Neutral Citation Number: [2019] EWHC 1311 (Ch)

BR-2018-000180

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
RE: KARL ERIC WATKIN
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 24/05/2019

Before :

ICC JUDGE BARBER

- -

Between :

(1) NICHOLAS STEWART WOOD
(2) DAVID JOHN STANDISH
(As the joint trustees in bankruptcy of Karl Eric Watkin)

Applicants

- and –

KATE REBECCA WATKIN

Respondent

- -

James Pickering (instructed by **Womble Bond Dickinson**) for the Applicants
Gabriel Moss QC (instructed by **Hinde Law LLP**) for the Respondent

Hearing dates: 13 and 14 February 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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ICC Judge Barber

1. This is the application of the trustees in bankruptcy of Karl Eric Watkin, who was made bankrupt on 10 December 2012 on a petition of the Bank of Scotland presented on 18 May 2012. The application is brought against Karl Watkin's daughter, Kate Watkin, for declarations and other relief in relation to 3 properties known as 64 Crossgate, Durham, DH1 4PR, 40 Rowallan Road, London SW6 6AG and 8 Albert Street, Durham, DH1 4R, purchased in 2003, 2006 and 2007 respectively (together 'the Properties'). Each of the Properties was purchased in the sole name of Kate Watkin and registered in her sole name at HM Land Registry shortly after purchase. The Applicants maintain that Karl Watkin was at all material times sole beneficial owner of each of the Properties 'on resulting trust principles.' Their alternative case is that all sums paid by or on behalf of Karl Watkin towards the purchase of each of the Properties were transactions defrauding creditors pursuant to s.423 of the Insolvency Act 1986. In relation to the fairly modest sum of £2,010.38 forming part of monies raised by re-mortgage of Rowallan Road in July 2008, the Applicants also contend that Kate Watkin's retention of that sum was a transaction at an undervalue pursuant to s.339 IA 1986.

Written Evidence

2. For the purposes of this trial I have read the following witness statements and their attendant exhibits:

   (1) First, second and third witness statements of Nicholas Wood dated 29 January 2018, 29 May 2018 and 16 August 2018 respectively;

   (2) Witness statement of Kate Watkin dated 27 April 2018;

   (3) Witness statement of Kate's mother, Mrs Jill Watkin, dated 28 April 2018.

   I have also considered further documents set out in the bundles agreed for use at the hearing, to which reference will be made where appropriate.

General Comment on Written Evidence

3. This case proceeded by application notice and supporting statements. No directions for pleadings or disclosure were given. Regrettably, there were certain categories of documents in the Applicants' possession of material significance to the issues raised by their application which were not exhibited to their supporting statements and were not otherwise produced in evidence until I directed their production on day one of the trial. Some other document categories of material significance were not produced at all.

4. By way of example (1) the Official Receiver's bankruptcy questionnaire, completed by Karl Watkin, was not produced until day one of the trial, on my direction; (2) the transcript of an interview by Grant Thornton of Karl Watkin on 4 November 2013, which contained questions regarding the Properties, was not produced until day one of the trial, on my direction, notwithstanding prior requests made by the Respondent for its production; (3) a detailed 'bespoke' questionnaire, prepared by Grant Thornton for Karl and completed by him ahead of the interview of 4 November 2013, containing

written responses by Karl to questions regarding the Properties, was not produced at all, despite my direction on day one of the trial that it be produced. I was told that it could not be located; (4) no transcript or notes of a 3 hour interview by Grant Thornton of Karl's wife, Jill Watkin, were produced; (5) save for a few selected pages of bank statements, added to the bundles partway through trial to prove a given point, the bank statements relating to Jill and Karl's joint bank account, which the Applicants accepted that they had taken into their possession and which were plainly relevant to issues raised in the application, together with bank statements relating to Karl's other bank accounts, which the Applicants had taken into their possession, were not produced in evidence.

5. Office-holders bringing an application by application notice and witness statement must take proper steps to ensure that all non-privileged documents in their possession which are of obvious relevance to the issues raised by their application are exhibited to their supporting statements. If this long-standing practice is not honoured, it may prove necessary for directions for pleadings and formal disclosure to be given in a higher proportion of office holder applications than is currently the case.

Oral Evidence

6. I heard oral evidence from Nicholas Wood, Kate Watkin and Jill Watkin.

Mr Wood

7. Mr Wood is a partner in the firm of Grant Thornton UK LLP. He was appointed, together with David John Standish, a partner in the firm of KPMG LLP, as joint trustee of Karl Watkin in 2013.

8. I have some reservations as to the accuracy and fairness of Mr Wood's written evidence. I have highlighted at paragraph 4 of this judgment some key documents which were not exhibited to his statements. I set out other examples of the selective and at times inaccurate presentation of the case in Mr Wood's statements during the course of this judgment. The description of Mr Quinn as simply a 'business colleague' of Karl Watkin (Wood (1) paragraph 18) is one such example; the assertion that net rental receipts from all three properties were paid into Karl and Jill's joint account (Wood (1) paragraph 35.4) is another.

9. In oral evidence, whilst for the most part Mr Wood did his best to engage with the questions put to him, he was prone to moments of obduracy. When it was put to him by Mr Moss QC that the trustees had 'chosen' not to exhibit material bank statements, for example, he avoided the question by stating: 'they are not exhibited'. The question was put to him three or four times. On each occasion, he responded in the same way, each time avoiding the issue whether the failure to exhibit bank statements was deliberate or an oversight. When he was asked to accept that it was wrong of him not to have disclosed the Official Receiver's questionnaire and the transcript of Grant Thornton's interview with Karl Watkin of 4 November 2013, he simply looked down in the witness box and ignored the question, apparently hoping that no one would notice that he was not answering. It was only when I intervened that he gave an answer, stating that he had not deliberately failed to comply with his professional obligations.

10. There were also material gaps in his knowledge. When asked what had happened to the detailed 'bespoke' questionnaire, prepared by Grant Thornton for Karl and completed by him ahead of the interview of 4 November 2013, for example, he stated that that had been 'Mr Standish's duty', that he hadn't been able to track it down overnight, that he hadn't read it, and that he did not even know if it existed. Yet it was obvious from reading the transcript of the Karl Watkin interview of 4 November 2013 that the interview itself mostly comprised 'follow up' questions to those answered by Karl in the questionnaire; a questionnaire which was never produced.

11. Overall, whilst I found Mr Wood to be a truthful witness, it was clear from his testimony that he knew little of any probative value about the issues arising in this case and had played very little part in the investigations himself.

Jill Watkin

12. As a witness Jill Watkin engaged openly and honestly with questions put to her, volunteering additional relevant information as she went along. She readily accepted the limits of her own knowledge; accepting, for example, that she did not know whether the monies paid from the joint account towards the purchase of given properties were technically 'Kate's' monies, or monies belonging to Jill and Karl; as she put it: 'activity on that account was massive'. She also readily accepted that she could not remember the precise circumstances in which Mark Quinn came to contribute to the purchase price of one of the properties; he was a 'very close family friend' as she put it, adding, 'we discussed things all the time with Mark.' Whilst her recollection of events was not in all respects perfect, this was hardly her fault; it was partly due to the passage of time and partly due to missing documents, including bank statements which the Applicants had taken into their possession and had failed to adduce. Overall, I am satisfied that Jill answered all questions put to her honestly and truthfully to the best of her recollection.

Kate Watkin

13. As a witness Kate engaged readily and honestly with questions put to her. When pressed to state whether funds paid from her parents' joint account towards purchase of the properties were their monies or hers, for example, she openly responded 'how do you quantify in a family context?' explaining that she and her siblings received money from share sales and legacies which were paid into her parents' joint account, and that whilst 'money has gone both ways', her parents 'did have more of my money than was put into the properties'. She readily accepted that she had made errors in the past (when seeking to recall how rental receipts from the Durham properties had been dealt with, for example) and took responsibility for her mistakes. Whilst at times Kate was hindered in her responses by missing documents, such as the bank statements from her parents' joint account, I am satisfied that she answered all questions put to her honestly and truthfully to the best of her recollection. I have every confidence in the veracity of her testimony.

Background

14. Karl Watkin was for many years a successful entrepreneur, involved in a number of highly lucrative start-ups and listings on the UK stock market. He and his wife Jill had three children, Kate, Jake and Hannah, born in 1981, 1983 and 1988 respectively

('the Watkin children') and lived on a large country estate which they owned known as the Ghyllheugh estate in Northumberland. Karl's business commitments meant that he was overseas for 6-9 months of each year; as Jill Watkin put it in unchallenged evidence, Karl was 'almost permanently overseas'. In his absence, Jill ran the Ghyllheugh estate with the assistance of staff, including Audrey Williams, referred to variously in the evidence before me as 'the estate office PA', 'Jill's manager', and 'the family PA'.

15. Kate described her upbringing as 'extremely privileged'. According to one mortgage application form completed by Karl Watkin in 2003, the accuracy of which was not challenged before me, Karl's annual income in 2003 was £1.6 million. From 2001 to 2007, Kate enjoyed the use of an American Express card at her parents' expense, running up bills which at times reached £6,000 per month. She also remained on a monthly allowance of £320, paid from Karl and Jill's joint account at Barclay's Bank Plc (account number 4013 2454) ('the Joint Account') until 2007, some time after graduating and starting paid employment. Her siblings were similarly indulged. Jill and Karl helped Kate's brother, Jake, purchase a property in Manchester whilst he was a student at Manchester University. They also imported a polo pony and purchased a customised horse box for Hannah, Kate's younger sister. As Jill Watkin put it: 'Karl and I ensured they did not want for anything,'

16. From a young age, the Watkin children were themselves able to buy into a number of companies in which their father and his business colleagues were involved, including Crabtree Group PLC, Just2clicks PLC, D1 Oils PLC, Sabien Technology PLC, Helius Energy PLC, China Gold Mines PLC, and Proton Power Systems. On the formation of each of these companies, the Watkin children and family friends were allowed to invest at par. They would then sell following listing. As Kate put it 'I was always fortunate to get into the shares in my father's companies when they were penny stocks and sell when they were pounds' (email dated 23 March 2015 from Kate to Grant Thornton). These highly profitable deals went back to the 1990s. For many years, Jill and Karl Watkin received any gains realised on such share sales on their children's behalf. Jill Watkin's evidence, which in this regard I accept, was that such gains would be paid into the Joint Account.

17. Bequests and inter vivos gifts from family members to the Watkin children were dealt with in much the same way, Karl and Jill Watkin habitually receiving such monies into the Joint Account on their children's behalf. In her oral evidence, which in this regard I accept, Jill Watkin confirmed that prior to his death, her father 'was making gifts up to his annual allowance for inheritance tax' and that her children had each received legacies from her mother's estate, her father's estate and her aunt's estate. Kate, for example, had been left £10,000 by her maternal grandmother, £84,000 by her maternal grandfather, and £30,000 by her aunt. These monies were paid into the Joint Account.

18. Contemporaneous correspondence supports Jill Watkin's account of how such monies were dealt with. By way of example, I was taken in evidence to a letter dated 22 November 2007 from Ward Hadaway to Karl and Jill Watkin, confirming payment of the sum of £84,249.60 due to Kate from her late grandfather's estate, together with payment of a similar sum of £84,250.79 due from that estate to Kate's sister, Hannah, into the Joint Account, in accordance with Kate and Hannah's respective instructions. I note that Karl Watkin also referred to such payments in interview ('NSW1' p79-80),

saying that monies received by Karl and Jill from the Watkin children's legacies and share sales would be 'used to purchase properties for their children when required at their direction'.

19. On behalf of Kate Watkin, Mr Moss QC submitted that, whether or not legally the monies from share sales and bequests would have belonged to the Watkin children after payment into the Joint Account, the pattern of such payments served to provide a helpful context to explain why Karl and Jill Watkin would feel morally obliged to provide their children with assistance with the purchase of property when the time came.

20. The property purchases under scrutiny in this application took place in 2003, 2006 and 2007. In cross examination, Mr Wood confirmed that there was no evidence that Karl Watkin was in any financial difficulty at the time of any of these purchases. Indeed, there was no evidence before me that Karl Watkin was in any financial difficulty until late 2009. Jill Watkin's uncontroverted evidence was that she was not aware of any financial difficulty until that time.

21. Karl and Jill Watkin separated in March 2010. It was an acrimonious split, triggered by the discovery that Karl was having an affair. Karl moved out of Ghyllheugh and he and his wife were not on speaking terms for some time thereafter. Relations between Kate Watkin and her father were also affected. Both she and Karl confirmed that they are still not on speaking terms. Kate's evidence, which in this regard I accept, was that she was wholly unimpressed with the way that her father Karl had left her mother without any money to pay for even the basic running costs of the family home, such as heating bills. As she put it in cross examination, with some feeling: 'Mum was sitting in the house watching her breath it was so cold'.

22. Some two years later, on 18 May 2012, a bankruptcy petition was presented against Karl Watkin by the Bank of Scotland. A bankruptcy order was made on that petition on 10 December 2012. In a bankruptcy questionnaire completed by Karl Watkin for the Official Receiver on 25 March 2013, Karl (at paragraph 25.1) summarised the reasons for his insolvency as 'Stupidity and incompetence of BOS [the Bank of Scotland] supported by judiciary and my stupidity for being the subject of a $27m fraud'.

23. Against that backdrop, I turn to consider the property purchases.

64 Crossgate, Durham, DH1 4PR ('Crossgate'): purchased on 9 May 2003

24. In 2001, Kate Watkin began studying at Durham University. On 9 May 2003, when Kate was 21 years old and in her second year at university, Crossgate was purchased for £350,000. It was a terraced property with 2 living rooms, 1 dining room, 7 bedrooms, 3 bathrooms and 1 utility room.

25. Ward Hadaway in Newcastle were instructed in respect of the purchase. Both Kate and her mother Jill described Ward Hadaway as the family solicitors. Ahead of the purchase, Kate went to see Ward Hadaway and completed the 'Know Your Client' process. Kate's evidence, which I accept in this regard, was that she planned to live

in Crossgate whilst at university, and to cover the mortgage and running expenses of the property by letting out rooms to other students either known to her or 'vouched for' by other friends of hers.

