with D1's earlier evidence that he had got a mortgage lined up but which C then stopped.

d. D1 appeared to be making up his evidence as he went along in an attempt to answer questions in a manner consistent with his case.

42. Shifting case – In his statement of case, D1 denied that the House Meeting took place, but in his written and oral evidence he accepted that the House Meeting had taken place. D1 unconvincingly sought to explain away this significant change of position by claiming that he had meant to say in his statement of case that the House Meeting took place in the March and not in the April as claimed by C.

Other witnesses

43. C called his other brother, Mohammad Nasir Butt, who gave evidence of his recollection of what was agreed between the Brothers in connection with the purchase of the Centre.

44. D1 called his wife, Iram Shabana, who gave evidence of her recollection of what was said during the course of the House Meeting.

45. I did not find that the evidence of Mr Butt and Mrs Shabana was tainted by indicators of unsatisfactory witness evidence. I found them to be honest witnesses doing their best to assist the Court. However:

a. much of Mr Butt's evidence was in reality mere recollections of what he had been told by a particular Brother at a particular time rather than matters directly within his personal knowledge.

b. Mrs Shabana was not present in the living room where C, D1 and D3 held the House Meeting. She was in the dining room, which was separated from the living room by wooden double doors. Mrs Shabana to her credit accepted in cross examination that she did not hear mentioned a number of matters that D1 said in his own evidence were discussed during the meeting.

c. they were both seeking to recall conversations that took place several years ago.

d. neither can be regarded as detached or objective observers. Mr Butt has been sued by D1 in parallel but unconnected court proceedings in which D1 alleges that Mr Butt has forged a disputed family will. Mrs Shabana is the wife of D1 and has an indirect financial interest in the outcome of the proceedings. Therefore, both witnesses were subject to significant motivating forces and powerful biases.

Conclusion

46. For all these reasons, I have approached the evidence of all the witnesses of fact with a substantial degree of caution.

Subsequent conduct

47. In ***Carmichael and another v National Power Plc*** [1999] 1 WLR 2042, the House of Lords held that the Industrial Tribunal had been entitled, when determining as a question of fact whether a contract of employment had been agreed between the parties, to have regard to the parties' subsequent conduct. In so deciding, Lord Hoffman said this (at [2050H], and with my emphasis added):

> "…….In the case of a contract which is based partly upon oral exchanges and conduct, a party may have a clear understanding of what was agreed without necessarily being able to remember the precise conversation or action which gave rise to that belief. As the Court of Appeal pointed out, the tribunal did not make any specific findings about what was said at the interviews or on any other occasion. But the terms of the engagement must have been discussed and these conversations must have played a part in forming the views of the parties about what their respective obligations were.
>
> The evidence of a party as to what terms he understood to have been agreed is some evidence tending to show that those terms, in an objective sense, were agreed. Of course the tribunal may reject such evidence and conclude that the party misunderstood the effect of what was being said and done. But when both parties are agreed about what they understood their mutual obligations (or lack of them) to be, it is a strong thing to exclude their evidence from consideration. Evidence of subsequent conduct, which would be inadmissible to construe a purely written contract (see *Whitworth Street Estates (Manchester) Ltd. v. James Miller and Partners Ltd.* [1970] A.C. 583) may be relevant on similar grounds, namely that it shows what the parties thought they had agreed. It may of course also be admissible for the same purposes as it would be if the contract had been in writing, namely, to support an argument that the terms have been varied or enlarged or to found an estoppel."

Importance of corroborating contemporaneous documents, if available

48. In ***The Ocean Frost*** [1985] 1 Lloyd's Rep 1, Robert Goff LJ observed (and which observation was described as "salutary" by Lord Mance in ***Central bank of Ecuador v Conticorp SA*** [2015] UKPC 11 at [164]):

> "[57.] …….. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."

49. Similarly, in ***Gestmin SGPS SA v Credit Suisse (UK) Limited***, Leggatt J, having commented upon the unreliability of human memory, concluded that:

> "[22.] 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."

Overall approach to findings of fact in this case

50. In making my findings of disputed facts in this case, I have had particular regard to what the Brothers subsequently said and did, the contents of the reliable contemporary documents, the undisputed facts, the inferences properly to be drawn from those undisputed facts, and the overall probabilities including by reference to the parties' motives.

