Neutral Citation Number: [2024] EWCC 7

Case No: 27 of 2020

IN THE COUNTY COURT AT BRISTOL
BUSINESS AND PROPERTY WORK

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 10 September 2024

Before :

HHJ PAUL MATTHEWS

- -

Between :

TRACY ANN TAYLOR	**Applicant**
- and -	
(1) OLGA SAVIK	**Respondents**
(2) PHILIP RYLE	

- -
- -

Steven Fennell (instructed by **Irwin Mitchell**) for the **Applicant**
Dale Timson (instructed by **Direct Access**) for the **First Respondent**
The **Second Respondent** in person

Hearing dates: 20-24 May 2024

- -

This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 4:30 pm on 10 September 2024

HHJ Paul Matthews :

Introduction

1. This is my judgment on the trial of an Insolvency Act application by the present trustee in bankruptcy of the second respondent, for orders relating to a property in Bristol known as "The Grange", in the name of the first respondent, alleged by the trustee to have been purchased with monies provided by the second respondent. The current trustee was substituted for the original trustees as applicants by order of 13 March 2023. No substantive relief is sought by these proceedings against the second respondent. He is joined to these proceedings simply so that he shall be bound by the result.

2. The trustee's application was originally based on three separate matters: (1) the doctrine of sham; (2) transaction at an undervalue under section 339 of the 1986 Act; (3) fraud on creditors under section 423 of the 1986 Act. However, following an informal application by the first respondent on the first day of the trial I made an order staying the application in respect of matters (2) and (3): see [2024] EW Misc 18 (CC). Accordingly, the case has continued only in relation to the sham argument, and this judgment is concerned only with that.

Background

3. As I did in relation to the informal application referred to above, I take the background to this case from an earlier judgment which I gave in this litigation on 5 April 2024, and which is found under neutral citation number [2024] EW Misc 15 (CC):

> "3. The background to this matter is as follows. Before being adjudicated bankrupt, the second respondent was a dealer in stamps and related products, both on his own account and through companies. In 2012, the first respondent, who was born in the Ukraine, began working for one of the second respondent's companies. The first and second respondent later began a personal relationship and eventually married in the Ukraine. On 3 October 2014 the first respondent became the sole registered proprietor of The Grange. On 10 November 2014, the second respondent was arrested on suspicion of defrauding HMRC. On 17 September 2018, he pleaded guilty to that charge, and on 28 September 2018 he was sentenced to a term of imprisonment of three years and eight months.
>
> 4. On 24 April 2017 a bankruptcy order was made against the second respondent on his own application, dated 23 April 2017. On 8 March 2018 a restraint order was made against the second respondent in proceedings under section 41 of the Proceeds of Crime Act 2002 ('POCA'). However, because the second respondent was made bankrupt before the POCA proceedings, his assets as at 24 April 2017 are not affected by the restraint order, having already vested in the trustees in bankruptcy."

4. Later in this judgment, in recording my finding of the facts, I will set out more detail on these matters.

The statements of case

Points of claim

5. The Insolvency Act application was begun by notice dated 12 January 2022. The points of claim (in the light of the partial stay ordered on the first day, which I refer to at [2] above, and again at [13] below) relevantly plead as follows:

> "8. Lindley Johnstone Solicitors acted for [the first respondent ('OS')] in relation to the purchase of [The Grange, Parklands Road, Bristol ('the Property')].
>
> 9. The purchase price of the Property was £890,000. The total sum required to complete the Purchase of the Property was £927,845.58, the additional sums being legal costs, costs arising from late completion, stamp duty and the like.
>
> 10. HSBC provided a loan of £595,000 secured by a mortgage over the Property, so that the balance required on completion was £332,845.58 ('the Balance').
>
> 11. [The second respondent ('PR')] transferred a total of £75,964.60 from his account with Lloyds Bank plc … to Lindley Johnstone to be applied to the Balance as follows:
>
> a. 2 October 2013: £57,964.60
>
> b. 3 October 2014: £18,000.
>
> 12. By letter dated 10 March 2014 addressed to Lindley Johnson, PR stated:
>
> 'This is to confirm that I am gifting half the deposit for the purchase of the above property to my wife'.
>
> 13. OS made three transfers totalling £256,000 ('the OS Payments') from her own bank accounts to Lindley Johnson in respect of the Balance as follows:
>
> a. £89,000 on 20 August 2014 from [her] HSBC Account;
>
> b. £82,500 on 2 October 2014 [from her] Barclays Account; and
>
> c. £84,5000 [sic] of 3 October 2014 from [her] HSBC Account.
>
> 14. The source of the OS Payments was PR, either directly or through [UK Philatelics Ltd ('the Company')]. The Trustees will rely at trial on the analysis of the movement of funds at schedule one hereto, which is itself derived from the analysis undertaken by the prosecuting authorities in the POCA Proceedings. Further, it is to be inferred that in 2014 OS had little or no funds of her own, OS having disclosed nothing to show ownership of or access to substantial sums of cash in her evidence in the POCA Proceedings or in pre-action correspondence.
>
> 15. As to the mortgage loan from HSBC:
>
> a. OS's income declared to HMRC in the tax year 2014/15 was £15,000, being paid to her by the Company. Her monthly salary was thus £1250.

b. Between March 2014 and August 2014, the Company increased OS's salary from £1250 per month to £13,750 per month. OS received the increased remuneration accordingly.

c. After the purchase of the Property, the Company reversed the increase in OS's salary for the purpose of its reporting to HMRC. OS did not make any repayments to the Company.

d. After August 2014, OS's salary reverted to £1250 per month.

16. It is to be inferred that:

a. OS's salary was artificially increased for a short period in order to allow her dishonestly to overstate her income to HSBC in order to support the mortgage application; and

b. OS and PR did that in pursuance of their joint plan to conceal the true ownership of the Property as pleaded below.

17. It is to be inferred that the common intention of PR and OS was that PR was to be the beneficial owner of the Property and that OS was to be registered as the proprietor of the Property so as to conceal the fact of PR's ownership. The facts upon which the Trustees will rely at trial in respect of the said inference are as follows.

a. PR provided the whole of the Balance to OS as aforesaid.

b. OS had little or no money of her own, or access to substantial funds, as aforesaid.

c. The monthly instalments due to HSBC in relation to the mortgage debt secured on the Property were £3605. OSs monthly salary was only £1250 as aforesaid. As at October 2014, OS was reliant upon PR for money to make good the shortfall and for such other sums as would be needed for maintenance and other outgoings in relation to the Property.

d. PR did in fact fund the outgoings and mortgage payments on the Property as set out below.

e. By October 2014, PR had been engaged in large-scale VAT fraud for some considerable time. He would have known in general terms of the risk of detection and civil or criminal action, and that such risk would increase the longer the fraud continued. A fraudster such as PR is to be expected to have made provision to conceal his assets.

f. In hearings in the Crown Court in the POCA Proceedings on 1 October 2020 and on 8 June 2021, PR admitted that he owned 100% of the beneficial interest in the Property.

18. Between 31 October 2014 and 23 April 2017, a total of £93,163.21 was paid to HSBC in relation to the mortgage debt ('the Mortgage Payments'). The Mortgage Payments were made by OS from the HSBC Account.

19. Further, between the same dates, a total of £25,931.48 was paid by OS in relation to outgoings on the Property such as council tax, telephone/Internet, gas, electricity, gardening and so on ('the Outgoings').

20. It is to be inferred that PR placed OS in funds to make the said payments. The facts upon which the trustees That will rely at trial in respect of the said inference are as follows.

a. The facts relied upon in support of the inference as to the common intention of PR and OS concerning the beneficial ownership of the Property as aforesaid.

b. In the tax year 2014/15, OS's total gross pay was £15,000 as aforesaid. In the tax year 2015/16, OS's total gross pay was £17,699, received by her from employment with the Company and with Grange Investment Holdings Ltd ('GIH'). In the tax year 2016/7, OSs total gross pay was £10,599, received by her from her employment with GIH. OS therefore had insufficient resources of her own to make the mortgage and other payments.

[…]

22. By reason of the matters aforesaid, as at the date of the purchase of the Property and that material times thereafter was that PR would be the owner of 100% of the equity in the Property and OS would have no beneficial interest in the Property.

23. The Trustees seek the following declarations and orders:

a. A declaration that the transfer of the Property into OS's name was done to conceal PR's ownership of the Property.

b. Further declarations that PR is the holder of 100% of the beneficial interest in the Property, that such beneficial interest vested in the Trustees upon their appointment pursuant to section 306 of the Insolvency Act 1986, and that they are entitled to require OS is bare trustee to transfer the legal interest in the Property to them.

c. Orders that OS transfer the legal interest in the Property to them and surrender vacant possession of the Property to them."

Defence of the first respondent

6. The points of defence of the first respondent relevantly plead as follows:

"13. Paragraph 8 is admitted.

14. Paragraph 9 is admitted and a copy of the completion statement in respect of the Property is annexed to these Points of Defence …

15. Paragraph 10 is admitted.

Paragraph 11 is admitted. The First Respondent sought, unsuccessfully, to negotiate a reduction to the purchase price of the Property as she was in difficulty raising both the deposit and associated costs (including stamp duty, which was significant) from her own resources. However, she was offered to loans (as follows) to bridge the gap:

> a. The sum of £57,964.60 referred to at subparagraph 11a, was intended to be alone by the Second Respondent to the First Respondent. This loan was subsequently repaid to him from the First Respondent's own funds;
>
> b. The sum of £18,000 referred to at subparagraph 11b, was not made from the Second Respondent's own funds, but rather was and/or represented and/or was referable to a sum lent to the First Defendant [sic] on a short-term basis by her friend Janice Bentley, which Ms Bentley had paid to the Second Defendant [sic] not beneficially, but ministerially, to be applied to the order of the First Defendant [sic]. The First Respondent subsequently repaid this loan from her own funds.
>
> […]

17. The existence of the letter dated 10 March 2014 and accuracy of the extract quoted at Paragraph 12 is admitted. No admissions are made in respect of the truth and accuracy of the contents of said letter, which appears to have been written by the Second Respondent and without reference to the First Respondent. The First Respondent believes it may have been written at a time when she and the Second Respondent were still contemplating purchasing the Property jointly but was overtaken by subsequent events as set out above at paragraph 8h. …

18. The First Respondent avers that the only payment made towards the Property by the Second Respondent from funds which belonged to him was the sum of £57,964.62 Lindley Johnson on or around 1 October 2014 … The remainder of the Balance the First Respondent provided from her own resources (comprising [her father's house and land in the Ukraine, his collection of collectibles, which she inherited from him on his death in August 2010 ('the Inheritance')] and/or income earned from [trading in collectibles and historical artefacts on her own account as a sole trader ('the Business')] or otherwise …), save for the sum of £18,000 which was lent to the First respondent by Ms Bentley …