26. In February 2003, an application was made to Bank of Scotland for a mortgage in the joint names of Kate Watkin and her father Karl. The mortgage application form in evidence before me described the proposed mortgage as a 'Graduate Mortgage'. In a column headed 'You', Kate's details were inserted. In a column headed 'Your Partner', Karl's details were inserted, and the words 'Your Partner' struck out in manuscript. Kate's income was given as 'nil' in the form. Her father's income was given as £1.6 million per annum. That income figure was not challenged at trial before me. In response to the question 'If joint application, is title of property to be in joint names', the box marked 'no' was ticked. In cross examination, Kate stated her understanding at the time to be that her father was acting as guarantor. In his interviews with Grant Thornton, Karl Watkin confirmed that he had acted as a guarantor in relation to a number of property purchases by Kate and other members of the family. Jill Watkin also confirmed at paragraph 4 of her statement that mortgages used to purchase properties by the children had been 'guaranteed by Karl'.

27. The purchase ledger opened by Ward Hadaway in respect of Crossgate was opened in the name of 'Karl E Watkin'. According to that ledger, the purchase price of £350,000 was funded partly by way of a mortgage loan (£273,985) in the joint names of Kate Watkin and her father Karl, and partly by monies (totalling £70,915) advanced from the Joint Account.

28. On 9 May 2003, the purchase was completed, in the sole name of Kate Watkin. The completion statement prepared by Ward Hadaway in respect of Crossgate, however, was headed 'Completion Statement – K & J Watkin'. The same completion statement also stated the purchase price to be £340,000 rather than £350,000. Kate Watkin was registered at HM Land Registry as sole proprietor of Crossgate on 26 June 2003. The purchase price given in the proprietorship register is £350,000.

29. Kate Watkin's unchallenged evidence was that she lived at Crossgate whilst she was a student at Durham and let out rooms to other students either known to her or vouched by her friends. Her evidence, which in this regard I accept, was that (as she had anticipated from the outset) the rental receipts, which were received into an account in her sole name, amply covered all mortgage payments and other running expenses of Crossgate, and that her father did not have a key to the property.

30. Following her graduation from Durham in 2005, Kate headed to London. Crossgate was kept on and continued to be let out to individuals known to Kate or vouched for by her friends until its sale in 2012, Jill Watkin and the family PA Audrey Williams assisting with day to day arrangements with deposits and lettings, given their closer proximity to Durham than Kate's new base in London.

31. Crossgate was sold for £492,400 on 8 October 2012. Kate's uncontroverted evidence was that any income tax and capital gains tax liabilities incurred from the rental and subsequent sale of Crossgate have been declared and settled by her.

40 Rowallan Road, London SW6 6AG ('Rowallan Road'): purchased 17 January 2006

32. In the summer of 2005, Kate left Durham University and moved to London. Initially she lived at one of her father's properties in Knightsbridge. Her evidence, which I accept, is that she then found Rowallan Road with her mother, and decided to buy it to live in, letting out rooms surplus to her own requirements to friends and others 'vouched for' by friends to help cover the mortgage payments and other outgoings on the property. Again, Ward Hadaway in Newcastle were instructed. When pressed in cross examination to explain why a firm of solicitors in Newcastle were instructed on a property purchase in London, Kate responded 'they were our family solicitors', also pointing out that instructing solicitors out of London was a good way of keeping costs down.

33. Kate's evidence was that she, rather than her father, was Ward Hadaway's client on the purchase. Again, however, as with Crossgate, Ward Hadaway opened a purchase ledger in the name of 'Karl E Watkin'. According to that ledger, Ward Hadaway received the following sums towards the purchase price of £615,000 for Rowallan Road: (1) £62,000 from the Joint Account on 1 November 2005 (2) £210,000 from a Mr Mark Quinn on 13 January 2006 and (3) £369,951 from the original mortgagee, Birmingham Midshires, on 16 January 2006 (incorrectly recorded in the ledger as 16 January 2005). Completion took place on 17 January 2006.

34. Kate was registered at HM Land Registry as sole proprietor of Rowallan Road shortly after completion, on 15 February 2006. Her evidence, which I accept, is that, save for the odd period when she has stayed with her family, she has occupied Rowallan as her home ever since she purchased it. Her unchallenged evidence was that neither of her parents have keys to the property.

35. Unlike Crossgate, there is no mortgage application form in evidence showing whether Kate applied alone for the original Birmingham Midshires mortgage loan taken out in respect of the purchase of Rowallan Road, or jointly with her father Karl. Paperwork subsequently sent by letter dated 6 November 2013 from Birmingham Midshires to Kate, however, (comprising an account summary listing monthly mortgage payments made in 2008 in respect of Rowallan Road until the date of re-mortgage in August 2008) was addressed and headed solely in Kate's name; it made no mention of Karl at all ('KRW1', pp 9-10). Whilst the fact that the covering letter dated 6 November 2013 was addressed solely to Kate might be explicable, given that the letter was a response to an enquiry from Kate, the fact that the account summary enclosed with that letter is headed up in the sole name of Kate, rather than in the joint names of Kate and Karl, is in my judgment significant.

36. In an interview with Grant Thornton conducted on 4 November 2013 ('NSW1' at p.79), Karl Watkin said that he had 'guaranteed' the original Rowallan Road mortgage; on the evidence overall, it is more likely than not that he did. Jill Watkin's oral evidence, which I accept, was that after Kate graduated in 2005, she did an unpaid internship in London for 6 to 9 months, and then took a job in 'snowball marketing' at a salary of £16,000 per annum. In Jill Watkin's words, Kate's 'next job paid slightly better, but only by a couple of thousand…. she really couldn't afford to live in London'. Kate was plainly still financially dependent on her family at the time of the Rowallan Road purchase. She still had the benefit of an American Express

card funded by her parents at this time and received a monthly allowance of £320 from the Joint Account until March 2007. It is highly unlikely that on a headline salary of £16,000 (or even £18,000), Kate would have secured a mortgage of £370,000 in 2006 without a guarantor. As rightly noted by Mr Moss QC, however, this does not lead inexorably to the conclusion that Karl was a party to the mortgage itself; he could just as easily have entered into a separate guarantee. He had described his role as 'guarantor' in interview with Grant Thornton. From the transcript I note that Grant Thornton did not query or challenge this description of his role in interview.

37. I further note that when Rowallan Road was re-mortgaged in 2008, it was re-mortgaged in Kate's sole name.

38. The Applicants did not mount a positive case that the original mortgage loan required to purchase Rowallan Road had been taken out in the joint names of Kate and Karl; on behalf of the Applicants, Mr Pickering stated in opening that the Applicants did not know whether the original mortgage was taken out in Kate's sole name, or in the joint names of Kate and her father Karl.

39. Given the nature of their primary case (that is to say, sole beneficial ownership on 'resulting trust' principles), the Applicants must bear the burden of proof on this issue. On the evidence which I have heard and read, the Applicants have failed to satisfy me that the original Birmingham Midshires mortgage loan taken out to fund the purchase of Rowallan Road in 2006 was taken out in the joint names of Karl and Kate. On the evidence which I have heard and read, I am satisfied on a balance of probabilities that the original Birmingham Midshires mortgage loan taken out to fund the purchase of Rowallan Road in 2006 was taken out in Kate's sole name. I am further satisfied on a balance of probabilities that Karl guaranteed the original Birmingham Midshires mortgage. I so find.

40. The role of Mr Quinn (who had contributed £210,000 to the purchase price of Rowallan Road) took up some time at trial. At paragraph 18 of his first statement, Mr Wood described Mr Quinn as 'a business colleague of the bankrupt', adding, 'I am not aware of any connection between the Respondent and Mr Quinn or any reason why the latter would contribute monies to a property to be bought in the Respondent's name, and therefore, I infer the above monies were paid on behalf of the Bankrupt.'

41. During cross examination, however, it became clear that Mr Wood's summary of the position as set out at paragraph 18 of his first witness statement did not paint the complete picture. During his interview with Grant Thornton on 18 August 2016, Karl Watkin had made clear that, in addition to being a business associate of Karl, Mark Quinn was 'a close friend of the family'. He also said that he was not personally aware of any contribution by Mark Quinn to the purchase price of Rowallan Rd but that it could have been arranged by Jill or Kate, as Mark Quinn 'was familiar to the whole family.'

42. I am told that during the course of the Applicants' investigations prior to issue of proceedings, Jill Watkin was questioned by Grant Thornton for 3 hours and was not asked about Mark Quinn. The notes of her interview were not in evidence.

43. Jill's evidence about Mark Quinn, which I accept, was as follows. Mark Quinn was a 'very close family friend', in addition to being a business associate of Karl. Mark Quinn was a single parent, his wife having divorced him. Karl and Jill's son, Jake, and Mark Quinn's son, Max, had been friends, and Jake had worked for Mark Quinn for approximately two years. Mark Quinn was 'an incredibly generous person'. He took the Watkin family on holiday and gave them expensive gifts. Mark had had a 'sad life' with 'lots of family tragedy'; his son, Max, had contracted AIDS and Mark had ended up as a drug addict. Karl had, in Jill's words, 'dragged him off to a specialist clinic in Spain' at one point, in order to help him overcome his addiction. He was very close to the Watkin family.

44. Kate also gave evidence of Mark Quinn's friendship and generosity. Her evidence, which I accept, was that at one point he had flown the whole of her family, plus her best friend, out to Vienna.

45. The Applicants' case was that Karl Watkin had arranged for Mark Quinn to make a payment of £210,000 towards the purchase of Rowallan Road on his behalf. In this regard they relied heavily upon paragraph 3.4 of a letter from Kate's then solicitors, Cameron Legal, to Bond Dickinson, the Applicants' solicitors, dated 15 March 2016, in answer to a letter from Bond Dickinson dated 2 February 2016 listing a series of questions about each of the properties. In answer to the question 'Clarify why Mr Mark Lockhard Mure Quinn provided a sum of £210,000 in relation to this property and what were the arrangements or agreements relating to this sum', Cameron Legal had written 'We are instructed that this is a matter you will have to take up directly with the Debtor. This is a matter that he arranged.'

46. From Kate Watkin's oral evidence, however, which in this regard I accept, it was clear that the response set out at paragraph 3.4 of Cameron Legal's letter of 15 March 2016 was borne more of assumption than knowledge. Kate's unchallenged evidence was that she had suffered a 'nervous breakdown' in late 2015/early 2016 and had been recovering in a residential clinic from 10 February to 10 March 2016. In oral testimony, she explained that she had given her solicitors such documents as she had to hand and had instructed them as best she could. On reflection however, having spoken to her mother and having read Grant Thornton's interview with Mr Watkin, she believed the response at paragraph 3.4 of Cameron Legal's letter dated 15 March 2016 to be incorrect. She now did not believe that it was her father who arranged the payment, although very openly accepted that she could not recall how it had come about.

47. By her written evidence (at para 10), Jill Watkin stated her belief that Mark Quinn 'gifted some money to Katie by way of thanking our family for supporting him through some incredibly difficult and tragic times…' In cross examination she accepted that she could not recall precisely how it had come about. Her oral evidence, which I accept, was that 'we discussed things all the time with Mark. Jake was working with Mark and his son.'

48. Kate and Jill's inability to remember the detail of how Mark Quinn came to contribute the sum of £210,000 towards the purchase of Rowallan Road must be considered in context. Mark Quinn's advance towards the purchase occurred in January 2006, over 10 years prior to Cameron Legal's letter of 15 March 2016 and over 12 years prior to trial. The advance was made at a time when, judging from the analysis of the Joint

Account for the period 18 February 2005 to 21 February 2008 undertaken by Grant Thornton, movements of money in the hundreds of thousands of pounds, if not commonplace, were not particularly unusual or memorable events for the Watkin family. A brief perusal of Grant Thorton's analysis of the Joint Account for the period 18 February 2005 to 21 February 2008, for example, reveals numerous individual credits of several hundred thousand pounds each, and more than one credit of a million pounds or more. Over the course of 2006, for example, there were credits to the Joint Account of (inter alia) £1.7m (February), £153,000 (March), £500,000 (April), £846,000 (April), £280,000 (July), £124,000 (September), £100,000 (October) and two credits of £100,000 each in December. In 2007, credits to the Joint Account included £667,000 in July, £250,000, £300,000 and £706,000 in August, £265,000, £500,000, and £150,000 in October, and £265,000 in December. Credits to the Joint Account in 2008 included £320,000 in January and £1.04m in February.

49. Mr Pickering pointed to a number of payments to Mark Quinn and a Mr Chris Quinn in Grant Thornton's analysis of the Joint Account for the period 18 February 2005 to 21 February 2008. The analysis showed 3 payments to Mark Quinn totalling £37,849.41 in 2005, no payments in 2006 (the year of purchase of Rowallan Road), 2 payments of £50,000 to Chris Quinn in August 2007, and a payment of £6500 to Mark Quinn in September 2007. There was no evidence before me as to who Chris Quinn was or whether he was related to Mark Quinn. When asked, Jill Watkin had not heard of him. The payments to Mark and Chris Quinn were not addressed specifically in the written evidence of the Applicants. I was taken to no evidence detailing what investigations had been undertaken in relation to the payments or in order to determine whether there was any connection between Chris and Mark Quinn. Mr Wood was unable to assist much further in oral evidence. In re-examination he was taken to each of the 7 payments to Mark Quinn and Chris Quinn itemised in the Applicants' analysis of the Joint Account in turn and asked 'in the light of these what do you say?', to which he responded simply, 'they appear to be business associates.'

50. Ultimately, for the Applicants to establish that the sum of £210,000 advanced by Mark Quinn towards the Rowallan Rd purchase was in truth an advance by Karl Watkin, the burden of proof is on the Applicants to show, on a balance of probabilities, that the monies (a) were Karl's monies, channelled through Mark Quinn for some reason, or (b) were owed by Mark Quinn to Karl Watkin and advanced by Mark towards the purchase at Karl's request, or (c) were lent or gifted by Mark Quinn to Karl Watkin and advanced by Mark towards the purchase at Karl's request.

