IN THE OXFORD COUNTY COURT

Claim No. D00LU357 (linked to D0PP0115)

Before:

HIS HONOUR JUDGE MORADIFAR

In the matter of:
Application for a declaration of a trust

Between:

FAIZ ULHASAN FAIZI

1ST CLAIMANT

-and-

OAKWOOD HOMELOANS LIMITED

2ND CLAIMANT

-V-

MOHAMMED TAHIR

DEFENDANT

Dr Russell Wilcox counsel for the first Claimant instructed by Allied Law Chambers Solicitors

Mr Connor Kennedy counsel for the Defendant instructed by Landmark LLP

Date of the hearing:

17, 18 & 19 December 2018

and 14 March 2019

His Honour Judge Moradifar:

Introduction

1. At the centre of this claim is the property at 3 Sutton Gardens Luton (the "property"). The first claimant (the "claimant") has resided at this property since its purchase in 2006. The legal title of the property is vested in the defendant and is subject to a mortgage in favour of the second claimant.

2. The claimant asserts that the property was purchased for him by the defendant. At the time of purchase, he was advised that due to his immigration status he was unable to obtain a mortgage. He and the defendant agreed that the property would be purchased in the defendant's name and the legal title would be transferred to the claimant at a future date. In reliance on this agreement, the claimant has paid for the deposit and the expenses associated with the purchase, met the monthly mortgage instalments, undertaken and paid for works that have improved the property. The claimant seeks a declaration of his beneficial interest in the property pursuant to s.14(2)(b) of the Trust of Land and Appointment of Trustees Act (1996).

3. The defendant emphatically denies this and asserts that the property was purchased by him to aid with his wife's application for a visa to reside in the UK. He further asserts that the claimant has always been his tenant and any instalment payments by him have been made in lieu of rent. The defendant has applied for a possession order against the claimant.

4. The second claimant has applied for a possession order against the defendant. It has not taken any part in the hearing before me. At the invitation of the claimant and the defendant, I will allow the second claimant an opportunity to first consider this judgment before indicating to the court and the parties if it wishes to pursue its claim against the defendant.

The law

5. The court's decision must be based on relevant facts that are found on evidence. The claimant must prove his case and those relevant facts in support thereof on a balance of probabilities.

6. The claim is made under the provisions of the Trust of Land and Appointment of Trustees Act (1996) (the "Act"). The powers of the court and the relevant factors that guide the exercise of those powers are set out in s. 14 and s. 15 of the Act. These sections provide that;

"14

(1) Any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section.

(2) On an application for an order under this section the court may make any such order—

(a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or

(b) declaring the nature or extent of a person's interest in property subject to the trust as the court thinks fit.

(3) The court may not under this section make any order as to the appointment or removal of trustees.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this Act.

15 Matters relevant in determining applications.

(1) The matters to which the court is to have regard in determining an application for an order under section 14 include—

(a) the intentions of the person or persons (if any) who created the trust,

(b)) the purposes for which the property subject to the trust is held

(c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and

(d) the interests of any secured creditor of any beneficiary.

(2) In the case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 13, the matters to which the court is to have regard also include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.

(3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 6(2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).

(4) This section does not apply to an application if section 335A of the M1Insolvency Act 1986 (which is inserted by Schedule 3 and relates to applications by a trustee of a bankrupt) applies to it."

7. The Act confirms a wide discretion upon the court when dealing with such cases (*Bogum v Hafiz [2015] EWCA Civ 801)*. The exercise of the court's discretion has been the subject of a great deal of jurisprudence and guidance for many years preceding the passing of the Act. The authorities have developed over many years and have been the subject of much commentary. In summary the developing authorities make a distinction in approach to cases where the property in dispute is purchased as a home in a matrimonial or quasi matrimonial scenario and those properties that are bought with a commercial aim where the parties have acted at arm's length.

