

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (Ch D)**

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

18 June 2021

Before :

**DEPUTY MASTER FRANCIS**

Between :

**SHARAS ALEXANDER CHANGIZI**

**Claimant**

- and -

**(1) LARA MARIE CHANGIZI**  
**(2) ROBIN DONALD MAYES**  
**(executor of the Estate of Parviz Changizi**  
**(3) PAMELA KATHLEEN CHANGIZI**  
**(executor of the Estate of Parviz Changizi**

**Defendant**

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The **Claimant**, Sharas Alexander Changizi, in person  
The **First Defendant**, Lara Marie Changizi, in person  
**Lina Mattson** (instructed by **Berry & Lamberts LLP**) for the **Second and Third Defendants**

Hearing date: 2 June 2021  
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**Approved Judgment**

I direct that this approved judgment, sent to the parties by email on 18 June 2021, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

## **Deputy Master Francis:-**

### **Introduction**

1. This is my judgment on the application of the Second and Third Defendants dated 23 October 2020 for the summary dismissal under CPR Part 24 of the claim as it has been brought by the Claimant on the grounds that it has no real prospects of succeeding. The application is framed in the alternative as one to strike out the claim under CPR r. 3.4 (2) (a) as disclosing no reasonable grounds for bringing the claim.
2. There is also before the Court an application by the Claimant dated 4 January 2021 to dismiss or strike out the defence of the First Defendant. By his order dated 6 January 2021 Deputy Master Moraes directed that both applications should be heard at the same time, but with the Second and Third Defendants' application standing as the lead application. For reasons which will become apparent, I have found it unnecessary to determine the Claimant's application.

### **Background**

3. This is the latest of a series of unhappy disputes between members of the Changizi family relating to the estate of Parviz Changizi, the father of the Claimant, Sharas, the First Defendant, Lara, and their two siblings, Gheev and Sarah, and husband of the Third Defendant, Pamela. I will refer to the protagonists by their given names for convenience without intending any disrespect thereby.
4. Parviz died on 18 September 2010, by then living in Spain as his habitual residence and having taken Spanish nationality. He had formerly lived in England with his family, after coming to this country from Iran at the time of the Islamic Revolution as a refugee. He had made an English will on 1 March 1985 under which he appointed Robin Mayes, the Second Defendant, and Pamela as his executors and trustees (referred to collectively below as "the Executors"), and left his residuary estate on trust, as to one-third share for Pamela, and as to the remaining two-thirds share in equal shares for his four children. Probate of that will, as it related to Parviz's property in England (which I refer to as "the Estate"), was granted to the Executors in solemn form by order of Mann J dated 30 July 2014 at the conclusion of contentious probate proceedings in which Sharas had sought to challenge the will on various grounds. In the meantime, Lara, Gheev and Sarah, but not Sharas, had entered into a deed of variation on 17 July 2012 passing their shares in the Estate to their mother. So, as matters now stand, Pamela is a beneficiary of 5/6<sup>th</sup> share of the Estate with Sharas the beneficiary of the remaining 1/6<sup>th</sup> share.
5. The principal asset in the Estate was a flat at 19 Wetherby Mansions in Earls Court Square, SW5 9BH ("the Property"). This had been purchased on 25 September 2009 by Parviz for a price of £695,000 in the joint names of himself and his daughter Lara on the terms of an express trust of land under which Parviz had an 80% beneficial interest and Lara a 20% beneficial interest. Lara lived in the Property as her principal residence following its purchase.
6. Previously Parviz had made substantial lifetime gifts to each of his four children in or after 2007, apparently utilizing monies realised on his sale of the family property, Fairhill

in Hildenborough, Kent. These gifts had taken the form either of cash sums or property transfers or contributions to the costs of purchasing property, to a value of £300,000. In Lara's case, Parviz had paid for the purchase of a one bedroom flat known as Flat 11, 3 -5 Collingham Place in March 2007 at a price of £428,000 of which £300,000 was intended as a gift. The treatment of the balance of the purchase monies of £128,000 is one of the issues which falls for consideration on this application.