51. The Applicants have failed to discharge that burden on the evidence before me. With regard to (a), there was no persuasive evidence before me that the monies were Karl's monies, channelled through Mark Quinn; nor indeed any reason why, in 2007, Karl would wish to channel such monies via Mark Quinn, when a sum of £62,000 had been paid quite openly from the Joint Account towards the same purchase. With regard to (b), there was no evidence before me that Mark Quinn owed Karl Watkin such a sum, and no evidence that Karl Watkin had asked Mark Quinn to pay any such sum towards the purchase. Quite the contrary; Karl Watkin's response in interview with Grant Thornton to the suggestion that Mark Quinn had contributed to the purchase had been one of surprise. With regard to (c), there was no evidence before me that Mark Quinn had advanced the sum by way of loan or gift to Karl or that Karl Watkin had asked Mark Quinn to pay any such sum towards the purchase.

52. Mr Pickering submitted that given the size of the contribution, the only sensible explanation for it was that it was in truth a further contribution by Karl. I reject that submission. The size of the contribution must be considered in context. Mark Quinn was a wealthy individual. In his interview with Grant Thornton on 18 August 2016, Karl Watkin described Mark Quinn as the Chief Executive of a number of companies, including a company listed on the NASDAQ. In the words of Karl (who it will be recalled had himself sported an annual income of £1.6m in the past), Mark had 'made a lot of money'. Given Mr Quinn's past generosities and close personal relationship with the Watkin family, it is in my judgment more likely than not that his £210,000 contribution to the purchase of Rowallan was either an open-ended 'soft' loan to Kate Watkin, or an outright gift to her. It matters not which it was for present purposes. The burden of proof is on the Applicants. On the evidence before me, the Applicants have failed to persuade me on a balance of probabilities that the sum of £210,000 advanced by Mark Quinn towards the purchase of Rowallan Road should be treated as an advance by Karl Watkin.

53. Save for a period in 2007-8 spent staying with family, Kate Watkin has occupied Rowallan Road as her home at all material times since its purchase, renting out rooms to friends and others vouched for by friends when necessary to help cover the mortgage. As addressed more fully below, Rowallan Road was re-mortgaged, in Kate's sole name, in August 2008. Kate's uncontroverted evidence was that any income tax liabilities incurred from the rental of rooms in Rowallan Road are declared and settled by her.

8 Albert Street, Durham, DH1 4RL ('Albert Street'): purchased on 5 September 2007 for £410,000

54. The evidence of Kate and her mother Jill was that, by the summer of 2007, Karl and Jill Watkin had decided to set up a property portfolio for the Watkin children, to make provision for their future. In or about August 2007, Albert Street, another property in Durham, was identified as an appropriate candidate and Ward Hadaway were instructed on the purchase.

55. Kate and Jill's evidence as to the purpose of the purchase of Albert Street is supported by contemporaneous third party documentation in evidence before me. By an email dated 8 August 2007 from Alex Cox of Ward Hadaway to Lucy Guthrie of the same firm, Mr Cox wrote [with emphasis added]:

> 'Karl and Jill are trying to build up a portfolio of residential investment properties *as a fund for their children*. Accordingly, they intend to purchase this property in the name of their daughter Katie… I have asked Jill to ask Katie to bring in the usual ID documentation as I don't think we have up to date documentation for her. If you could pick this up with Jill and Katie when they come in and take copies of the relevant documents, I would be most grateful….'

56. At paragraph 7 of her statement, Kate Watkin explained that 'In September 2007 8 Albert Street was bought in my sole name, but for the benefit of me and my brother and sister, as my parents had decided by then to set up a property portfolio for us to make provision for our future.' Jill Watkin confirmed this at paragraph 3 of her

statement, stating '8 Albert Street, Durham was bought in Kate's sole name but it was intended to be for all the children.' In cross examination Jill confirmed that previously, in about 2006, she and Karl had assisted Jake in purchasing a property in Clapham. Jake, however, was 'hopeless with money' as she put it; he would get fines and then forget to pay them. So out of prudence it was decided that Albert Street should be purchased in Kate's sole name.

57. Ward Hadaway opened a purchase ledger for Albert St in the name of 'Karl E Watkin'. The mortgage offer dated 11 August 2007, however, which was in evidence before me, was made to Kate Watkin alone. There is no mention of Karl Watkin in that offer. On the basis of such contemporaneous evidence, I am satisfied that Kate took out the mortgage loan required for the purchase of Albert Street alone and not jointly with her father. I so find.

58. The purchase price for Albert St was £410,000. The mortgage advance (less arrangement fees) was £314,000. It is common ground that the balancing payments required for the purchase (totalling £108,872.24) were paid to Ward Hadaway on 5 September 2007 from the Joint Account. The Land Registry transfer (TR1) form names Kate Watkin as transferee. Kate Watkin was registered at HM Land Registry as sole proprietor in November 2007.

Renovation of Albert Street: Feb-Oct 2008

59. From February 2008 to October 2008, renovation works were carried out at the Albert Street property. The Applicants maintain that Karl Watkin bore the cost of the renovations. No underlying documentary proof of the source of payments for the Albert Street refurbishment works was adduced by the Applicants. The Applicants instead relied upon a letter dated 23 November 2015 from Mr David Peel, Taxation Consultant, on Kate Watkin's behalf, to HMRC, which stated that 'most of the building work was done in-house by Miss Watkin's father who used his employees to carry out the work. This was supervised by his manager, Mr Bob Carr.' In his skeleton argument Mr Pickering stressed the use of the term 'in-house', inviting the court to infer from this that the renovations were 'therefore' at Karl's own cost.

60. Notwithstanding Mr Peel's reference to the Albert Street renovation work having been done 'in-house', however, there was no suggestion in evidence that Karl Watkin ran a construction company himself. In oral evidence Kate Watkin explained that the workforce used for the Albert Street renovations was not her father's workforce as such, but workers habitually used by the family. In oral evidence Jill Watkin also confirmed that the contractors used were the contractors 'we always used for our house and other properties'.

61. The costings for the work set out in Mr Peel's letter were all based on invoices. These invoices confirmed the total cost of the renovations and refurbishment to be approximately £103,000; a figure not dissimilar to the sum of £97,000 odd raised by way of re-mortgage of Rowallan Road in August 2008, of which £95,000 was paid by Kate into the Joint Account (as addressed below).

62. Following completion of the works, Albert Street was let out to students until its sale on 8 July 2013 for £400,000. The net proceeds of sale, totalling £64,084, were paid to Kate. Kate's uncontroverted evidence was that any income tax and capital gains tax

liabilities incurred from the rental and subsequent sale of Albert Street have been declared and settled by her.

Re-Mortgage of Rowallan Road: August 2008

63. On 1 August 2008, during the course of the Albert Street works, Rowallan Road was re-mortgaged, in Kate's sole name, for £470,000. Ward Hadaway were instructed on the re-mortgage. From the bank statements in evidence it is clear that, after paying off the original Birmingham Midshires mortgage, on 1 August 2008 Ward Hadaway paid the balance of £97,100.38 into Kate Watkin's s bank account with Coutts. Kate then made a CHAPs payment of £95,000 to the Joint Account on 4 August 2008.

64. When questioned by Grant Thornton on 4 November 2013 about the £95,000 paid by Kate into the Joint Account in 2008, Karl Watkin responded (with emphasis added) 'she was helping the family finances. She re-mortgaged *her* house and put 100,000 in.' I pause to note the language used by Karl in that interview. It is not the language of someone asserting a beneficial interest in the property himself. This was not the only point in the interview when Karl readily used language suggesting that he viewed Rowallan Road as Kate's property.

65. Kate's written evidence was that she had paid the sum of £95,000 from the Rowallan Road re-mortgage monies to her parents in August 2008 at her father's request. In oral evidence Jill Watkin said that she believed the £95,000 to have been used to fund the majority of the work done on Albert Street, adding that some may have gone into a jewellery company called Lebeado, which she and Kate had set up in 2007. Kate gave evidence to similar effect. In cross examination Mr Pickering referred to some selected bank statements from the Joint Account (the selected pages having been added by the Applicants to the bundles during the trial for the purpose) and put to Kate Watkin that the real reason for the payment of £95,000 was that her father needed the money to pay off some of his own commitments. As rightly noted by Miss Watkin, however, the selected bank statements on which the question was based were simply a 'temporal snapshot', from which little meaningful information could be gleaned, particularly viewed in the context of refurbishment works spanning over 8 months. It was the Applicants' choice not to put in evidence the full set of the bank statements for the Joint Account which they had in their possession.

Sale of Crossgate and Albert Street

66. On 13 April 2012, Kate Watkin instructed Ward Hadaway in Newcastle in relation to proposed sales of Crossgate and Albert Street. The client letters of engagement, dated 13 April 2012, are each addressed simply to Kate.

67. The following month, on 18 May 2012, the Bank of Scotland presented a bankruptcy petition against Karl Watkin.

68. On 8 October 2012, Crossgate was sold for £492,400 and the net proceeds of sale, totalling £297,345.11, were transferred by Ward Hadaway to Kate Watkin's bank account with Coutts. On 9 October 2012, Kate transferred £253,345 of that sum to her mother, Jill Watkin. The Applicants maintain that Jill Watkin transferred £253,345 onto Karl Watkin the same month. There are no bank statements in evidence confirming payment of this sum to Karl; the Trustees rely instead upon a response

given by Cameron Legal (then Kate's solicitors) at paragraph 1.5 of a letter to Bond Dickinson dated 15 March 2016.

69. On 10 December 2012, a bankruptcy order was made against Karl Watkin. Joint Trustees were appointed on 12 February 2013.

70. On 8 July 2013, Albert Street was sold for £400,000. The net proceeds of sale, totalling £64,084, were paid to Kate.

71. Against that backdrop, I turn to consider the Applicants' case.

The Application Notice

72. The case proceeded by Application Notice and supporting statements. There were no pleadings. The application notice sought declarations and orders in the following terms:

> (1) A Declaration that pursuant to sections 283 and 306 Insolvency Act 1986 (IA 1986) the balance of £42,005.72 of the proceeds of the sale of 64 Crossgate, Durham, DH1 4PR (64 Crossgate) retained by the Respondent form part of the estate in bankruptcy of Karl Eric Watkin (the Bankrupt's bankruptcy estate).
>
> (2) Further or in the alternative a Declaration that the transfer of the balance of £42,005.72 of the proceeds of sale of 64 Crossgate to the Respondent after the presentation of the bankruptcy petition is void pursuant to section 284 of the IA 1986.
>
> (3) A Declaration that pursuant to sections 283 and 306 of the IA 1986 the balance of £64,084.92 of the proceeds of the sale of 8 Albert Street, Durham, DH1 4RL (8 Albert Street) retained by the Respondent form part of the Bankrupt's bankruptcy estate.
>
> (4) Further or in the alternative a Declaration that the transfer of the balance of £64,084.92 of the proceeds of sale of 8 Albert Street to the Respondent after the making of the bankruptcy order and the appointment of Nicholas Stewart Wood and David John Standish as joint trustees in bankruptcy of the Bankrupt is a void disposition pursuant to section 284 of the IA 1986.
>
> (5) A Declaration that pursuant to sections 283 and 306 of the IA 1986 the balance of £2010.38 of the monies from the re-mortgage of 40 Rowallan Road, London, SW6 6AG (40 Rowallan Road) received and retained by the Respondent form part of the Bankrupt's bankruptcy estate.

(6) Further or in the alternative a Declaration that the transfer of the balance of £2,010.38 of the monies from the re-mortgage of 40 Rowallan Road to the Respondent was a transaction at an undervalue pursuant to section 339 of the IA 1986.

(7) A Declaration that pursuant to sections 283 and 306 of the IA 1986 the beneficial interest in 40 Rowallan Road forms part of the Bankrupt's bankruptcy estate.

(8) In the alternative, a declaration that the sums paid by or on behalf of the Bankrupt to purchase 64 Crossgate, 8 Albert Street and 40 Rowallan Road were transactions defrauding creditors pursuant to section 423 of the IA 1986.

(9) An Order that the Respondent do pay interest on all sums payable hearing pursuant to the Court's equitable and/or restitutionary jurisdiction (and at a compound rate) or pursuant to section 35A of the Senior Courts Act 1981.

(10) An Order that the Respondent shall pay the costs of and incidental to the Application herein.

(11) Such other Order as the Court thinks fit.

73. Paragraph 4 of the application notice was dropped during the course of opening submissions (the relevant transfer not falling within the s.284 window).

74. It will be noted that save for paragraphs 6 and 8, the application notice is premised on the notion that at all material times, Karl Watkin was the sole beneficial owner of each of the 3 properties (and therefore sole beneficial owner of any proceeds of sale and/or re-mortgage of the same).

75. The basis upon which the Applicants' primary case, of sole beneficial ownership, was put, changed several times during the course of the trial. It even changed after close of the Applicants' evidence. Ultimately, however, after much vacillation and contrary to paragraphs 2 and 25 of his own skeleton argument, Mr Pickering confirmed the Applicants' primary case to be that Kate held the Properties as bare trustee for her father Karl 'on resulting trust principles' and not, as his skeleton argument had suggested, as Karl's nominee. I shall therefore proceed on that basis.

Resulting Trusts and the Presumption of Advancement

76. As helpfully summarised in Mr Moss QC's skeleton argument, in cases of this kind, where events took place years ago and where important documents and witnesses may not be available, the courts have developed important presumptions. If A purchases with his own money a property in the name of a stranger, B, the starting presumption is that B holds the property on trust for A under the 'presumption of resulting trust'. This however only applies if (a) A is the 'purchaser' of the property and (b) if and to

the extent that A used his own monies for the purchase. If B is the daughter (or wife or son) of A, the presumption of resulting trust may be displaced by a (rebuttable) 'presumption of advancement', that is to say, a presumption that a gift was intended.