8. Waite LJ in *Midland Bank plc v Cooke [1995] 4 All ER 562* encapsulated the court's approach to the former scenario at 575 in the following term;

"Equity has traditionally been a system which matches established principle to the demands of social change. The mass diffusion of home ownership has been one of the most striking social changes of our own time. The present case is typical of hundreds, perhaps even thousands,

of others. When people, especially young people, agree to share their lives in joint homes they do so on a basis of mutual trust and in the expectation that their relationship will endure. Despite the efforts that have been made by many responsible bodies to counsel prospective cohabitants as to the risks of taking shared interests in property without legal advice, it is unrealistic to expect that advice to be followed on a universal scale. For a couple embarking on a serious relationship, discussion of the terms to apply at parting is almost a contradiction of the shared hopes that have brought them together. There will inevitably be numerous couples, married or unmarried, who have no discussion about ownership and who, perhaps advisedly, make no agreement about it. It would be anomalous, against that background, to create a range of home-buyers who were beyond the pale of equity's assistance in formulating a fair presumed basis for the sharing of beneficial title, simply because they had been honest enough to admit that they never gave ownership a thought or reached any agreement about it."

9. Following the decision of the House of Lords in *Stack v Dowden [2007] UKHL*, the Supreme Court took the opportunity to provide further clarification as to the court's approach in such cases. In the leading judgements of Walker SCJ and Hale SCJ in *Jones v Kernott [2011] UKSC 53*, the court stated (para 25);

"The time has come to make it clear, in line with Stack v Dowden (see also Abbott v Abbott [2007] UKPC 53, [2007] 2 All ER 432), that in the case of the purchase of a house or flat in joint names for joint occupation by a married or unmarried couple, where both are responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit (or indeed

the rest of the purchase) in unequal shares. The presumption is that the parties intended a joint tenancy both in law and in equity. But that presumption can of course be rebutted by evidence of a contrary intention, which may more readily be shown where the parties did not share their financial resource."

10. In this context, the court further addressed the issue of imputing an intention to the parties to a case by stating (para 31):

"... the search is primarily to ascertain the parties' actual shared intentions, whether expressed or to be inferred from their conduct. However, there are at least two exceptions. The first, which is not this case, is where the classic resulting trust presumption applies. Indeed, this would be rare in a domestic context, but might perhaps arise where domestic partners were also business partners: see Stack v Dowden, para 32. The second, which for reasons which will appear later is in our view also not this case but will arise much more frequently, is where it is clear that the beneficial interests are to be shared, but it is impossible to divine a common intention as to the proportions in which they are to be shared. In those two situations, the court is driven to impute an intention to the parties which they may never have had."

11. The court summarised the approach in this category of cases in the following terms;

"51. In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests.

(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.

(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.

(3) Their common intention is to be deduced objectively from their conduct: "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party" (Lord Diplock in Gissing v Gissing [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in Stack v Dowden, at para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, "the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property": Chadwick LJ in Oxley v Hiscock [2005] Fam 211, para 69. In our judgment, "the whole course of dealing ... in relation to the

property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).

52. This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above.

53. The assumptions as to human motivation, which led the courts to impute particular intentions by way of the resulting trust, are not appropriate to the ascertainment of beneficial interests in a family home. Whether they remain appropriate in other contexts is not the issue in this case."

12. The contrast in approach by the court in cases of commercial enterprise is clearly illustrated by the decision of the Court of Appeal in *Generator Development Limited v Lidl UK GmbH*

[2018] EWCA Civ 396 where Lewison LJ (paras 78 to 85) stated that:

"78… this was a case of commercial parties, advised by lawyers, working at arms' length towards the conclusion of an agreement for a purely commercial enterprise…The application of the principles underpinning the Pallant v Morgan equity, in so far as they rest on the doctrine of common intention constructive trust, operate quite differently in a commercial context from the way in which they operate in a domestic context…But we have seen from Cobbe that the House of Lords firmly denied the applicability of proprietary estoppel in a commercial case like this one where each party knows that they are not legally bound. In this case, as in Cobbe, there can have been no expectation on either side that the parties were legally bound to each other. If the principles underpinning the Pallant v Morgan equity are the same as those underpinning proprietary estoppel (as Chadwick LJ considered them to be) it follows logically that if a proprietary estoppel claim cannot succeed, nor can a claim based on the Pallant v Morgan equity.

