

Neutral Citation Number: [2020] EWHC 3374 (Ch)

CASE NO: PT-2019-BHM-00069

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
PROPERTY, TRUST AND PROBATE LIST (CH.D)**

B E T W E E N:

**(1) GOYAS MIAH
(2) ANAWAR MIAH
(3) RUMEL MIAH
(4) SHUHAIL MIAH**

Claimants

- and -

RAZA MIAH

Defendant

BEFORE HIS HONOUR JUDGE MITHANI QC, SITTING AS A JUDGE OF THE HIGH COURT, at the Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street Birmingham, B4 6DS

Mr Clifford Darton QC (instructed by Sony Sadaf Haroon, Solicitors) for the Claimants

Mr Martin Strutt (instructed by Sham Uddin, Direct Access Barrister, authorised to conduct litigation) for the Defendant

Judgment handed down on 8 December 2020

Approved Judgment

I EXPRESSIONS AND ABBREVIATIONS USED IN THIS JUDGMENT

1 In this judgment, the following words and expressions shall have the following meanings assigned to them:

1.1 "the Claim" shall mean the claim made by the Claimants against the Defendant in this action;

1.2 "Goyas" or "the First Claimant" shall mean Mr Goyas Miah.

- 1.3 "Anawar" or "the Second Claimant" shall mean Mr Anawar Miah.
- 1.3 "Rumel Miah" or "the Third Claimant" shall mean Mr Rumel Miah.
- 1.5 "Shuhail" or "the Fourth Claimant" shall mean Mr Shuhail Miah.
- 1.6 "the Claimants" shall mean Goyas, Anawar, Rumel and Shuhail.
- 1.7 "Raza" or "the Defendant" shall mean Mr Raza Miah.
- 1.8 "Barik" shall mean the parties' father, Barik Miah, who died on 19 August 2010.
- 1.9 "Rufjan" shall mean the parties' mother Rufjan Bibi who died on 12 November 2019.
- 1.10 "the Disputed Properties" shall mean the following properties (the beneficial ownership of which is in dispute between the Claimants and the Defendant) that form the subject of the Claim, namely: (1) 13 Oliver Road, Bletchley, MK2 2SF; (2) 88 Windsor Crescent, Duston, Northampton NN5 5AW; (3) 16 Kingsley Park Terrace, Northampton, NN2 7HG; (4) 34 Kingsley Park Terrace, Northampton, NN2 7HG; (5) 25 and 25a St Leonards, Northampton, NN4 8DL; (6) 146 Wellingborough Road, Northampton, NN1 4DT; (7) 148 Wellingborough Road, Northampton, NN1 4DT; (8) 150 Wellingborough Road, Northampton, NN1 4DT; (9) 1 Whistlets Close, Northampton, NN1 3BW; (10) 19 Spencer Bridge Road, Northampton, NN5 5HA; (11) 6 Boothville Green, Northampton, NN3 6JR; (12) 29 Pitstone Road, Northampton, NN4 8TL; (13) 13 Plantagenet Square, Northampton, NN4 9RG; (14) 14 Trinity Avenue, Northampton, NN2 6JJ; (15) 34 Gloucester Avenue, Northampton, NN4 8QF; (16) Manselton School, Manselton,

Swansea, SA5 9PB; and (17) 2 Boothville Green,
Northampton, NN3 6JR.

- 1.11 "the Joint Properties" shall mean those properties where the Registered Proprietors are any one or more of the Claimants and the Defendant.
- 1.12 "2 Margaret Street" means the property at 2 Margaret Street NN4 9XB.
- 1.13 "3 Whistlets Close" means the property at 3 Whistlets Close, Northampton NN1 3BW.
- 1.14 "the Third-Party Properties" shall mean those properties where one or more of the Registered Proprietors named on the title is not a party to the Claim, whether those properties are held by that person on their own or jointly with any other person (including the Claimants or the Defendant).
- 1.15 "the Registered Proprietors" means the persons in whose names the legal estate of the Disputed Properties are registered. The registered proprietors of each such property are identified in the Schedule to the amended Particulars of Claim.
- 1.16 "the Additional Properties" mean the properties referred to in paragraph 22 of the amended Defence and Counterclaim dated 12 November 2020, including those specified in paragraph 23 of the Defence and Counterclaim.
- 1.17 "Raza's Properties" shall mean the properties at 19 Spencer Bridge Road, 6 Boothville Green, 29 Pitstone Road and 13 Plantagenet Square¹.
- 1.18 "the Written Agreement" shall mean the document dated 8 January 2013 purporting to be an agreement made between Raza and Rufjan.

¹ Although 14 Trinity Avenue was purchased by Raza in his sole name, it has been transferred in the names of himself and his wife and is now a Third-Party Property.

1.19 "the Schedule" shall mean the Schedule to the Amended Particulars of Claim.

2 In addition, in this judgment, unless otherwise stated or the context otherwise requires, any reference, where appropriate, to:

2.1 "the Claimants" shall include any one or more of Goyas, Anawar, Rumel and Shuhail;

2.1 any property or properties included in the expression "the Disputed Properties" shall be made by referring to the first line of its full address;

2.3 "the Disputed Properties" shall include any one or more of the properties comprised in that expression;

2.4 "the Third-Party Properties" shall include any one or more of the properties comprised in that expression;

2.5 "the Additional Properties" shall include any one or more of the properties comprised in that expression;

2.6 "Raza's Properties" shall include any one or more person comprised in that expression;

2.7 "the Registered Proprietors" shall include any one or more person comprised in that expression; and

2.8 a paragraph number on its own in this judgment is to a paragraph number in this judgment.

II THE CLAIM

3 In the Claim, as it is now formulated in the Amended Particulars of Claim dated 11 November 2020, the Claimants claim (and seek declarations) that:

- 3.1 the Joint Properties (other than 1 Whistle Close)² are held by the Registered Proprietors of those properties on behalf of the persons specified in the transfer documents (TR1s) relating to the properties in accordance with the trusts declared by those TR1s;
- 3.2 the property at 1 Whistle Close, which is registered in the names of Anwar and Raza, is held on trust for Goyas absolutely, alternatively for all the parties to the Claim in equal shares, alternatively for Anwar and Raza in equal shares;
- 3.3 (so far as it is alleged by Raza that he has beneficial interest in the property at 2 Margaret Street), Raza has no interest in it³;
- 3.4 Raza's Properties belong to the parties in the proportions to which they contributed to those purchases;
- 3.5 The Additional Properties belong to the parties in the proportions in which they contributed, whether directly or indirectly (such as from the rents and/or income and/or the proceeds of sale of various properties to which the parties were beneficially entitled or "family assets"), to the acquisition of those properties;
- 3.6 further or alternatively, some or all of the properties specified in the Schedule are held for the ownership and benefit of all the Claimants and the Defendant.

² The TR1 in respect of 1 Whistle Close does not contain any express declaration of trusts as to how the beneficial interest in it are to be held.

³ Raza only claims an interest in this property if I find the properties listed in Schedule constitute "family assets".

- 4 In addition, the Claimants seek an account of the rents or income received by the Defendant from any property in which the Claimants claim to be entitled to a beneficial interest.

- 5 Further, the Claimants also claim to be entitled to a beneficial interest in the Third-Party Properties, so far as these have been purchased from the proceeds of sale of any property which was sold by the Defendant over which they claimed to have a beneficial interest or from any rent or other income received from those properties or the Joint Properties and/or family assets. I repeat what I made clear at the commencement of the trial that I do not consider it appropriate to make any declarations concerning the beneficial ownership of those properties. That is because not all the Registered Proprietors of the Third-Party Properties, or the persons claiming to have a beneficial interest in them, are before me. If I were to make declarations in relation to those properties, it would not be binding on those parties. Moreover, there would be a real risk of a subsequent court coming to a different decision to mine, based on the material (particularly any new material) which might be made available to it.

III THE BACKGROUND CIRCUMSTANCES

- 6 This case has had a chequered history. The lengthy chronology prepared on behalf of the Claimants sets out some of the relevant events which have occurred.

- 7 The bundles prepared for the purpose of the trial are voluminous. However, a considerable amount of further documentation, which may be relevant to the Claim, appears not to have been disclosed in the Claim. I deal with some of that documentation below.