19. Paragraph 13 is admitted.

20. Paragraph 14 is denied. The OS Payments were made from the First Respondent's own funds … In the circumstances, the inference drawn in the final sentence of paragraph 14 is entirely unjustified …

21. As to paragraph 15:

> a. Paragraph 15 is not admitted, as it is outside the knowledge of the First Respondent …
>
> b. Further:

> i. From time to time, the First Respondent had made in formal advances by way of loan to the Second Respondent for the purpose of paying salaries… And other business outgoings when the Company and/or the Second Respondent's businesses were unable to meet these outgoings at the relevant time. These sums were to be repaid on demand ('the Loans') …
>
> ii. the First respondent requested repayment of the Loans in preparation for her purchase of the Property;
>
> iii. The Second Respondent agreed that the Company would repay the Loans in instalments over a number of months as it was unable to meet the liability in one lump sum;
>
> iv. It appears from the matter is averred in the Application that the repayments may have been processed by Ms Gouldworthy and/or the Company (it is inferred on the instruction of the Second Defendant [sic]) as an increase to the First Respondent's monthly salary and reported as such by the Company to HMRC. For the avoidance of doubt this was done without the First Respondent's knowledge or understanding …

22. Paragraph 16a is denied … Paragraph 16b is denied for the reasons set out below.

23. Paragraph 17 is denied. The inference is unjustified …

a. Subparagraphs 17a and b are denied …

b. The first sentence of subparagraph 17c is admitted. The balance is denied …

c. Subparagraph 17d is denied …

d. Subparagraph 17e is outside the direct knowledge of the First Respondent and is not admitted … The Property was not and was not intended to be the Second Respondent's asset.

e. As to subparagraph 17f, the fact of the admission alleged is outside the knowledge of the First Respondent and cannot be admitted. The truth of any such admission is denied for the reasons aforesaid. The First and Second Respondents have been estranged since 2018 …

24. Paragraph 18 is admitted.

25. Paragraph 19 is admitted. Further, in or around 2015 builders instructed by the First Respondent informed her that the property That was in an unsafe condition and liable to collapse. The First Respondent has spent significant sums of her own funds to make the Property safe to live in and has continued to incur expenditure on necessary renovations.

26. Paragraph 20 is denied. The inference is not justified:

> a. As regards subparagraph 20a, paragraph 22 above is repeated.
>
> b. As regards subparagraph 20b, the income relied on is income from the First Respondent's employment only, and takes no account of self-employed income the First Respondent received from the Business and/or her savings and/or the balance of the Inheritance …
>
> c. The First Defendant made all of the Mortgage Payments from her own resources …
>
> d. Insofar as any outgoings may have been paid by the Second Respondent, which is denied, it is averred they would have been referable to his occupation, and not to any beneficial interest it is alleged he had in the property, which is denied … After the Respondent's [sic] joint mortgage application was rejected, there was never any common intention that the Second Respondent should acquire an interest in the property, either at the outset when it was purchased or at any material time thereafter.
>
> […]
>
> 28. Paragraph 22 is denied by reason of the matters aforesaid.
>
> 29. The relief sought at paragraph 23 is noted but the right to the relief claimed, or any relief, is denied for the reasons aforesaid. The Property belongs legally and beneficially to the First Respondent."

Defence of the second respondent

7. The points of defence of the second respondent relevantly plead as follows (the paragraph numbers referring to the paragraphs of the points of claim):

> "8. This is admitted as far as my recollection.
>
> 9. I have no personal knowledge of the details of this.
>
> 10. I have no personal knowledge of the details of this.
>
> 11. a. This is admitted.
>
> b. This was some kind of loan from her friend Mrs Bentley.
>
> 12. This is admitted. It accompanied the cheque for £57,964.60. I wanted to be sure I would get this money back.
>
> 13. I have no personal knowledge of the details of this.
>
> 14. This is denied. The flowchart analysis at schedule 1 is simplistic and flawed. It is lacking the underlying accounting records …
>
> 15. I have no personal knowledge of the details of this. When OS was employed by my company, all payroll matters were handled by our in-house bookkeeper

> and processed by an independent payroll company. I recall there were frequent errors and corrections in our payroll …
>
> 16. This is denied.
>
> 17. This is denied. I had no common intention with OS about any of these matters.
>
> a. This is denied.
>
> b. From my direct knowledge this is not correct. She had a substantial inheritance after the death of her parents.
>
> c. I have no direct knowledge of this. I did not make good any shortfalls. …
>
> d. This is denied …
>
> e. It is admitted that I was convicted of VAT fraud. I pleaded guilty to £300k of VAT evasion …
>
> f. This is an abridged and deliberate misrepresentation of the agreement …
>
> 18. I have no knowledge of this.
>
> 19. I have no knowledge of this.
>
> 20. This is denied. I require the applicant to prove these matters.
>
> a. I do not understand this assertion.
>
> b. I have no knowledge of these matters. I did not pay her shortfalls …
>
> […]
>
> 22. This is denied.
>
> 23. a. This is denied.
>
> b. This is denied. I do not hold 100% beneficial interest in anything.
>
> c. I have no knowledge of this."

Reply

8. It is not necessary for present purposes to set out any of the points of reply of the applicants to the points of defence of the first respondent.

Procedure

9. On 10 February 2024, the second respondent made an ordinary application by notice in form N244. This was for an order that that the trial of the trustee in bankruptcy's claims be conducted before a judge and jury, instead of before a judge alone. I heard the application on 25 March 2024, when the second respondent addressed me in person.

The application was opposed by the trustee, who appeared by counsel (not Mr Fennell), but the first respondent was neutral, and took no part in the hearing. On 5 April 2024, I handed down a written judgment, dismissing the application (see [2024] EW Misc 15 (CC)). This was on the basis that, although there was a "charge of fraud", within the meaning of section 66(3)(a) of the County Courts Act 1984, against the second respondent. the trial required a "prolonged examination of documents or accounts … which cannot conveniently be made with a jury." I also held that, in relation to the discretion conferred by section 66(2) of the 1984 Act, I would not have exercised it in favour of summoning a jury for this case. With the benefit of hindsight, I can see that my decision was right. This case could not have been conveniently tried before a jury.

10. The pre-trial review took place on 8 April 2024. Amongst other things, my order gave permission to the first respondent to rely on the expert evidence of Helen Gregory, a forensic accountant. On 26 April 2024, the first respondent's solicitors came off the record, and thereafter exercised a lien over the papers otherwise belonging to their former client. The first respondent however managed to instruct direct access counsel within two weeks thereafter, who appeared for her at the trial.

11. I should also mention that on 22 April 2024 the second respondent applied for an order that what he called "the historic VAT matters" should not be dealt with in these proceedings, and that the trustee should "provide a single, succinct document listing the allegations to which [he] must respond". I dealt with this application remotely via MS Teams on 1 May 2024, when I dismissed it. The reason for dismissing the application for the first order sought was that at the hearing the second respondent made clear that he did not dispute the allegations made in the points of claim at paragraphs 5 and 6. The reason for dismissing the application for the second order was that the points of claim were the document required by the rules to inform the second respondent of the allegations against him, and there was no need for any other.

12. On 10 May 2024, the second respondent issued an application for permission to issue witness summonses to call three witnesses. This was listed to be heard at 12 noon on 20 May 2024, that is, immediately before the trial of this claim was due to begin at 2 pm on the same day. Having heard the parties, I dismissed the application, for reasons given at the time.

13. The trial of this claim began at 2 pm on 20 May 2024. At the start of the trial, as I have already said (see [1] above), the first respondent made an informal application for an order dismissing the trustee's claims in respect of transaction at an undervalue and fraud on creditors. This application was based on section 419 of the Proceeds of Crime Act 2002. Having heard the parties, I reserved my judgment overnight, and handed down a short written judgment on the morning of 21 May 2024 ([2024] EW Misc 18 (CC)). In that judgment, I decided to stay (rather than dismiss) the transaction at an undervalue and fraud on creditors matters, pending the outcome of (i) the trial on the remaining matter (sham) and any further developments in the Proceeds of Crime Act proceedings. The trial of the sham allegations then got under way.

14. At the beginning of the hearing on 23 May 2024 the trustee made an informal application to admit further documents both as evidence and for the purposes of cross examination of the second respondent, in relation to meaning of the letters "SACS", which had been seen in other documents in the bundle, and about which questions had

been asked. This application was opposed by the first respondent, although the second respondent was neutral. These documents were downloaded from HM Land Registry and/or Companies House, and copies sent to the first respondent's counsel and the second respondent at 07:26 that morning. This raised some serious questions, including why this question was not spotted earlier, whether there were other documents available which had not been disclosed, and whether there would have to be an adjournment of the trial. I considered the so-called *Denton/Mitchell* principles (from *Denton v TH White Ltd* [2014] 1 WLR 3296, CA, and *Mitchell v News Group Newspapers Ltd* [2014] 1 WLR 795, CA), by analogy, for permission for evidence to be admitted late. As a result, I decided that I would not allow the documents to be admitted into evidence, though I did not then finally decide whether the trustee would be allowed to rely on the documents for the purposes of cross-examining the second respondent. In the event, that turned out not to be necessary.

15. During the court hearing on 23 May 2023, the first respondent expressed concerns about relevant documents not being in the trial bundle. There was some discussion between counsel and myself. This resulted in my directing that the trustee or her solicitor make a witness statement explaining the position, together with copies of all relevant documents in the trustee's power but not yet in the court bundle. At about 5 pm on 23 May 2024, the trustee's solicitors sent by email to the first respondent's counsel an electronic link to three further bundles of documents, amounting to about 6000 pages in all. Shortly before midnight on that day, the trustee's solicitors sent a further email attaching a copy of a witness statement made by the trustee's solicitor Tom Paton in compliance with my direction earlier the same day.

16. On the morning of 24 May (the last day of the trial) the first respondent made an informal application to strike out the claim on the ground of abuse of process. After some discussion, it was agreed that, in order to avoid the risk of running out of time, the best course was for me to hear the application, but not to attempt to make a decision on it straight away. Instead, I would go on to hear the closing submissions, after which I should reserve judgment on both the application and the claim, and give a single judgment. That was the course that I in fact took. This judgment accordingly deals with both the application and the claim.

How judges decide cases

17. For the benefit of the lay parties in this case I will say something about how English judges decide civil cases like this one. I borrow the following words largely from other judgments of mine in which I have made similar comments. First of all, judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds. But there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

Burden of proof

18. The first is the question of the *burden* of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the

burden of proving it. In general, the person who asserts something bears the burden of proving it. So, in the present case the claimant must prove that the registration of the first respondent as sole proprietor of the property is a sham. The respondents do not have to prove anything.