Analysis and findings of fact

Family dynamics

51. At the material times:

    a. D1 and D4 were in partnership together and as such owed each other fiduciary duties. However, D1 saw himself as more commercially savvy than his brother. He was willing and able to exploit his influence over D4 for his own advantage and contrary to the interests of D4. In 2019, D1 persuaded D4 to transfer the business of the Gym into D1's sole name on the spurious ground that it would help D4 to avoid any personal liability notwithstanding that the business had the benefit of public liability insurance. In 2020, D1 then incorporated the business into a limited company to remove the risk of any personal liability arising, but D4 was still not made a shareholder.

    b. C and D4 were estranged and had been for some considerable time following their late father's death.

    c. D3 exploited the fact that C and D1 were competing for his money and sought to negotiate the best deal for himself.

52. In summary, theirs was not a sibling relationship founded upon mutual trust and affection. As foreseen by C, it was perhaps inevitable that once all the Brothers became involved in the purchase of the Centre there would at some point be a falling out.

Alleged agreement made between all the Brothers pre-Completion that the shareholdings be proportionate to their respective financial contributions

53. It is not disputed that:

    a. prior to Completion, D1 was struggling to raise the funds to meet his equal contribution towards the purchase of the Centre as per the terms of the 2017 Agreement;

    b. D1 approached D3 and D4, who provided their own funds;

    c. Even on D1's case (and assuming that the payments from D3 and D4 were loans to D1), C ultimately contributed more than D1 towards the purchase of the Centre - £240,800 from C and £200,850 from D1.

54. However, C ultimately conceded in his oral evidence and consistent with his written evidence that, even after D1 told C that he could not raise his share of the funding and was bringing D3/D4 into the business, the consequences of unequal contributions were never discussed prior to Completion.

55. It was C's written evidence that:

> "[29.] At the [Meet-Up], [D1] also told us what shares everyone held… I can't recall the precise percentages [D1] said, but I understand them to be the same as those on the "shareholders contribution" document. Namely, that I have 59%, [D3] has 15%, [D4] has 17% and [D1] has 9%."

56. When it was pointed out to C in his oral evidence that, contrary to his written evidence, the Spreadsheet he sought to rely upon actually recorded the shareholdings 59% (C), 17% (D3), 15% (D4) and 9% (D1), C sought to explain away his mistake by saying:

> "I should have paid more attention at the meeting. It was a relaxed meeting."

    I remind myself that C had not spoken to D4 for some 10 years, which it makes it inherently unlikely that it was somehow a relaxed meeting. The more likely explanation for C's apparent indifference to what was said is that he was assured of his registered 50% shareholding, which was unaffected by any separate agreement made between D1 and D3/D4.

57. I am reinforced in that view by the fact that the Transcript repeatedly records C at the 2021 Meeting acknowledging that he was unaware, and seeking clarification, of what had been agreed between D1 and D3/D4 before finally conceding that any such agreement related only to D1's 50% shareholding:

> C "So, this is the money [D3] and [D4] put in? Was that given us a loan, or was that given as, they wanted a share in the site? What was it? So, we need to clarify that.
>
> …….
>
> D1 "Hold on, I need to write your points down, because I want it to be clear…. What agreement [D1] has with [D4] and [D3}. So that's the first point……So is that correct? Is that correct? In summary?"

C "Yes."

……..

Yeah, let's start on point one. Well go on then."

D1 "Elaborate on it then. So you want to know what I've, what the agreement was, my agreement was with [D4] and [D3]."

C "Right, we agreed, we had an agreement that we'd buy the site 50/50, me and you, right?"

D1 – "Yeah, that's correct."

C "And [D1], [D4] and [D3] didn't come into the equation in this. And why have they come into it, why have they come into it? Because you didn't raise the 50% as you agreed you would do. So based on the cash, I had to put in more on my side, and then [D4] and [D3] put money in. What is, so far as my agreement with you, 50/50 partnership, but that 50/50 partnership, the percentage changed, because you didn't bring the 50% of the, your money into this.

……

Right, one is what is [D3's] and [D4's] business in this? I mean, when, what, what did you agree with them?"

……..

D1 "….What I, where I get my money from and how I put my, my percentage has got no, nothing to do with you. And neither has, if I give a percentage of my share to these two, that's up to me, isn't it? Would that not be right? What you do with your share is your shit. Fine, you can do what you like, that's none of my business. Where you get your money from is none of my business either. You've got your money on the table, fine, I haven't questioned you about it, I haven't questioned who has a share in it, I'll let you deal with it.

……..