- 8 Although the facts, matters and evidence which give rise to the Claim are in substantial dispute between the parties, the background circumstances leading to the dispute between them,

and the bringing of the Claim, are largely uncontroversial. They need, therefore, only brief mention.

- 9 The parties are all brothers. The oldest of them is Goyas, then Anawar, next Raza, followed by Shuhail and finally Rumel. Their father, Barik, died on 19 August 2010 and their mother, Rufjan died on 12 November 2019.
- 10 During 1994 to 2017, the parties purchased and sold several properties. The Disputed Properties comprise the properties which currently remain unsold.
- 11 The circumstances and manner in which the Disputed Properties came to be acquired are controversial, as are the beneficial interests which each party claims to be entitled in them. However, what is not in issue is the names in which the Disputed Properties were acquired. That information is derived entirely from the office copy entries relating to those properties which have been obtained from HM Land Registry.
- 12 Up until the time when the parties' father, Barik, sadly died, the relationship between the parties was a relatively harmonious one. That relationship appears to have deteriorated rapidly after that point. At paragraph 32 of his third amended witness statement dated 9 October 2020, Anawar explains how, according to him, it reached a stage where in January 2013, Rufjan got Raza to sign the Written Agreement:

"After our father's passing on 19.08.10 the Defendant [who was a rent collector for various properties which the family owned and accounted for the rent to Rufjan] slowly stopped accounting to our mother. He would simply say that things were in hand and that everything was fine. The 1st Claimant and I could tell that things were getting out of hand. We tried to have a conversation with him in a meeting on the upper floor of 152 Wellingborough Road Northampton which was adjacent to the Maharajah. Present also was a brother in law. As soon as we expressed our concerns the Defendant rose up, stuck his chest out, kicked the coffee table around which we were sitting, and was enraged that we dared to suggest he was not accounting. We then spoke to our mother to have discussions with him on our behalf. The Defendant was not someone that we could reason with any more in relation to the family financial matters, the relationship between us had broken down, and the Claimants and I were happy to let

our mother deal with the Defendant on our behalf. With the assistance of extended family members including our youngest sisters then father in law with whom the Defendant had a good relationship and a cousin, our mother discussed these matters from time to time with the Defendant and met with him. This was not fruitful.”

- 13 The Claimants allege that the Defendant failed to honour the terms of the Written Agreement and, as a result, they had to issue the Claim.
- 14 The Claim was issued on 14 September 2018 as a Part 8 claim. It now correctly proceeds as a Part 7 claim. Prior to the issue of the Claim, Rufjan provided a witness statement dated 5 May 2018 and, subsequently, on 6 June 2018, provided a statutory declaration supporting the substance of some of the elements of the claim made by the Claimants against Raza.
- 15 As I have indicated, Rufjan sadly died on 12 November 2019. The Written Agreement, together with her written statement and statutory declaration, are relied upon by the Claimants in support of the Claim.

IV THE BASIS OF THE CLAIMANTS' CLAIM

- 16 The basis of the Claim of the Claimants is set out in the amended Particulars of Claim. In essence, the Claimants state (disregarding their claim to be entitled to a beneficial interest in the Third-Party Properties) that:
 - 16.1 where a TR1 relating to a Joint Property expressly declares the trusts upon which that property is held, the parties are bound by those trusts and the property must be held on those trusts, i.e. on the basis of the presumption of beneficial ownership which flows from that;

16.2 each of the Joint Properties was the subject of prior (oral) agreements or understandings for joint ownership by all the brothers and that one or more of them contributed to the purchase price of these titles as a result of their joint liability on mortgages and/or working in the family's various restaurants and/or joint ownership of the "family pot" from which they were bought⁴;

16.3 1 Whistlets Close is held by Anawar and Raza on trust for Goyas. That property was the "family home". Goyas lived there with his parents until they moved out to live in the neighbouring property, at 3 Whistlets Close. He was their carer until they died. He continues to live at 1 Whistlets Close. The Claimants claim that their parents and the parties had always "intended" that he would be entitled to that property or, at any rate, that he and his family would be entitled to live there for as long as they wished. The Claimants claim that this intention is reflected in paragraph 1 of the Written Agreement in which it is stated that "[a]ll 5 brothers owned their homes freehold individually". The property at 1 Whistlets Close was to be Goyas' "home" under that paragraph as it was a house in which he and his family had lived throughout their life (though Raza disputes this) and in which they continue to live. It should be noted that the TR1 for that that property does not set out the beneficial interests in which the property is held but does state that the survivor of Anawar and Raza can give a valid receipt for capital money arising on a disposal of the property; and

⁴ This argument has largely been abandoned in respect of those Joint Properties which are subject to express declarations of trust in the TR1s, i.e. all the Joint Properties, other than 1 Whistlets Close. Instead, the Claimants rely upon the terms of the trusts declared in the TR1s in support of their entitlement to a beneficial interest in those properties. I agree with Mr Strutt that this constitutes a *volte face* by the Claimants of the original position which they had advanced in support of their claim. On the first day of trial, I allowed the Claimants to amend their Particulars of Claim to plead this and reserved the issue of costs arising from it to when I handed down this judgment.

16.4 in the case of Raza's Properties, they were bought with the rents or other income from, and/or the proceeds of sale of, properties in which they had a beneficial interest and/or "family assets". The Claimants, therefore, claim that they are entitled to a beneficial share in these properties under resulting or constructive trusts or by way of tracing.

V THE BASIS OF RAZA'S OPPOSITION TO THE CLAIM

17 The basis upon which Raza contests the Claim may briefly be summarised as follows:

17.1 Subject to paragraph 17.8, below, Raza does not claim any beneficial interest in 2 Margaret Street;

17.2 Raza denies that there was any agreement that the Disputed Properties constituted some sort of "family" property portfolio to be shared with the Claimants;

17.3 Goyas, Anawar and Raza each pursued different careers: Goyas operated a restaurant in Kettering; Anawar qualified and practised as a barrister; and Raza created his own property portfolio;

17.4 it is common ground that Raza has managed all aspects of the property portfolio of the family, save for some legal input from Anawar. It is not credible that he did this for the benefit of the Claimants, whilst they chose to pursue their own careers and businesses;

17.5 Raza accepts that he collected rent and other income in respect of 2 Margaret Street, but claims that he accounted fully for such rent and income to his parents until they died and thereafter to, or on behalf of, the Claimants. Raza accepts that he has not accounted for any rental or other

income to the Claimants or to his parents in respect of any of the Joint Properties or Raza's Properties. That is because the entire beneficial interest in those properties is owned by him absolutely;

17.6 Goyas and Anawar were only added as proprietors of some of the properties in order to facilitate the obtaining of mortgage finance. None of the Claimants made any direct cash investment for the acquisition of the Joint Properties or Raza's Properties;

17.7 if the Claimants had genuinely believed that they had an interest in any of the Joint Properties or Raza's Properties, they would have brought Raza to account for the rents and other income he had received from those properties, at the very latest when Barik died (at which point, the Claimants say that Raza stopped accounting for such rents and income). Raza maintains that it is simply not credible that they would have waited some 8 years (i.e. until the bringing of the Claim) after Barik's death before demanding their share; and

17.8 If, contrary to the position advanced by Raza, the Joint Properties are found to constitute family assets, he invites the court to require the Claimants to "bring into account all investment properties owned by them and/or their wives and/or any corporate vehicles owned by them and/or their wives" [i.e. the Additional Properties] in accordance with paragraphs 22 and 23 of his counterclaim. This would include the property at 2 Margaret Street. So far as this requires an order for relief to be granted by me in respect of properties where a person claiming to be entitled to an interest in them is not before the court, I am, for the reasons already explained above, unable to do so.

VI THE ISSUES IN THE CLAIM

18 It is, I understand, common ground between the parties that the central issues in the Claim are as follows:

18.1 the beneficial interest upon which the Joint Properties are held;

18.2 whether the Claimants are entitled to a beneficial interest in Raza's Properties and, if so, the extent thereof;

18.3 whether Raza is entitled to a beneficial interest in any of the properties specified in paragraphs 22 and 23 of his counterclaim, i.e. the Additional Properties, though this only applies if I come to the conclusion that the Joint Properties and Raza's Properties were "family assets"⁵;

18.4 whether Raza is required to account for any rent which he may have received in respect of a Disputed Property that is found to be held beneficially in whole or in part by any of the Claimants;

18.5 whether Raza has accounted properly for the rent which he collected in respect of 2 Margaret Street; and

18.6 whether an order for sale and/or possession should be made in respect of any of the Disputed Properties to which the Claimants are found to be beneficially entitled.