7. Each of these lifetime gifts were potentially exempt transfers on which inheritance tax became payable in the event as Parviz did not survive for 7 years after they were made. The manner in which the inheritance tax due in relation to the lifetime gift to Lara was discharged is another of the issues which falls for consideration on this application.
8. In July 2016 the Executors brought a claim in the County Court at Central London on behalf of the Estate seeking an order against Lara under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 for the sale of the Property, which they said was necessary to enable the outstanding inheritance tax for which the Estate had become liable (including that due in respect of the lifetime gift to Lara) to be discharged and to enable the remaining funds in the Estate to be distributed ("the 2016 proceedings").
9. Lara resisted that claim, and contended that she was entitled to buy out her late father's share in the Property for a sum equal to 80% of the purchase price which had been paid in 2009, a sum of £556,000, under the terms of an oral agreement which she had made at the time of purchase with her father, to which the court should give effect under principles of promissory or proprietary estoppel. Lara's case was that it had been intended that she should sell her flat at 3- 5 Collingham Place to raise the funds to buy out her father during his lifetime, but his death had intervened, and it was only in 2011 that she finally sold the flat. Since that time she had retained the proceeds, some £461,000, in order that the buy out agreement could be concluded with the Estate.
10. After taking advice from Ms Lina Mattson of counsel, the Executors chose not to contest Lara's contention in those proceedings that she was entitled in principle to buy out Parviz's share under estoppel principles, but instead limited their challenge to the issues (i) whether the purchase price payable by Lara was the full amount of £695,000 which Parviz had paid on its acquisition in 2009 or only 80% of that sum, the sum of £556,000 asserted by Lara, and (ii) whether Lara was liable to pay interest on the purchase price. The issues between the parties as they had been narrowed in this way were recorded by DJ Lightman in an order dated 22 April 2017.
11. That dispute came on for trial before DJ Langley in the County Court at Central London on 6 and 7 November 2017. On 23 November 2017 the judge delivered an oral judgment setting out her decision on the two surviving issues together with a further issue which had been identified at the outset of the trial (iii) whether Lara should be denied relief on grounds of delay. The judge determined all of the issues in Lara's favour. I shall return to certain passages of her judgment in due course. For present purposes, it is sufficient to note that she found Lara to be a truthful witness after her evidence had been challenged at some length in cross-examination by Ms Mattson, who appeared for the executors then as she does today in these proceedings.
12. As a result of her determination, DJ Langley made an order on 23 November 2017 in the following terms

“IT IS DECLARED THAT

1. The Property known as and situate at 19 Wetherby Mansions, Earl’s Court Square, London SW5 9BH is held by the Claimants and the Defendant as tenants in common with the Claimants having an 80 per cent share and the Defendant a 20 per cent share of the beneficial interest in the Property.
2. The agreement between the Defendant and the late Parviz Changizi was that she be able to purchase the deceased’s 80% interest for £556,000.
3. No interest or compensation is payable by the Defendant to the Claimants on account of any delay or at all.
4. There is no bar on the Defendant’s equitable right to enforce the Agreement as a result of any delay or otherwise.

IT IS ORDERED THAT:-

3. The Defendant shall pay the Claimants £556,000 for their 80% equitable interest by 4pm on 12<sup>th</sup> January 2018.
4. If the Defendant makes such payment, the Claimants shall have no further interest in the property. The restriction registered on the title of the property on 13<sup>th</sup> October 2009 shall be removed.

The judge then went on to make a further order in default of Lara exercising her purchase entitlement for the Property to be sold.