….. so what I do with my share is up to me right? What you do with your share is your business, nothing to do with me, that's your, that's your business……

……..

…. again what I do with my shares is my business, right? If I want to give them away, I'll give them away, mate, you know, that's up to me, I, you know, so"

C "Fine.

……..

> So it needs to be clear, fact. You know, fine, you do whatever you want with your share, give it to whoever, but the point I'm making here
>
> ……
>
> What we need to establish, who's got what and who owns percentage wise.
>
> …….
>
> Right, right, fine. Whatever they got between you, that's their, your business with them, fine….."

58. I find on balance that, prior to Completion, C did not agree or intend that the shareholding in the Company be proportionate to each Brothers' financial contribution towards the purchase of the Centre.

59. In my judgment, there is nothing to rebut the presumption that C's beneficial interest corresponds to his 50% legal interest.

Character of the financial contributions made by D3 and D4

60. That leaves to be determined the issue of the character of the financial contributions made by D3 and D4 towards the purchase of the Centre: were they investments as D3 and D4 claim, or unconditional loans to D1 as he claims?

The written loan agreement

61. It is not disputed that, on 3 November 2021, D4 loaned D1 the sum of £25,000 to help clear the mortgage secured against the Centre. It is also not disputed that, on or around 20 December 2021, D4 drafted a loan agreement, which was back dated to 23 April 2019 and by which D4 agreed to lend the sum of £25,000 to D1 to be repaid by D1 "when he has the funds to do so."

62. It was D4's evidence that:

    a. D1 instructed D4 to draft the loan agreement and to back date it to 23 April 2019.

    b. It was only later when preparing his witness statement for this trial that D4 realised that the date on the written loan agreement was the date that he made the original payment of £25,000 towards the purchase of the Centre, which realisation "brought a tear to my eye."

63. It was D1's written evidence that it was D4 who decided to draft the loan agreement as proof that D4 had loaned the money back in 2019 for the purchase of the Centre without any conditions.

64. Ultimately, on balance, I prefer D4's evidence in this regard for the following primary reasons:

    a. C's letter of claim to D1 is dated 24 November 2021.

b. It is more than mere coincidence that shortly thereafter the written loan agreement was drafted.

c. It makes no sense that D4 would have felt the need to record in writing an alleged loan made in 2019, but not the loan made in 2021 in exactly the same amount.

d. D4 has disclosed a copy of an email dated 20 December 2021 and sent to D1 attaching a copy of the written loan agreement and asking D1 to check it.

e. When the email was put to D1 in cross examination, D1 conceded that he had asked D4 to draft the loan agreement after D1 had instructed solicitors in relation to C's letter of claim. D1 had been advised that he needed documentary proof, although he did not explain this to D4.

65. Therefore, I do not attach any weight to the written loan agreement that D1 seeks to rely upon in support of his case. I do, however, find that the written loan agreement was another example of D1 seeking to manipulate D4 for D1's own advantage and contrary to the interests of D4.

Inherent probabilities

66. D1 was unable to give any credible/coherent evidence of how and when he planned to pay off the alleged loans. This makes it inherently unlikely that D1 ever intended that the payments by D3 and D4 were personal loans that he was required to repay.

67. Further, on D1's case the alleged loans carried no interest and there was no discussion over the timescales for repayment.

68. It makes no sense that D3 would have committed such a large sum by way of his savings for absolutely no material gain as alleged by D1:

a. D1 sought to claim that D3 was motivated by a wish to get the money out of his bank account to avoid jeopardising his eligibility for state benefits.

b. However, D1 also accepted that D3 sought to exploit the fact that C and D1 were each competing for his money in order to secure the best deal for himself.

c. It is not disputed that C made a counter offer at the House Meeting to repay any loan with interest and thereby double D3's money within 12 months.

d. However, it was D1's evidence that D3 nevertheless preferred to lend the money to him instead without any interest or timescales for repayment because of some vague unfulfilled assurance that he would help D3 to get a house whilst at the same time effectively preventing D3 from using that same money as a deposit on any house purchase.

69. Whilst D4 was easily influenced by D1, it still makes no sense that D4 would have been willing to make a loan on such unfavourable terms:

a. from the money (£25,000) then held in his savings account (Nationwide Cash Builder), which was accruing interest; and

b. to assist D1 to acquire with C, whom D4 did not trust and had not spoken to for a decade, the very premises from which D4's business (the Gym) operated and also using in part a share of the profits that D4 was otherwise entitled to receive from that business.