77. In the present case, therefore, if and to the extent that Karl may have been the 'purchaser' of any of the properties, (which is not accepted by Mr Moss QC) or may have provided any value towards the purchases with his own monies, Mr Moss QC maintains that a presumption of advancement would arise in Kate's favour that a gift was intended. In that event, the next question would be whether the presumption of advancement is itself rebutted by evidence showing an intention not to make a gift.

78. The classic formulation of the presumption of resulting trust was set out in the opinion of Viscount Simonds in the case of Shephard v Cartwright [1955] AC 431 at 445. This was a House of Lords decision concerning beneficial ownership of shares. His Lordship reasoned as follows:

> 'I think that the law is clear that on the one hand where a man purchases shares and they are registered in the name of a stranger there is a resulting trust in favour of the purchaser; on the other hand, if they are registered in the name of a child or one to whom the purchaser then stood in loco parentis, there is no such resulting trust but a presumption of advancement. Equally it is clear that the presumption may be rebutted but should not, as Lord Eldon said, give way to slight circumstances: Finch v Finch (1808) 15 Ves 43.
>
> It must then be asked by what evidence can the presumption be rebutted, and it would, I think, be very unfortunate if any doubt were cast (as I think it has been by certain passages in the judgments under review) upon the well-settled law on this subject. It is, I think, correctly stated in substantially the same terms in every textbook that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from Snell's Equity, 24th ed., p.153, which is as follows:
>
> 'The acts and declarations of the parties before or at the time of purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration…. But subsequent declarations are admissible as evidence only against the party who made them, and not in his favour.'
>
> I do not think it necessary to review the numerous cases of high authority upon which this statement is founded…. The burden of authority in favour of the broad proposition as stated in the passage I have cited is overwhelming and should not be disturbed.'

79. I was also referred to the case of Chettiar v Chettiar [1962] AC 294. This case involved a transfer of land from father to son. In giving the advice of the Privy Council, Lord Denning stated:

> 'He [the father] had also to get over the presumption of advancement, for whenever a father transfers property to his son, there is a presumption that he intended it as a gift to his son; and if he wishes to rebut that presumption and to say that he took as trustee for him, he must prove that trust clearly and distinctly, by evidence properly admissible for the purpose, and not leave it to be inferred from slight circumstances: see Shephard v Cartwright [1955] AC 431'.

80. On the presumption of advancement between spouses, I was referred to Pettitt v Pettitt [1970] AC 777 and Re Figgis [1969] 1 Ch 123. There was little dispute between the parties that in modern times the presumption of advancement as between spouses is considered weaker than it was in the past.

81. The parties were at odds, however as to the scope and strength of the presumption of advancement between parent and child, and the manner in which it may be rebutted. Mr Pickering maintained that the 'parent/child' presumption of advancement, to the extent that it still applied at all,

(1) was relevant only to minors; Percore v Percore [2007] WTLR 1591:

(2) alternatively, was relevant only to financially dependent children: Musson v Bonner [2010] WTLR 1369; and Purvis v Purvis [2018] EWHC 1458;

(3) was 'very weak' in the modern age: Close Invoice Finance v Abaowa [2010] EWHC 1920 at [98]; Lavelle v Lavelle 2004 EWCA Civ 223; and

(4) was rebutted by 'strong evidence' in the present case.

The scope of the presumption of advancement

82. On the scope of the presumption of advancement between parent and child, Mr Pickering took me to a decision of the Supreme Court of Canada, Percone v Percone [2007] WTLR 1591 at paragraphs 23-40, submitting that this was support for his contention that the presumption of advancement should be restricted to minor children.

83. I reject that submission. In my judgment, the majority view expressed in Percone on this issue was ultimately obiter, the trial judge in the case having found that the evidence clearly demonstrated an actual intention on the part of D that the balance left in the relevant joint accounts was to go to P alone on his death through survivorship. In the context of such findings as to *actual* donative intent, questions as to the scope of the presumption of advancement, absent such findings, were ultimately unnecessary to dispose of the case.

84. Moreover even if I am wrong in that conclusion, and the majority view in Percone on this issue was not obiter, it does not represent English law.

85. To the extent that the decision of HHJ Grant in Musson & Another v Bonner [2010] WTLR 1369 may at first glance suggest otherwise, I respectfully decline to follow it.

86. The case of Musson concerned an adult child (paragraph 19). In the course of his judgment, HHJ Grant considered the majority (obiter) views of the Canadian Supreme Court of Canada in Percone without criticism. Having concluded that that the presumption of advancement did not apply between parent and adult child where the child was 'not in any way dependent upon the parent….', HHJ Grant continued (at paragraph 19, emphasis added): 'In so far as it is necessary to do so in this judgment, I therefore conclude that the presumption of advancement does not operate *in cases where the evidence does not establish that the parent is under an obligation to provide* for the child.' This last passage has been treated by some as broadly supportive of the majority views expressed in Percone.

87. In reaching these conclusions, HHJ Grant dismissed as obiter the remarks of Lord Neuberger in Laskar v Laskar [2008] EWCA Civ 347 at paragraph 20 cited to him during submissions (preferring, it would seem, the obiter remarks of the Canadian Supreme Court of Canada in Percone instead).

88. Laskar was a case concerning the beneficial interests in a property purchased by a mother and an adult daughter. At paragraph 20 of his judgment, Lord Neuberger had remarked as follows:

> 'It is right to mention that there is another presumption, rather longer established than that in Stack, which could be said to apply here, namely the presumption of advancement as between parent and child…. The presumption of advancement still exists, although it was said as long ago as 1970 to be a relatively weak presumption which can be rebutted on comparatively slight evidence (see per Lord Upjohn in Pettitt v Pettitt [1970] 1 AC 777 at 814….). I would add that it is even weaker where, as here, the child was over 18 years old and managed her own affairs at the time of the transaction….'

89. These comments, (whilst obiter as the point was not being argued), clearly reflect the existing position under English law, namely, that a presumption of advancement as between parent and child can exist in relation to a child who is not a minor.

90. Mr Pickering also referred me to a decision of Mr Mark Anderson QC in the recent case of Purvis v Purvis [2018] EWHC 1458, which made reference to the 'obligation to provide' test referred to in Musson. This case however was only argued one side and, as Mr Moss QC put it, was 'not an authority at all'. I would add that it contains only the briefest of references to the presumption of advancement (at paragraph 34). There is no reasoned analysis of the presumption.

91. Mr Pickering next submitted that, to the extent that the presumption of advancement extended to children who were not minors, it only applied to children over 18 years old who were still 'financially dependent' on their parents.

92. Again, I do not accept this submission. Although the issue of financial dependence is undoubtedly a factor relevant to the strength of the presumption (Laskar at paragraph 20), the historic rationale for the presumption is based on parental affection as well as parental obligation: see by way of example Grey v Grey (1677) 36 ER 742 (HC Ch) at page 743, where, at the elemental stage of development of the doctrine, the court identified natural affection as a rationale:

> '…. For the natural consideration of blood and affection is so apparently predominant, that those acts which would imply a trust in a stranger, will not do so in a son; and ergo, the father who would check and control the appearance of nature, ought to provide for himself by some instrument, or some clear proof of a declaration of trust, and not depend upon any implication of law….'

See too Sidmouth v Sidmouth (1840) 48 ER 1254 at p1258, Scawin v Scawin (1841) 62 ER 792 and Hepworth v Hepworth (1870) LR 11 Eq 10.

93. Whilst, as clear from Lord Neuberger's obiter remarks in Laskar, the presumption may be weaker (and therefore more readily rebuttable) in the case of an adult child who is financially independent, I reject the submission that it does not exist at all.

The strength of the presumption of advancement

94. On the strength of the presumption of advancement between parent and child generally, Mr Pickering went on to submit that it was 'very weak' in the modern age, citing Lavelle v Lavelle [2004] EWCA Civ 223 and Close Invoice Finance v Abaowa [2010] EWHC 1920 at [98].

95. In Lavelle, having being taken by Mr Chaisty of Counsel to Shephard v Cartwright and Chettiar v Chettiar, Lord Phillips MR at paragraph 15 commented: 'Some of the older authorities upon which Mr Chaisty relies indicate that the presumption of advancement is not lightly to be displaced by evidence', continuing, at paragraph 17: 'These authorities relied upon by Mr Chaisty have lost much of their force in modern times', citing Lords Reid, Hodson, and Upjohn in Pettitt v Pettitt [1970] AC 777.

96. The case of Pettitt, however, concerned the presumption of advancement in a husband and wife context, and a number of the passages from Pettitt considered by Lord Phillips in Lavelle made express reference to that context: see for example the remarks of Lord Hodson in Pettitt at p.811. In my judgment, the courts should be slow to extrapolate the treatment of the presumption of advancement in a matrimonial property context to the context of property acquisitions or transactions involving parents and their children. Whilst the presumption of advancement in each case may be, as Lord Upjohn opined, 'no more than a circumstance of evidence which may rebut the presumption of resulting trust' (Pettitt at page 814), plainly the husband/wife and parent/child contexts in which the presumption of advancement may arise will often differ in material respects.

97. Moreover, as rightly noted by Mr Moss QC, the case of Shephard v Cartwright was not cited in Pettitt. Mr Moss submitted that Pettit could not be treated as interpreting or qualifying Shephard in any way. He maintained that Shephard still stood as good

law and, as a House of Lords decision, took precedence over Lavelle in this respect. Subject to reserving my position on the comments made in Shephard on *admissibility* of evidence, I accept these submissions. The language of admissibility (rather than weight) employed in Shephard may simply have reflected the jurisprudential landscape at the time of the decision; the passage from Snell's Equity (24th ed) p.153 quoted at page 445 of Shephard, for example, reads rather differently in the current edition.

98. I would add that the views expressed by Lord Phillips MR in Lavelle on the strength of the presumption of advancement in modern times and the manner in which it may be rebutted were in any event ultimately *obiter*. At paragraph 48 of his judgment in Lavelle (May and Parker LJJ concurring), Lord Phillips MR stated (with emphasis added) that the 'core issue' in the case was 'whether *the considerable evidence* demonstrated that, in 1997, George had intended to give away his flat', continuing, '*The evidence left no room for the application of the presumption of advancement*. After a two-day trial in which he heard the witnesses, the judge concluded that George had had no such intention.'

99. The case of Close Invoice Finance v Abaowa [2010] EWHC 1920, also relied upon by Mr Pickering on the strength of the presumption, did not take matters much further on this issue. A submission that the presumption of advancement was 'nowadays very weak' was effectively conceded by the Claimant (at [97]). The judge in Close then went on to base himself on Lavelle on the invitation of both counsel.

Rebuttal of the presumption of advance

100. Mr Pickering further submitted that, to the extent that the presumption of advancement applied, there was strong evidence to rebut it.

The purchases

101. Against that backdrop, I turn to consider beneficial ownership of the Properties.

102. As will be recalled, the Applicants' primary case is that Karl was sole beneficial owner of each of the Properties, on 'resulting trust principles'. As a starting point therefore, I must consider the source of funding for each of the Properties. These were (1) the Joint Account (2) a mortgage advance and (3) (in the case of Rowallan Road) Mark Quinn.

103. I have already dealt with the contribution of Mark Quinn to the purchase of Rowallan Road. For the reasons given, the Applicants have failed to persuade me that the Quinn contribution should be treated as an advance from Karl towards the purchase. I turn, then, to deal with the payments made towards the purchases from the Joint Account and by way of mortgage advance.

The Joint Account

104. In the case of each purchase, monies were contributed from the Joint Account, as follows:

(1) Crossgate (2003): purchase price £350,000: Joint Account contribution: £70,915;

(2) Rowallan Road (2006): purchase price £615,000): Joint Account contribution: £62,000;

(3) Albert Street (2007): purchase price £410,000: Joint Account contribution: £108,872.24.

105. On behalf of Kate Watkin, Mr Moss QC rightly conceded that he could not demonstrate on the evidence before the Court that the monies paid from the Joint Account towards each purchase were, on a strict accounting analysis, monies belonging to Kate, or monies to which she was entitled in consequence of the proceeds of various share sales and bequests in her favour being paid into the Joint Account over many years.

106. In the light of that concession, I was invited to consider whether the payments from the Joint Account towards the purchase of each of the Properties should be treated as payments from Karl alone, or payments from Karl and Jill.

107. Mr Pickering submitted that I should treat the payments from the Joint Account towards the purchase of each of the Properties as payments solely from Karl, not Karl and Jill.

108. Mr Wood's written evidence (Wood (1) para 34) on this issue relied upon Grant Thornton's analysis of receipts and payments into and out of the Joint Account over the period 18 February 2005 to 21 February 2008. Mr Wood maintained that, in the light of that analysis, the Applicants had concluded that Jill did not make any payments into the Joint Account 'prior to or during the period when the Properties were purchased'. This of itself was a flawed conclusion, given that the first of the Properties, Crossgate, was purchased in 2003, 2 years prior to the period covered by the analysis in evidence. The period covered by Grant Thornton's analysis, in the context of a marriage spanning over 30 years, was not explained in the evidence either.

109. Moreover, even assuming that Jill Watkin did not make any payments into the Joint Account 'prior to or during the period when the Properties were purchased', that of itself would not conclusively determine whether or not she enjoyed a beneficial interest in the monies used from the Joint Account towards each the purchase of each of the Properties. The fact that for many years, Jill devoted herself to her family and managing Ghyllheugh estate rather than earning income which she paid into the Joint Account does not of itself determine the issue whether the funds from time to time standing in that account belonged to Karl alone or jointly to Karl and Jill; in the absence of evidence of Karl and Jill's intentions in setting up and thereafter maintaining the Joint Account in their joint names, a rebuttable presumption of advancement would apply: Re Figgis [1969] 1 Ch 123.

110. Mr Pickering sought to overcome the shortcomings of the Applicants' evidence on this issue by seeking to rely on an alleged admission by Jill herself that she did not contribute to the purchase of the Properties, referring (at paragraph 12 of his skeleton argument) to paragraph 9 of Jill Watkin's statement, in which she states:

> 'I note that the Applicants suggest that I did not contribute financially to the purchase of the 3 properties. Whilst I believe

> this to be the case I made a significant contribution in the marriage.'