13. On 20 December 2017 Lara paid the purchase price of £556,000 as ordered by DJ Langley, less a deduction of £25,000 in respect of costs which had been ordered to be paid to her by the executors, and in return the Property was transferred into her sole name.
14. Sharas was not a party to the 2016 proceedings. He had no right or reason to be a party because the proceedings were not concerned with internal matters of the administration of the Estate but rather with the recovery or realisation of property belonging to the Estate which it was properly for the Executors to pursue on behalf of the Estate. However, by an application notice dated 7 September 2017 he did apply to be joined to the proceedings, he explains, having become concerned that the Executors were not making a robust enough challenge to Lara’s claim, and in particular were not challenging the principle whether any estoppel arose in her favour at all. That application was heard by DJ Langley a week before the trial was due to commence and was dismissed by her order dated 2 November 2017.

**The present claim and the application for its summary dismissal**

15. Sharas was not content to leave matters there. On 6 July 2020 he issued the present claim, which he described as a derivative claim brought by him as a residuary beneficiary for the benefit of the Estate, against Lara, as named first defendant, and the Executors as named second and third defendants. In the claim form, he stated the claim to be one for a

declaration that the Estate was entitled to a 100% beneficial share in the Property under a constructive trust or by way of equitable lien.

16. He set out the basis for such claims in the Particulars of Claim attached to the claim form. It was founded on two separate obligations or liabilities which Sharas identified that Lara had to the Estate. Quoting from the particulars of claim, they were stated to be as follows:-

*“(2) The First Defendant owed the Estate £128,000 for a self-alleged loan. Under common law restitution the Claimant claims interest at 9.89% p.a. compounded monthly be applied to the First Defendant’s alleged loan of £128,000 ... from the date of death until the date the Court declares the Estate’s constructive trust was established and held over the Property (Total interest £133,416.95) at which date the self-alleged loan and its accumulated interest were amalgamated into and formed part of the Estate’s constructive trust into proportionate share in beneficial interest rights, into share in all beneficial proceeds value and a 1000% share of all profits value*

*“(3) The First Defendant owed the Estate £225,849.03 for Inheritance Tax (“IHT”) and IHT interest due to HMRC on her failed Potentially Exempt Transfers (“PETs”) as the Estate was immediately compelled by English statute to pay HMRC all the First Defendant’s IHT and IHT interest in the event that the First Defendant failed to pay said amounts to HMRC within the 12 month period after the date of the Deceased’s passing (by 18 September 2011 ...). The First Defendant indeed failed to pay HMRC before 18 September 2011, had no intention to pay HMRC and indeed the Estate was so compelled.*

*“(4) The First Defendant paid £556,000 to the Estate for the Estate’s 80% beneficial interest in the Property in December 2017 and the Estate was then immediately in funds to pay HMRC the substantial IHT and IHT interest due on the First Defendant’s failed PETs in December 2017”*

17. These obligations were said to give rise to a constructive trust in favour of the Estate in the Property. In addition, paragraph (5) of the Particulars of Claim asserted as follows:-

*“(5) Although breach of trust or fiduciary duty are not necessary for the remedies sought, the Claimant alternatively relies upon the clear breach of trust and / or fiduciary duty of the Co-Executors and the dishonest assistance and / or knowing receipt of the First Defendant giving rising to dishonest participation in breach of trust and / or fiduciary duty. The Co-Executors sold estate property to the First Defendant knowing that she owed substantial sums to the Estate and reciprocally the First Defendant bought estate property knowingly so and knowingly owing. Further alternatively still the Claimant relies upon knowing receipt only of the First Defendant. The conduct throughout of both the First Defendant and the Co-Executors is utterly unconscionable”*

18. There are no particulars given of the alleged breaches of trust or fiduciary duty on the part of the Executors, or of the alleged dishonesty on the part of Lara. Nor is it at all clear on the face of the claim the basis upon which it is alleged that any alleged misconduct on the part of the Executors or Lara in proceeding with the purchase of the Property as it had

been directed by the court whilst the two identified obligations were unsatisfied could entitle the Estate to the entire beneficial interest in the Property or indeed any lesser such interest.