79. the proposed "joint venture" (if such it was) was expressly made "subject to contract"... As Lord Walker stressed in Cobbe, equity will not intervene in a case where the parties expressly agree that a putative agreement is binding in honour only. Likewise, in the Hong Kong case the Privy Council recognised that the use of the "subject to contract" formula means that the parties are not committed either in law or in equity… The mere fact that parties have agreed to engage in good faith negotiations for the

making of a joint venture agreement is insufficient to support a constructive trust: Kilcarne Holdings Ltd v Targetfollow (Birmingham) Ltd [2005] EWCA Civ 1355 at [15] and [23].

82. ... there is some significance in the fact that (to the knowledge of Generator) Lidl's board had not approved the joint venture. In order to be able to invoke the Pallant v Morgan equity it must in my judgment be possible to say that the agreement or understanding in question is one which has been assented to by a person capable of binding the party in question; or who at least has ostensible authority to do so.

85. ... it cannot be unconscionable to exercise a right which has been expressly reserved to both parties by means of the "subject to contract" formula; and which Generator had even more clearly reserved to itself in the draft lock-out agreement. As Lord Walker said in Cobbe (and as Arden LJ said in Crossco), it cannot be unconscionable for one party to follow a course which the other party has insisted was open to itself."

14. Proudman J in *Clarke v Corless [2009] EWHC 1636* provided very helpful guidance by observing that in a;

"... proprietary claim based on constructive trust and what I may call its sister claim in proprietary estoppel ..",
[further (at paras 22-24)] that:
"First, although the agreement between the parties requires less than contractual certainty (for otherwise a constructive trust would not be necessary) it is not engaged with anything less than an express accord between the parties…

> *Secondly, while unconscionable behaviour is a necessary condition for relief by way of constructive trust, it is insufficient by itself … the court should have two aims: one is to recognise and prevent unconscionable conduct, but the other is to protect people from unintended legal consequences resulting from informal relationships … What does seem to me to be plain as a matter of law is that in order to be enforced there must be a clear agreement on the basic details of the arrangement without difference of principle.*
>
> *Thirdly, in order to succeed, the claimants have to show that they relied on the alleged agreement, arrangement or understanding.*

15. There are many cases, such as the present case, that fall somewhere between the two categories. In the general context of the Act and the authorities, cases are fact sensitive and the facts whether agreed or found by the court will provide the essential guide to where the starting point must be. To consider a case from the incorrect starting point can be fatal to the conclusions that are subsequently reached. As Baroness Hale of Richmond stated in *Stack v Dowden* (at 69) *"In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts."*

Background

16. The claimant and his family were resident in the UK in 2006. The defendant was already a UK resident and lived in council accommodation together with his son from a previous marriage. His second wife and their children resided in Uganda and they wished to live with the defendant in the UK.

17. The claimant and the defendant met through a mutual friend in 2006. At that time, the claimant ran his own business from premises that had multiple business occupancy. He states that the defendant was a frequent visitor to those premises. The defendant denies this and states that he suffered an accident in the summer of 2006 and at that time he did not visit those premises. It is however clear that in Autumn of 2006 the claimant and the defendant were involved in discussions about the property.

18. The contract for the sale of the property was exchanged on 22 November 2006 and completed on 24 November 2006. The property was purchased for £219,000 with the aid of a mortgage of £208,265. The claimant moved into the property soon after completion. The defendant was registered as the legal owner on 27 December 2006.

19. It is common ground that the claimant paid regular sums of money to the defendant. It is also common ground that this changed in 2007 when the defendant went to Uganda where he spent extensive periods until 2010. During this period the claimant agreed to pay the mortgage instalments directly to the mortgagor. The instalments were not always paid on time. At best the payments were sporadic and some were missed.

20. In the autumn of 2007 the claimant applied for planning permission to renovate and extend the property. This was received by the planning authority on 3 December 2007 and granted on 28 January 2008. The defendant denies any knowledge of this but accepts that the claimant converted the garage to an office. The claimant did not undertake all the work that was permitted by the planning authority but claims to have added a small extension as well as converting the garage.

21. On 15 September 2008, the second claimant obtained a possession order at the Luton County Court requiring the Defendant to give possession of the property to the second claimant. This was not enforced and on 31 August 2016 the Defendant applied to set aside this order.