19. The importance of the burden of proof is that, if the person who bears that burden satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it *did* happen. But if that person does *not* so satisfy the court, then for those purposes it did *not* happen. The decision is binary. Either something happened, or it did not, and there is no room for 'maybe'. That may mean that, in some aspects of the case, the result depends on who has the burden of proof.

Standard of proof

20. Secondly, the *standard* of proof in a civil case is very different from that in a criminal case. In a civil case like this, it is merely the balance of probabilities. This means that, if the judge considers that a thing is *more likely to have happened than not*, then for the purposes of the decision it *did* happen. If on the other hand the judge considers that the likelihood of a thing's having happened does not exceed 50%, then for the purposes of the decision it did *not* happen. It is not necessary for the court to go further than this. There is certainly no need for any *scientific* certainty, such as (say) medical or scientific experts might be used to. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not to have happened.

Role of judges

21. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Our system is not inquisitorial, but *accusatorial*. Judges decide cases on the basis of the material and arguments put before them *by the parties*. So, it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce, and formulate their legal arguments, in order to convince the judge to find in that party's favour. There are a few limited exceptions to this, but I need not deal with those here.

The fallibility of memory

22. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22]. This is not a commercial dispute, but a property dispute. Nevertheless, there are documents available. This is often important in particular where, as here, the relevant facts occurred some years ago, and the memories of the witnesses available have been dimmed by the passage of time.

23. But it became apparent during the trial that there is a real problem about the documentation available to the parties in this case. During a "raid" by HMRC on the offices of the second respondent in October 2014, computer hard drives were seized,

and have never been returned. Further hard drives were seized in August 2015. They have not been returned either. These hard drives contained electronic files said to have relevant to the subject matter of this dispute. Subsequently, some of these files were used in criminal proceedings against the second respondent (to which the first respondent was not a party), and later still in proceedings against both respondents under POCA, which are still ongoing. Apparently, there are tens of thousands of documents (or electronic files) in the POCA proceedings.

24. For whatever reason, these have not been made available freely to the parties for the purposes of these proceedings. I have not investigated this aspect in any detail, but my initial impression is that this is scarcely fair. At the very least, I can and do bear in mind the existence of these other documents in considering the many respects in which the respondents were asked, and attempted to answer, questions about specific banking or sales transactions in the years from 2011 to the time of the second respondent's bankruptcy in 2017. Their frequent response was that they were unable to remember. I am not surprised. On the contrary, I would have been very surprised if they had remembered what these (many) transactions were about.

25. In addition to that, I bear in mind that the second respondent has attacked a number of documents in the bundle as being forgeries or fakes. Indeed, I was referred to two versions of the *same* witness statement, made by an officer of the court (a non-party) in insolvency proceedings involving one of the second respondent's companies, apparently made and signed on the same day, but differing in important respects. No-one attempted to suggest a plausible lawful explanation for this. I make clear that the trustee and her team have nothing to do with the witness statement in question, but it goes without saying that this is a matter of considerable concern to me. It is also a matter of concern that, although the trustee had both versions of the witness statement, only one of them was put into the agreed bundle (although it was put into the unagreed bundle, added at the request of the second respondent). I certainly do not say that that was an attempt to suppress knowledge of the second version, but even assuming it was inadvertent it is still a matter of concern.

26. In deciding the facts of this case, I have nevertheless had regard to the contents of the documents in the case. In addition to this, and as usual, in the present case I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to cross-examination and re-examination. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is deliberately not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the (relative) objectivity of the limited documentary evidence available to me.

Reasons for judgment

27. Fifthly, a court must give reasons for its decisions. That is what I am doing now. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. They deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of

imprecision which may still play an important part in the judge's overall evaluation. Put shortly, judgments do not explain all aspects of a judge's reasoning, although they should express the main points, and enable the parties to see how and why the judge reached the decision given.

Failure to call witnesses

28. Lastly, there is the question whether the failure to call a witness has any effect on a party's case. In *Royal Mail Group Ltd v Efobi* [2021] 1 WLR 3893, SC, this question arose. In his judgment, Lord Leggatt (with whom all the other members of the court agreed) said:

> "41. The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

29. I bear these points in mind in the present case.

Witnesses

30. The following witnesses gave evidence before me: (i) the current trustee in bankruptcy Ms Taylor, (ii) the first respondent, (iii) her forensic accountant Helen Gregory, and (iv) the second respondent. None of the earlier trustees in bankruptcy was called, though a witness statement from one of them was in the trial bundle. In the event, and as foreseen at the PTR, counsel for the trustee did not seek to rely on it, and so I have not read that statement or taken it into account.

31. I make the following brief comments about the witnesses. The current trustee was appointed only recently, in January 2023, in the course of this litigation started by her predecessors in January 2022. Her knowledge is therefore limited in time. It is also limited in scope, because, as is common in such cases, the trustee has a team of assistants who deal with day to day matters, and her contact with the case is not day to day, but at intervals when her input is needed. The case had been largely prepared by the time she became involved, and her predecessors' solicitors continued to act on her behalf. She could give very little useful information orally. Her role in substance was

limited to production of the files prepared by others. I am satisfied that what she told me was true so far as she knew.

32. I preface what I say about the first respondent by saying that she is originally from the Ukraine (although she is now a British citizen), and did not come to this country until 2011, when she was about 27 years old. I am not as familiar with assessing Ukrainian witnesses as I am British witnesses. So I must take account of that. Secondly, her English, learned only since her arrival in this country, is good for conversational purposes, but not sufficient for technical ones, such as would be involved in giving at least some of the evidence in this case, dealing with business transactions and accounts. She accordingly had the benefit of an interpreter who was sworn and sat with her, and her evidence has been given in a mixture of Ukrainian and English. The court is very grateful to the interpreter.

33. It is self-evident that Ukrainian culture and lifestyle, including business life, are not the same in all points as British culture and lifestyle. I must therefore bear in mind that her demeanour in the witness box and her responses to questions will or may be influenced by differences in culture and lifestyle. At the same time, I am judging this case according to English legal standards, both procedural and substantive: I would not be competent to judge them according to any other legal standards. The first respondent was skilfully cross-examined on behalf of the trustee for about a day overall. The trustee asks me to disregard the whole of her evidence, except where corroborated by known or probable facts. Her counsel says that the first respondent's evidence is inherently improbable, in that she claimed to remember so little detail of her business affairs. I disagree. Having observed her closely, I am bound to record that I consider that she was telling me the truth throughout, and I accept her evidence without reservation. I say that because, in other circumstances, particularly with a native English witness, some of the answers she gave in relation to documents might have caused me some doubts. But, having reflected on the evidence as a whole, I find that she was honest, and a witness of truth.

34. Helen Gregory was a very precise witness, dealing with the documents which had been submitted to her. She did not attempt to deal with matters outside her knowledge or experience, making clear what the limits of those were. I accept her evidence, so far as it goes. However, I draw attention to a very significant limitation on it, which she has very properly made clear. This is that she is aware from her work as a retained expert in the POCA proceedings that there exist other documents highly relevant to the issues in these proceedings which have not been made available to her to use in these proceedings. As a result she says in her report that she is "not able to give the Court a properly informed view" and that this "is a serious limitation in the scope of [her] work]", as a result of which she has been "unable to – (i) trace the original source funds which have been identified by the [trustee] as being funds from [the second respondent and his companies]; and (ii) comment on [the first respondent's] income". This means that her report may provide me with signposts, but not necessarily destinations.

35. The second respondent was cross-examined for rather less time than the first respondent. But I still had a sufficient opportunity to observe him closely. Because he is unrepresented, I have also heard him speak in other hearings and on making applications and interventions in the trial. He readily accepted that he had pleaded guilty in 2018 to a charge of cheating the public revenue (and served a prison

sentence), but insisted that his plea was based on a sum of about £300,000, rather than the somewhat larger sum pleaded by the trustee. It is clear that he is not a natural businessman, but rather a knowledgeable stamp enthusiast who made a successful living selling stamps and coins to other enthusiasts. He seemed somewhat battered, as well as bemused, by all the things that had happened to him in the last ten years, his arrest, the seizure of documents and loss of his business, the breakup of his marriage, his bankruptcy, his prison sentence, and so on. His main interest at the trial was in trying to show that he had himself been the victim of a crime in having his funds, with which he says he intended to pay the tax his company owed, embezzled by another person. But his evidence in response to questions put on behalf of the trustee and the first respondent was clear. I am also satisfied that this evidence was honest, and that I can safely rely on it, especially where it was corroborated by that of the first respondent.

Facts found

A procedural point

36. There is a small procedural point with which I must deal. The second respondent submitted that, as the trustee had not served a notice under CPR rule 32.19, she could not challenge the evidence put forward by the second respondent in the documents which she disclosed. This is not right. Rule 32.19 provides that "A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial."

37. The trustee not having served the relevant notice cannot challenge the *authenticity* of a document disclosed to her by the first respondent. The document is authentic, that is, it is what it purports to be. But the rule does not deal with either of two other important matters. One is the *admissibility* of the document in evidence. To some extent that is governed by para 27.2 of the practice direction to Part 32. The other is the *truth of the content* of the document. Even if the document is authentic, and even if it is admissible in evidence, it does not follow *either* that there cannot be any inconsistent evidence admitted on the part of the trustee, *or* that the trustee (or the court) must accept that what the document says is true. That is a matter for the court in weighing the evidence.

The first respondent and her family

38. The first respondent was born in the Ukraine in 1984, then part of the Soviet Union. Her first language is Ukrainian, and she also speaks Russian. Her father was an architect, and her mother a mathematician. She has one brother. Her family lived in Lviv in the west of the Ukraine, close to the border with modern day Poland. Indeed, for much of its existence, Lviv *was* in Poland (or Polish parts of the Austrian or Austro-Hungarian Empire), but was annexed by the Soviet Union in 1939. Lviv is an old city, founded in the thirteenth century. I take judicial notice of the fact that the historic city centre is on the UNESCO World Heritage list. It includes architecture from the renaissance, baroque, neo-classical and art nouveau styles, amongst others. The first respondent's family enjoyed a good standard of living. The first respondent obtained a university degree in economics and management. She had however no professional qualifications, and no experience of running a business, or of preparing

or working with financial statements. She worked as a broker in motor car insurance, both in a call centre and in the specialist claims and losses department.