19. On 27 August 2020 Sharas filed a witness statement in which he stated that he was amending the claim so that it was brought in his personal capacity as well as a derivative claim on behalf of or for the benefit of the Estate. However, no further or additional relief was identified in the statement as now being claimed by him against either Lara or the Executors in his personal capacity. Indeed Sharas has subsequently been at pains to emphasise that he is not seeking in these proceedings to assert a claim against the Executors for damages or equitable compensation for breach of trust or breach of fiduciary duty arising from their conduct of the 2016 proceedings or otherwise, although he intends to do so in separate proceedings in due course: see paragraphs 15 of his witness statement dated 4 January 2021 and paragraphs 45 and 46 of his witness statement dated 20 January 2021.
20. On 23 October 2020 the Executors issued an application for the summary dismissal or strike out of the claim, supported by a witness statement of the same date made by Paul Reader, managing partner of Berry & Lamberts LLP, the litigation solicitors retained by the Executors in the 2016 proceedings, as well as the present claim. Mr Reader made the following short and straightforward points as showing the claim had no real prospects of success:-
  - a) the obligations or liabilities which Sharas alleged were owed by Lara to the Estate at the time of the purchase, even if correct, could not give rise to an proprietary interest in favour of the Estate; as he put it in paragraph 22: *“the claim that a creditor obtains a proprietary interest in funds held by a debtor and therefore a proprietary interest in property purchased by the debtor has no basis in law and is fundamentally misconceived”*;
  - b) in any event the Estate would be estopped from claiming any such proprietary interest in the light of paragraph 4 of DJ Langley’s order of 23 November 2017 cited above;
  - c) the factual basis of the claim was also incorrect:-
    - i) the loan of £128,000 said to be due from Lara to the Estate had been fully repaid; £44,107 of this had in fact been repaid prior to Parviz’s death, with the balance, initially reported to HMRC in the IHT400 as being £83,893 but subsequently adjusted to £85,713, repaid on 6 June 2018;
    - ii) at the date of purchase of the Property, the Estate had not paid the outstanding inheritance tax due in respect of the failed PETs to Lara, and so there was not then in existence any debt or restitutionary obligation on Lara’s part to repay such monies to the Estate; the Estate only paid the tax after the Property had been transferred to Lara, using part of the purchase monies for that purpose.
21. On 20 January 2021 Sharas made a further 42 page statement in response to the summary judgment application. That set out a detailed history of the family dealings and relationships during Parviz’s lifetime, as well as the history relating to the administration

of his estate in both England and Spain in the period since his death. The key points in answer to the application however can be found in paragraphs 67, and 83 to 90.

22. In paragraph 67, Sharas addressed the factual basis of the claim as it concerned the sum of £128,000. He explained that this sum was not after all a loan advanced by Parviz to Lara and owed by Lara to the Estate following his death. Instead:-

*“... C believed the evidence (once it is finally provided to C) would establish that the £128,00 [sic] advanced to ID by the Deceased inter vivos was in fact not a “loan” rather the Deceased’s property in the hands of ID advanced to ID by the Deceased on trust [see here Exhibit SAC-7 page 49 paragraph labeled as [8]]. Furthermore, the interest claimed by C is not “loan” interest rather restitutionary compound interest for trust money (trust property) had and received and not returned to the Trust on death of the Deceased and the Trust needing to call in all Trust assets to sell and convert into cash / ready money for payment of just debts, estate IHT due and testamentary expenses and thereafter full distribution to the Trustee beneficiaries. That is why restitutionary compound interest claimed runs from date of death and until ID used that Trust money (Trust property) to purchase the 80% share of the Property from the Trustees ...”*

So, it appears, Sharas now alleged that part of the money used by Lara to purchase the Property in fact represented sums advanced by Parviz to be held for his benefit and compound interest accrued on such sums, and which she held accordingly on trust for Parviz during his lifetime and for the Estate following his death.