22. By 2015 the claimant had stopped paying any sums to the defendant or the second claimant. The dispute as to the ownership of the property was becoming increasingly plain and on 3 November 2016 the claimant filed a unilateral notice of his beneficial interest in the property. This was followed by the court discharging the order of 15 September 2016 and on 16 November 2016, the defendant served on the claimant a notice for possession pursuant to s.8 of the Housing Act 1988. On 12 December 2016 the claimant issued his claim for a declaration of a trust and beneficial ownership of the property. This preceded an application by the defendant on 3 January 2017 for a possession claim against the claimant. The applications have since proceeded in the County Court and come before me for a determination of the claimant's action.

Evidence

23. I have read the case papers that are within the trial bundle and heard the oral evidence of the claimant, his witness Mr Ahtesham who knows the claimant and the defendant, and finally that of the defendant.

24. The claimant confirmed his two statements as accurate and told me that he set up his business after he came to the UK. His family helped him set it up as he was not very familiar with the formalities of such endeavour. He had only known the defendant for a short time and he was a regular visitor to his office. He was unable to explain why the defendant would take on such a large liability for him other than stating that in his

community this is not unusual. He stated that he was advised by a man called Ibrahim that he would not be able to obtain a mortgage as this was conditional on being a British citizen. He was unable to identify Ibrahim by his second name or to disclose his whereabouts. The discussions around the purchase of the property and the mortgage took place over several meetings. When it was finally clear that he could not obtain a mortgage, the defendant offered to purchase the property for his benefit.

25. He stated that he had brought £90,000 from Pakistan. Pursuant to the oral agreement with the defendant, he paid for the deposit and the purchase costs. He did not pay a "single penny" to the defendant and these sums were paid directly to the conveyancing solicitors. He was unable to point to any document that supported the payment of a deposit but pointed to two payments on 20 and 21 November 2006, the sum of which correspond to the sums due in the "draft completion statement" of the conveyancing solicitors.

26. On 18 May 2007, the defendant wrote to the claimant requesting that he makes good the missed mortgage payments and that the property is transferred to another name. When challenged about the authenticity of this document, the claimant denied that it was "fabricated". The claimant continued to explain that due to a "speeding ticket" his immigration application was delayed and he did not become a British national until 2014 or 2015. This he offered as a reason why he had not attempted to transfer the property and the mortgage to his name. Later he did attend the defendant's home to ask for such a transfer. The defendant initially asked for £15,000 but then increased his demand to £45,000 before he would agree to the transfer. The claimant accepted that he stopped paying any money to the defendant from about 2015. He agreed that between

2007 and 2010 he paid the mortgagor directly and thereafter he was asked to resume the payments to the defendant.

27. The claimant was adamant that his schedule of payments disclosed in these proceedings was accurate. When taken through some of the entries, he was forced to accept that not all the alleged payments corresponded to the precise amount or date of the entries provided by the second claimant. In other examples it was impossible to say what the payments related to. Additionally, he admitted that there were many missed payments and cheques that were returned as not cleared. The claimant was pressed about numerous receipts in the bundle that proport to show his expenditure on the property improvement. With some reluctance, he accepted that certain items did not improve or add to the value of the property. These included white goods and smaller DIY items. He was reluctant to agree that some of his receipts were illegible and had little evidential value. Similarly, he explained that some of the items were paid for through his limited company but that as a sole owner of the company this made little difference to the alleged sums he had spent improving the property.

28. The claimant was also taken through the receipts from Aaron Hall Associates (Limited) for the building work. He accepted that Aaron Hall Associates (Limited) was incorporated in 2012 and ceased in 2014. The claimant was unable to explain why the invoices predating the company's incorporation identified the company as a limited company with the same registered address and company number as after when the company was incorporated in 2012. He was also unable to show that he had paid any of the sums due under the invoices, stating that these were paid in cash. The claimant relied on the sums that had been transferred from Pakistan. The

Claimant also stated that some of the sums for the mortgage payments were paid directly to the Defendant and his son although he could not point to any evidence that would corroborate this. Finally, he stated that Mr Ahtesham was present during the meeting at which he and the Defendant entered into a verbal agreement about the purchase of the property.