70. It is inherently more likely that the financial contributions made by D3 and D4 were in the character of investments in the joint property venture rather than unconditional loans to D1.

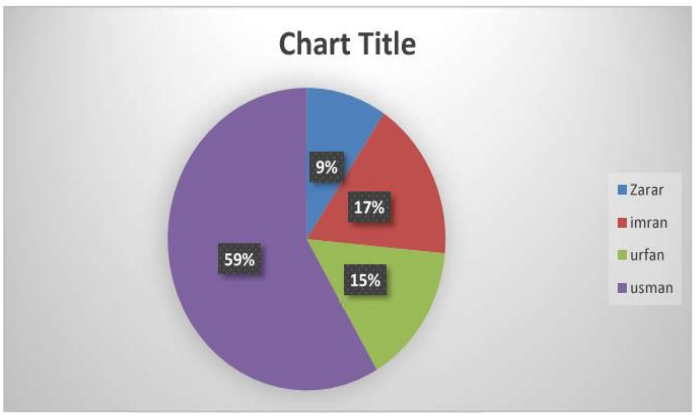
Subsequent conduct

71. I consider that their subsequent conduct overall in terms of what was said and done is also more consistent with the financial contributions made by D3 and D4 being in the character of investments rather than loans:

a. D3 and D4 made their payments directly into the Company's bank account rather than to D1 personally.

b. The Spreadsheet admittedly prepared by D1 and emailed to C on 16 April 2020 records -

Zarar	40,997
imran	75,000
urfan	65,997
usman	255,601.19



The Spreadsheet expressly records each of the Brothers receiving a % share calculated by reference to their respective financial contributions towards the purchase price of the Centre. Further, D4's recorded financial contribution includes an amount equivalent to half of the profits arising from the Gym that were applied towards the purchase of the Centre, in addition to his £25,000 direct payment to the Company. In his oral evidence, D1's unconvincing explanation for recording the payments in this way, if they were not investments, was that he was only messing around and it looked great so he just left it in. D1 not only prepared the Spreadsheet, he also named it 'Shareholders contributtion' (sic). I remind myself that D1 prided himself on being commercially savvy.

c. C has disclosed another document that he says was prepared by D1 -

“M&B Board Meeting

• Opening meeting with congratulations on purchase of site. Before we start we need to acknowledge that we are business partners and not family in regards to the site.

• These meetings are important, and everyone needs to attend at the same time as its about being transparent!! we will not be discussing business matters on an individual basis as its not appropriate without all members present, so anything that needs to be discussed can be raised at the board meetings which will be held monthly/quarterly.

• What does this mean for us? Before we talk about the work, want to discuss everyone who is involved and the shareholders.

- Show value of shares- spreadsheet/piecharts

- If any partner wants to sell their shares they can do so but it has to be open for all partners to buy if they want to.

- Establish job roles within team- talk about job roles (who is doing what)

- Establish value to that job role. (wages)

• Future

- Short term plan - show income generated at present and the projected income within a years time.

- Medium term plan - create plan for next board meeting.

- Long term plan - create plan for the next board meeting.

• All M&B documents will be in the filing cabinet to view for all. Documents will be locked away if you would like to view the documents all you to do is ask but they will be locked away as they contain sensitive info.

• 1% Gross income - will go towards sadaka

• Office

• I will be working the site and gym so my time will be very limited so please don't ring me to ask for trivial things that have no importance towards the business as my workload has increased.

• Last point - if anyone is not happy with being part of the M&B business, you can have you're money back but this will take up to 2years (but that is not written in stone).

• This is a general overview of where we are at now.”

C said that he discovered this document ("***the Board Minutes***") on a memory stick that D1 gave him in September 2019. D1 does not dispute that he gave C a memory stick of Company documents, but he denies that it contained the Board Minutes, which he claims were forged by C. However, I do not consider that it is necessary for me to determine who created the Board Minutes, since the single joint expert, Ronald Gordon Cufley (BEM), from an analysis of the metadata is of the opinion that the electronic document was created on or before 27 May 2019. That evidence was not challenged at trial. Therefore, I find that the Board Minutes were created shortly after Completion and long before C and D1 fell out. Whoever was the creator, the Board Minutes are a contemporary and likely reliable record of what was discussed at the Meet-Up. It is not disputed that D3 and D4 were in attendance at the Meet-Up. The recorded discussions are entirely consistent with D1 having agreed to D3 and D4 being investors and shareholders in the Company – "Before we talk about the work, want to discuss everyone who is involved and the shareholders….. if anyone is not happy with being part of the M&B business, you can have you're money back but this will take up to 2years (but that is not written in stone)."

d. On 27 August 2020, D1 sent the following text messages to D4 –

> "Was thinking if we sell the site and the gym Could potentially get 300k for gym 900k for site total 1.2mil
>
> We both walk away with about 225k each."