23. As regards the sums paid by the Estate in satisfaction of the IHT liability, Sharas said this in paragraph 67:-

*“The Trust money (Trust property) ID was unlawfully advanced by the Trustees to discharge her liability to HMRC for the substantial IHT and IHT interest on her failed PETs was Trust property at the time ID purchased the Trust’s 80% share in the Property from the Trustees and again ID interfered with the Trust’s property rights. Mr Reader cannot argue as he does at his paragraph 27 that at the time ID paid for the Trust’s 80% share in the Property the Trust had not paid the IHT and IHT interest on the failed PETs because the payments are both causally and transactionally linked to ID’s purchase of the Property and the scheme hatched by the Trustees together with ID and executed by the same, despite the Trustees’ and ID’s premeditated planning to intentionally not discharge ID’s IHT and IHT interest liability until after ID had purchased the Trust’s 80% share in the Property. Further the Trustees did not have the power or authority to make such an advance or disposition of Trust property to ID either under statute or under the Trust Instrument (the Will)”*

24. And then, drawing both factual threads together, Sharas stated at the end of paragraph 67 that:-

*“C argues that ID has interfered with the Trust’s property rights twice, firstly with respect to the Trust’s £128,000 and secondly with respect to the Trust’s property used to discharge her liability to HMRC for the substantial IHT and IHT Interest due on her failed PETs. This therefore gave rise to the restitutionary compound interest on the £128,000 and then the tracing of that Trust property and restitutionary interest*

*amount together with the Trust IHT and IHT Interest unlawful discharge to her and into 80% of the Property purchased by ID using both those Trust money property sums”*

25. In paragraphs 83 to 90 Sharas then sets out in further detail various ways in which he contends that the Estate is entitled to a 100% beneficial share in the Property in consequence of these matters. I shall not lengthen this judgment further by citing those paragraphs, some of which are not easy to follow or understand. However, in simple terms, each of the arguments depends on Sharas being able to establish that all or at least part of monies in Lara’s hands which were used to fund the purchase of the Property were impressed with a trust in favour of the Estate or at any rate were monies in respect of which she had fiduciary obligations to the Estate.

### **The Executors’ standing to make this application**

26. Before dealing substantively with the application, I must first consider whether the Executors have standing to make it. Sharas contends that they do not; he states that they are merely nominal defendants to the derivative claim he seeks to bring on behalf of the Estate, and emphasizes that he makes no claim and seeks no relief against the Executors in these proceedings. He says that the Executors have no business seeking to mount any defence on Lara’s behalf or of taking any active part in the claim at all. He refers me to a number of decisions of US state courts considering the role to be played by corporations in derivative claims brought on their behalf by shareholders against outsiders in which it has been stated variously that the corporation “is a nominal party only” and should “take no active part in the controversy”, but instead must “maintain a wholly neutral position”.

27. In *Roberts v Gill* [2010] UKSC 22; [2011] 1 AC 240 the Supreme Court had to consider whether a first-instance judge had been right to refuse permission for the claimant, a beneficiary of his late grandmother’s estate, to amend a claim he had brought in his own right against two firms of solicitors who had advised the former personal representatives of the estate, so as to reconstitute the claim as a derivative claim brought on behalf of the estate. Four of the justices upheld the judge’s decision on the grounds that the beneficiary had not shown any special circumstances which would justify him being given permission to bring a derivative claim. In addition, however, three of the justices held in any event that the amendment should be refused as it would amount to a new claim to which the personal representatives were required to be joined as necessary parties, which was not permitted under section 35 (2) and (3) of the Limitation Act 1980 and r. CPR r. 19.5 as the relevant limitation period for the claim had expired. Their joinder were not simply a procedural technicality and their role was not merely that of nominal defendants. Lord Collins said this at paragraph 62:-

“The purpose of joinder has been said to ensure that they are bound by any judgment and to avoid the risk of multiplicity of actions: *Lewin on Trusts* , 18th ed (2008), para 43–05. But joinder also has a substantive basis, since the beneficiary has no personal right to sue, and is suing on behalf of the estate, or more accurately, the trustee.”