39. The first respondent's mother died in 2006, and her father in 2010. She was told after her father's funeral that she inherited everything according to her father's wishes, as her brother was excluded. Her father's assets came to her from her grandmother, who was then still alive (she died in 2017). As a former university professor teaching comparative property and inheritance law I know, and in any event I think I can take judicial notice, that Ukraine has a civil law system, in which notaries play a significant role, in particular in recording inheritance. Notarial documents recording the transfers to the first respondent were in evidence before me. Those assets included the family house and its contents, and some land, but also (importantly) her father's substantial stamp and coin collection. These were the subject of detailed submissions by the trustee, particularly its value, whether and how it was brought to the UK and (if so) how it was sold, and for how much. I have borne these submissions in mind, but find as follows.

40. In the inherited collections there were thousands of sets of stamps, and about 500 coins. They were stored in albums, folders and stock books (for stamps), and in plastic holders and coin boxes (for coins). The notarial documents include lists of elements of the collections. The first respondent does not know, but assumes that these lists were prepared by her late father, relying for (then) values on the catalogues available to him. The first respondent decided to value the collections for herself. In trying to value this collection in 2010 she met the second respondent online, who advised about stamps, and also spoke Russian. They met on holiday in Croatia in the summer of 2011, and, after a short courtship, were married in Kiev in September 2011. (I should say that their relationship broke down after the second respondent was sent to prison in 2018, and they are now separated, but, as I understand the matter, not yet divorced.)

The first respondent comes to England

41. After the first respondent came to England, she brought her father's collections to England too, but in hand luggage, a bit at a time. At that time, the second respondent did not own a house, and so she and the second respondent lived together in successive rented homes, in and around Bristol. The first respondent did not like living in rented accommodation. She was financially independent, with her own savings and her inheritance. She wanted them to buy a house. I will come back to this. In the meantime, her father's collections were stored, not in the rented accommodation, but in the safe at the second respondent's office. She did not insure them, partly because this was not usual in the Ukraine, and she had no experience of doing such a thing, and partly because she did not know how much they were worth.

42. She studied English, and began to work for the second respondent's company, learning how stamps and coins were bought and sold. The company had about 10 employees. After some months of simply assisting others to sell, learning about the market, she began selling for the company. Then, in 2012, she started to sell items from her father's collection on her own account. She also bought for her own account, to create her own collection, and to replenish her stock. By the time of this litigation, she had sold about 90% of her inherited and personal collections. It is perhaps relevant to note that she became a British citizen in 2015.

Selling online

43. Selling took place on online platforms such as eBay. A seller would create an account with eBay, to which a bank account or PayPal account would be linked. It appears to be common for those involved in selling and buying collectibles such as coins and stamps to operate multiple eBay or similar platform accounts, each with a linked bank or PayPal account. This enables the seller to get round the restrictions that may be imposed on individual accounts, such as a maximum number of transactions, or a maximum overall value, in a particular month. It also means that, if there is a delay in being paid, because of a customer query, or if an account is blocked for some reason, trading can continue on the other accounts. The first respondent opened and used a number of such accounts. But it is (or was) also the practice to "rent" accounts from other people for the same purposes. This would account for a number of account names which the first respondent did not recognise as her own. She also used accounts belonging to the second respondent or his company.

44. The first respondent's personal sales were accordingly recorded both on the sales platform (such as eBay) itself, and also on the linked bank or PayPal account. The former recorded the *details* of the sale, the latter the *movement of funds* as a result of the sale. Some of the eBay records were printed out in paper form and kept by the first respondent. But she also downloaded the records in electronic form as .csv files (".csv" standing for "comma-separated values"). This is a text-file format, which allows tabular data (such as records of financial transactions) to be recorded as plain text, and therefore easily imported into proprietary spreadsheet software (for example, MS Excel). But they are electronic files, stored on a computer or other electronic media.

45. As I mentioned earlier, the second respondent was arrested in November 2014. At the same time HMRC not only seized the paper files relating to the first respondent's eBay transactions, but also the relevant computers storing the electronic files, with the result that the first respondent ceased to have access to her electronic records pre-dating the seizure. (There was also a subsequent seizure of further records from the respondents by HMRC in August 2015.) I shall come back to these events later in this judgment. For now I simply record my finding that HMRC has never restored any of them to the first respondent. *Some* of these records have however turned up in the POCA proceedings, and the first respondent has been able to obtain these (or some of them) that way. But I find that these records were not made systematically available to her for the purpose of these proceedings. The trustee is of course not responsible for the actions (or inactions) of HMRC. And of course I have not heard from HMRC. But, in considering the evidence available to the first respondent in supporting her case, I bear in mind the limitations under which she has had to prepare for this litigation.

The first respondent's own business

46. Returning to the time before the second respondent's arrest, the first respondent used the second respondent's contacts, and established her own relationships with other players in the market, and also with banks. The end customers were in many different countries, particularly the USA. As a result, she maintained accounts with banks in different countries, because each sales platform needed its own linked PayPal account, which in turn needed its own bank account in the appropriate local currency.

The consequence of this, coupled with the desire to avoid the platforms' restrictions on total numbers and values of transactions per account, meant that the first respondent, like the second respondent's company, had many eBay and PayPal accounts, each with a different name. I can well imagine that, for investigators of tax fraud and insolvency irregularities, the discovery that the respondents between them had multiple accounts with online selling platforms and banks, and all in different names, must have seemed to the investigators much more valuable to them than in fact they were.

47. For the first respondent, one particular problem now, without access to all her records, and at a distance of 10 years and more, has been to identify which accounts were hers and which were those of the second respondent or his companies. But I accept her evidence that, when she made a sale, the proceeds of that sale might be dealt with in different ways, depending on the exigencies of the situation. Sometimes, funds would be left in the PayPal account to be used to pay suppliers. Sometimes they would be transferred to a bank account. The problem was compounded, however, because it is clear that sometimes proceeds were paid from a PayPal account into one of the bank accounts of one of the second respondent's companies, instead of into one of her own. When that happened the first respondent relied on the second respondent's bookkeeper, Alyson Gouldsworthy, to keep the relevant records, so that the funds were properly accounted for. She had no reason not to trust the second respondent (who was after all her husband) and his bookkeeper. But of course those records were seized too, and were therefore unavailable to the first respondent, and also to the court.

48. On the evidence before me, I find that the first respondent did not know, or try to find out, how the finances of the second respondent's business worked. It was not her business. However, she at least understood that all his wealth was tied up in that business, and that therefore he had no capital with which separately to buy a house with her. She worked for his business, and therefore understood how sales and purchases took place, and how the records would be kept, and accounting for proceeds of sales would take place. But she did not know any more than that. Indeed, once she had started to buy and sell on her own account, she no longer needed to know any more than that. She was effectively independent of the second respondent. As the second respondent put it in evidence, she "went her own way, technically employed by the company, but training by herself".

49. After the second respondent's arrest, the first respondent continued to work on her own account. His problems were not her problems. Her evidence, which I accept, was that she had a turnover of some $300,000 to $400,000 each year, generating a profit of about £100,000 per annum. It is important to bear in mind that the first respondent was not simply selling the collectibles she had inherited, even though that was where she started from. She was now buying on her own account to sell at a profit if she could. One of the criticisms made of the first respondent's case, that she made money in selling her inherited collection, and indeed then carried on a profitable business, is that she has not produced financial records, or sufficient such records, of particular transactions to back that up. But, as I have just made clear (at [45]), all such records were seized by HMRC. Although some of these records are in the documents in the trial bundle, the first respondent says that most of them are not.

50. Indeed, it now appears from the further disclosure made by the trustee on the evening of the penultimate day of the trial (see at [15]) that the trustee actually had a lot more of the business records, showing specific sale transactions going back to 2014, and also of the first respondent's tax returns, showing turnover in some years in the hundreds of thousands of pounds. For whatever reason, these were not made available for the purposes of this trial, and this is a matter of real concern. And, as I say, the rest of the business records are still in the hands of HMRC or the CPS. I cannot reproach the first respondent for having to rely on what she has left, including her own oral evidence, and the impression that she has made on the court, especially in the light of thorough cross-examination. In this context, the fact that she has no photograph of her standing, beaming, beside her inherited collection, or of any customs declarations made when the collection was imported, is of very little weight indeed. I have already stated my conclusion (at [33], and also earlier in the previous paragraph) that I accept her evidence. The criticism of the first respondent therefore goes nowhere.

The first respondent's salary

51. However, the first respondent's employment with the second respondent's business meant that she earned a salary. The points of claim plead at [15] that

> "a. OS's income declared to HMRC in the tax year 2014/15 was £15,000, being paid to her by the Company. Her monthly salary was thus £1250.
>
> b. Between March 2014 and August 2014, the Company increased OS's salary from £1250 per month to £13,750 per month. OS received the increased remuneration accordingly.
>
> c. After the purchase of the Property, the Company reversed the increase in OS's salary for the purpose of its reporting to HMRC. OS did not make any repayments to the Company.
>
> d. After August 2014, OS's salary reverted to £1250 per month."

52. The points of claim go on at [16] to plead that:

> "It is to be inferred that:
>
> a. OS's salary was artificially increased for a short period in order to allow her dishonestly to overstate her income to HSBC in order to support the mortgage application; and
>
> b. OS and PR did that in pursuance of their joint plan to conceal the true ownership of the Property as pleaded below."

53. The first respondent accepted that her annual salary from the second respondent's business was £15,000, paid in monthly instalments, subject to the usual deductions. But her evidence was that "we all got large bonuses too". In her formal defence, set out earlier, she pleaded to the matters set out in paragraph [15] that she had "no personal knowledge of the details of this", as payroll was handled by the company's bookkeeper. However, in cross-examination, bank statements were put to the first respondent showing monthly payment of about £1085 until March 2014, but significant increased monthly sums (about £8550) being paid to her by the second

respondent's company in the three months from April to June 2014, reducing to £1544 monthly from July 2014 onwards.

54. I was also shown an email between the company bookkeeper (Alyson Gouldsworthy) and a lady called Jane Poole (at an external organisation), dated 27 February 2014, in which the former asked the latter to increase the first respondent's salary, for the month of March 2014 (and *only* that month), to the annual equivalent of £165,000. As the bookkeeper said, "we need the payslip to show this". Neither Ms Gouldsworthy nor Ms Poole gave evidence before me. (When this was put to the first respondent, she commented that she would have been happy to ask Ms Gouldsworthy to come and give evidence, but that no-one suggested it.) No explanation was given by anyone as to why such a temporary salary increase should have taken place. But it appears to be the basis of the trustee's pleading at [15] of the particulars of claim, even though its terms are inconsistent with them. After all, the email makes clear that the increased payment was for *one month only*, whereas the pleading asserts (and the bank statements show) that there were increased payments *for three months*, April, May and June 2014.