VII BURDEN AND STANDARD OF PROOF IN THE CLAIM

⁵ As this basis for claiming a beneficial interest in such properties has largely been abandoned by the Claimants, the counterclaim essentially falls by the wayside.

- 19 The burden of proving the facts and matters upon which the Claimants rely in making good their claim against Raza rests upon them. The standard of proof is the usual civil standard of proof: the balance of probabilities. There is no heightened standard of proof simply because allegations of fraud, dishonesty and other serious impropriety have been made by the parties: see the decision of the House of Lords in *Re B* [2008] UKHL 35 and of the Supreme Court in *Re S* [2009] UKSC 17.
- 20 However, it is appropriate for me to mention one further point about the burden of proof, though in the present context, that point, for the reasons I mention below, is largely academic. Although the primary burden of proof will always lie with a claimant, there may be situations where the onus of proving certain facts and matters on which reliance is placed by a defendant will lie upon the defendant and would also need to be proved on the balance of probabilities. As the editors of *Halsbury's Laws of England* (5th Edition, Volume 12, 2015, Civil Procedure), at paragraphs 702 and 704, state:
- “The evidential burden (or the burden of adducing evidence) requires the party bearing the burden to produce evidence capable of supporting but not necessarily proving a fact in issue; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be, was adduced by either side. It has been said that the evidential burden shifts from one party to another as the trial progresses according to the balance of evidence given at any particular stage, but it may be more accurate to say that it is the need to respond to the other party's case that changes ...The evidential burden (or the burden of adducing evidence) will rest initially upon the party bearing the legal burden. However, rather than referring to a shifting burden, it may be more accurate to say that it is the need to respond to the other party's case that changes as the trial progresses according to the balance of evidence given by each party at any particular stage. If the party bearing the legal burden fails to adduce evidence, he has failed to discharge his burden and there will be no need for the other party to respond; however, if the party bearing the legal burden brings evidence tending to prove his claim, the other party may in response wish to raise an issue and must then bear the burden of adducing evidence in respect of all material facts.”
- 21 An example of such a situation would be where the Claimants were able to establish, by terms of the declaration of trust contained in a TR1, that the beneficial interest in a property was held in the

manner set out by those terms; it would then be for Raza to demonstrate, on the balance of probabilities, why the court should depart from the terms. However, for the reasons which are referred to below, my factual findings are not based on the niceties of whether the burden lies with the defendant to establish that he should be entitled to depart from the declaration of trust specified in the TR1, and whether that burden has been discharged, but on the basis that wherever it lies, the evidence supporting the findings I have made is clear.

- 22 In addition, numerous factual matters have been relied upon or raised by the parties in the Claim. As far as my approach to the determination of those factual matters is concerned, it is appropriate for me to make this short point: it is not necessary for me to decide every point which has been advanced by the parties in order to determine the issues in the Claim. It is only necessary for me to decide whether the matters relied upon by the parties are supported by the evidence which I have heard and, if they are, whether they warrant the relief sought by them against the other party or parties being granted: see, by way of examples, *Weymont v Place* [2015] EWCA Civ 289, at [4]-[6], per Patten LJ; and *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 3 All ER 385, CA.

VIII OVERVIEW OF THE EVIDENCE IN THE CLAIM

- 23 I heard oral evidence from Anawar, Goyas, Shoreful Moula, Jalal Miah, Gulam Ahmed, Raza and Zi Wen Wang. Neither Shuhail nor Rumel furnished witness statements or gave oral evidence at the trial.

Raza

- 24 I found the evidence which Raza gave, for the large part, to be untruthful.

- 25 There were many examples of this. It suffices if I mention a few.
- 26 Raza told me that he had signed the Written Agreement knowing that it was a “worthless piece of document” and that he had only done so because Rufjan was old and frail and because he “would do anything to put a smile on her face”. Raza was certain that she was being manipulated and pressurised by the Claimants to get him to sign the agreement. She had come to his house unannounced (having, he presumed, been dropped there by one of the Claimants) and had pleaded with him to sign the agreement, questioning whether he “wanted her to die”. He felt obliged to because he did not wish to upset his mother, who, at the time, had several serious health issues.
- 27 The substance of this account was also contained at paragraph 23.4 of his witness statement in which he said:
- “I looked at [the Written Agreement] briefly. I saw that none of the Claimants were party to it and it did not list any of the properties that it purported to deal with. It did not seem to me to be a binding contract and I signed it to placate my mother. I certainly did not intend it to constitute a gift of four fifths of the 12 properties in my portfolio that I had already acquired by that stage.”
- 28 Raza appeared to imply from his account of the circumstances in which Rufjan had asked him to sign the Written Agreement that she may not have known what was contained in it and what she was asking him to put his signature to. That is simply incorrect.
- 29 It is correct that the Written Agreement does not have a certification that its contents were translated to Rufjan. However, it was expressed as having been signed in the presence of Mr Mohammed Angur Pervez and Mrs Jusna Begum. In any event, when one consider the terms of the witness statement that Rufjan made on 5 May 2018, and the statutory declaration which she furnished on 6 June 2018, it is clear that Raza’s account simply does not withstand proper scrutiny. Whatever Raza may say about the Written Agreement, there can be no question that Rufjan knew

and understood the contents of those two documents and, by reference to paragraph 1 of the latter document, the terms of the Written Agreement.

- 30 Paragraph 2 of Rufjan's witness statement (which is endorsed with a certificate of translation) expressly states that:

"My husband worked hard and over the years we invested in properties. Until my husband's passing, we as a family placed the properties in the names of our sons according to convenience and funding reasons. It was always our intention that all 5 sons would have an equal share in all the properties. This was made known to the sons from time to time ... Even as each property was being purchased my sons, when they were of age of understanding including Raza himself acknowledged to me, that everything was being held for the 5 sons."

(My emphasis).

- 31 When Raza was asked how that statement could be consistent with the case which he was advancing, he stated that his mother had been pressurised into making that statement and that the reference in the above paragraph of the witness statement only applied to "their [i.e. the Claimants'] properties". It is difficult to see how the latter contention can be correct, given the express terms of paragraph 2 and of paragraph 3 which sets out why Rufjan had decided to furnish it:

"Following my husband's death ... Raza has failed to account for the income generated by the properties. In order that Raza would not cheat my other sons, I asked him to confirm and agree in writing to the agreement by my late husband, myself and our sons relating to all assets and the intention of all of us."

(My emphasis).

- 32 In any event, neither the provisions of Raza's Amended Defence and Counterclaim nor his witness statements make reference to his construction of the provisions of the Written Agreement, although it is possible that Raza only saw those documents when witness statements were exchanged between the parties and was unable to formally comment upon those documents before he began giving evidence.

- 33 But if there is any doubt about the circumstances in which Rufjan's witness statement was signed, and what its contents meant, there can be no doubt about those matters once the statutory declaration was furnished.
- 34 Paragraph 1 of the statutory declaration expressly provided that Rufjan "adopt[ed] the contents of [her] statement as if it were incorporated into this Declaration." That statutory declaration was supported by a certificate of interpretation and administered in the presence of an independent solicitor. Paragraph 4 of the statutory declaration also contained a provision that its contents had been read back to Rufjan in a language which she understood.
- 35 The suggestion, therefore, that Rufjan was pressurised into signing the Written Agreement, or that Rufjan did not understand its contents, simply cannot be correct. I hasten to add that I accept, for the reasons advanced by Mr Strutt, and largely accepted by Mr Darton QC, that the Written Agreement cannot be binding on Raza (as a contractual document). However, as Mr Darton said, it does provide some support of the case of the Claimants about Rufjan's concerns that there would not be a fair and equitable distribution of the "family properties" when she died.
- 36 That Raza is prepared to deceive or to resort to underhanded means is clearly demonstrated by his false impersonation of Anawar in the phone call (a recording of which was played in court) that he made to Legal and General Assurance Society. In that recording, the authenticity of which Raza accepted, he can be heard giving Anawar's personal details, such as his name, date of birth and address. When questioned about it, he gave a convoluted, and entirely unconvincing, account of why he did that. There can never be any excuse, let alone justification, to resort to this type of deceitful behaviour, whatever the circumstances. Raza's impersonation of Anawar took place after the Claim had been issued. This makes his behaviour even more reprehensible.