28. The personal representatives act on behalf of and safeguard the interests of the estate. If a beneficiary seeks to bring a claim on behalf of the estate, they are in my judgment entitled to participate and be heard. Whilst they may in many cases have no cause to intervene, still less to take up arms on behalf of the person against whom the claim is being asserted,



I do not consider that in principle they are precluded from doing so. And in circumstances where a beneficiary seeks to bring a claim on behalf of the estate which the personal representatives consider to be devoid of merit but which may prolong the administration of the estate and result not only in further cost to the estate but also a broader impact on the welfare of the beneficiaries as a whole, it would be odd if the personal representatives could not be heard.

29. So far as the black-letter rules are concerned, there is nothing in Part 24 of the Civil Procedure Rules which limits who may apply for summary judgment. Under r. 24.3 (1), the court may give summary judgment against a claimant in any type of proceedings. Under r. 24.2 the only specified criteria are that the court considers that the claimant has no real prospect of succeeding in the claim and there are no other compelling reasons why the case should only be disposed of at a trial. It is not a requirement that the person bringing the application is the defendant against whom the substantive relief sought under the claim is being claimed. By the same token, the powers of the court under r. 3.4 to strike out a claim are not circumscribed so as to be exercisable only on the application of a defendant against whom the substantive relief is claimed. Indeed under CPR r. 3.3 the court has power to strike out a claim of its own initiative.
30. Accordingly, I am satisfied that the Executors do have standing to bring this application. However, if I am wrong on that, I would nevertheless proceed to hear and determine the application as if it were brought by Lara. Lara addressed the court briefly, and in response to my question, stated that she wished to adopt the Executors' application and arguments as her own. In those circumstances, there would be no reason why the application should not proceed as one brought by Lara herself if the Executors were not permitted to bring such application themselves.

### **Discussion on the substantive application**

31. Mr Reader is undoubtedly right in the point he makes in paragraph 22 of his statement. The mere fact that Lara, at the time of her purchase of the Property, may have owed money to the Estate, or may have been subject to any other personal obligation to the Estate arising under the law of restitution or otherwise, could not result in the Estate having any proprietary interest or claim to monies in Lara's hands which she used to purchase the Property. In my judgment, for his claim to have any prospects of success, Sharas would have to show that the monies in Lara's hands which were used to purchase the Property were either monies which Lara held on trust for the Estate, or at any rate were monies which she held as a fiduciary and which she was bound to apply for the benefit of the Estate.
32. I take this as the starting point, therefore, to consideration of the question whether the claim has real prospects of success and / or whether reasonable grounds are disclosed for bringing the claim. However, in so doing, I decline to determine the application, as Ms Mattson invites me to do, solely on the basis of Sharas' pleaded case as it is set out in the Particulars of Claim, since it is apparent from his witness statement dated 20 January 2021 that he seeks to put his claim on a slightly different basis from that pleaded, and could no doubt apply to amend in order to do so.
33. In his statement of 20 January 2021, Sharas contends that the sum of £128,000 advanced by Parviz to Lara in his lifetime was not a loan at all but rather monies which she held on

trust for Parviz. He further contends that the monies used by Lara to fund the purchase of the Property were those same trust monies or their substitute.

34. An application for summary judgment is not a mini-trial, but that does not mean that the court cannot and should not scrutinize with care the factual assertions which a claimant may rely upon in support of his claim to see whether there is any real substance in them. This is of course well-established, included in the oft-cited summary of principles set out by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 at paragraph 15. So I must consider in this case whether there is any real substance behind the assertion that the sum of £128,000 was advanced to Lara for her to hold on trust for Parviz.
35. There is no doubt that the Executors have historically treated such monies simply as a loan advanced to Lara by Parviz and repayable by her as such. It was so recorded by them in completing the IHT400.
36. It is apparent also that there was evidence before DJ Langley in the 2016 proceedings was that the money was a loan. In paragraph 39 of her judgment she said this:-

“As an example of her approach to the financial assistance that she received from her late father, she received £425,000 from him to enable her to purchase her flat in Collingham Place without a mortgage. £300,000 was a gift, as indeed had been given to the other children, and she regarded the balance of £125,000 to be loan, of which she has paid back £45,587. She has £60,000 to repay the balance”.