55. Then, on 6 June 2014, there is an email from Ms Gouldsworthy to Ms Poole to say that the second respondent "has asked me to tell you that he would like Olga's salary reversed so that we can claim back the NIC and tax on this. Could we put this back into the company as a refund from Olga?" I have not seen any reply to this.

56. Given, in particular, the limited disclosure of financial records to her, the first respondent was unable to say why these increased payments had temporarily come about, or indeed ceased. She postulated the possibility that she had sold something, and that the company was accounting to her. But I think that the truth is that she just did not know. The claimant trustee's case is that this was an attempt at mortgage fraud and at hiding the second respondent's assets, because at this time the first respondent was applying for a mortgage loan, in order to buy a house. I will return to the house purchase shortly. In her evidence, the first respondent denied that she was part of a conspiracy to defraud the mortgage lender into lending more than it would otherwise have done. I believe her, and find that there is nothing in this episode which is the responsibility of the first respondent.

57. The second respondent also said in evidence that he had no idea about these changes to the first respondent's salary. He said he did not ask for them, and that he had no idea how they came about. An annual salary of this level would make no sense at all. I accept this evidence. I find he was not responsible for this either. Once the second respondent found out about the changes, it would make sense for him to ask for them to be reversed, and this is a fair interpretation of the email of 6 July 2014. *Ex hypothesi*, I cannot know if further disclosure of financial and other company records would have made any difference. On the basis of what I have seen and heard, I am not persuaded by the trustee that this was an attempt either to hide the second respondent's assets in the first respondent's purchase, or to make a gift to the first respondent.

Sums paid by one respondent to the other

58. A further matter concerns sums of money paid by the first respondent to the second respondent or his companies, and sums paid by him or the companies to the first

respondent. One such payment was on 5 March 2014, when the second respondent transferred £25,000 to her. The same sum was transferred by the first respondent to another of her accounts the next day. Another took place on 28 April 2014, when the second respondent transferred £20,000 to her, and on 22 May 2014 she transferred an equal sum to another account in her own name. However, as indeed in respect of both these occasions, she was generally unable to remember the reason for the payment, in either direction. In her evidence the first respondent made clear that there were occasions when she personally paid an account to a third party owed by the second respondent or the company, so that he or the company owed her money and would in due course pay it back. But she could not say whether these payments were such cases.

59. On 13 March 2014, the first respondent received a payment from Rare Stamp Associates Ltd (a company belonging to the second respondent) of £48,000. The same day she transferred £40,000 to another of her accounts and 19 March 2014 she paid £8000 to the second respondent. On 22 April 2014 she transferred £15,000, £10,000 and £15,000 in from another of her accounts, and paid out £9500 to UK Philatelics Ltd, the second respondent's main company, and £10,000 to Rare Stamp Associates. She made a further payment of £15,000 to Rare Stamp Associates the following day, and another of £5000 on 25 April. On 28 April she transferred £10,000 in from another of her accounts and immediately paid out the same sum to Rare Stamp Associates. The first respondent could not remember what these transactions were for.

60. On 13 June 2014 the second respondent made two payments to the first respondent, of £7000 and £18,000 respectively. On 22 and 24 September 2014 the first respondent received two payments from the second respondent, of £15,000 each, totalling £30,000. On 2 October 14, there was three further payments from the second to the first respondent, of £3000, £3100 and £25,000 respectively, totalling £31,100. In cross-examination, the first respondent could not remember what any of these payments was for.

61. In the period June to August 2016, Grange Investment Holdings Ltd (a company incorporated and owned by the first respondent) received a series of payments from the second respondent into its HSBC 8060 (US Stamps) account, whilst making an approximately similar number of payments (though not identical sums) out to an account called US Philatelics. The first respondent told me, and I accept, that this was a trading name that she used. So, these were in effect payments in from the second respondent to her, and then on between two of her own accounts. On the face of it, there is nothing improper in that. The first respondent could not remember what these payments were for. Once again, at this distance of time, and in the absence of her financial records, I am hardly surprised.

62. In the same period, the first respondent made a large number of separate payments from her HSBC 5223 account to the second respondent. All bear the legend "Loan repayment". On some days there was more than one such payment. At the same time there were significant sums coming in from the US Philatelics account. She explained the payments to the second respondent as money owing to him from sales. No attempt was made at the trial to match up the payments referred to in the previous paragraph to those in this. Without all the financial records seized by HMRC, I currently do not see how it is possible to reach any conclusion about them. They may be connected, or

they may not. As things stand, I am not prepared to find that there was anything sinister in any of them.

63. Given the close interaction between the first respondent's business on her own account and the second defendant's company and its staff, and the fact that the payments go in both directions, I see no reason to suppose that those payments which were in her favour must have been for the purpose of hiding the first respondent's assets or of making gifts to her. On the material before me, it seems far more likely that such payments were in connection with business matters, such as repaying loans or remitting proceeds of sale received into the other party's account.

Money moving between the first respondent's accounts

64. The first respondent also moved significant amounts of money between her own personal bank accounts. (I think that during cross-examination I saw statements from at least 12 different accounts with at least six High Street banks, though there may have been more. When asked why she had opened so many, she replied that at that time banks offered useful incentives, such as free travel insurance, to new customers. I see no reason to doubt the truth of this. For example, in March 2014 she received two separate sums (on two different days) totalling £69,000 into her own 3960 TSB account, from her own 3568 TSB account. Then, in five separate payments subsequently, in March and April 2014, she transferred the same total sum back again. Without more, this is not unlawful. Nor is it even suspicious. People move their money from account to account for all kinds of (lawful) reasons.

65. Another example is in May and June 2014, when she made three payments from her Nationwide 7472 account to her Nationwide 5770 account, amounting to nearly £86,000. However, on 23 June 2014 she made four separate payments from her 5770 account, totalling nearly £87,000, *back* to her 7472 account. There was also another credit on that day to the 7472 account from her personally for £7000. Finally, and again on the same day, she made 11 separate payments out of her 7472 account, amounting to nearly £64,000, all to herself (no account stated). Again, on the face of it, there is nothing wrong with any of this.

66. Then, the next day, 24 June 2014, the first respondent received into her Lloyds Bank 8860 account a total of nearly £197,000 in several payments from her Lloyds Bank 4360 account, but on the same day paid out nearly £206,000 to that 4360 account, again in several payments. In all these cases, the first respondent was unable to remember what each of these transactions concerned. Frankly, given the many accounts, the profusion of transactions, and the lapse of time, I am not at all surprised.

67. However, given that the first respondent had multiple bank accounts for the purposes of her buying and selling on her own account, it does not surprise me that she moved money between them, even several times a day. It is regrettable that the way that businesspeople think and work does however sometimes elude civil servants, more used to single accounts with few transactions. So far as this case is concerned, however, these transactions are not between the first respondent and second respondent (or his company), and so do not help me anyway. I may add that the first respondent confirmed, and I accept, that only she had power to operate these accounts, at least at the relevant times. I find that no-one else could operate them, remotely or otherwise.

Grange Investment Holdings Ltd

68. I referred above to Grange Investment Holdings Ltd. This was incorporated on 7 May 2015, and the first respondent was both sole director and sole shareholder. It was created as a vehicle for the first respondent to carry on her business of buying and selling stamps and coins, which she did from The Grange itself. At its height the company employed 8 members of staff. It was dissolved on 30 April 2019, although it appears from the evidence that an unrelated third party had by then become a person with significant control. I accept that the company was dissolved because, as the first respondent said, it was no longer needed, although she has in fact continued herself to trade in stamps. The abbreviated accounts (applicable to small companies) for the year ended 31 May 2016 show as at that date the company had tangible assets of £117,511, stocks of £9,255,376, and creditors falling due within one year of £9,721, 283. The total net liabilities as at that date were shown as £234,541. When asked about this balance sheet, the first respondent could not recall what either the stocks or the creditors were. But she confirmed, and I accept, that she did not allow anyone else to use the company. She just could not remember what these figures represented without her accountant's assistance.

69. In the context of the facts of this case, I do not consider that this is in any way suspicious. The first respondent is a person, inexperienced in business, who inherited a stamp and coin collection, which she wished to realise, and then became involved with, married and even moved to the country of, another stamp and coin enthusiast, himself also not a natural businessman. She sensibly took professional advice as to how to organise her own business relationships, incorporated a company, and signed the corporate documents (not in her native language, and not necessarily prepared according to the accounting conventions to which she is accustomed, if indeed any) which were presented to her by her professional advisers. That would not excuse her if the documents told lies. After all, she signed them. But, then, no-one has suggested that. On the other hand, I see no reason why, several years later, she should be so familiar with the figures contained and what they stand for, as to be able answer questions about this at sight in cross-examination. They were professionally prepared, after (no doubt) professional consideration. No-one buys a dog and barks herself. In any event, the point goes only to credibility, as the trustee could not and did not suggest that what the company was doing in 2016 helped to answer the question whether the purchase of The Grange in 2014 was for the second respondent's benefit.

The Grange

70. In these proceedings, the trustee's focus is, as I have said, on a residential property whose title was registered in the sole name of the first respondent on 3 October 2014. This is known as The Grange, Parklands Road, Bower Ashton, Bristol, BS3 2JW. It is a substantial detached property not far from the centre of Bristol. As I have said, the second respondent did not own a property of his own at the time of his marriage with the first respondent. As I have also said, at first they rented houses to live in. But the first respondent, not unnaturally, wanted to buy a house with her husband, instead of living in rented accommodation.

71. So, the respondents looked for suitable properties, and she found The Grange. The original plan was for both of them to buy it, together. However, they did not have enough money between them to pay cash, and accordingly mortgage finance would be

needed. Unfortunately, the second respondent was judged too old to obtain a long-term mortgage loan. On the other hand, the first respondent did not want a short-term one. So, the first respondent negotiated a long-term mortgage loan from HSBC Bank for her alone, and with her being the sole purchaser. The second respondent appears to have agreed to this. After the house was purchased, she discovered that its condition was worse than she had believed, and she had to carry out a lot of remedial works, which she says she financed herself. This led to further work. I will come back to this.

Purchase

72. I deal first with the purchase itself. The asking price was £950,000, but the price finally negotiated was £890,000. With legal costs and taxes, the total to pay was £927,845.58. This was financed by the first respondent by a combination of (i) a mortgage loan from HSBC of £595,000, (ii) her own funds, and (iii) short-term borrowing from the second respondent and a friend, Janice Bentley. The first respondent organised the loan with HSBC by herself, and (on the suggestion of the bookkeeper, Alyson Gouldsworthy) instructed Lindley Johnstone, solicitors, to act for her in the purchase. I find that there was in particular no conspiracy between them that the second respondent would hide his assets in the purchase of this property, and, more prosaically, no agreement between the respondents that the second respondent would have *any* share in the beneficial ownership of the house, either immediately or in the future. Once it became clear that the second respondent could not obtain a long term mortgage loan, neither of them intended that the second respondent should have a beneficial interest in the property once acquired. The first respondent paid the deposit on the purchase of £89,000 to her solicitors on 20 August 2014.