Jill Watkin continues at paragraph 9 of her statement, however (with emphasis added):

> 'Apart from the first 3 years when I worked for Oxfam as Regional Organiser for the North East, and Karl had a number of very successful business ventures, I did not have a career. Whatever money was used to buy the children's properties was their money kept in our joint account for safe management. I was aware of this and fully in agreement with this arrangement. With this in mind if Karl (and therefore the Applicants) have any interest in the 3 properties, or their proceeds of sale, which I do not accept, then I as Karl's estranged wife have an *equal interest*.'

111. It is clear, from the passages of Jill's statement quoted above, that Jill's position (in layman's terms) was that subject to any beneficial interest in the monies standing from time to time in the Joint Account that the Watkin children might have, she and Karl enjoyed equal beneficial interests in the same. Mr Pickering's attempt to carve an admission out of an extract from paragraph 9 of Jill's statement, perhaps hoping to rebut any presumption of advancement in Jill's favour in relation to the Joint Account which might otherwise arise, therefore does not succeed.

112. In cross examination Jill gave evidence, which I accept, of the valuable contributions which she made to the marriage and to Karl's business ventures. In addition to rearing her family, she ran the Ghyllheugh estate with the assistance of staff, whilst Karl was overseas for much of the time on business. Her evidence, which I accept, was that it was she who largely arranged the work undertaken at Albert Street and dealt with much of the interior design work on properties that she and Karl purchased over the years. She also hosted politicians and others important to Karl's business interests at Ghyllheugh. On the evidence overall, it was clear that, prior to the breakdown of their marriage in 2010, Jill and Karl each contributed significantly to the wealth of the family in their different ways.

113. It was also clear from the evidence that Jill made active use of the Joint Account on her own initiative. When she was presented in cross examination with Grant Thornton's analysis of the Joint Account and asked to point to any transactions in which she herself had effected, she was able to point to numerous examples and explain them without hesitation.

114. On the evidence which I have heard and read, I am satisfied that Jill Watkin was not party to the Joint Account simply as a mode of conveniently managing her husband's affairs; her husband regularly used the services of authorised signatories on other bank accounts in his sole name, without going to the lengths of naming them as an additional account holder. It was clear from the evidence (and I so find) she and Karl each used the Joint Account as they wished, as joint beneficial owners of what Megarry J once memorably described as a 'fluctuating and defeasible asset consisting of the chose in action for the time being constituting the balance in the [Joint Account]' (Re Figgis, loc cit at p149). Karl's responses in interview support this

conclusion. He clearly did not treat the Joint Account simply as his own; he viewed it as a joint asset. When asked why Kate had paid £95,000 into the Joint Account, for example, he responded 'she was helping with the family finances'; notably, he did not suggest that she was helping with 'his' finances.

115. To the extent that a presumption of advancement in favour of Jill in relation to the Joint Account is required at all in the light of my findings, the presumption arises and the Applicants have failed to rebut it.

116. In the light of my conclusions, I am satisfied that advances towards the purchases of Crossgate, Rowallan and Albert from the Joint Account should be attributed on a 50-50 basis to Jill and Karl respectively.

117. In round terms, this means that the contributions from the Joint Account towards the purchases of Crossgate, Rowallan Road and Albert Street attributable to Karl stand at approximately 10%, 5% and 13% respectively.

Crossgate and Rowallan Road: contributions from the Joint Account

118. In my judgment, a presumption of advancement in favour of Kate arose in respect of Karl's contributions to the purchase price of each of Crossgate and Rowallan from the Joint Account at the time of purchase.

119. I find that at the time of each of these purchases, Kate was still financially dependent on her parents. She still enjoyed the use of an American Express card at their expense and was also still in receipt of a monthly allowance from the Joint Account.

120. I also find that the timing of purchase of Crossgate and Rowallan, at locations convenient to Kate, was entirely consistent with a pattern of parental support which Karl and Jill Watkin had extended to each of their children throughout their lives.

121. I further find that the pattern of payments into the Joint Account of share sale proceeds and bequests in Kate's favour served to fortify the moral obligation felt by her parents to assist her in the purchase of these properties.

122. No plausible suggestion has been advanced as to why Karl Watkin (or Jill Watkin, for that matter) would provide value for Crossgate and Rowallan Road purchased in Kate's sole name at locations convenient to her if it was not intended to make provision for her: Shephard v Cartwright per Viscount Simonds at p.450. It was conceded by the Applicants that there was no evidence that Karl was in any financial difficulty at the time of purchase of any of the three Properties or indeed for some years thereafter. Kate's unchallenged evidence was that her parents were both solvent at the time of the purchases (Kate Watkin (1) para 24); Jill's unchallenged evidence was that the family had 'substantial means' at the time of the purchases (Jill Watkin (1), para 3).

123. There was no evidence of any trust being communicated by Karl to Kate; and as a sophisticated wealthy businessman, it is inherently unlikely that Karl would wish his daughter, an undergraduate at the time of purchase of Crossgate, and a fresh graduate on a 'starter' salary at the time of purchase of Rowallan, to be his trustee, particularly

in relation to sums which, although capital to many, were a mere fraction of his own annual income (£1.6m) at the time.

124. Moreover, in fiscal terms, a trust for Karl, or indeed a trust for Karl and Jill, made no sense. Beneficial ownership by Kate did make sense. In the case of each of Crossgate and Rowallan in turn, she was going to live in the property and cover the cost of the mortgage and other outgoings on the properties by letting out rooms to vetted cohabitants.

Albert Street

125. In relation to Karl's contribution to the purchase price of Albert Street from the Joint Account, there is in my judgment no need for the operation of the presumption of advancement, there being clear contemporaneous third party evidence of Karl and Jill's intentions at the time of purchase (see for example email dated 8 August 2007 quoted at paragraph 55 above). On the evidence which I have heard and read, I find that both Karl and Jill contributed to the purchase and refurbishment of Albert Street as an investment for their children, intending to retain no beneficial interest in the property, or in the monies advanced from the Joint Account towards its purchase (or its refurbishment, for that matter), themselves. If I am wrong in that conclusion however, I would add that a presumption of advancement in favour of the Watkin children would in any event apply.

126. I turn next to consider the mortgage advances.

Mortgage Advances

127. It was not at all easy to see how the Applicants could pursue their primary case of 100% beneficial ownership on a resulting trust basis, given the mortgage arrangements for the Properties.

128. Whilst, in principle, the undertaking of liabilities under a mortgage used to fund payment of a substantial portion of the purchase price of a property may in certain circumstances be treated as a contribution to the purchase price capable of giving rise to a resulting trust (Carlton v Goodman [2002] EWCA Civ 545 per Mummery LJ at para 22(v)), the Applicants only had evidence that Karl was a party to the mortgage loan taken out to purchase one of the three properties (Crossgate). Karl was not a party to the mortgage loans taken out to purchase Rowallan Road or Albert Street.

129. Despite this, Mr Pickering submitted that Karl should be treated as contributing the whole of each of the mortgage loans used to fund the purchase of each of the Properties. I reject that submission.

130. In the course of argument Mr Pickering referred me to Carlton v Goodman [2002] EWCA Civ 545. This was of no assistance to him whatsoever in relation to Rowallan Road and Albert Street (as Karl was not a party to either mortgage) and a double-edged sword in relation to Crossgate.

131. In Lord Justice Mummery's words, the appeal in Carlton v Goodman raised 'an interesting point on resulting trusts in a case where the purchase of property acquired

for the sole use and occupation of one party is partly financed by a joint mortgage on the property.'

132. In Carlton v Goodman, Mr Goodman was the tenant of a property which he wished to purchase from his landlord. He could not raise a mortgage for the purchase by himself as he did not have sufficient income. Ms Carlton was in a relationship with Mr Goodman at the time but never lived with him. She agreed to act as co-mortgagee so that he could raise a mortgage. Together they signed the mortgage application form. Mr Goodman paid the deposit. The mortgage deed was signed by both Mr Goodman and Ms Carlton. The property was purchased in joint names and the property was registered in joint names at HM Land Registry. There was no express declaration of trust in the transfer or in any other document. At the time of the purchase Mr Goodman told Ms Carlton that she would 'come off' the mortgage after a year, but she never did.

133. Mr Goodman made all the mortgage interest payments and paid all the premiums on an endowment policy out of his own money. Ms Carlton made no contributions to payment of mortgage interest during Mr Goodman's lifetime.

134. When Mr Goodman died, Ms Carlton and her new partner moved into the property and thereafter made mortgage repayments and insurance payments. The administrator of Mr Goodman's estate brought a claim seeking recovery of the property and declaratory relief.

135. At first instance, the deputy judge found that the property was held by Ms Carlton on resulting trust for the claimant, as administrator of Mr Goodman's estate. He found that Mr Goodman made all the payments in respect of the mortgage and the endowment policy and that Ms Carlton made none. He further found there to be no evidence of any agreement, understanding or common intention that beneficial ownership of the property was to be jointly held, or of Ms Carlton acting to her detriment or altering her position in reliance on any agreement with Mr Goodman.

136. On appeal, Mr Crawford argued on behalf of Ms Carlton that since she and Mr Goodman each covenanted with the Alliance & Leicester to repay the mortgage loan of £47,500 used to fund the bulk of the purchase price, and in the absence of any agreement that Mr Goodman should indemnify Ms Carlton or be treated as primarily liable for the mortgage, the Deputy Judge should have held that Mr Goodman and Ms Carlton each contributed one half of £47,500 to the purchase price, and that each was beneficially entitled in undivided shares under a resulting trust. He maintained that the Deputy Judge had ignored the contribution made by Ms Carlton to the purchase price in the form of one half of the sum raised on the joint mortgage on the strength of the total income of both of them. He argued, inter alia, that if Mr Goodman had fallen into arrears with the mortgage payments, Ms Carlton would have been liable to pay them.

137. The appeal was dismissed. Whilst accepting in principle that the undertaking of liabilities under a mortgage used to fund payment of a substantial portion of the purchase price of a property could be treated as a contribution to the purchase price capable of giving rise to a resulting trust (para 22(v)), on the facts as found by the trial judge, Mummery LJ concluded that the form of assistance given was not 'a contribution by her, or intended to be a contribution by her, to the purchase price of

the House so as to give rise to a resulting trust in her favour' (para 22(vi)). Mummery LJ described the role played by Ms Carlton as 'a different and lesser one than that of a contributor to the purchase price.' He concluded that she had simply 'facilitated the purchase … by lending her name in order to secure the advance from the Alliance & Leicester. She thereby assisted Mr Goodman in *his* purchase of the House' (para 22 (vi), emphasis added).

138. The fact that she remained potentially liable to the Alliance & Leicester did not assist her claim to a beneficial interest. Mr Goodman was to pay (and did in fact pay) all the mortgage payments and all the premiums on the endowment policy. Mummery LJ further noted that there were no other circumstances, such as purchasing the property as a family home for them both to live in, or discussions between the parties leading to an agreement or understanding between them that the beneficial interests in the house were to be shared, which would serve to assist Ms Carlton in her appeal. The property had been purchased for Mr Carlton's sole use and benefit (para 25).

139. The parallels with the purchase of Crossgate speak for themselves.

140. Laws LJ concurred, adding that it was clear that there was no intention to confer any beneficial interest on Ms Carlton. Ward LJ also agreed that the appeal should be dismissed, although took a slightly different route to that conclusion to Mummery LJ. In Ward LJ's view, a presumption of resulting trust had arisen in respect of Ms Carlton's contribution of one half of the mortgage loan (para 38), but had been rebutted on the evidence. On the facts, whilst she had 'put her name to the mortgage deed', 'as between the two of them she had no intention of being responsible for the repayment.' (para 41).

141. Applying Mummery LJ's approach to the facts of this case, on the evidence which I have heard and read, I am satisfied that Karl's involvement in the mortgage loan taken out to effect the purchase of Crossgate should not be treated as a contribution by Karl of the whole or even part of the mortgage loan to the purchase price of Crossgate.

142. Crossgate was purchased and registered in the sole name of Kate, for Kate (and not her father) to live in, in a location convenient for Kate. Kate's clear evidence, which I accept, was that at the time of purchase of Crossgate, she understood her father to be acting as a 'guarantor' of the mortgage. Karl has confirmed this in interview and Jill also confirmed it in her evidence.

143. On the evidence which I have heard and read, I am satisfied that the understanding between Kate and Karl at the time of the purchase of Crossgate was that Kate (and not her father) would be responsible for paying the mortgage instalments, from the rent that she received from other students renting rooms in the property. I am further satisfied that at all material times, Kate received the rental income into her own bank accounts and Kate paid the mortgage and other outgoings on the property from the rental income received. Kate has also declared and paid tax on the rental income received from Crossgate and was also responsible for paying the tax which arose on its subsequent sale. I was taken to no evidence to suggest that Karl paid any of the mortgage instalments on Crossgate after its purchase.

144. I also take into account my findings and conclusions on the matters set out at paragraphs 164 to 211 below.

145. The fact that Karl remained potentially liable to the mortgagee in relation to the mortgage loan taken out in respect of Crossgate is not of itself sufficient to give rise to a beneficial interest in Karl's favour in respect of the mortgage loan or any part of it. I find that Karl was party to the Crossgate mortgage simply as a 'credit enhancer'. On the evidence which I have heard and read, I am satisfied that Karl simply facilitated the purchase of Crossgate by 'lending his name' to the mortgage. In so doing, (to adopt, respectfully, the words of Mummery LJ in Carlton), he assisted Kate in *her* purchase of the property. In my judgment, Karl did not thereby become a 'purchaser' himself to the extent of part or all of the mortgage loan, so as to trigger a resulting trust in his favour in respect of those mortgage loans or any part thereof.

146. Even if I am wrong in that conclusion, and Karl should be treated as having made a contribution in respect of the mortgage loan taken out in respect of Crossgate, in my judgment the presumption of advancement would apply to any such contribution.