In his oral evidence, D1 was unable to explain how it was that D4 would have been entitled to an equal share from a sale of the Centre if D4 was not invested in the holding Company and had simply loaned D1 the sum of £25,000 towards the purchase. Initially, D1 said that he was not referring to the Centre in his text messages, before conceding that he was "probably talking about the site." He became increasingly argumentative and claimed that "Just ideas. I write something down, is that legally binding?"

e. The Transcript repeatedly records D1 at the 2021 Meeting acknowledging that D3 and D4 were investors and shareholders in the Company through his 50% shareholding. By way of illustration –

> D1 "Yeah, you know he lent me the money, right? So, if I decide to give him a part of my share, that's between me and Imran."
>
> D3 "I didn't lend you the money."
>
> D1 "I asked you for the money, and in return I give you a share of my share"
>
> ……
>
> ….. The gym was 50% ownership of [D4], so [D4] and me are one entity, right? Legends Gym owns a percentage of the shares. Right, so Legends Gym owns a percentage share. Imran

lent me the money in return that I give him a share, that share comes out of my, my share, not yours….

……..

…… you're saying where the money come from. I answered the question where the, the money came from Legends right. 50% of that money belongs to, listen, listen 50% of that money belongs to [D4], right? So, he, he is coming to business with me right, right? I'm coming as a share, again what I did with my shares is my business right? If I want to give them away, I'll give them away….

C "Fine"

D1 "…… you don't like the fact that [D4] and [D3] are involved with me and my percentage of shares, because that's what it sound like to me, you know?

……

….. You own a certain percentage, I owe a certain percentage, out of my percentage, right, [D4] has something out of my percentage and [D3] has something out of my percentage. Are we clear? Is that clear enough for everybody?"

C "Wow, don't start taking that tone. Calm down."

D1 "No, no, no, no because… I'm finding this offensive and I'm getting annoyed because, cause it's quite simple for me and you understand this regard who has the shares."

……

C "Right, right, fine. Whatever they got between you, that's their, your business with them, fine. Don't come to me, next, if your man comes to me and says 'Right, will you buy my share?' No, it's not my problem…."

D1 "Right okay, okay, now, now, can I stop you there. You've been asking to buy his share…one minute you say, 'He's not a shareholder' and the next minute you're saying, you acknowledge him as a shareholder, because then you've been offering to buy his shares. And I've been saying to him '…that's your choice and it's a very good deal. Do I want you to sell it? No, but do what's right for you. And I personally in one year, the return that you're getting is great, it's fantastic…."

D3 "No, you're not doing that anymore"

D1 "So he's not doing that anymore…. That's your business with him, I even said that to you on the phone…I explained to you, 'Well, no, sorry, I've been actually encouraging him to sell to

you, sell you his shares because it would be more advantageous for him financially, you know?'"

Conclusion

72. It is not disputed that:

    a. The Company was incorporated as a special purpose vehicle to acquire the Centre as a joint property venture between C and D1.

    b. It was agreed between C and D1 that they would each contribute the sum of £200,000 towards the purchase of the Centre with each being a 50% shareholder in the Company.

    c. D1 was unable to raise sufficient funds to meet his agreed 50% contribution towards the purchase of the Centre, and so he approached D3 and D4 to secure additional funding and to make good the shortfall.

73. I find on balance that:

    a. Prior to Completion, D1 persuaded D3 and D4 to meet the funding shortfall by investing for a share in the joint property venture. That finding is more consistent with their subsequent conduct overall in terms of what was said and done. Further, it makes no commercial sense, and so is inherently unlikely, that D3 and D4 would have agreed instead to make such substantial financial contributions by way of alleged loans to D1, which were unsecured, interest-free and had no fixed repayment terms.

    b. Whilst D3 and D4 were unsurprisingly unable to recall now the precise % figures that were discussed prior to Completion, it is likely that the shared intention was that the shares of D1, D3 and D4 would be proportionate to their respective investments. I am reinforced in that view by the fact that this was certainly how, shortly after Completion, D1 chose to record the effect of their agreement in the Spreadsheet albeit also taking into account C's separate investment.

    c. As recorded in the Spreadsheet the respective investments were £40,997 (D1), £75,000 (D3), and £65,997 (D4).