- 37 In her oral evidence, Mrs Moula stated that the payments of £50,000 which were made by Raza to her children through her bank account were not made for the reasons set out in her letter dated 18 March 2018, but by way of part payment of the proceeds of sale of a property belonging to her mother in Bangladesh which she had sold to a member or associate of Raza's extended family. Mrs Moula indicated in her witness statement that Raza had asked her to sign the letter and said he needed it for "his accounts' purpose". She did not read the letter. She assumed that what he had said to her was correct and signed it. She only realised what she had signed when she was asked to be a witness by the Claimants.
- 38 Mrs Moula made no mention in her statement that the reason for the payment of the £50,000 was for the sale of her mother's Bangladesh property. However, subsequent to giving evidence, she produced a document which purported to establish that. Raza's response was to say that the evidence Mrs Moula was false. However, he did confirm that a member or associate of his extended family had purchased a property in Bangladesh, though he said that the purchase had nothing to do with him or any member of his immediate family.
- 39 Raza gave what can only be described as a bizarre explanation about how he came to pay the £50,000. He said that Mrs Moula had contacted him out of the blue and had told him that his late father, Barik, had owed her father £50,000. Raza claimed that he had arranged to make payment of sums totalling that amount because he was aware that Barik had borrowed that money in order to assist Raza in business. Raza had neither checked whether there was any documentation to support Mrs Moula's claim or sought to ascertain from his mother, Rufjan, or his brothers (through their solicitors, if necessary) whether they knew anything about the loan. It is difficult to see why Mrs Moula would be seeking to have the loan repaid after almost 8 years since Barik had died and why she would

be contacting Raza, as opposed to Rufjan, Goyas or Anawar about the loan, particularly as Anawar was, according to Raza at any rate⁶, the executor of Barik's will and Goyas was the eldest son and had announced at Barik's funeral (see paragraph 11 of Goyas' witness statement) that any person to whom Barik owed money should contact him. Nor could he provide any, or any convincing, explanation, about how Mrs Moula got his contact details. I come to the clear conclusion that the £50,000 paid by Raza had nothing to do with any alleged loan. It appeared to relate to the sale of the Bangladeshi property, the payment for which, it appears, Raza had facilitated. I am also satisfied that Mrs Moula was tricked into signing that letter, believing it was necessary for Raza to show it to his accountants as proof of the payment of that amount for the sale of the Bangladeshi property, when Raza had intended to use it for an altogether different purpose. Certainly, neither the making of the alleged loan of £50,000 from Mrs Moula's father nor the purpose for which Barik had advanced that sum to him is referred to in his witness statement.

- 40 Raza displayed a detailed knowledge of the documents which were included in the various bundles that were prepared for the trial. He was keen to refer to the express provisions of the order for specific disclosure dated 7 September 2020 (amended on 15 September 2020) when it suited him to explain why a document was not produced by him. When it was plain that a document was disclosable, and he could not shelter behind that order, he sought to rely on various excuses to justify his failure to disclose it. They included: (a) his bad record-keeping; (b) his alleged failure to understand that a document might be relevant to the Claim; (c) his contention that a document was not in his "possession or control" (though plainly it was in his control, even if it was not in his possession); (d) he was "trying to cope with too many things"; (e)

⁶ The information that Anawar gave to HMRC was that his father had not left a Will: see the minutes of the meeting prepared by HMRC at page 142 of Bundle 4. However, that appears to be incorrect. Pages 131 and 132 of Bundle 3 contain an incomplete copy of his purported Will.

he was not asked to disclose a document by his solicitors; (f) it may have skipped his mind; and (g) his solicitors never suggested that he needed to bring relevant documents which had not previously been disclosed to court.

41 The obligation to give proper disclosure can never be understated. It is incumbent upon a party to supply all the material in that party's possession or control that may be relevant to a claim – whether that material advances or undermines the party's claim. It is also of the utmost importance for his solicitors to explore with him what documents may be relevant to the claim and to advise him of the consequences of failing to make those documents available to the other party or parties. Raza has sought to pick and choose the material which was made available to the Claimants. Whether that means that his defence and counterclaim is struck because it amounts to a breach of the order dated 7 September 2020 (which prescribed that sanction) has not been raised before me and does not, therefore, fall to be determined by me. The same must also be said about any alleged deficiency in the disclosure given by the Claimants. The court can, of course, draw an adverse inference in relation to any failure to provide disclosure and take it into account, in its overall evaluation of the evidence, any such failure as not supporting a premise contended for on behalf of a party.

42 Raza refused or failed to answer satisfactorily perfectly simple questions which were put to him. His answers were often convoluted and evasive. He continually sought to refer to documents which he considered assisted in supporting the case which he was advancing, rather than answer direct questions which were put to him.

Anawar

- 43 The fact that I found Raza's account to be untruthful, and largely unreliable, does not mean that I found the account which Anawar gave to be fair or dependable. He took every opportunity to criticise Raza when there was no need to. While I preferred his evidence over the evidence of Raza on the substantive issues which I have to decide in support of the Claim⁷, I found his evidence on a number of matters to be inconsistent, unconvincing and unreliable. Some of his evidence was also untruthful. I give a few examples.
- 44 Anawar appeared to display detailed knowledge of how beneficial interests in properties were held and what they meant when it suited him but, when it was convenient for him to do so, gave the impression that he did not understand them. It is difficult to see how he would not know exactly what they meant not just from his general legal knowledge but also the fact that he (and his wife who is the sole principal of the firm of solicitors instructed on behalf of the Claimants in the Claim) have been involved in the Claim for over two years and he had a detailed grasp of the documents included in the various bundles. This is quite apart from the fact that Raza claimed that he had worked in a conveyancing solicitors' office for some time and had to know what the conveyancing documents which he was being referred to meant.
- 45 In addition, like Raza, his answers often to simple questions which were put to him were long and protracted, often seeking to deflect attention away from the question and seeking to rely on documents which advanced his case. He also sought to evade perfectly simple questions which were put to him when it appeared to him that the answers that he might give would not support what he was saying.
- 46 Nor does it appear to me that information he gave to HMRC about his ownership of various properties was entirely truthful. For

⁷ Largely, because there is some contemporaneous documentation supporting his account (such as the TR1s), whereas Raza's account is based almost entirely on bare assertions which are not just inherently inconsistent but are not supported by any or any proper documentation.

example, in the course being interviewed by HMRC on 10 April 2014, he informed the investigating officers of HMRC that the only interest he had in any property was his residential property in which he and his family lived, 41 St. Albans Road East, in Hatfield. Anawar said that although his name was registered on several properties, he had nothing to do with them and it was "all down to his brother Raj", i.e. Raza. He also stated that he did not know if he was named as borrower on any mortgages attached to the properties and that he had no source of income other than his earnings as a barrister.

47 At paragraph 10.2 of the Reply and Defence to Counterclaim, he provided the following explanation about the information he gave to HMRC:

" ... [Anawar] correctly stated [to] HMRC ... that he ... was not in a position to account for the income on investment properties which bore his name as registered proprietor as the Defendant was the 'rent collector' and he had failed to account to [Anawar] for such income."

48 The enquiries which were being made by HMRC did not relate just to any income he had received from properties that were in his name as registered proprietor. They also related to the beneficial interest he had in these properties. In the course of giving evidence, he said, among other things, that: (a) the minutes of the meeting did not represent a verbatim record of the questions he was asked by HMRC and that he answered all the questions which he was asked truthfully; (b) he had answered all the other questions, such as those concerning the income from his earnings as a barrister, correctly; (c) HMRC were satisfied that he had not received income from any of the properties in which he claims an interest. Accordingly, no assessment made by HMRC for unpaid tax against him, following the investigation, included rents or other income from any properties. They only related to his earnings as a barrister; and (d) HMRC had concluded their investigation into his affairs. He did not produce all of the documents which supported what he had to say. Even those documents which he did produce had to be disclosed pursuant to an order for specific disclosure,

Anawar having previously incorrectly sought to rely on privilege in refusing to give disclosure of those documents.