147. In relation to Rowallan Road, as I have found, Karl was not even a party to the original mortgage loan taken out to effect its purchase in 2006, or the re-mortgage of it in 2008. Whilst I am satisfied that Karl guaranteed the original Rowallan Road mortgage in 2006, I was taken to no caselaw to suggest that the mere guarantee of a mortgage used to fund payment of a substantial portion of the purchase price of a property may be treated as a contribution to the purchase price capable of giving rise to a resulting trust in favour of the guarantor.

148. Even if it could as a matter of principle, the form of assistance which Karl gave in guaranteeing the original mortgage loan taken out by Kate in 2006 in respect of Rowallan Road was plainly not intended by Karl to give rise to a beneficial interest in his favour in respect of the property.

149. Rowallan Road was purchased and registered in the sole name of Kate, for Kate (and not her father) to live in, in a location convenient for Kate. It is clear from Kate's evidence overall (and I so find) that, as with Crossgate, it was Kate (and not her father) who undertook responsibility from the outset for paying the mortgage and other outgoings on Rowallan Road, renting out rooms where necessary to friends and associates. At all material times, Kate received the rental income into her own bank accounts and Kate paid the mortgage and other outgoings on the property from her salary coupled with the rental income received. Kate has declared and paid tax on any rental income received in respect of Rowallan Road. I was taken to no evidence to suggest that Karl paid any of the mortgage instalments on Rowallan Road after its purchase.

150. I also take into account my findings and conclusions on the matters set out at paragraphs 164 to 211 below.

151. In the case of Albert Street, the issue of how to treat the mortgage advance is even simpler: Karl was not a party to the mortgage and there is no evidence that he even guaranteed it.

152. In the light of my earlier conclusions on the Quinn contribution, and on the manner in which the mortgage advances employed in the purchase of each of the Properties fall to be treated on a resulting trust analysis, Karl's contributions towards the purchases of Crossgate, Rowallan Road and Albert Street, in round terms, remain at

approximately 10%, 5% and 13% respectively; these representing 50% of the contributions from the Joint Account towards each purchase. For the reasons already given, the presumption of advancement arises in respect of Karl's contributions from the Joint Account towards the first two purchases (Crossgate and Rowallan Road). No presumption of advancement arises in respect of Karl's contribution from the Joint Account towards the third purchase (Albert Street), there being clear contemporaneous evidence of Karl and Jill's donative intent at the time of purchase.

Rebuttal of the presumption of advancement

153. On behalf of the Trustees, Mr Pickering submitted that to the extent that the presumption of advancement was engaged in relation to any contributions by Karl to the purchase of each of the Properties (and in the case of Albert Street, any contributions by Karl towards the costs of refurbishment), the presumption was rebutted on the evidence. By his skeleton argument, he listed the following factors.

(1) All three purchase files were opened in the name of Karl (not Kate);

(2) In respect of all 3 purchases, the monies came from Karl and Jill's joint bank account. No monies came from Kate.

(3) In relation to Rowallan Road, a significant contribution of £210,000 came from an associate of Karl.

(4) The rental income from the properties was administered by Karl's personal assistant. After payment of the monthly mortgage instalments, any surplus was paid (most, if not all of the time) to Karl.

(5) The renovations to Albert St (which took over 8 months and were substantial) were carried out by Karl using his employees (and therefore at Karl's cost).

(6) The bulk of the monies raised on the re-mortgage of Rowallan (some £95,000 of the balance of £97,010.38) were paid to Karl Watkin.

(7) The sales of the two Durham properties were initiated about a month before the bankruptcy petition was presented in relation to Karl Watkin.

(8) The bulk of the monies raised on the sale of Crossgate – some £255,345- were paid to Karl Watkin.

154. With regard to (1) (that all three purchase files were opened in the name of Karl Watkin); I was taken to no evidence confirming that the purchase *files* in relation to each of the three properties were opened in the name of Karl E Watkin, but was only taken to purchase *ledgers* opened in his name in respect of the three purchases. That aside, Jill's unchallenged evidence was that Karl was a significant client of Ward Hadaway both with family business and his own and related business activities. Of the Watkin family, Karl was their main customer. Save for the Quinn contribution in respect of Rowallan Road, the balancing payments after mortgage loans came from the Joint Account. In the circumstances, it is not wholly surprising that a ledger produced for accounting purposes would bear his name and customer number. The

ledger references are not of themselves accurate pointers to where beneficial interest in each property would lie.

155. Kate Watkin's evidence, which I accept, was that (a) ahead of the purchase of Crossgate, she went to see Ward Hadaway and completed the 'Know Your Client' process; and (b) that it was she (and not her father) who instructed Ward Hadaway on the purchase of Rowallan. In relation to the purchase of Albert St, contemporaneous correspondence (an email dated 8 August 2007 from Alex Cox of Ward Hadaway) confirmed that Kate was asked to bring in up to date ID, and the mortgage offer, which was in evidence, was in Kate's sole name.

156. Moreover, all three purchases were completed in Kate's sole name. In the absence of any evidence suggesting that the contractual documentation said otherwise, I consider it legitimate to infer that the purchase contracts named Kate as the purchaser as well as the transfers.

157. Overall, it seems to me that little weight can be attached to the fact that Ward Hadaway chose to use the name Karl E Watkin on the purchase ledgers for each purchase. There is no evidence that Karl Watkin requested such an internal filing arrangement, nor any evidence from Karl or Ward Hadaway suggesting that at the time of each (or any) of these purchases, Karl's intention was that he should enjoy a beneficial interest in the properties purchased.

158. With regard to (2) (in respect of all 3 purchases, monies came from the Joint Account and no monies came from Kate): I cannot see how this of itself serves to rebut the presumption of advancement. The advance of monies is the start of the enquiry, not the answer to it. If the underlying premise is that Kate Watkin brought no value to the property purchases, and that this somehow rebuts the presumption of advancement, it is wrong in both law and fact. Kate was party to all three mortgage loans used to purchase the properties and sole mortgagor in the case of both Rowallan Road and Albert St. On the evidence which I have heard and read, I am satisfied that Kate was the person who at the time of the purchase of each of Crossgate and Rowallan assumed liability (as between Kate and Karl) for the mortgage payments. In the case of Albert Street the position is even more plain; not only was Kate sole mortgagor, Karl did not even guarantee the mortgage.

159. With regard to (3) (in relation to Rowallan Road, a significant contribution of £210,000 came from an associate of Karl); for the reasons already explored, in my judgment this contribution cannot be attributed to Karl. Even if it could, I do not see how this fact of itself would operate so as to rebut the presumption of advancement.

160. With regard to (4) to (8), there was a legal dispute between Counsel as to the extent to which such factors, if proven, were admissible in evidence for the purposes of rebutting the presumption of advancement. On behalf of Kate, Mr Moss QC submitted that, whilst the court could consider '… acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction…', subsequent declarations and acts were admissible only against the party doing the act or making the declaration: Shephard v Cartwright [1955] AC 431(HL) per Viscount Simonds at p445: see too Chettiar v Chettiar [1962] AC 294 (PC).

161. Mr Pickering in turn relied upon a comment of Millett LJ in the case of Tribe v Tribe [1996] Ch 107 at page 129, where Millett LJ said:

> 'it does not follow that subsequent conduct is necessarily irrelevant. Where the existence of an equitable interest depends upon a rebuttable presumption or inference of the transferor's intention, evidence may be given of the subsequent conduct in order to rebut the presumption or inference which would otherwise be drawn.'

162. The case of Shephard was not cited in Tribe, but was cited in Lavelle. Lord Phillips (in Lavelle at para 18), approved the passage from Tribe, going on to state:

> 'In these cases equity searches for the subjective intention of the transferor. It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. But words or conduct more proximate to the transaction itself should be given the significance that they naturally bear as part of the overall picture. Where the transferee is an adult, the words or conduct of the transferor will carry more weight if the transferee is aware of them and makes no protest or challenge to them.'

163. Naturally I am mindful of the fact that Shephard v Cartwright is a House of Lords authority which has never been overruled and that the comments of Lord Phillips in the Court of Appeal in Lavelle, whilst ultimately *obiter* (see paragraph 98 above), warrant close consideration. In this case, however, the issue of admissibility is in any event academic. I say this because, even assuming in favour of the Applicants that evidence on points (4) to (8) is admissible and that the Lavelle approach on admissibility is to be preferred, they have still failed to rebut the presumption of advancement, to the extent that I have found it to apply.

164. With regard to (4) (treatment of rentals): it is clear from the evidence before me that all rentals received from each of the Properties were paid into an account in Kate Watkin's sole name. Having received such monies into her own sole name account, Kate was entitled to deal with any surplus over mortgage payments and outgoings as she wished.

165. The Applicants maintained that *all* surplus rental monies, over and above those required to pay the mortgage and other outgoings on *each* of the Properties, were then paid on to Karl and Jill. They argued that this was a consensual arrangement and pointed to Karl (or Karl and Jill) retaining a beneficial interest in the Properties. The Applicants did not have the evidence to support this sweeping contention, however. The evidence put forward by Mr Wood in his statements in support of this allegation was ultimately rather thin.

166. In Mr Wood's first witness statement, the allegation in relation to Crossgate net rental receipts (para 15, referring to 'NSW1', pp31-33) was expressly based upon a letter dated 6 May 2016 from the Respondent's solicitors Cameron Legal to Bond Dickinson, paragraph 10 of which read 'The surplus rental income from the 2 Durham properties, as had accrued from 2003, was paid by our client to her mother in or around 2009/10… as her mother was in need of money as the Debtor was no longer providing for her.' This is hardly a firm basis for an allegation of a consensual arrangement pointing to Karl retaining a beneficial interest in Crossgate – or indeed Albert Street.

167. The allegation in relation to Rowallan Road net rental receipts (Wood(1) para 21, referring to 'NSW1', p18) was expressly based upon a letter dated 12 November 2015 from Cameron Legal to Bond Dickinson – a letter which had since been corrected by the letter of 6 May 2016 and which in any event contained *no suggestion at all* that rental income derived from Rowallan Road had been paid to Karl Watkin.

168. The allegation in relation to Albert Street net rental receipts (Wood(1) para 26, referring to 'NSW1' pp17-18) was again expressly based upon the letter dated 12 November 2015 from Cameron Legal to Bond Dickinson – a letter which, as indicated, had since been corrected by the letter of 6 May 2016.

169. Mr Wood's written evidence was unequivocal on how Karl was allegedly paid the surplus rentals from the Properties. At paragraph 35.4 of his first statement, he alleged (with emphasis added) that the rental income from all 3 properties 'was paid (net of the monthly mortgage instalments) *to the Bankrupt's joint account with JW* [Jill Watkin]'. In cross examination, Mr Wood again confirmed that part of his case was that surplus rents, after payment of mortgage and outgoings, were paid into the Joint Account.

170. I was not taken in evidence to any bank statements for the Joint Account showing a pattern of payment of net rental income by Kate to the Joint Account, however. The only bank statements for the Joint Account adduced in evidence by the Applicants were one or two 'cherry picked' pages added late to the trial bundles to demonstrate other points.

171. Instead of putting the bank statements in evidence, Mr Wood had simply exhibited to his first statement Grant Thornton's analysis of certain payments in and out of the Joint Account over the period 18 February 2005 to 21 February 2008, without even identifying those members of his team responsible for compiling the analysis or stating how they had gone about their task. I was taken to no entries in Grant Thornton's analysis of the Joint Account over the period 18 February 2005 to 21 February 2008 suggesting a sustained pattern of payment of net rental receipts from any of the Properties. The analysis was of limited utility for this purpose in any event, as the period covered by it started two years after the purchase of Crossgate, and ended in February 2008, over 4 years prior to a petition being presented against Karl Watkin – and over 4 years prior to the sale of Crossgate and Albert Street. Why that period had been chosen for the analysis was not explained in the evidence.

172. The Applicants clearly had more information on the Joint Account and Karl's other bank accounts to hand by the time that Mr Wood came to prepare his written evidence in support of this application. By the time of Grant Thornton's interview with Karl

Watkin on 4 November 2013, for example, members of the Applicants' team had closely scrutinised, not only the Joint Account, but also other bank accounts of Karl, including accounts which he held at Coutts and HSBC. At pages 10-12 of the transcript of the interview of 4 November 2013, for example, there is reference to Karl's accounts with Coutts, Barclays, and HSBC. Page 14 of the transcript provides: 'We can't see that large payment you made from your bank accounts'. Page 19 of the transcript continues: 'moving on to payments to Hannah, we can see Hannah has received £56,000 since 2009'. Page 20 provides: 'So then, Kate Watkin, you actually received some money from Kate in 2008, which was £95,000'. Pages 22-36 of the transcript then record the Grant Thornton team working through a list of third party transactions and asking Karl questions about them.

173. It is clear from the transcript of this interview with Karl Watkin that Grant Thornton had an abundance of evidence (including bank statements) as to movements in the Joint Accounts and Karl's other bank accounts spanning materially beyond the period covered by the analysis of the Joint Account (2005-2008), yet had declined to produce such evidence. Had the bank statements from the Joint Account and Karl's other accounts demonstrated a regular pattern of payments of net rental receipts from the Properties into the Joint Account (or indeed any of Karl Watkin's other bank accounts), I would expect the Applicants to have exhibited the statements and to have highlighted the relevant payments. I consider it legitimate to infer that the bank statements relating to the Joint Account and to Karl's other bank accounts reviewed by Grant Thornton do not, in fact, reveal a regular pattern of payments of net rental receipts from any of the Properties into such accounts from the date of purchase of each of the Properties onwards.

174. At trial, Mr Pickering sought to 'row back' from the very specific allegation made at Wood (1) para 35.4, stating that it was 'no part' of the Applicants' case that the payments were made to a given account. This was an astonishing submission, given that Mr Wood had at paragraph 35.4 of his first statement stated, in terms, that rental income from all 3 of the Properties 'was paid (net of the monthly mortgage instalments) to the [Joint Account]'. Mr Wood had not sought to correct that allegation in his oral testimony; quite the contrary, he had confirmed it in cross examination.