29. Mr Omer Ahtesham was the next witness to give evidence. After confirming his written statement as accurate, he told me that he was a regular attendee at the claimant's offices as he ran his garage from the same building. He has known the claimant since his childhood and the defendant since 2006. He was aware that the claimant was paying money towards the property. Mr Ahtesham explained that the claimant had lent him money and asked for it back. He did not witness the claimant paying any money towards the purchase of the property but "knew" that he had. He was also aware that the claimant bought many items for the property at auctions.

30. Mr Ahtesham stated that the Defendant regularly visited his property. They discussed the defendant's wish to have the legal titled of the property transferred to the claimant in the event of the defendant's death. Mr Ahtesham was clear that he could not comment on the detail of the agreement but was clear that there was an agreement that the beneficial interest in the property belonged to the claimant. This was discussed on many occasions at the time of obtaining the mortgage. He was also aware that the claimant needed to have a "British passport" which he obtained in 2013 or 2014 although he could not "be sure" of those dates.

31. Finally, I heard from the defendant. He began by confirming his written statement as accurate. He told me that he and the claimant first met

through a mutual friend in May or June 2006 during an organised protest march. At that time, he lived with his son in council accommodation. He owned and ran his business, from which he earned about £35,000 to £40,000 gross per annum. His son worked different jobs and the defendant showed little interest in his employment. In August or September 2016, he suffered an accident for which he received about £36,000 in compensation. Because of his accident, he was unbale to work and relied on incapacity benefit. He had two keyhole procedures on his injured knee and was very restricted in his movement. He denied visiting the claimant at his offices in 2006 and cited his injury as a barrier to doing so.

32. The defendant was very clear that he saw the claimant as his tenant and nothing else. He asked rhetorically, why would anyone take on such a liability as a favour for a person he has only just met? The defendant went on to explain that his wife and children lived in Uganda. They wished to live with the defendant in the UK. One of the conditions of a successful immigration application is demonstration that the applicant can be housed. To this end he purchased the property for his wife and children to live in. He told me that at the time of the purchase he had about £13,000 in savings that he used to pay the conveyancing solicitors. He paid this from his Nationwide Building Society Account. He has not been able to provide any documentary evidence as the bank do not hold these details for such a long time. He has tried to locate the solicitor but have been unable to do so. He reminded me that in any event the solicitors will not have accepted any sums from the claimant as he was not their client. The fact that the claimant appears to make a payment for the identical amount that was due at the relevant time was coincidence.

He further asserted that his access to the documents had been restricted by the claimant as they were sent to the property.

33. The defendant had to accept that his reply dated 13 December 2017 inaccurately described the mortgage as a "buy to let" mortgage. He confirmed that the mortgage was a "self-certified mortgage" and that he could pay the monthly instalment for two or three years from his compensation. The defendant was forced to accept that his mortgage application inaccurately described him as the "primary resident" at the property. The defendant conceded that in his reply he inaccurately stated that the "rent" paid by the claimant was "£800" and that it should state £900. He further conceded that in his statement he did not make any reference to a meeting in 2014. After much cross examination, the defendant further conceded that he did not know about the need to discharge the possession order in favour of the second claimant until 2015.

34. The defendant readily accepted that between 2007 and 2010 the mortgage payments were paid directly to the mortgagor by the claimant. He then asserted that he had made some payments by using his nephew's credit card but did not pursue this assertion when questioned further. The defendant accepted that there was no evidence filed by his nephew and that he was not able to identify which payments were purportedly made on his nephew's card. He was forced to concede that he has provided no evidence that can illustrate that he has made any payments towards the mortgage instalments. Similarly, he conceded there is no evidence illustrating that the claimant had ever paid £900 to the defendant in lieu of the alleged rent.

35. The defendant remained resolute in his assertion that any payments by the claimant was in lieu of rent. He told me that the rent changed in 2014 to £1,200 after a meeting at which he agreed to sign a tenancy agreement. However, he did not return the next day to sign a tenancy agreement. He denied having any knowledge of or writing the letter in 2007. He told me that the language used in the letter is very basic and "uneducated". He further denied having any knowledge of applications by the claimant for planning permission. He did not visit the property a great deal but was aware that the claimant had converted the garage into an office. He accepted that the property alterations would have been a "considerable expense" to the claimant.