Although the figures are slightly awry, DJ Langley was undoubtedly in this passage considering the same monies with which I am now concerned. She then went on at paragraph 43 to say this:-

“The position the facts where Lara is concerned seems to me to be clear. I accept her evidence that she took the sum ... as a gift of £300,000 to assist in purchasing Collingham Place and the loan of £125,000 which she feels bound by ...”

37. Ms Mattson urges me to treat these paragraphs of her judgment as the final word on whether the monies were a loan or not, on the basis that the judge had made a finding of fact on the question giving rise to an issue estoppel. I am not persuaded that is correct. The character of such monies, and the terms on which they were advanced, was not one of the issues which fell for determination in, or was an essential precursor to the determination of, Lara’s claim in the 2016 proceedings. Nor is it clear that there was any dispute on this question which the judge was asked to decide, or even that she did make any finding as to the character of the monies: the judge says no more than that Lara “regarded the balance ... to be a loan” and something “which she feels bound by”.
38. Sharas relies on an undated letter written by Lara to Robin in 2015, which, he contends, shows that £128,000 was advanced by Parviz to Lara as monies to be held by her on trust for him of the principles. She wrote as follows:-

*“Collingham Place*

*“This was my property which I purchased in 2007. My father helped me to purchase it but at the time, he had advanced money as gifts to each of his children. This was in the sum of £300,000 each.*

*“My father also advanced to me the additional sum of £128,000 for me to purchase my flat without any requirement as to repayment. We did agree, however, that this money would be held on account (with me) for him to access when in the UK and available in the event of a family emergency. This did transpire and I paid him nearly £50,000 at his request and when he was in hospital, I transferred £35,000 required for hospital fees”*

39. Sharas also relies on an e-mail dated 1 December 2016 from Lara to Antony Kalp, the solicitor acting for the Executors in the administration of the Estate. In similar vein, Lara had written as follows:-

*“I think there has been a misunderstanding regarding the sum of £428k. £300k was a gift (the same as has been gifted to each of my siblings). For some reason my father paid the total for the flat I purchased, rather than us paying in separate transactions (with me paying the balance). My father told me to retain the balance in my account so that he could draw on it whenever he wanted (up to £44k prior to his passing). This money was at our disposal when my father was in the hospital, although it was not drawn upon ultimately (ie the £35k was not required, therefore not repaid.)”*

40. I do not consider that either of these items of correspondence provides Sharas with sustainable grounds for contending that Lara held sums of £128,000 on trust for Parviz. They show no more than that Parviz had paid the full amount of the purchase price for the Collingham Place flat, and that rather than asking Lara to reimburse him the £128,000 excess over the intended amount of the gift, Parviz simply asked her to have the money available for him to call on if and when needed. There was no fund as such deposited and held in any account by Lara constituted in or impressed with any trust, nor was there anything in the nature of a trustee’s obligations imposed upon Lara in respect of any such fund. This was simply an informal understanding, commonplace in a family setting, that Lara should provide funds if and when needed to Parviz by way of repayment of the excess £128,000.

41. Furthermore, there is no evidence whatsoever to support Sharas’ contention that Lara paid for purchase of the Property using such trust monies or their substitute. It is apparent from paragraph 21 of DJ Langley’s judgment in the 2016 proceedings that Lara had retained the sum of £461,000 representing the net proceeds of sale of the Collingham Place flat in order to fund the purchase of the Property, and those monies were still held by Lara to be used as such at the time of trial. At paragraph 24 the judge further recorded Lara’s evidence that her cousins had agreed to make her a personal loan to enable her to pay the balance of the purchase price. Whilst there is not any evidence before the court as how the balance was in fact paid, there is nothing which even faintly suggests that Lara had retained any separate fund of monies, being the residue of the trust monies or their substitute, which was used for the purchase.

42. In my judgment, Sharas does not have real as opposed to merely fanciful prospects of succeeding in establishing that any part of the purchase price of the Property was funded with so-called trust monies which Lara held for the benefit of the Estate. In reality, his

claim is based on nothing more than speculation and supposition, sustained by the hope that something may show up to support his claim at trial. Such Micawberism is not a sufficient basis on which to maintain a claim.