175. Mr Pickering went on to submit that the Applicants 'did not know' how the payments were made, suggesting that they could have been made 'in cash'. This formed no part of the Applicants' case as set out in their written evidence in support of the application and was in fact contrary to that case. It also contradicted Mr Wood's oral testimony. Moreover, when Mr Moss QC pointed out that Mr Pickering had not even put the suggestion of cash payments to Kate in cross examination, Mr Pickering 'rowed back' yet again, maintaining that the Applicants were not seeking to mount a positive case as to how the payments were effected, just that the payments were made. This was highly unsatisfactory.

176. Mr Pickering also sought to rely on what he maintained were 'admissions' on the treatment of net rental receipts from the Properties, in correspondence and in the written statements filed by Kate and Jill in answer to the application.

177. In this regard Mr Pickering urged me to consider passages from letters written by Cameron Legal, Kate's former solicitors, to Bond Dickinson which he maintained

supported the Applicants' case, stressing that such letters must have been written on instruction.

178. Read as a whole, it is clear that Cameron Legal's letters are peppered with internal inconsistencies and with errors readily demonstrable by reference to other evidence or undisputed facts. The letters cannot all be right. Reading the full run of Cameron Legal's letters in evidence, it is clear that Cameron Legal sought by their letter of 6 May 2016 to correct certain errors in their earlier letters, making clear at paragraph 8, for example, that the rent from each property was paid to an account in the Respondent's sole name and was used predominantly by her for mortgage repayments and other outgoings on the same, and by paragraph 10, that the surplus rental income from the Durham properties 'as had accrued from 2003' was paid by the Respondent to her mother 'in or around 2009/2010.'

179. If the Applicants wished to put forward a case contrary to that account of events, and to establish a case of systematic remittance of surplus rentals to Karl from all three Properties from the date of each purchase onwards, the way to go about that was not simply to ignore the contents of Cameron Legal's letter of 6 May 2016 and rely selectively on other passages from Cameron Legal's earlier letters when preparing evidence in support of their application, but instead to look beyond correspondence exchanged many years after the event to *primary evidence*: see generally JSC BM Bank v Kekhman and others [2018] EWHC 791 per Bryan J at paragraph 67. As noted by Bryan J, 'memories are fallible… and therefore where possible a court should rely on documentary evidence and any other objectively provable facts.'

180. Kate's oral evidence, which I accept, was that Cameron Legal's correspondence with Bond Dickinson covered a period when she was undergoing significant difficulties in her personal life (see by way of example paragraph 46 above). She had instructed Cameron Legal as best she could but her recollection of events long past had clearly been confused in certain respects. She did recall that the family PA was a signatory on her Coutts bank account at some stage. She said that in the early stages of Cameron Legal's correspondence with Bond Dickinson, she had wrongly assumed that her parents were taking the surplus rents from the Durham properties from the date of each respective purchase (2003 and 2008) onwards. Looking back since at her bank statements, she recalled that there was also a Barclays account in her sole name. She said that she had now realised that it was only 'at the end', as she put it, around late 2009/2010, when her parents split up, that she transferred surplus rentals from the Durham properties to her mother, in order to assist her.

181. Mr Pickering placed great store by references in Cameron Legal's correspondence with Bond Dickinson to a total of £129,000 of net rental receipts having been paid by Kate Watkin to Karl. On reading the correspondence in evidence as a whole, however, it is clear that this figure was simply a 'conservative estimate' of rental income from Crossgate and Albert Street overall (Cameron Legal's letter of 12 November 2015 at para 2.4), calculated as 'circa 300K, less the mortgage payments, between 2003 and 2012' (Cameron Legal's letter 15 March 2016 at para 5.1). This was all premised on Kate Watkin's mistaken assumption at the time that all surplus rents from the Durham properties were paid over to the Joint Account from the date of purchase rather than simply from late 2009/2010. The same figure, described as 'loan repayments' for a period up to May 2013, shortly prior to sale of Albert Street, is

reflected in Kate Watkin's earlier email to Ward Hadaway dated 10 July 2013. Overall, the correspondence was of little assistance on this issue.

182. Mr Pickering also sought to rely on what he maintained were admissions contained in Kate and Jill's written evidence in answer to the application.

183. In oral testimony, Kate's evidence, which I accept, was that she had prepared her witness statement partway through an MBA and had stayed up all night to do it. It was not a perfect document. In relation to use of surplus rental income, the key paragraphs were paragraphs 9 to 15, the salient parts of which read as follows (with emphasis added):

> '9. I accept that my parents, that is to say both my mother and father, have provided for me and did help me out with the purchase of the three properties (to include not only practical but financial assistance and ongoing assistance in relation to the renting of those properties following me moving from Durham to London after my graduation), but it was always their intentions that the properties would be mine and, as I mention above, 40 Rowallan has been my home since 2006. I fully accept that without their financial assistance I could not have bought the properties myself but this was their way of, at that time, providing for me for the future and with my own property (and it was their intentions to do so for my brother and sister). While at University and since leaving Durham, I have let rooms in each of the properties (until the two Durham properties were sold) to meet the mortgage repayments and, *certainly since 2010*, to supplement my income and that of my mother. Whilst the rental income from the two Durham properties was paid to my parents and they used the same to pay the mortgage and deal with any other financial needs for each of the properties (until their sales) I have always retained the rental income from 40 Rowallan for my own personal use.
>
> 10. Additionally, in relation to the two Durham properties (and since me having left Durham), my mother and the family PA, Audrey Williams, were both involved in and dealt with the day-to-day issues in relation to the letting of these properties… For the avoidance of any doubt, my father was not involved in the day-to-day lettings of these properties and at no time have [sic] either he or my mother lived in Durham and/or held any interest in the two Durham properties other than to provide me with assistance and support. It made sense for my mother and the family PA to be involved and to be signatories given their proximity to Durham.
>
> 11. As I say, the rent from the two Durham properties was paid into my Coutts account (Audrey Williams, the family PA was a joint signatory for convenience) and was used this [sic] to pay the mortgages, deal with issues such as replacing/repairing and

> until about late 2009 they continued to provide me with financial support.
>
> 12. In relation to 40 Rowallan, I remortgaged this property in August 2008 and paid the sum of £95,000 to my parents as my father had asked me to do so. Further, in November 2007, following the death of my maternal great aunt, I was due to inherit £84,249.00 but at the request of my parents, I arranged for this sum to be paid to them instead….
>
> 14. The Applicants suggest that I have failed to explain the financial arrangements I had with my parents, in particular my father. I confirm that my parents did support me financially, did provide for me and that I enjoyed a very privileged upbringing. They provided me with my home and when they needed money, I made the necessary arrangements to assist them. The applicants have taken this to mean my father (not my mother and father, simply my father) was the owner of these properties which I do not accept. *Since 2010, when my father stopped supporting my mother, and following the sales of the two Durham properties, the rental income and the majority of the sales proceeds (less, of course, the sums I needed to meet the HMRC liability) has been paid to my mother for her to use*, which she has in part used to deal with repayment of the mortgage and the letting of the two Durham properties.
>
> 15. I confirm that any income tax and capital gains tax liabilities that have been incurred from the rental and sales of 64/64a Crossgate and 8 Albert Street have been incurred and settled by me. If these gains had been my father's, then it would have been very easy for me to have treated these as such and left it for HMRC to make a claim in my father's bankruptcy estate. I did not as, I repeat, the properties were mine.'

184. Naturally, the Applicants seek to rely on the statement at paragraph 9 of Kate's statement 'Whilst the rental income from the two Durham properties was paid to my parents'. The same sentence however asserts that Karl and Jill used the rent to pay the mortgage; this is plainly an error, as at all material times mortgage instalments were paid from Kate's bank account. Moreover, in context, it will be seen that the reference to rental income being paid to Karl and Jill is preceded by the quoted caveat 'certainly since 2010', which is consistent with Cameron Legal's letter of 6 May 2016. There is a repeated reference to 2010 at paragraph 14 of Kate's statement.

185. Jill Watkin's written evidence addressed surplus rental income at paragraphs 6 to 8 of her statement as follows:

> '6. … Following Kate going to university in Durham in 2001, we bought her a house and had it developed to live in where she could also let out rooms, namely 64/64a Crossgate. Following Kate's graduation in 2005, she moved to London and we bought her 40 Rowallan Road which she still lives in

> today, as her home. We did also add to the portfolio by buying Albert Street in 2008, which along with 64/64a Crossgate, we let out … The properties were let to people that Kate knew or were people who were vouched for by people she knew. The rent was paid into our account and I personally managed the properties together with the family PA Audrey Williams who dealt with day-to-day issues in relation to the properties. The monies received were used to pay the mortgages and for maintenance. At this point in time Katie was still young and financially naive and was concentrating on building up her career. However, she dealt with 40 Rowallan Road as I was based in the north-east, although Audrey and I handled the contracts and deposits. Karl had absolutely no involvement following the purchase of the properties, not least because he was almost permanently overseas. Not only would this not have been practical, but he had no interest in doing so.
>
> 7. Throughout all this time and up until about late 2009/2010 Kate (and our other children) did receive financial assistance and were provided for by Karl and I.…
>
> 8. However, from about June 2010 onwards, and following my separation from Karl, Kate allowed me to use the surplus rental income to meet my living costs and those of the estate, Ghyllheugh, until it was sold in February 2013, as I had no other source of income. Additionally, following the sales of the 2 Durham properties, Kate was quite explicit in the fact that the money was intended for me and must go into an account held solely in my name as her relationship with her father had by this time broken down.'

186. Jill's recollections of arrangements regarding rental income as set out in her statement (and on a number of other points, such as receipt of the net proceeds of sale of Albert St) are flawed in certain respects. Whilst Jill and the estate PA, Audrey, undoubtedly assisted with letting arrangements for the Durham properties, particularly after Kate had graduated and moved to London in 2005, rental payments were paid into Kate's bank account and not the Joint Account, and mortgage instalments were paid from Kate's bank account. Jill's witness statement is plainly wrong in this regard.

187. In cross examination, when it was put to Jill that the rent 'did not go to Kate', Jill readily responded 'a lot of it did'. Jill was not subjected to any detailed cross examination about surplus rentals.

188. Overall, the written evidence of both Kate and of Jill contains a number of errors and inconsistencies. On the evidence which I have heard and read, however, I am satisfied that such errors and inconsistencies are not borne of any attempt on the part of either Kate or Jill to misrepresent or conceal the truth, but instead reflect the challenges of remembering with any acceptable degree of precision what payments may have been made back and forth in an informal family context from year to year some time in the past, compounded by the fact that a number of relevant documents (including bank

statements relating to the Joint Account) were in the Applicants' possession and (save for one or two selected pages) had not been adduced.

189. As Mr Moss QC noted during submissions, 'you cannot prove a case on inconsistencies'. The burden of proof was on the Applicants to establish, on a balance of probabilities, that all net rental receipts in respect of the three properties were paid to Karl, or into the Joint Account (Wood (1) para 35.4) from the date of purchase of each property, if they wished to rely upon that allegation. In this regard I refer to paragraphs 165 to 175 of this judgment. I also remind myself of the guidance given by Bryan J in JSC BM Bank v Kekhman and others [2018] EWHC 791 at paragraph 67. This underlines the importance of basing key allegations on primary documentary evidence where possible.

190. Against that backdrop, on the evidence which I have heard and read, my conclusions on treatment of net rental receipts from the Properties are as follows.

191. There is no evidence of any express agreement between Kate and Karl, whether at the time of respective purchase of each of the Properties or thereafter, that net rental receipts would be paid over to him. It was not put to Kate that there was any such express agreement in relation to any of the Properties. I find that there was no such express agreement in relation to any of the Properties, whether at the time of its purchase or thereafter.

192. From the date of purchase, all rental income received from each of the three properties was paid into an account in Kate Watkin's sole name. Having received such rentals into her sole name account, Kate was entitled to deal with any surplus over mortgage payments and outgoings as she wished.

193. At all material times, the Respondent has had control over the accounts held in her name. It was not until 2008, that the family PA, Audrey Williams, was added as an additional signatory on the Respondent's Coutts account for administrative convenience, to assist with running the Durham properties. Prior to this point the Respondent was sole signatory on her own bank accounts.

194. At all material times, mortgage payments in respect of the mortgages on each of the three properties were paid from an account in Kate Watkin's sole name. I am fortified in this conclusion by the number of bank statements adduced by Kate in evidence relating to her own bank accounts demonstrating a regular pattern of mortgage payments for the Properties from her bank accounts. Whilst Kate was unable to obtain all of her bank statements dating back to 2003, those she has obtained and produced are sufficient to demonstrate a clear pattern of mortgage payments being made from her own bank accounts. I am also fortified in this conclusion by the Applicants' failure to adduce bank statements from any account in the name of Karl or Karl and Jill showing mortgage payments being made in relation to any of the Properties from their accounts.

195. At all material times from the purchase of Rowallan in 2006 to date, Kate Watkin has retained net rental receipts from Rowallan (after payment of mortgage instalments and other outgoings on the property) for her own beneficial use. At no material time have any net rental receipts from Rowallan Road been paid to Karl Watkin or into the Joint Account.

196. From approximately 2010, when her parents separated and her mother had very little income, Kate Watkin allowed her mother Jill to use, for Jill's own benefit, the net rental receipts from the Durham properties, Crossgate and Albert St, until their sales in October 2012 and July 2013 respectively. This was entirely Kate's choice. It does not serve to rebut the presumption of advancement in the case of Crossgate. Nor does it undermine my conclusions in relation to beneficial ownership of Albert Street.

197. I am not satisfied on a balance of probabilities that net rental receipts from (a) Crossgate from its purchase in 2003 to 2010 and (b) Albert Street from its purchase in 2008 until 2010, were paid to Karl (or Karl and Jill for that matter) for his or their personal use. The evidence is inconclusive on this issue. The Applicants have failed to adduce in evidence bank statements or any other contemporaneous documentary evidence to prove such payments, or even a sample pattern of such payments over any part of the periods in question. For the reasons indicated, early correspondence from Cameron Legal to Bond Dickinson is unreliable and must be read as subject to the corrections indicated by their letter dated 6 May 2016. Kate Watkin explained in oral testimony how errors arose on this issue in her witness statement and in correspondence sent on her behalf. I accept her explanation. Jill Watkin's recollection of arrangements regarding rental receipts for the Durham properties as set out at paragraph 6 of her statement is inaccurate for the reasons previously indicated. That aside, it is clear from paragraph 8 of Jill's statement that, from whatever account such net rental receipts from the Durham properties were administered, Jill viewed them as belonging to Kate. In this regard I note, in particular, that she speaks in her statement of Kate 'allowing' her to use surplus rental income to meet her living expenses from 2010 onwards.