Analysis

36. I am most grateful to both counsel for their oral submissions, their very helpful documents and the bundles of authorities that they have each provided. I have carefully read and considered these documents. Dr Wilcox and Mr Kennedy have each set out their respective positions on behalf of their clients with admirable clarity. Dr Wilcox on behalf of the claimant summarises his submissions in the following salient points;

> *"The Property which is the subject of the present proceedings was purchased in the name of the Defendant:*
>
> *(a) With deposit and completion monies provided exclusively by the Claimant;*
>
> ***(b)*** *Together with an interest only mortgage secured on behalf of the Claimant in the name of Defendant, the Claimant being unable to secure a mortgage on his own behalf at that time.*
>
> *The intention of the parties at the point of purchase was clear and is demonstrated both by powerful contemporary*

documentary evidence in the form of payments and audit trails and the clear oral evidence of a third party witness.

It is also demonstrated by the on-going mortgage repayments made by the Claimant and refurbishment/extension works he subsequently undertook.

As such the Property was purchased by the Defendant upon behalf of the Claimant such that it was held on resulting trust in its entirety for the Claimant.

It is accepted that the Claimant must account to the Defendant as trustee for the monies paid towards servicing the mortgage by the Defendant between April 2015 and December 2017.

The question of equitable accounting, however, does not arise in the circumstances of this case as there was no joint beneficial interest in the Property. The payments by the Claimant towards the servicing of the interest only mortgage cannot, therefore, be accounted as occupation rent.

Should the Defendant enjoy any additional benefit from the Property, this would offend against the long established prohibition upon trustees enjoying unauthorised benefit from property they hold on trust"

37. Mr Kennedy on behalf of the defendant summarises his submissions in the first two paragraphs of his written document as follows:

"These written submissions address the court's questions as to whether (in the event that the court accepts the Claimant's evidence that he paid the deposit and made subsequent mortgage payments) i.) the payment of the deposit gives rise to a resulting or

a constructive trust; and ii) the effect of any subsequent payments made by the Claimant to the mortgage lender.

It will be submitted that in relation to the first question, there would only be a presumed resulting trust because there was no clear agreement between the parties and no commitment from the Claimant to contribute to the purchase price (above the amount provided for the deposit). In relation to the second question, it will be submitted that there should be no presumption of a resulting trust because payment of the modest sums in question to the legal owner (and majority beneficial owner at equity) by a claimant in occupation would not be prima facie gratuitous transfers/apparent gifts such as would give rise to a resulting trust. Further, there can be no question that any constructive trust arises from these payments because there was no clear agreement that they should give the Claimant any rights in the property, and the Claimant cannot argue that the Defendant has acted unconscionably because he has had the use and occupation of a 5 bedroom house in Luton for over 10 years without reducing the principal mortgage loan and having only made payments which amount to less than market rent for that period."

38. This is an unusual case where the claimant and the defendant have no family connections, at the time of the purchase they had known each other for a short time, the property was not purchased as a commercial venture nor was it purchased as a shared home and the arrangements about the property have persisted for many years. The latter has significantly contributed to relevant corroborative evidence being unavailable to the court.

39. When assessing the evidence, I must allow for cultural issues and the impact of the passage of time on the memory of the witnesses and their ability to accurately recall important information. It is now over twelve years since the property was purchased.

40. The documentary evidence that has been produced by the claimant has been disorganised and confused. This has significantly limited the corroborative value of this evidence. His assertions that his contributions to the property should include the purchase of white goods or small inconsequential items are misguided. Despite his confidence in presenting the court with the correct sums, within the space of a few questions he was forced to acknowledge that the total sum was overstated where many payments were returned or not cleared. The claimant's efforts to keep the smallest receipts for any expenditure on the property bordered on the obsessive, yet he was unable to show where the alleged sums were spent improving the property. In some instances, he was unbale to show that sums spent related to the property at all.