73. As to the deposit, it is common ground between the parties that, in a letter dated 10 March 2014 addressed to Lindley Johnstone, the second respondent wrote:

> "This is to confirm that I am gifting half the deposit for the purchase of the above property to my wife".

However, the first respondent's evidence was that this did not in fact happen. As stated above, the deposit was not paid until the end of August, and it came from the first respondent's own bank account. I was not taken to any particular document showing a transaction or transactions evidencing the payment by the second to the first respondent of half the deposit. I find therefore that the second defendant originally intended to, but in fact did not, make a gift of half or any other fraction of the deposit.

74. Completion took place on 3 October 2014. On 2 October the first respondent transferred £82,500 from her Barclays 7241 account to her solicitors, and on 2 October she transferred £84,500 from her HSBC account to them. The first respondent was expecting to have the balance to complete (taking account of the mortgage loan) available from business (mostly PayPal) receipts, but in the event found that she did not have enough. She agreed with the second respondent to borrow £57,000 from him, and also with Janice Bentley, a friend, to borrow £18,000 from her. The second respondent from his own bank account paid Lindley Johnstone the sum of £57,964.60 on 2 October 2014 and the sum of £18,000 on 3 October 2014. I am satisfied that she was able to raise these sums by the sale of her stamps and coins.

That was her unshaken evidence, and there was no evidence of any weight to the contrary.

75. I find that those payments represented his own loan for £57,000 and that of Ms Bentley for £18,000. (He had received the sum of £16,000 from Ms Bentley on 3 October 2014, and paid her back £16,500 on 6 October – the disparity with £18,000 was however not resolved at the trial). These sums add up to £926,964.60. But according to the completion statement from her solicitors, she had earned some interest on the monies held with her solicitors, and had earlier made a small payment on account of £300. That left a balance for the first respondent to pay on completion of £538.29. I am not clear when this was paid, but I have no doubt that it was. The solicitors would not have proceeded to register the purchase without this. On 24 October 2014 the first respondent was registered as sole proprietor of the fee simple estate in The Grange.

76. The question is whether any of the second respondent's funds were used in this purchase, whether by way of gift from him to the first respondent, or indeed directly, to acquire a beneficial interest in The Grange. First of all, I am satisfied that the second respondent did not pay any part of the deposit. Secondly, the sums of £57,964.60 and £18,000 paid by him to the solicitors on 3 and 4 October 2014 were indeed *loans* from himself and Ms Bentley respectively to the first respondent. Therefore, when they were used by the solicitors in completing the purchase, they were in law the first respondent's funds and not the second respondent's. In respect to them, the first respondent simply incurred a debt. Thirdly, I am satisfied that, whatever the cause of the temporary increase in salary of the first respondent, this did not of itself put any of the second respondent's money into the purchase.

77. Fourthly, I am satisfied that the first respondent was able to, and did, repay the loans from the second respondent and Ms Bentley, and to pay the instalments on the mortgage loan, from her own resources. As I have held above, at about that time, her own private business had a turnover of some $300,000 to $400,000 each year, generating a profit of about £100,000 per annum. On this basis, she could afford to repay the loans from the second respondent and Ms Bentley, and to keep up the instalments on her HSBC repayment mortgage loan. According to the HSBC mortgage loan statements I have seen for the period 2014-2018, the first respondent has been paying about £3000 per month and incurring interest of about half that. (The mortgage loan is still outstanding, and indeed was increased by £30,000 to help fund the renovation work, and the second respondent is self-evidently not in a position to be able to service this.) Her £15,000 per annum salary from the second respondent's company was, frankly, neither here nor there.

78. Subsequently there were many payments from the first respondent to the second, some of which have already been referred to. So far as I can see, they are sufficient, along with business transactions between them, to have covered the repayment of the sums lent.

Building works

79. The second question that arises relates to the building works that needed to be carried out on The Grange. I can deal with this more shortly. The surveyor's report in July 2014 indicated that there were extensive works to undertake. After the purchase was

completed, however, more serious problems became apparent. The roof had to be removed and replaced, floorboards taken out and replaced and walls demolished. The drains had collapsed through subsidence. So had the gutters. The land was contaminated with arsenic. The plumbing and heating systems had to be replaced. Listed building consent had to be applied for and obtained. This has all taken time and cost money. The first respondent considered whether to make a claim against the surveyor. The work to the upper floors has by now been completed, whereas that to the ground floor remains.

80. Despite the presence of a straw or two in the wind, such as an application for planning permission/listed building consent prepared by the instructed architects in the names of "Mr and Mrs P Savic", and that sometimes invoices for the work were made out to the respondents as a married couple, I find that the first respondent alone funded this work, from her own business and resources. On the evidence before me, and despite the trustee's submissions to the contrary, I find that the second respondent did not contribute.

Other events

81. One of the second respondent's companies involved in the VAT fraud was Rare Stamps Associates Ltd, incorporated on 18 October 2012. HMRC presented a winding-up petition against the company, which was due to be heard on 14 July 2014. The company gave notice of a proposal for a company voluntary arrangement on 9 July 2014. Meetings of creditors and members were convened for 5 August 2014. On that day the company resolved to enter into creditors' voluntary winding up.

82. On 10 November 2014, officers of HMRC attended the second respondent's office at Jamaica House, Bridge Road, Bleadon, arrested him and took away all the business documents. He was interviewed by HMRC, but released on bail after several hours. Later the same day the first respondent was also interviewed, but was not arrested, and was never charged with any offence. (In fact, nor was anyone other than the second respondent.) On 6 July 2015 the second respondent was interviewed again. In August 2015, HMRC attended the office again and seized further documents. On 25 August 2015 the first respondent was interviewed again.

83. On 24 April 2017, the second respondent was adjudicated bankrupt on his own petition, dated the previous day. On 2 November 2017 the second respondent's discharge from bankruptcy was indefinitely suspended. Subsequently, the liquidator of Rare Stamp Associates Ltd submitted a proof of debt in the bankruptcy, in a sum exceeding £850,000. Recently, on 16 April 2024 the suspension of discharge from bankruptcy was itself discharged.

84. In 2018 the second respondent was prosecuted, on a single charge of cheating the public revenue (involving a VAT fraud), to which he pleaded guilty. On 28 September 2018 he was sentenced to a term of imprisonment of three years and eight months. He went to prison, and was released in March 2020 (the beginning of the Covid-19 pandemic), having served approximately 18 months of his sentence. In December 2018 proceedings were begun under POCA, aimed at demonstrating that various assets of the respondents, including The Grange, in whole or in part constituted the proceeds of crime or were "tainted gifts" under POCA, and should be subject to a confiscation order. The first respondent, as registered proprietor of The

Grange, is a party to those proceedings. I understand that they are still ongoing, six years later. It appears that, at and for the purposes of a hearing in those proceedings on 1 October 2020, the prosecution and the second respondent came to an agreement, under which the prosecution dropped its allegations in respect of assets other than The Grange, and the second respondent agreed that he owned 100% of The Grange.

85. The terms of the agreement were these:

> "The Defendant agrees (subject to any claim by Olga Savik or the trustees in bankruptcy) he is the sole legal and equitable owner of The Grange such that the remaining equity is available and realisable.
>
> The Crown no longer pursues the alleged tainted gifts as being available to Mr Ryle but reserves it[s] position in relation to Ms Savik. The available amount is therefore limited to the full remaining equity in The Grange."

86. It appears that this was done in order that the "benefit figure" in the POCA proceedings against the second respondent could be agreed. The first respondent was not a party to that agreement. In cross-examination by the trustee, the second respondent said that he was not allowed to expand on the significance of this. On any view, however, by agreeing that he owned The Grange, the second respondent obtained the benefit of limiting the value of his "benefit" for POCA purposes. At the same time, as I understand the position, the first respondent was not bound by this agreement, and was entitled to assert (as she has done) her own claim to own the property. So, the agreement was a net gain for him, without causing a significant (or perhaps any) loss to the first respondent.

87. Another explanation may be that the actual agreement by the second respondent was that he owned The Grange *subject to the first respondent's claim*. So, if he himself considered that *she* owned it (as in these proceedings he says she does), then strictly speaking what he said there was not inconsistent with that. Since she has a (in his view justified) claim to it, he does not. It may be that *either* the net gain without loss argument *or* the strict construction explains why the second respondent was advised to enter into it. Or it may be something else entirely. But I do not know, and at the end of the day it does not matter.

The law

Resulting trusts

88. The law in this case is really about shams. But submissions were made to me about resulting trusts. So, I will say this. A trust is a trust, whatever kind of trust it is. But it matters whether a trust is an express trust or a resulting trust, because, apart from anything else, the formalities for their creation are or may be different: see the Law of Property Act 1925, s 53. A resulting trust for the purposes of section 53(2) is different in *character* from an express trust. An express trust comes about because the settlor has expressed the intention that there should be such a trust, and the trustee has accepted the obligation to act as such. A resulting trust comes about without either the need for any expression of intention by the trustee or any acceptance by the trustee. Moreover, the settlor is always the beneficiary of whatever beneficial interest is held on resulting trust. (Trusts created expressly for the benefit of the settlor are

sometimes, and confusingly, referred to as "express resulting trusts". In the sense in which I have used the term, they are express trusts, and the word "resulting" is used only to denote the identity of the beneficiary.)

89. In the cases and books, there are usually said to be two kinds of resulting trust. The first is called a *presumed* resulting trust. There are two sub-types, purchase where the price is paid by another and gratuitous conveyance. They both involve the same idea. This is that, where A conveys property to B without making clear whether B is to take beneficially or to hold as a trustee, the matter must be resolved by the evidence available. In default of such evidence, certain presumptions are applied.

90. In relation to a case where A conveys property to B, although C has provided the purchase price, the presumption is that B is to hold the property on trust for C. (If B and C have provided the purchase price between them, then the trust is presumed to be for them in the shares in which they paid the price.) In relation to a gratuitous conveyance, and depending on the relationship between the parties, the presumption may be of gift (*eg* parent conveying to child, or still, perhaps, husband to wife) or of resulting trust (other cases). But whether it is a purchase where the price is paid by another or a gratuitous transfer, it is simply a presumption. Although there is no expressed intention to create a trust, in fact it turns on what was *presumed* to be the intention, whether of gift or of trust. In practice it is rare that there is no other relevant evidence which either supports or rebuts the presumption. The court then has to make up its mind.