198. I would add that, even if any of the net rental receipts from the Durham properties *were* paid into the Joint Account over the period 2003 to 2010, this of itself would not, in my judgment, operate so as to rebut the presumption of advancement in the case of Crossgate or undermine my conclusions in relation to beneficial ownership of Albert Street. Both prior to and during the period 2003-2010, Karl and Jill Watkin received into the Joint Account numerous payments made to Kate and her siblings, including share profits, inheritance monies, and inter vivos gifts from relatives, to which Kate and her siblings were undoubtedly beneficially entitled. Cash flowed back and forth. Kate Watkin was still on an allowance from her parents and still had an American Express card at her parent's expense until 2007; as rightly noted by Mr Moss QC, it would be entirely unsurprising in the circumstances if some of the net rental receipts from Crossgate ended up being used towards payment of her monthly American Express bills. This does not point one way or the other on the issue of beneficial entitlement to Crossgate itself. The same year (2007), at their parents' request, both Kate and her sister Hannah authorised the payment into the Joint Account of substantial inheritances, of £84,000 odd each; there is no suggestion that these inheritance monies did not belong beneficially to Kate and Hannah, yet they were paid (with Kate and Hannah's consent) into the Joint Account. In my judgment, viewed in the context of this family's financial arrangements overall, the payment of any surplus rental income from the Durham properties into the Joint Account does not, of itself, point one way or another on the issue of underlying beneficial entitlement to those underlying properties.

199. Moving next to (5), the Applicants allege that the renovations to 8 Albert Street (which took place over 8 months and were substantial) were carried out by Karl Watkin using his employees (and therefore at his cost) (Mr Pickering's skeleton argument, para 26).

200. In this regard I refer to Paragraphs 59 to 62 of my judgment.

201. As I have already found, Karl and Jill Watkin contributed to the purchase of Albert street as an investment for their children, intending to retain no beneficial interest in the property, or in the monies advanced from the Joint Account towards its purchase, themselves. Any later involvement they may have had in assisting with the costs of renovating Albert Street must be viewed in this context.

202. Moreover, on the evidence which I have heard and read, the Applicants have failed to satisfy me on a balance of probabilities that the renovation works at Albert Street were carried out exclusively (or even largely) at Karl Watkin's cost. The Applicants adduced no bank statements or other primary material demonstrating the source from which these works were funded. Kate Watkin's recollection in oral evidence, which I accept, was that she paid some of the labour costs, at least, directly from her own bank accounts. I would add that, even if payments for the bulk of the works were initially made from the Joint Account, that of itself is not conclusive on the issue whether such works were ultimately carried out at Karl's cost, given the timing of the remortgage of Rowallan Road and the remittance of £95,000 of the remortgage monies by Kate to the Joint Account.

203. In this regard I note that in the schedules attached to David Peel's letter dated 23 November 2015 to HMRC, the mortgage increase of £97,000 odd on Rowallan Road is explained as follows (with emphasis added): 'previous loan made by father *re Albert Street* repaid.' ['NSW1' p65]. I also note that Kate accounted for expenditure on the renovation works in her own tax returns, setting off allowable expenditure against the rental income declared by her in respect of the Properties.

204. On the balance of probabilities, it is more likely than not that Kate, with the assistance of the remortgage monies raised on Rowallan Road, ultimately funded the bulk, if not all, of the Albert Street works herself. To the extent that she did not, and any of the works were ultimately paid for by Karl (or Karl and Jill), I am satisfied that this is consistent with their overall plan, declared shortly prior to the purchase of Albert Street, that the property should be an investment for their children. Against that backdrop, I am satisfied that to the extent that Karl did contribute towards the cost of the renovation works carried out at Albert Street in 2008, he did not thereby seek or intend to acquire a beneficial interest in the property, and any such contribution should not be viewed as evidencing the retention by him of a beneficial interest in the property. To the extent necessary in the light of my other findings, the presumption of advancement would apply to any such contribution towards the costs of renovation.

205. I shall deal with (7) and (8) together. By (7), the Applicants allege that sales of the two Durham properties were initiated about a month before a bankruptcy petition was presented in relation to Karl. By (8), the Applicants allege that the bulk of the monies realised on the sale of 64 Crossgate – some £255,345 – were paid to Karl Watkin. They contend that the timing of the sales and the remittance of the bulk of the net sales proceeds of Crossgate evidence the retention by Karl of a beneficial interest in

the Durham properties, thereby rebutting any presumption of advancement in respect thereof.

206. In my judgment the timing of initiation of these sales does not operate so as to rebut the presumption of advancement in relation to the sums contributed by Karl to Crossgate or so as to undermine my findings as to Karl and Jill's donative intent with regard to Albert Street.

207. Crossgate was purchased in 2003 and sold in October 2012. Albert St was purchased in 2007 and sold in 2013. Both sales processes were initiated by Kate in April 2012. I accept her evidence that it was entirely her choice to initiate these sales when she did. I find that Kate did not initiate either sale on the instruction of Karl or even at his request.

208. In relation to Crossgate, even assuming in the Applicants' favour that evidence of conduct and events 9 years after the date of purchase is admissible for such purposes, in my judgment such evidence can be afforded very little weight in determining whether or not the presumption of advancement is rebutted. So much had changed over those years. By the time of the sale, the family's fortunes were in very different shape, Karl and Jill Watkin had separated, Karl was in financial difficulties, Kate was in her late twenties/early thirties and living independently in London, and Jill Watkin had been left without any income. Kate's evidence, which I accept, was that she wished to provide for her mother, and had insisted on paying £255,345 from net sale proceeds of £297,345 from Crossgate into her mother's account. Bank statements in evidence confirm the payment of £255,345 from Kate's account to an account in Jill's sole name.

209. The Applicants' case is that Jill then transferred that sum to Karl, although again, they have adduced no bank statements or other contemporaneous documentation to evidence this payment, relying instead upon a letter from Cameron Legal dated 15 March 2016 later corrected by a letter dated 6 May 2016. Even assuming in the Applicants' favour that Jill did transfer part or all of the sum of £255,345 to Karl, however, I am satisfied on Kate's evidence that any such transfer from Jill to Karl was not Kate's wish or made at her request or with her prior knowledge. In oral testimony it was clear (and I so find) that Kate transferred the sum of £255,345 from the proceeds of sale of Crossgate to her mother with the intention of providing for her mother, not her father. In my judgment the payment by Kate to Jill of £255,345 of the net proceeds of sale of Crossgate in 2012 (even assuming a subsequent payment of that sum by Jill to Karl) does not operate so as to rebut the presumption of advancement which arose in Kate's favour on the purchase of Crossgate in 2003.

210. I would add that, even if it did operate so as to rebut the presumption of advancement in the case of Crossgate, the remittance to Karl of £255,345 from the net proceeds of sale from Crossgate more than covered Karl's interest (of approximately 10%) in that property.

211. In relation to Albert Street, again, I am satisfied that the timing of this sale was entirely Kate's choice. On the evidence which I have heard and read I am satisfied that Kate did not initiate the sale of Albert Street on the instruction of Karl or even at his request. It is also common ground that she kept the net proceeds of sale of Albert Street herself. There is no evidence that Karl benefited from the sale in any way, even

indirectly: all of the net proceeds of £64,084 were paid to Kate. In my judgment the timing of initiation of this sale does not undermine my findings as to Karl and Jill's donative intent with regard to the purchase and refurbishment of Albert Street.

Conclusions on the Applicants' primary case

212. In the light of my findings, the Applicants' primary case (of sole beneficial ownership on resulting trust principles) must fail. Relating that conclusion back to the heads of relief sought by the Application Notice, paragraphs (1), (2), (3), (5), and (7), all of which are premised on sole beneficial ownership, are not made out and shall stand dismissed. Paragraph (4) was abandoned at the outset.

213. Overall, the Applicants have pursued a confused and poorly evidenced primary case for little purpose. On a resulting trust analysis, even if they had made out a case that a resulting trust applied in favour of Karl's contributions towards the purchases of Crossgate, Rowallan Road, and Albert Street, those contributions, as I have found, in round terms amounted to no more than approximately 10%, 5% and 13% respectively. On the Applicants' case, Karl has been more than repaid that already, from the £255,345 which he received from the sale of Crossgate, even putting to one side (1) the payments into the Joint Account of £84,000 inherited by Kate in 2007 and £95,000 of re-mortgage monies raised by Kate on her re-mortgage of Rowallan Road in 2008 and (2) the indemnities to which Kate would be entitled in respect of mortgage payments and other outgoings on the Properties, including income tax and capital gains tax. As Mr Moss QC put it on more the one occasion during the course of the trial, the Applicants' primary case was ultimately a 'waste of time'.

The Applicants' alternative case: s.423 and s.339

214. The Applicants alternative case is that if Karl did not acquire a beneficial interest in the Properties at the time of their respective purchases, the purchases amounted to transactions defrauding creditors for the purposes of s.423 IA 1986.

215. In so far as material, s.423 IA 1986 provides as follows:

> (1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if –
>
> (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration…. or
>
> (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself…
>
> (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose –

> (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
>
> (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make….'

216. On behalf of the Applicants, Mr Pickering referred me to the cases of Sands v Clitheroe [2006] BPIR 1000 and JSC BTA Bank v Ablyazov [2018] EWCA 1176.

217. In Sands v Clitheroe, a solicitor who had been made bankrupt in 2003 argued (inter alia) that section 423 could not apply to a transaction entered into by him 15 years previously in 1988 because the creditors he had at the time of his bankruptcy were not in his contemplation 15 years previously at the time of the transaction. This argument was rejected. The creditors and other victims contemplated by section 423 were not restricted to those persons whom the transferor had in mind when entering into the transaction.

218. In JSC BTA Bank v Ablyazov, the Court of Appeal cleared up a judicial debate on what was required to establish the statutory purpose laid down by s.423(3). Some authorities had held that the purpose had to be the 'dominant' purpose; others had held that it did not need to be the dominant purpose so long as it was a substantial purpose. In JSC BTA Bank, the Court of Appeal confirmed that there was no requirement that the purpose be a substantial purpose; the test was simply whether the transaction was entered into by the debtor for the prohibited purpose (with or without other purposes).

219. I was also reminded that the mental state of the recipient is not relevant when seeking to determine the purpose of the debtor when entering the transaction: Moon v Franklin 1996 BPIR 196.

220. With those principles in mind, I turn to consider the evidence.

221. The Applicants have produced no evidence at all that Karl's contributions towards the Properties were gifted to Kate for the purpose (whether with or without other purposes) of putting assets beyond the reach of creditors or otherwise prejudicing them: s.423(3).

222. Mr Wood's first statement (at paragraph 39) states simply that 'it can readily be inferred from all the circumstances' that Karl acted with the statutory purpose, without identifying what circumstances he had in mind. In cross examination, it was conceded by Mr Wood that there was no evidence that Karl was in any financial difficulty at the time of purchase of any of the three Properties or indeed for some years thereafter. Kate's unchallenged evidence was that her parents were both solvent at the time of the purchases (Kate Watkin (1) para 24); Jill's unchallenged evidence was that the family had 'substantial means' at the time of the purchases (Jill Watkin (1), para 3). There was no evidence before me to suggest that Karl was in any financial difficulty at all until late 2009/2010, nor any persuasive evidence to suggest that at the time of each or any of the purchases, Karl was even aware of any potential claims against him or indeed any other clouds on the horizon.

223. In short, there was no direct evidence of statutory purpose, and no persuasive evidence of circumstances from which the statutory purpose could legitimately be inferred.

224. I would add that it is inherently implausible that an individual commanding an annual income of £1.6million would wish to conceal sums which amounted to no more than a small fraction of that income.

225. On the evidence which I have heard and read, the Applicants have failed to make out their s.423 claim in respect of any of the Properties. As Mr Moss QC put it, this was a 'patently bad claim'.

226. I turn finally to the Applicant's s.339 claim in respect of Kate's retention of £2,010.38 from the monies raised on the remortgage of Rowallan Rd in 2008. In the light of my earlier findings as to the overall percentage contributed by Karl towards the purchase price of Rowallan Road, this claim also fails. No undervalue is established.

227. I would add that Kate's written evidence (Kate Watkin (1) para 24) as to her father's solvency at the time of purchase of each of the Properties was not challenged in cross examination and it was conceded by the Applicants that there was no evidence that Karl was in any financial difficulty until late 2009/2010. I consider it legitimate to conclude that Karl was neither insolvent nor rendered insolvent by the retention by Kate in 2008 of the balance of £2,010.38 of the Rowallan Road remortgage monies.

228. Moreover, in the light of my findings as to Karl's contributions of approximately 10%, 5% and 13% in respect of Crossgate, Rowallan Road and Albert Street respectively, even if a transaction at an undervalue had arisen in respect of the sum of £2,010.38 forming the subject of the s.339 challenge, on the Applicants' case Karl was more than repaid on the sale of Crossgate.

229. I would add that even if I am wrong in that conclusion, in the light of the payment £84,000 odd of Kate's inheritance monies into the Joint Account in 2007, as a matter of discretion I would decline to grant any relief under s.339 in any event.

Conclusion

230. For the reasons set out in this judgment, I shall dismiss this application.

231. I will hear submissions on costs and any other consequential matters on a date to be fixed following the handing down of this judgment.

Tribute to Gabriel Moss QC

232. While this judgment was being prepared the Court received the very sad news of the untimely death of Gabriel Moss, who so scrupulously presented the case for Kate Watkin. The Court wishes to pay tribute to the intellectual rigour brought by him to all of his cases, be they large or small, and to acknowledge his peerless contribution to the development and application of the laws of insolvency.

ICC Judge Barber

24 May 2019