- 49 Mr Strutt rightly points out that if one considers the interview notes, and the answers Raza gave to the investigating officers at the interview, disregarding the communication that emanated from his accountants subsequently, the clear indication he was giving to those officers was that he did not claim any interest in the Disputed Properties. I agree with Mr Strutt. However, Anawar points to two matters which he claims establish that he had told HMRC the truth: first, the interview notes do not specify the questions he was asked. If they had, it would have been clear from the manner in which he had answered those questions that the information he had given to the investigating officers was truthful. That explanation is possible, but not plausible, given the clear contents of the terms of the interview notes; and second, there were two documents which were sent to HMRC by him or on his behalf, namely: (a) a letter from his accountants, DMO, dated 27 July 2014, in which they set out the properties in which Raza believed he had an interest; and (b) a statement of personal assets prepared in the form usually required by HMRC following the conclusion of an investigation (which was only produced at the trial) in which he listed the properties in which he had an interest. Anawar maintains that those documents confirm that he made a full and frank disclosure of all the assets in which he believed he had an interest to HMRC. I am not sure that this is correct⁸. However, even if it is, I accept the point Mr Strutt makes that he failed to disclose to the investigating officers that he

⁸ It is possible that the letter from Anawar's accountant does no more than set out the list of the properties which (to use the terminology referred to in the notes dated 10 April 2014) he "is attached to", i.e. which he, at the time believed were held by him jointly with others, as opposed to properties in which he had a beneficial interest. That is because the request from HMRC (as specified in the ante-penultimate paragraph of the notes of the meeting on 10 April 2014 at page 142 of Bundle 4) only sought details of properties held by him jointly with others, based on Anawar's specific indication to them that he had nothing to do with any property, other than 41 St. Alban's Road East. This also appears to be evident from paragraph 3 of the letter from HMRC dated 16 April 2014. It is significant, for example, that the letter from his accountant does not refer to 2 Margaret Street in which he had, knew he had, and had always maintained that he had, an interest. Nor does the HMRC form of disclosure refer to that property.

claimed to have an interest in Raza's Properties. It appears, therefore, that he had failed to disclose all the assets in which he claimed to have an interest to HMRC. While this is a matter that I am able to – and do take into – account in deciding, on the material before me, the veracity of Anawar's evidence, it is not for me to decide whether Anawar did make a full and frank disclosure to HMRC about his interest in various properties. My function is to decide whether he, and the other Claimants are entitled to an interest in the Joint Properties and Raza's Properties, based on the evidence which I have heard. It is not my function to trespass into territory which does not belong, i.e. territory which belongs to HMRC. Whether Anawar or the other Claimants have misled HMRC is a matter for them. This court is confined to the evidence which it has heard, based on the material that has been presented to it, in keeping with the adversarial nature of these proceedings. HMRC's investigations are largely of an inquisitorial nature. Whether they are satisfied with the response Anawar has given, based on the allegations he has made in the Claim, is a matter for them. I do, however, agree with Mr Darton that Raza's defence to the Claim has largely been motivated by the possibility that if this court finds the Claim proved, then it must mean that Anawar provided an untruthful account of his tax affairs to HMRC and HMRC might have something to say about that. Of course, Raza vehemently denied this when giving evidence, though it is difficult to see how this denial can be consistent with the terms of his letter to the Claimants' previous solicitors dated 25 September 2018 in which there is, *inter alia*, an implied threat to report the Claimants to HMRC if the Claimants persisted with their claim to be entitled to an interest in what he called "my properties"⁹. Raza stated that his aim was to get Anawar to tell the truth to this court – as he had done to HMRC – that he had no interest in these properties. Whether or not

⁹ Anawar said in evidence that Raza had made it clear to him that he intended to bring his conduct to the attention of the Bar Standards Board for providing deliberately false information to HMRC if Raza continued with the Claim. I accept what Anawar says. It is in line with the September 2018 letter which Raza sent to the Claimants' previous solicitors.

that is correct, the matters for determination by me are what interest he and the other Claimants have in the Disputed Properties. As I have indicated, whilst I am able to take into account what Anawar has said to HMRC, as recorded in the documents which have been included in the bundles, my function is to evaluate the overall evidence in the Claim. I do not believe that any alleged misleading by Anawar of HMRC, by itself, gives rise to the inescapable conclusion that he has no interest in those properties.

Goyas

50 Like Anawar, there were a number of unsatisfactory features of Goyas' evidence. The evidence he gave about his tax affairs to HMRC appeared, in significant parts, to be untrue. In addition, the answers he gave to certain questions were wholly unconvincing. For example, he was asked why if, as he accepted, the Kettering restaurant was purchased from "family assets", the title documents relating to it showed that it was owned by a limited company belonging to him and why he had failed to account for any rental or other income from the property to Raza. Goyas appeared to accept that Raza was entitled to a beneficial interest in the property and stated, albeit reluctantly, that he was prepared to give Raza his proper share of that property¹⁰. Goyas also said that he had provided a full account of all the income he had received from the property to Rufjan. He initially said that he had paid the income to her in cash but then suggested that part of it may also have been paid into her bank account. He could not say how much money he had paid to Rufjan (not even approximate amounts) or why she appeared to have no cash in her possession on her death. Nor was he able to provide any information about the amount of income which he had received from that property after her death.

¹⁰ This appeared to be accepted by the Claimants, as is clear from paragraph 23 of their Reply and Defence to Counterclaim. However, as noted above, as this property is a Third-Party Property, I am unwilling to grant any declaratory or other relief relating to it.

51 Neither Goyas nor Anawar could say what motivated their parents to instruct them to include either the express declarations of trust (or the provisions relating to who could give a valid receipt for capital money) in the various TR1s which related to the Joint Properties. All Goyas was able to say was that so far as he had anything to do with the transfer of the Joint Properties into the names of the members of his family, he always followed the instructions of Barik, when he was alive, and Rufjan, when she was alive.

Zi Wen Wang

52 I found the evidence which Mr Weng gave to be entirely unconvincing.

53 At paragraphs 5 onwards of his witness statement, he said:

“Around 2010 Raj contacted me asking me if I knew any suitable tenants for another property of his namely 34 Kingsley Park Terrace, Northampton, NN2 7HG. I told him that I would be interested in that property. I viewed it and decided that the premises would be suitable for a Chinese restaurant, and so I negotiated terms with Raj. However, when my solicitors were preparing the paperwork in relation to the lease, they discovered that there were two other names of people on the property. At that time, I estimated my set up costs would be in the region of £30,000.00. I was going to make substantial changes to the premises and also spend a lot of money and time. I knew Raj but did not know the others and so wanted to know what connections the other two people had with the property as I did not want to have any problems later. Raj told me that the other two people were his brothers Goyas Miah and Anwar Miah, and that they did not own the property but were on the property deed by name only and would not interfere with my business. I still wanted to make sure so I told Raj I wanted to meet them. Raj then arranged a meeting at 34 Kingsley Terrace with the other two. I cannot remember the exact date of the meeting but the day was a Sunday and the time was just after midday. At the meeting were Raj, Anwar Miah and Goyas Miah. Both of them told me clearly that the property belonged to Raj and that they were only on the property deeds by name only. After that meeting I had no further dealings with Anwar Miah and Goyas Miah and paid my rent only to Raj.

54 It is not entirely clear to me why, if Mr Wang had solicitors, he was concerned about making sure that he was dealing with the right individuals involved in granting a lease or tenancy agreement to him. That, surely, had to be a matter for his solicitors. He provided no satisfactory response to that question.

55 I am not satisfied that there was a meeting between the parties, as alleged by him. If there was, I am unable to accept Raza's evidence that it was Goyas and Anawar who attended that meeting. I accept their evidence that they did not. However, whatever the situation, it is yet another example of Raza's deceitful behaviour. Raza points to the fact that the lease of the property shows both Goyas and Anawar's signature appearing on it. That is, of course correct (though both Goyas and Anawar deny that it is their signature in spite of the fact that it purports to have been properly witnessed by an Abdul Ali), but that is an altogether different point from whether there was any meeting and, if so, whether those who attended were Goyas and Anawar.

The other witnesses who gave oral evidence

56 I have dealt with the oral evidence of Mrs Moula and have indicated that I accept the substance of what she had to say. I need not say much about the evidence of either Jalal Miah or Gulam Ahmed.