91. The second kind of resulting trust is called an *automatic* resulting trust. Where A conveys property to B on an express trust, but does not exhaust the beneficial interest, whatever is not the subject of the express trust *results* (from the French *ressauter*, jump back) to the settlor. More accurately, of course the interest of the settlor in fact never leaves him or her. As Lord Russell of Killowen put it in *Commissioner for Stamp Duties v Perpetual Trustee Co Ltd* [1943] AC 425, 441, giving the advice of the Privy Council on an Australian appeal,

> "A person who declares trusts of property only gives the beneficial interests covered by the trusts. Everything else he retains and does not give."

92. The whole idea of a resulting trust in either sense is that it is not intended, and certainly not *expressed*, to be for the benefit of anyone other than the settlor. It is true that there are statements of the law which may be regarded as outliers on this point. For example, that great common lawyer Lord Halsbury LC in his *extempore* judgment in *Smith v Cooke* [1891] AC 297, 299, said

> "If it is intended to have a resulting trust, the ordinary and familiar mode of doing that is by saying so on the face of the instrument; and I cannot get, out of the language of this instrument, a resulting trust except by putting in words which are not there."

But this must be regarded as a statement produced in the afterglow of forensic argument, without much opportunity to reflect, or to consult a fellow judge with chancery experience. In any event, at the outset of his oral judgment, he confessed to having "entertained considerable doubt at the commencement of the argument in this

case", even though by the end he had recovered his characteristic self-confidence in his decision-making.

Sham

93. In his poem *Annus Mirabilis,* published in 1967, Philip Larkin stated that sex had been invented in 1963. Whilst, given the age of the human race, that seems somewhat unlikely, it is clear that many English lawyers similarly believe that the law of *sham* also began in 1967, with the well-known dictum of Diplock LJ in *Snook v London and Western Riding Investments Ltd* [1967] 2 QB 786, 802, that

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

94. This was a case that had nothing to do with land, or trusts, but instead with the hire purchase of a motor case, a hot topic for those days. It was also a case in which each of the three judges (Lord Denning MR, Diplock and Russell LJJ) gave a full, reasoned judgment. But only this one dictum is cited, usually with reverence, and occasionally with a gloss. But the fact is that Diplock LJ, a legal polymath, was simply stating what to him was obvious. The *idea* of the sham had existed for centuries. His *dictum* (for he held that there was *in fact* no sham in the case) was based on his understanding of earlier authority. And it has been taken up in many subsequent decisions of the courts in England (and indeed elsewhere): see *eg Hitch v Stone* [2001] EWCA Civ 63, [63]-[69]; *Mackinnon v Regent Trust Co Ltd* [2005] JCA 66; *Pankhania v Chandegra* [2012] EWCA Civ 1438, [20]-[21]; *Islam v Islam* [2024] EWHC 1082 (Ch), [136]-[144].

95. A "sham" in English law consists in the combination of two separate things, both of which must occur. First, a (genuine) transaction happens, whether by words or acts. Or sometimes indeed *nothing* happens. Second, *a different* transaction from the first (or, if nothing happened, then something different from nothing) is *said* or at least *implied* to have taken place. The "sham" is not what *actually* happened (or did not happen) but what is *said or implied to have happened*. Essentially, it is a *misdescription* of the real position, rather than an actual thing. Usually (but not always) there is a document which purports to embody or at least prove the second (non-existent) transaction. The *sham* is the pretence that a transaction *different* from the real one has taken place. The "sham" is therefore the words or acts or or the document misdescribing the events, rather than the transaction itself. Despite the loose language of lawyers, judges and commentators, there are no sham contracts, conveyances, or trusts, but only sham *acts or documents purporting to amount to or at least evidence* such contracts, conveyances, or trusts. The first transaction (or non-transaction) happened (or did not happen). The second, pretend transaction did not. Subject to problems created by registration statutes and so-called "statutory magic" (mentioned below), the pretend transaction is void of legal effect.

96. Diplock LJ went on to say, after the dictum cited above, that *all* the parties to the pretence "must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating". But this,

with respect, goes too far. This is because in English law pretences are subject to the doctrine of estoppel. If one party adopts one view of the situation, and represents it as fact to the other, and the other relies on that representation, there is at least the potential for an estoppel to arise. If that estoppel arises, then the facts are *as represented to the representee*, and not as conceived by the representor. We see this, for example, in the famous case about the sale of old oats and new oats, *Smith v Hughes* (1871) LR 6 QB 597.

97. There Blackburn J said (at 607):

> "I apprehend that if one of the parties intends to make a contract on one set of terms, and the other intends to make a contract on another set of terms, or, as it is sometimes expressed, if the parties are not ad idem, there is no contract, unless the circumstances are such as to preclude one of the parties from denying that he has agreed to the terms of the other. The rule of law is that stated in *Freeman* v. *Cooke.* If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms."

98. As a result, if A truly intends one transaction, but puts forward a document to B expressing another, the document is a sham. However, if B, looking at the document, does not realise that it is a sham, and agrees to its terms, then, although A and B do not *in fact* agree, there is a consensus between them *by estoppel*. As between A and B there is an agreement on the terms of the document put forward. As between A and B the terms of that contract (if that is what it is) can, as Blackburn J says, be enforced by B against A. As between them, A's unexpressed intentions are irrelevant. But there is no estoppel as against A in favour of any other person who has not been deceived by and relied to his or her detriment on the sham. As against that other, A is at liberty to assert the sham nature of the document, and to express A's previously unexpressed intentions.

99. Thus, where A puts forward a sham document to B, and B simply goes along with it, neither knowing not caring whether it is true or not, B cannot claim to have been deceived by it or to have relied on it to his or her detriment. Hence as between A and B there is no estoppel, and A can assert his previously unexpressed intentions. On the other hand, any third party to whom the sham document is shown who is deceived by and relies on it can set up the estoppel, and prevent the assertion of previously unexpressed intentions. And this is why Diplock LJ concluded (at 802F) that:

> "No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived."

100. The question which then arises, at least for the present case, is whether an allegation that a document (or other act) is a sham by itself *necessarily* connotes an allegation of fraud or dishonesty. In my judgment, authority apart, the short answer to that is No. It all depends what you mean by sham. In *A v A and St George Trustees Ltd* [2007] EWHC 99 (Fam), Munby J (as he then was) said:

> "15. A number of different principles, rules or doctrines (call them what you will) may come into play if it is said that some document or transaction is not in truth entirely what it purports to be … "

The judge went on to set out seven such principles, of which I will refer to three.

101. First, a person may put forward a document believing, or at least hoping, that it accurately states the transaction intended to take place. For example, a person may execute a document stating that it is an *inter vivos* gift, although it is subsequently held by the court to amount to a will: *Cook v Cocke* (1866) LR 1 P&D 241, 243. Or an owner of a residential property may consider that the arrangement he has proposed (in writing) to an intended occupier of the property is a licence, rather than a tenancy. The document accordingly refers to a "licence". But the court later holds it to be a tenancy: *Street v Mountford* [1985] AC 809, HL. Here the allegation of sham merely means that the document (or other act) does not accurately record the substance of the transaction. The proponent of the act may have intended the legal result, but has not achieved it. The court looks to the substance of the transaction, and not to the form, or label: *A v A and St George Trustees Ltd* [2007] EWHC 99 (Fam). [15](i).

102. Another example would be where a person conveys property to another apparently outright as beneficial owner, but privately intends, and is later held (by the court), to retain the beneficial ownership by way of resulting trust. The transaction is valid to transfer the legal estate, but not the beneficial interest. This may also be described as a sham (*A v A and St George Trustees Ltd* [2007] EWHC 99 (Fam). [15](iv)], at least as to part, but is not necessarily fraudulent or dishonest.

103. But in some cases the proponent of the act knows that what is said or done misstates his or her true intention. For example, A knows that s/he is the owner of property, and intends to remain so, but states or writes that s/he has transferred it to B, perhaps so that B can thereby obtain some advantage from C that otherwise would be unobtainable, or obtainable only with difficulty. That statement or document is a sham too. There is in fact no legal transfer of property to B. This is the classic sham in the *Snook* sense: *A v A and St George Trustees Ltd* [2007] EWHC 99 (Fam). [15](v). It may be fraudulent, but not dishonest, or it may be both fraudulent *and* dishonest, depending on an appreciation of all the circumstances by the participants, both objective and subjective.

104. On the other hand, it is even possible for a statement or document to be both fraudulent and dishonest, but still have legal effect to create or transfer a property right or interest. In *Grondona v Stoffel & Co* [2021] AC 540, SC, the respondent entered into a mortgage loan transaction with an innocent lender, for the purpose of acquiring a property, which was intended by her to take effect as a mortgage on the property. However, the mortgage application contained fraudulent and dishonest representations that her purchase was a private sale, that the deposit was from her own resources, and that she was managing the property herself. It was a case of mortgage fraud. At first instance, the judge held that the mortgage was a *sham*. The Court of Appeal and the Supreme Court held that it was not, and that it had the legal effect that it purported to have. The respondent did not *pretend* to create a mortgage. On the contrary, that was her real intention, and, because it was done with due formality, it succeeded. The fact that she lied in order to persuade the other party to enter into the

transaction with her did not make it a sham, although it did make it a fraud, and therefore could be undone at the instance of the lender.

105. *Victus Estates (2) Ltd v Munroe* [2021] EWHC 2411 (Ch) was a case where a property was owned legally and beneficially by A and B, and B not only signed, but also forged A's signature on, a transfer of the property to C. In this case C knew of the forgery. One of the questions raised was whether the transfer was "a sham and of no effect", or whether it was effective to transfer B's undoubted equitable interest in the property to C. The answer to this is obvious. B intended *both* (i) to transfer all B's own interest in the property to C, *and* (ii) to pretend to transfer A's as well. C knew of both aspects, and was not deceived by the pretence of the transfer of A's interest. The signature purporting to be A's was a sham (but C knew about that, and so could not rely, as against B, on being deceived; and, even if C *had* been deceived, that would not avail as against A). The rest was not a sham. So the transaction had effect on the basis that B alone had signed it. In the circumstances, that produced a conveyance to C of B's equitable interest in the property, though no transfer of the legal estate or of A's equitable interest.