41. I accept that the claimant may view his business as his and not distinguish between payments made by him personally and those that are made through the business. Whilst the documentary evidence about the planning permission on the property appeared reliable, the evidence about the actual works on the property was not. The invoices from Aaron Hall Associates (Limited) did not in my judgment provide sound corroborative evidence for the alleged work that was undertaken. The invoices date between 2010 and 2016. The authenticity of these documents was challenged by the defendant. The claimant was unable to explain the serious discrepancies concerning the incorporation and deregistration of this company. His apparent continuing work on the property from 2015 onwards was entirely inconsistent with his explanation that he stopped

paying the mortgage on the property because of the apparent dispute over the ownership of the property.

42. I found Mr Ahtesham to be a truthful witness who tried his utmost to be helpful. However, I found his direct knowledge of specific events to be very limited and wanting. I have no doubt that the significant passage of time and the many conversations about the property over that time have tainted his memory of the relevant events. The significant part of his evidence was based on his impression rather than his knowledge. Despite his clarity about the existence of an agreement between the claimant and the defendant, I found his evidence to be at best no more than broadly corroborative of the claimant's version of events.

43. The defendant's evidence varied in quality and reliability. At first, the defendant presented as cogent and consistent in his evidence. However, when he was challenged in cross examination, his explanations were wanting. I accept that the defendant would have a real difficulty in accessing papers from twelve years ago. Importantly, I remind myself that it is for the claimant to prove his claim. I also make allowance for the fact that in some communities, individuals may rent property with less formality than is advisable. However, it was astonishing that the defendant was unable to recall a single correct sum for the rent that he says fell due every month. Despite the arrears in rent as demonstrated on his behalf when questioning the claimant about the monthly payments, he took no steps to enforce the tenancy agreement and to ensure that the mortgage instalments were paid on time. The differing and inconsistent sums that the defendant mentioned did not correspond to the sums that were paid by the claimant. I found his evidence on the asserted sums due for the monthly rent to also be inconsistent with the arrangements that the

claimant should pay the monthly mortgage instalment directly to the mortgagor during the period between 2007 and 2010.

44. On the pertinent issues in case, I found the defendant's evidence to be evasive and unreliable. This was amply illustrated by his replies to the questions about the nature and the type of mortgage. Notwithstanding his asserted ability to meet the monthly mortgage instalments from his personal injury compensation, he took no steps to meet the shortfalls in the mortgage in the early years. The defendant's lack of curiosity for the property was highlighted by his lack of knowledge of the planning application and his lack of visits to the property to inspect his investment in the future home for his wife and children.

Conclusion

45. In this unusual case, I have considered each piece of relevant evidence in the context of the totality of the evidence before me. Whilst I have concerns about the quality of the evidence that the claimant has adduced before the court, I have no hesitation in finding that the claimant and the defendant reached an agreement in 2006 that the defendant would purchase the property and hold its legal title for the benefit of the claimant. They further agreed that, when possible, the legal title would be passed to the claimant. In reliance on that agreement, the claimant has acted to his detriment by meeting most of the monthly mortgage payments, applying for planning permission and converting the garage at the property to an office.

46. The evidence about further works on the property is not reliable enough to support any further findings. I note that borrowing on the property has increased due to default payments. In my judgment, this does not lead to a conclusion that the claimant has not acted to his detriment given that I

have found that the parties agreed that this would be a property belonging to the claimant in all but the legal title.

47. The defendant has been paying some of the mortgage instalments since 2015. When the parties reached an agreement in 2006 the parties anticipated that at some point in the future the legal title would be passed to the claimant. I find that the defendant was fully aware of the liability that he was taking on and the requirement that he would have to meet the monthly mortgage payments. However, given the agreement between him and the claimant as I have found, the defendant has a reasonable expectation to be reimbursed for the monthly mortgage outgoings.

48. In the circumstances;

(a) I declare that the legal title of the property which is vested in the defendant is held by him on trust for the claimant.

(b) The claimant is entitled to one hundred percent share of the beneficial title in the property subject to

(i) Paying back to the defendant all the sums that were paid in respect of the monthly mortgage payments by the defendant from 2015 onwards within three months of this judgment being handed down, or

(ii) The total sums stated above are secured against the property until they are fully discharged by the claimant.

(c) The defendant having accepted that my declarations detailed above are fatal to his action for possession against the claimant, I dismiss his claim.