57 Jalal Miah had provided evidence to the effect that the letter relating to the property at 146-150 Wellingborough Road, alleged to have been sent by Indre Navikate dated 19 July 2015 purportedly on behalf of his firm, did not emanate from his firm, both because Indre did not have the authority to sign letters of that type on behalf of that firm, because the information of the firm on that letter heading was incomplete (it did not contain the company number) and because he could not see from his firm's website that his firm had ever marketed the property. Indre was not called to give evidence because she no longer works with the firm. It is, at least, possible that at the time when the letter was sent, the firm did not include its company number on their letter headings (a practice which I was told was current from the information obtained by Raza from the firm's website). Nor is it beyond the bounds of possibility that the letter could have been sent by the firm because Jalal Miah confirmed that he had had discussions about the property

with Raza. In the circumstances, though having misgivings about whether the letter is genuine, I am unable to find that it was, as the Claimants and Jalal Miah alleged, a forgery.

58 Gulam Ahmed's evidence was fair and neutral. He refers in his witness statement to the Miah family having a substantial portfolio of investment properties but, of course, he cannot, and does not, provide any assistance about what was intended by the parties when the family acquired these properties¹¹. He is one of the executors named in Rufjan's Will – a fact which he only discovered when he gave evidence – though it is unlikely that he will be able to prove the Will with his co-executor, given that it appears that the Will has only been attested by one witness.

IX THE VARIOUS PRINCIPLES GOVERNING THE CLAIM

59 It has long been established that the starting point in deciding beneficial ownership in a property is to look at the conveyancing documents – specifically, the transfer documents – to see what they state. This will normally be conclusive unless factors such as fraud, undue influence or mistake come into play or there is some other basis for conferring to a claimant a beneficial interest in the property: see for example *Stack v Dowden* [2007] UKHL 17, [2007] 2 All ER 929 and *Jones v Kernott* [2011] UKSC 53, [2012] 1 All ER 1265.

60 There is an important distinction, in this context, between cases where a party asserts a beneficial interest in a property of which he is not a joint registered proprietor and cases where the issue is as to beneficial ownership as between joint registered proprietors.

¹¹ Paragraphs 5 and 6 do no more than state that both Barik and Rufjan wished all their sons to be treated equally. It provides little other assistance.

- 61 Where the issue is as to the extent of the beneficial shares in jointly owned property, the principle in co-habitation cases is that there is a presumption that equity follows the law and the joint owners at law will share beneficial ownership in the same proportions: see *Stack v Dowden*, at [56]. However, the presumption will not apply where the property in question is an investment property, rather than a home for the parties: see *Laskar v Laskar* [2008] EWCA Civ 347. In such cases court will look at what was agreed between the parties and, in the absence of agreement, will look at actual contributions and apply resulting trust principles.
- 62 The decisions in *Stack v Dowden* and *Jones v Kernott* do not materially affect the principles upon which it was indicated in *Lloyds Bank v Rosset* [1991] AC 107 that a party may be entitled to obtain an entitlement of a share in the equity of a property.
- 63 In *Lloyds Bank-v-Rosset* [1991] 1 A.C. 107, Lord Bridge said at 132B-H:
- “The first and fundamental question which must always be resolved is whether independently of any inference to be drawn from the conduct of the parties in the course of sharing a house as their home, and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel. In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust, but, as I read the authorities, it is at least extremely doubtful whether anything less will do.”
- 64 The above principle does not just apply to a married or cohabiting couple, but in most disputes involving the beneficial ownership of

property: see *Stack v Dowden* and *Jones v Kernott*, above. However, there is little doubt in my mind that things have moved on from *Rosset* and the courts will be more willing to find a constructive trust proved than it might have been willing to do when *Rosset* was decided. The circumstances in which the court will be prepared to find the existence of a constructive trust are summarised in the following passages of *Snell's Equity* (34th Edition):

"24-041 A constructive trust may arise when land is purchased as a joint home but where the registered legal title does not reflect the beneficial shares which the proprietors intended for themselves. The common case is of cohabiting partners who buy a house to live in as their home. The legal estate may be registered in the name of only one of them, and the name of the other does not appear on the registered title. Alternatively, both may be registered as joint proprietors but they do not intend to hold for each other as joint beneficial proprietors. In each case, a constructive trust may arise which binds the legal estate and gives effect to the parties' common intentions as to their beneficial shares in the property. Those intentions are usually inferred from the entire course of dealings between the parties, and go beyond financial contributions to the purchaser or maintenance of the property. In sole proprietorship cases, the trust arises because it would be inequitable for the registered proprietor to hold the legal estate as sole beneficial owner given the contributions made by his partner in reliance on their shared understanding. In cases of joint proprietorship, it would be inequitable for one of the joint registered proprietors to take a larger share than he and his partner intended when each contributed to the property and their relationship.

24-049 The claimant alleging the constructive trust or the different beneficial share in the property must prove that there was an agreement, arrangement or understanding about their respective beneficial shares in the property. The agreement may be based on evidence of express discussions between them or it may be inferred from their conduct. The relevant intention should generally be found when the property was first acquired, though later conduct may be relevant to proving what was previously intended. The parties may also intend that their beneficial shares should be 'ambulatory' in the sense that they would vary over time. In that case, the parties' conduct after the property was acquired would be directly relevant to ascertaining the existence and extent of each party's beneficial share."

65 In deciding whether such a common intention exists, *Snell's Equity* says at paragraph 24-053 *et seq*:

"The court should, ascertain what the parties actually intended to agree, as deduced objectively from their words and conduct. They are therefore

taken to intend what the other party would reasonably understand them to mean, rather than what might have been subjectively in each party's mind. So one party's actual intentions about the ownership of the property, which he did nothing to disclose to the other party, are not relevant to inferring their shared understanding. Likewise, if the proprietor of the legal estate does not know about the claimant's conduct, it cannot support the inference of an agreement between them. The court cannot impose a solution on them which is different from what the evidence shows they actually intended. It follows that an agreement as to shared beneficial ownership cannot be inferred when the party who holds the legal interest in the property explicitly says that the other is not to have a beneficial share in it.

The relevant evidence is not confined to direct financial contributions made by the claimant to acquiring the property or to paying mortgage instalments. It may include: any advice or discussions at the time of acquisition that may shed light on the parties' intentions; the reason why the property was registered in joint names or in the name of a sole proprietor; the purpose why the home was acquired; the nature of the parties' relationship and whether they had any children; how the purchase was financed, initially and subsequently; how any mortgage liability and household expenses were met; and the extent to which they ran their finances jointly, separately, or in a coordinated way. A discount due to a sitting tenant would count as a contribution to purchasing the property. Even in domestic cases where the presumption of resulting trust is no longer directly relevant, financial contributions to acquiring the property or to paying a mortgage debt secured on it may provide some of the strongest evidence of the parties' intentions. The evidence must, however, have some bearing on their intentions as to the beneficial ownership of the property. For example, evidence of the claimant's contributions to a business run from the property from which they and the proprietor earned their livelihood may not prove much about their intentions as to the property itself.

Only where it is impossible to ascertain by direct evidence or inference what the parties' actual intentions were as their shares in the property does the court resort to imputing an intention to them. The parties are imputed with an intention to take shares in the property which, as reasonable and just people, they would regard as fair had they thought about it at the time. Only the parties' intentions about the extent of their shares may be imputed to them. The court does not impute to the parties an intention that the claimant should take a beneficial interest in the property if there was no actual or inferred agreement to this effect. Nor can the court use the criterion of fairness to compensate the claimant for the other party's conduct in a relationship where natural love and affection were not to the fore."

- 66 However, different rules apply where there is an express declaration of trust. Where a TR1 or some other instrument (duly satisfying the requirements of section 53(1)(b) of the Law of Property Act 1925 in the case of land) contains an express declaration of trust which comprehensively declares the beneficial interests in the property or its proceeds of sale, then, unless and until the conveyance (or other instrument) is rectified or rescinded on the ground of mistake, fraud, undue influence or the like, the declaration of trust is conclusive as between the parties to it and

there is no room for the application of the principles of common intention constructive trusts or resulting trusts, referred to above: see *Lewin on Trust* (20th Edition) at 10-059. However, the document must declare the trusts, not merely say that the survivor can give a receipt for purchase money: *ibid*.