106. Counsel for the first respondent referred me to a paragraph in the decision of Neuberger J in *National Westminster Bank plc v Jones* [2001] 1 BCLC 98. There, the court had to decide whether the sale of farming assets and the grant of an agricultural tenancy amounted to transactions at an undervalue. In the course of so deciding, the judge also considered whether the grant of the tenancy was in fact a sham. He said this:

> "59. In one sense, lawyers find it difficult to grapple with the concept of sham, presumably on the basis that, subject to questions of mistake (which can give rise to rectification or rescission), there is a very strong presumption indeed that parties intend to be bound by the provisions of agreements into which they enter, and, even more, intend the agreements they enter into to take effect. The difficulty is perhaps illustrated by the way in which Diplock LJ expressed himself in *Snook* ('what (if any) legal concept is involved' and 'if it has any meaning in law') and the fact that Lord Templeman found it necessary to reformulate the concept in *AG Securities* (where at 462H, having referred to his formulation of 'sham devices and artificial transactions' in an earlier case, he said it would have been better if he had used the word "pretences"). A sham provision or agreement is simply a provision or agreement which the parties do not really intend to be effective, but have merely entered into for the purpose of leading the court or a third party to believe that it is to be effective. Because a finding of sham carries with it a finding of dishonesty, because innocent third parties may often rely upon the genuineness of a provision or an agreement, and because the court places great weight on the existence and provisions of a formally signed document, there is a strong and natural presumption against holding a provision or a document a sham. The fact that a document creates a tenancy, which is an estate in land, does not make it inherently more difficult to conclude that it is a sham: if the contract itself is a sham, then no tenancy can be created by it. However, a tenancy is a document which is particularly likely to be relied on by third parties (e.g. mortgagees and sub−tenants) which explains the court's reluctance to hold a tenancy to be a sham (see the observations of Sir Thomas Bingham in *Belvedere* [1997] QB 858 cited above).

> 60. However, I would suggest that the possible prejudice of innocent third parties who have relied on the document or the provision should not stand in the way of the court concluding that the document is a sham as between the parties thereto and as against a party who claims to be prejudiced thereby (and particularly the party against whom the sham is directed, if I can put it that way). If a tenancy agreement is a sham, and an innocent third party accepts it as security for a loan to the tenant, then it seems to me that the third party is entitled to treat the tenancy in existence as against the landlord and as against the tenant: it can scarcely lie in the mouth of either of them to contend that the tenancy agreement does not exist as against the mortgage in such circumstances … "

107. In fact, the judge concluded that whilst the transaction was artificial, it was not a sham. On the other hand, it was a transaction at an undervalue, and should be set aside as against the bank. The defendants (landlords and tenant under the tenancy) appealed to the court of appeal, which dismissed the appeal: [2002] 1 BCLC 55. The question of sham was raised by the bank in its respondent's notice, but expressly not considered by the Court of Appeal in light of its decision that the judge had been right on the question of transaction at an undervalue.

108. I accept that Neuberger J did say at [59], that "a finding of sham carries with it a finding of dishonesty". But this was not a reasoned statement. It was a bald comment, almost in passing, one of three reasons given for reaching the conclusion that there was a "presumption against holding a provision or a document a sham". I accept that a finding of sham may involve a finding of dishonesty. But, as I have attempted to show above (at [101]-[102]), I respectfully do not accept that it *always* does so, and neither do I consider that Neuberger J meant it to be so taken. What the judge said was sufficient for the purposes, and on the facts, of that case. I note also that the judge in the following paragraph of his judgment ([60]) makes the same point about the rights of deceived third parties as was made by Diplock LJ in *Snook*.

109. In the present case no-one suggests that the first respondent did not by purchase acquire and become the proprietor of the fee simple estate in The Grange. Indeed, once she was registered as proprietor, the so-called "statutory magic" (contained in section 58 of the Land Registration Act 2002) would ensure that that happened, even if, contrary to the fact, she had had no intention to acquire it. Even without section 58, the purchase of the legal estate by the first respondent simply could not be a sham, just like the transfer of one half of the equitable interest in the *Victus* case. It was intended, and it happened. Instead, the argument here is whether the assertion of a 100% beneficial interest by the first respondent is a sham, on the basis that her real intention was that the second respondent should have some or even all of that.

110. What all this means, in my judgment, is that it is necessary to analyse the allegations actually made to see if in their context they involve an allegation of fraud or dishonesty. If they do, then the rules relating to the pleading of such allegations are applicable.

Pleading

111. These rules are set out in CPR rule 16.4 and PD 16 para 8.2. CPR rule 16.4 relevantly provides:

> "(1) Particulars of claim must include—
>
> (a) a concise statement of the facts on which the claimant relies;
>
> […] and
>
> (e) such other matters as may be set out in a practice direction."

And para 8.2 of the practice direction to Part 16 relevantly provides:

> "The claimant must specifically set out the following matters in the particulars of claim where they wish to rely on them in support of the claim –
>
> (1) any allegation of fraud;
>
> (2) the fact of any illegality;
>
> (3) details of any misrepresentation;
>
> […]"

112. In *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, HL, Lord Hope said:

> "55. … A party is not entitled to a finding of fraud if the pleader does not allege fraud directly and the facts on which he relies are equivocal. So too with dishonesty. If there is no specific allegation of dishonesty, it is not open to the court to make a finding to that effect if the facts pleaded are consistent with conduct which is not dishonest such as negligence … "

And Lord Millett said:

> "184. It is well established that fraud or dishonesty … must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence … This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so."

Application of the law to the facts

113. In the present case I have found that the first respondent intended to buy The Grange on her own account, and that she intended to be the sole beneficial owner. To the extent that this is relevant (but I doubt that it is), I have also found that the second respondent himself did not intend that he should have any share of the beneficial ownership of the property. None of the documents or other acts carried out to implement or even to evidence the purchase, considered not only in the context in which they were created, but also in the light of what happened subsequently, was in any sense a sham. They were all exactly what they purported to be, *ie* collectively amounting to a purchase by the first respondent in her own name and for her own entire benefit. Even had the second respondent thought differently, the first

respondent had no intention to deceive anyone, and, indeed, if the second respondent *had* thought differently he would have been deceiving her.

114. I have also found that none of the second respondent's assets was used in the purchase. There is accordingly no question of a resulting trust in his favour by virtue of a contribution to the purchase price, which resulting trust might be described as a sham, at least for some purposes (see *A v A and St George Trustees Ltd* [2007] EWHC 99 (Fam). [15](iv), already cited). The first respondent used her own resources, including those raised by her own borrowing from others.

115. The consequence is that The Grange belongs legally and beneficially as to 100% to the second respondent, and the statement by the second respondent of 1 October 2020 that he owned that property was wrong. In my judgment, he does not.

116. It follows that there is no need for me to consider the pleading question raised by the first respondent. But it has been argued, and I think it right briefly to say this much. First, what is pleaded against the respondents is that it was their "common intention" that the second respondent "was to be the beneficial owner of the Property and that [the first respondent] was to be registered as the proprietor of the Property so as to conceal the fact of [the second respondent]'s ownership …" (see para 17 of the points of claim). The trustee's statements of case do not mention the word "sham" (though the case summary does; but that is not a statement of case). I do not think that an allegation that A's money has been put into the purchase of a property in the name of B is without more an allegation of fraud or dishonesty. As I have already said, an allegation may be made that some document or statement or other thing is a "sham" without necessarily imputing an intention to deceive.

117. Secondly, the use of the word "conceal" by itself does not allege deceit, or an intention to mislead. I may conceal my valuables on my person, not with an intention to deceive or mislead anyone, but because I wish to thwart pickpockets, or simply in order to preserve my own privacy. Concealing something may well just mean "I'm not telling you." Nor does it do so as part of an allegation of an agreement that the second respondent was to own the property acquired by the first respondent. 0 plus 0 does not make 1. Taken as a whole, I do not think that the trustee's statements of case on sham in the purchase of The Grange allege fraud or dishonesty.

118. For completeness, the word "dishonestly" *does* appear in paragraph 16a of the particulars of claim, which alleges that the first respondent's

> "salary was artificially increased for a short period in order to allow her dishonestly to overstate her income to HSBC in order to support the mortgage application".

The allegation is denied, and I have dismissed it on the evidence. But, unlike the allegations of sham, this is no part of a case of dishonesty against the second respondent's creditors. It is self-standing and, for what it is worth, clearly put. It is an allegation of mortgage fraud, a fraud which, if proved, would be committed against the bank induced to grant the mortgage loan. No cause of action arises in the trustee in respect of it.

119. Accordingly, I do not consider that the fraud pleading rules were either engaged or breached in any relevant sense in this case. But, of course, given my conclusion on the facts, that makes no difference to the result.

Conclusion on the sham claim

120. For the reasons given above, the sham claim fails, and is dismissed.

The application to strike out the claim

121. In these circumstances, it is unnecessary for me to consider the application to strike out the claim on the basis of non-disclosure of documents. Nevertheless I wish to say this. If the application had been made at the start of the trial, or earlier, and if there had there been sufficient time to do so, I would probably have dealt with this question first, *before* going on try the substance of the claim on the basis of the materials available to the court. As it happens, the application came at the *end* of the trial, by which I had already heard all the evidence, and indeed there was insufficient time both to make a decision on the application and also have the benefit of closing submissions.

122. Had matters been otherwise, and I had had to decide the application without having heard the evidence, I should have been extremely concerned to decide whether the non-disclosure of documents that may have occurred in this case (including the unavailability of the bulk of the POCA documents, and especially the financial records seized by HMRC) meant that it was simply impossible to hold a fair trial of the issues raised (see *eg Prebble v Television New Zealand* [1995] 1 AC 321, 338, PC). That is not to criticise the trustee, or indeed HMRC, which is not a party, and from whom I have not heard. I am not now in a position to say whose fault, if anyone's, that would have been, and, given my conclusion on the substance of the claim, I do not now need ever to do so. But the lawyers involved in this case know that there are cases where, regardless of fault, a fair trial simply cannot be had, and I think that it is at least possible that this would have been one of them.

123. If, however, I had concluded that a fair trial were still possible, I would then have had to go on to consider whether the claim should be struck out for the alleged separate failure to comply with the rules (see *eg Candy v Holyoake* [2017] EWHC 373 (QB)). Obviously, I do not now need to do that either. But I record that, in addition to the submission made to me in the trial itself, the trustee's solicitors wrote to me (at my direction given on 24 May 2014) after the trial was finished, by letter dated (and emailed to me on) 28 May 2024, to give further information on the concerns raised on behalf of the first respondent. On 4 June 2024 I received a lengthy and detailed email in answer from counsel on behalf of the first respondent. A further email in reply to that from the trustee's solicitors was received on 5 June 2024. I am grateful for all the effort that went into the letter and both emails. But, in all the circumstances, I do not think that I need say any more about them.

Order

124. I should be grateful to receive a draft minute of order to give effect to this judgment for my consideration.