43. I turn to the second factual basis of the claim which concerns the inheritance tax liability arising in respect of Parviz' *inter vivos* gifts to Lara, a liability which Lara had not herself discharged in the period prior to her purchase of the Property but which the Executors have themselves discharged. In the Particulars of Claim Sharas suggests that the Executors had discharged this liability at some point prior to Lara's purchase, and that she was accordingly subject at the time of the purchase to an existing obligation to reimburse. In fact, as Mr Reader has set out in his statement, the Executors only paid the outstanding tax after the purchase had completed, using the funds realised from it. Sharas does not dispute such sequence of events, but nevertheless asserts that the Property when transferred to Lara was acquired and held by her subject to a beneficial interest under a constructive trust, or an equitable lien, arising in respect of the inheritance tax liability which the Estate was intending to discharge from the purchase monies.
44. The following matters are clear and undisputed:-
- a) Lara was primarily liable for the inheritance tax due on the *inter vivos* gifts made by Parviz to her in the seven years prior to his death: see Inheritance Act 1984 section 199 (1);
  - b) the Executors became liable for the inheritance tax due in relation to those gifts after that tax remained unpaid 12 months after Parviz's death: see Inheritance Act 1984 sections 199 (2) and 204 (8);
  - c) where the tax was paid by the Executors they would have a common law restitutionary claim against Lara for reimbursement of the same.
45. Sharas seeks to go much further in suggesting that the Estate has a proprietary right or claim over the Property arising by reason of the fact that (i) Lara had not discharged the tax liability, thereby exposing the Executors to a liability to meet the tax, (ii) because she had not paid the tax she was able to use funds which could otherwise have been used for that purpose to purchase the Property. To support his claim, he resorts to various unparticularised and wholly unsubstantiated allegations of fraud and collusion between the Executors and Lara, and then appeals to broad and vague notions he refers to as backward tracing and remedial constructive trust to get him home. It is unnecessary to attempt to unpick all the knotted threads of his convoluted and somewhat baffling arguments on this. There is simply no sustainable factual basis on which to link what at the time of the purchase of the Property was at most a contingent liability on Lara's part to reimburse the Estate for inheritance tax which the Executors might subsequently discharge with a proprietary claim on the part of the Estate to a beneficial interest in or equitable lien over the Property itself.
46. I conclude therefore that Sharas has no real prospects of succeeding on this second basis of the claim either.
47. In my judgment, there are no other compelling reasons why the determination of this claim should await trial. To the contrary, this is a claim which should be disposed of

summarily without further delay or expense. It has no proper factual underpinning, it is in parts barely comprehensible, and it is replete with unparticularised and unsubstantiated allegations of misconduct and fraud against both Lara and the Executors which may otherwise fall to be struck out as an abuse of process under CPR r. 3.4 (1) (b).

48. I have been invited in the alternative to dismiss the claim on the grounds that it is barred as *res judicata*, or under the doctrines of issue estoppel or *Henderson v Henderson* abuse of process. Ms Mattson relies on paragraph 4 of DJ Langley’s order by which it was provided that upon Lara paying the Estate the purchase price for the Property, the Estate “shall have no further interest in the property”. I am not persuaded, at least for the purposes of this summary judgment application, that that would prevent the Estate from asserting a beneficial interest in the Property arising by virtue of the whole or part of the purchase monies themselves being monies belonging to the Estate or which were impressed with a trust in favour of the Estate.

### **Disposal**

49. For the reasons which I have set out above, I accede to the Executors’ application for summary judgment, and dismiss the claim. I would otherwise have treated the application as one brought by Lara, and dismissed the claim for the same reasons. Furthermore I consider that this would have been an appropriate case in which to exercise the court’s power, whether of its own initiative, or on the application of any party, to strike out the claim as disclosing no reasonable grounds for bringing the claim or as an abuse of process.