67 It is also necessary, in this context, to deal briefly with whether an interest or enlarged interest may have been acquired by a party through the operation of the doctrine of proprietary estoppel. This doctrine applies where one person encourages, or acquiesces in the reasonable belief of, another that the other person will acquire some right over his property, where the other person acts to his detriment in reliance on that belief. The estoppel is premised on the doctrine that equity is concerned to prevent unconscionable conduct, and it is that factor which determines whether an award should be made.

68 I can see no basis upon which proprietary estoppel may arise in the present case, as is contended for on behalf of the Claimants (but not seriously pursued) in the amended Particulars of Claim.

69 Another, related principle, which Raza says may have application in the present case to support his defence to the Claim is the operation of the doctrine of “estoppel by convention”.

70 The editors of *Halsbury’s Laws of England* (5th Edition, Volume 47, 2014, Estoppel), at paragraph 368, summarise when estoppel by convention will arise:

“[w]here two parties act, or negotiate, or operate a contract, each to the knowledge of the other on the basis of a particular belief, assumption or agreement (for example about a state of fact or of law, or about the interpretation of a contract), they are bound by that belief, assumption or agreement ... There can be no estoppel by convention where, although both parties are labouring under a common mistaken apprehension, it cannot be said that they have acted on the basis of that apprehension... In order for an estoppel by convention to arise, the relevant assumption or agreement must be communicated by one party to the other, either by words or conduct... Estoppel by convention is not confined to an agreed assumption as to fact, but may be as to law; and the court will give effect to the agreed assumption only if it would be unconscionable not to do so.”

71 It should be noted that, as a matter of law, estoppel by convention cannot be invoked to deny a party the protection of a statute from the terms of which contracting out is not possible or to create new rights: see *Chitty on Contracts* (33rd Edition) Volume 1, at 4-099 and 5-043; *Keen v Holland* [1984] 1 All ER 75, [1984] 1 WLR 251; and *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, [2008] 1 WLR 1752, at [29]. The Claimants say that this situation applies in the present case. That is because to allow an argument based on such an estoppel to succeed would be to allow equity to contradict the express terms of a statutory provision – in the present case, section 53 of the Law of Property Act 1925. Raza disputes that his reliance on estoppel by convention engages section 53 in the present case because it is no part of his case that the declarations of trust specified in the TR1s are invalid as a result of the operation of that principle, simply that the Claimants cannot rely upon their terms. Even if Raza is correct – and I express no firm view in the matter, though my provisional view is that he is not (because the effect of the estoppel would, in effect, be to vary the terms of the declarations of trust which would require written evidence under section 53) – it is, as I explain below, difficult to see how, on the facts, such an estoppel can apply in this case.

X THE FACTS AND EVIDENCE

72 I do not need to repeat or summarise the observations I have made, or the views which I have reached, above, concerning the evidence that I have heard in these proceedings.

Joint Properties other than 1 Whistlets Close

73 The TR1s in relation to the Joint Properties (other than 1 Whistlets Close) set out how the beneficial interest in them are to be held.

- 74 It must follow that those trusts are conclusive unless the party seeking to suggest the contrary is able to persuade the court that the declaration of such trusts came about as a result of a mistake or because it was procured as a result of fraud, undue influence or the like. There is no suggestion of this by the Defendant in the present case.
- 75 None of the parties who gave evidence could say who gave the instructions which led to the TR1s containing the express declarations of trust specified in them. However, there is no question in my mind that they were included by the solicitors who acted on the purchase upon instructions received from their clients – a premise which Raza does not dispute. The fact that some of them appear not to have been signed by the Joint Proprietors does not affect the validity of the declarations: see *Re Gorman* [1990] 1 W.L.R. 616.
- 76 It is possible that declarations were included because Barik, before his death, and Rufjan before hers, had told their children that that was what they wanted, as appears to be the case from the terms of the Written Agreement and Rufjan’s witness statement. However, whoever it was who gave those instructions, it is plain that it represented the instructions which the solicitors had received from the individual or individual whom they regarded as their clients.
- 77 Estoppel by convention is pleaded by Raza in the following terms in his amended Defence and Counterclaim:

“Paragraphs 5B and 5C of the Amended Particulars of Claim are denied.
Without prejudice to the generality of the foregoing denial:

- 5B.1 Notwithstanding the terms of the declarations of trust, the parties have never regarded the same as determinative of beneficial ownership of the properties.
- 5B.2 The parties have always understood and agreed that the jointly owned properties belonged to the Defendant beneficially and they have conducted themselves accordingly and/or acquiesced in the Defendant treating the properties along belonging to him beneficially.

- 5B.3 By reason of the matters aforesaid the Defendant has acted to his detriment and/or changed his position to the extent that:
- 5B.3.1 he has retained and spent the rental income from the jointly owned properties;
 - 5B.3.2 he has taken responsibility for the tax on the rental income at a higher rate than would have been the case had such income been divided between the relevant parties;
 - 5B.3.3 he has managed the jointly owned properties as a full time occupation, which he would [not] have done had such properties not belonged to him as the sole beneficial owner.
- 5B.4 In the premises the Claimants are estopped from denying that the Defendant is the sole beneficial owner of the jointly owned properties.

78 On the facts, none of the requirements for convention by estoppel to operate are satisfied.

79 Even taking Raza's case at its highest, it is very difficult to see how it can be demonstrated that he and any one or more of his brothers operated on the basis of any particular belief, assumption or agreement about how the beneficial interest in the Joint Properties, which form the subject of the declaration of trust, were to be held. Quite apart from the fact that Goyas and Anawar denied any such belief, assumption or agreement, Raza himself, despite being probed when giving evidence, was unable to put forward any conversation with his brothers or any course of conduct or even an isolated act or omission to suggest that he, let alone both him and his brothers, had proceeded in this manner.

80 The most he was able to say was that since Barik had died, none of his brothers had asked him to account for the rent which he was collecting for those properties. That is simply incorrect. As Goyas and Anawar, whose evidence I accept on this point, said, while Rufjan was alive, they were perfectly content for her, as the matriarch of the family, to hold Raza to account for the rent he was receiving, though it soon became apparent that he was not doing so. In addition, it is not that the Claimants did not raise their concerns about Raza's conduct with Rufjan. They did and it resulted

in Raza signing the Written Agreement in January 2013. It seems to me, therefore, that it was clear that shortly after Barik died, the Claimants had made it plain to Raza, indirectly through their mother, if not directly to him, that he should account for the rent and other income he was receiving from the properties. Whatever the terms of the Written Agreement, the fact of its signature by Raza is inconsistent with the assertion that there was any belief, assumption or agreement between the parties about how the beneficial interest in the Joint Properties, which form the subject of the express declarations of trust, were to be held.

81 But, as Mr Darton points out, there are several contemporary documents (in addition to the Written Agreement) which are at odds with Raza's assertion that convention by estoppel applies. They include:

81.1 The TR1 for 88 Windsor Crescent (dated 2 November 2006) which actually bears and was accepted to bear Raza's signature;

81.2 Raza's email to his then solicitor, Mr Paul Harrison of 11 July 2013 in which he referred to "...the set up of our family business...", "...for the sake of completeness, the loan to which I refer is secured against several of properties, including Windsor Crescent ..." and "Our family business set-up, and hence the agreement reached as a family, has always been that rental income would be collected and simply used to fund the loans on the portfolio of properties, including paying off the loans surrounding the same."

81.3 Raza's statutory declaration of 27 August 2011 in proceedings brought in relation to 25 St Leonards Road in which he stated: "I jointly own the freehold of 25 St Leonards Road Northampton NN4 8DL with my siblings. I also

have dealings with Barik Miah Investments [Raza's trading enterprise] which manages properties for the family."