Applying the law to the particular facts

74. The primary claims are that the beneficial ownership of the shares in the Company are subject to a resulting or constructive trust.

75. A resulting trust takes a narrow approach, presumptively recognising a share in property based on the proportion of the purchase price contributed, although the presumption can be rebutted through evidence of contrary intention.

76. A constructive trust is founded on a wider range of circumstances than merely the proportion of the purchase price contributed. As observed by Edmund-Davies LJ in ***Carl Zeiss Stiftung v Herbert Smith & Co. (no.2)*** [1969] 2 Ch. 276 at 300:

> "English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague

so as not to restrict the court in technicalities in deciding what the justice of a particular case might demand."

77. That said, there are established categories of case where the imposition of a constructive trust by operation of law is recognised. In ***Cobbe v Yeoman's Row Management Ltd*** [2008] UKHL 55, Lord Scott observed:

> "[30.] It is impossible to prescribe exhaustively the circumstances sufficient to create a constructive trust but it is possible to recognise particular factual circumstances that will do so and also to recognise other factual circumstances that will not. A particular factual situation where a constructive trust has been held to have been created arises out of joint ventures relating to property, typically land. If two or more persons agree to embark on a joint venture which involves the acquisition of an identified piece of land and a subsequent exploitation of, or dealing with, the land for the purposes of the joint venture, and one of the joint venturers, with the agreement of the others who believe him to be acting for their joint purposes, makes the acquisition in his own name but subsequently seeks to retain the land for his own benefit, the court will regard him as holding the land on trust for the joint venturers. This would be either an implied trust or a constructive trust arising from the circumstances and if, as would be likely from the facts as described, the joint venturers have not agreed and cannot agree about what is to be done with the land, the land would have to be re-sold and, after discharging the expenses of its purchase and any other necessary expenses of the abortive joint venture, the net proceeds of sale divided equally between the joint venturers. A number of cases exemplify the operation of a constructive trust in such a situation. ***Pallant v Morgan*** [1952] Ch.43 was one such case."

78. D1 argues that the alleged agreements are chronologically inconsistent being allegedly made after the monies had been advanced. However, a ***Pallant v Morgan*** equity does not depend on there being a legally binding agreement between the parties. In ***Banner Homes*** [2000] EWCA Civ 18 the arrangement was not sufficiently certain as to constitute an enforceable contract. Chadwick LJ held (at para [36.(1)]) that:

> "It is unnecessary that the arrangement or understanding should be contractually enforceable. Indeed, if it is, there is unlikely to be any need to invoke the ***Pallant v Morgan*** equity, since equity can act through the remedy of specific performance and will recognise the existence of a corresponding trust."

79. However, I do not consider for present purposes that anything turns on the important conceptual differences between these two classes of trust (resulting or constructive) where the evidence relied upon for each is the same. Ultimately, it is a question of fact. Were the financial contributions of D3 and D4 investments in the acquisition of the Centre (as C, D3 and D4 claim), or were they unconditional loans to D1 (as he claims)?

80. I have found that:

    a. C did not agree or intend prior to Completion that the shareholding in the Company be proportionate to the Brothers' financial contributions towards the purchase of the Centre.

b. Prior to Completion and by way of separate agreement to make good the funding shortfall, (i) D1 persuaded D3 and D4 to invest in and for a share of the joint property venture, and (ii) there was a shared intention that D1, D3 and D4 would each acquire an interest in the Centre derived from D1's 50% shareholding in the holding Company proportionate to the amounts of their respective investments.

c. As per the Spreadsheet drafted by D1 shortly after Completion, the respective investments were £40,997 (D1), £75,000 (D3), and £65,997 (D4).

81. In conclusion:

a. C's beneficial interest corresponds to his 50% legal interest in the shareholding of the Company.

b. Whether under a resulting trust or a constructive trust, D1's 50% shareholding in the Company is beneficially owned by D1, D3 and D4 in shares proportionate to the amounts of their respective investments.

Overall conclusion

82. I find and declare that:

a. C is the legal and beneficial owner of 50 of the ordinary shares in the capital of the Company.

b. D1 holds 50 of the ordinary shares in the capital of the Company on trust for -

i. D1 - 11;

ii. D3 - 21; and

iii. D4 - 18.