- 82 Nor is it easy to see how Raza can be said to have suffered detriment to support an estoppel. His amended defence and counterclaim states that the detriment he suffered was that he had retained and spent the rental income from the properties, had taken responsibility for the tax on the rental income and managed the properties as if he were their sole beneficial owner.
- 83 I cannot see how any of those matters can support a basis for detriment. The rent and income which he received was a benefit to which he was not (and well knew he was never) solely entitled. It ill-behoves him to seek to use that as a basis for contending that he suffered detriment. The same may be said about the tax liabilities he incurred. They arose as a direct result of the benefit he received from the rents and income, to which he knew he was not entitled. As far as his management of the properties is concerned, it was as much in his interest to collect the rents and income as he is entitled, at least, in part to an interest in them and had always been doing so before the death of his parents. Nor, for those reasons, is it easy to see how it can be said to be unconscionable for the Claimants to rely upon the declarations of trust which relate to the properties.
- 84 In any event, even if Raza has suffered any loss as a consequence of his treatment of these properties as his own then this is a matter which can be reflected in the terms of any account that I may, and do direct, should be taken.
- 85 It must follow, from what I have said above, that the following properties are owned beneficially in the terms declared by their TR1s namely:

- 13 Oliver Road, Bletchley (Title BM291476) – on trust for all the Claimants and Raza in equal shares;
- 88 Windsor Crescent, Duston (Title NN12153) – on trust for all the Claimants and Raza in equal shares;
- 16 Kingsley Terrace, Northampton (Title NN287287) – on trust for the Goyas, Anawar and Raza as tenants in common in equal shares;
- 34 Kingsley Park Terrace, Northampton (Title NN70563) – in the names of Goyas, Anawar and Raza as tenants in common in equal shares;
- 25 and 25a St Leonards, Northampton (Title NN15441) – in the names of Goyas, Anawar and Raza as tenants in common in equal shares;
- 146 Wellingborough Road, Northampton (Title NN26912) – by Goyas, Anawar and Raza as tenants in common in equal shares;
- 148 Wellingborough Road, Northampton (Title NN25617) – by Goyas, Anawar and Raza as tenants in common in equal shares; and
- 150 Wellingborough Road, Northampton (Title NN9619) – by Goyas, Anawar and Raza as tenants in common in equal shares.

1 Whistlets Close

86 The legal estate in 1 Whistlets Close is held by Anawar and Raza. The TR1 in respect of that property is silent as to how the beneficial interests in that property are held between them. However, the TR1 states that either of them can give a valid receipt for capital money arising on a sale of that property.

87 The basis upon which Raza claims to be entitled to the entire beneficial interest in 1 Whistlets Close is set out in paragraph 4 of the amended Defence and Counterclaim in the following terms:

- "4.1 ... 1 Whistlets Close was purchased in November 1995 ... That property was purchased as a family home for the Defendant (the Defendant having married in 1994) for £118,000 with a mortgage advance; he provided the deposit. It was registered in the names of the Defendant and the 2nd Claimant, as the latter agreed to make a joint application for the mortgage so as to increase the amount that could be borrowed upon the express understanding that the property would belong to the Defendant and that he would pay the mortgage instalments.
- 4.2 ... the Parties' parents and the 3rd and 4th Claimants lived there until June 2004 when the parents purchased the property next door, 3 Whistlets Close, which was registered in their joint names. Thereafter the Parties' parents lived at 3 Whistlets Close, whilst the Defendant remained at 1 Whistlets Close.
- 4.3 In July 2011 the Defendant purchased 14 Trinity Avenue, Northampton as a new family home and he moved there with his wife from 3 Whistlets Close. The Defendant funded the deposit payable for 14 Trinity Avenue by way of loans from relatives and friends."

88 In his witness statement dated 4 October 2020, Raza provides the following account in support of that position:

- "8 In November 1995 I purchased my first home, 1 Whistlets Close ... The purchase was funded by a £90,000 mortgage and approximately £30,000 from the savings that I had managed to accumulate and wedding gift monies.
9. At the time when I bought the property I was self-employed, but had not been so for very long. My father therefore asked Anawar to be a joint applicant with me for the mortgage to improve my chances of getting mortgage funding; this obviously resulted in him being registered as a joint proprietor of the property. This property was purchased by me as my family home and there was never any agreement or understanding between me and Anawar that he would have any beneficial interest in 1 Whistlets Close ... In his interviews with HMRC in 2014 and 2015 Anawar told them that 1 Whistlets Close was nothing to do with him; he said he had been asked to sign documents relating to the property by his father. Furthermore, HMRC were notified by Anawar's accountants that he had never contributed towards the mortgage or maintenance on 1 Whistlets Close. The fact is that none of my brothers contributed towards the initial acquisition cost of 1 Whistlets Close and they have not so alleged in their statements of case.
10. As I was very close to my father, I asked my parents and my younger siblings to move into 1 Whistlets Close with my family. My father was not a wealthy man; however, he had a big heart and was always surrounded by numerous family and friends that adored and trusted him. My father was a religious and honest man who devoted all his spare time helping others within the local community. I have always believed that I was my father's favourite child."

89 At paragraph 7 of his witness statement dated 9 October 2020, Goyas states that the parties' parents:

"... had savings and these were used to put the deposit down on [1 Whistlets Close]. It is not true that the Defendant paid the deposit from his own personal savings. He had never had a job of substance beyond the job as a casual waiter and the restaurant he was charged with running, the Long Buckby restaurant, was a disaster. We all moved in as a joint family and lived at 1 Whistlets Close at all material times. I still do. Our eldest sister had been married off by then so it was the parents, the 5 brothers, 3 sisters and 2 half-sisters who had joined us from Bangladesh. The Defendant and I had also married and our wives lived there too. The 2nd Claimant would mainly live there during weekends and other stays as he was studying in London. All the sisters were married off from this house. Relatives, friends and family all knew it as our joint family home because that is what it was. Our parents occupied the principle bedroom with the en-suite. It was our joint family home with our parents as the heads of our household. There was never any conversation at all that this house was for the sole benefit of the Defendant and his wife to our exclusion."

90 Anawar says much the same in his witness statement dated 9 October 2020.

91 Anawar accepts that he never expected to pay the instalments on the mortgage of £90,000 which was taken out on 1 Whistlets Close when it was purchased but he expected to be liable under it if he was called upon to do so. Nor do Anawar or Goyas dispute that they did not pay either the deposit or any other payments towards the purchase of that property. However, both say that Raza did not make any payments from his own resources because his income was insufficient to support such payments. That has to be correct. At the time when that property was purchased, it is clear that Raza was barely earning a sufficient income to meet his daily expenses, let alone pay amounts towards the purchase of the property. Indeed, it is an important feature of his case that the reason why Goyas and/or Anawar were included on the titles to some of the properties which he claimed belonged to him was because he was unlikely, on his own, to qualify to obtain mortgages on them because of his limited resources. Nor is his assertion that he used the wedding gifts he received (presumably these were mainly cash payments which he received when he got married) towards the purchase convincing. He was unable to specify what the amounts of

those wedding gifts and where they were likely to have come from. Anawar's evidence was that the wedding was a modest affair and while that, by itself, does not mean that Raza did not receive substantial cash payments and other valuable gifts from friends and relations for the wedding, he provides no particulars at all about them.

92 In reality, as appears clear from the documents, the purchase of 1 Whistlets Close was made from the net proceeds of sale of 21 Connaught Street (as is shown by Goyas' bank statement at page 61 of Bundle 2), which was purchased in the names of Goyas and Anawar. Goyas said that there was a good reason why 1 Whistlets Close was put in Raza and Anawar's name, rather than his and Anawar's names. It was because he was going through what he described as a "messy divorce". True it is that neither Goyas nor Anawar made any direct payments towards the mortgage of that property but Rumel made some payments towards it (though Raza says, at paragraph 18.18 of his witness statement, that he did so in lieu of rent, which I am unable to accept because if that were correct, one assumes that Raza would also have charged Goyas rent or sought a contribution from him towards the mortgage of the property).

93 I am unable to accept that the mortgage payments were made solely from Raza's own resources. I have seen no documentation to support this. Raza's failure to respond satisfactorily to Mr Darton's question that, with all the properties Raza had purchased, and claimed he was servicing, there were bound to be detailed accounts relating to the amounts he had been receiving for those properties, was particularly pertinent. It is difficult to see how, in the absence of some documentation supporting the making of the mortgage payments, it can be asserted by him that those payments were made entirely from his resources.

- 94 The fact is that it is plain that 1 Whistlets Close was never – and never intended to be – Raza’s sole property. The solicitors who acted on the purchase (Messrs Franklins, see page 65 of Bundle 2) regarded Goyas as their client. Raza explained this by saying that initially Goyas intended to purchase that property but then changed his mind and said that he was going to continue living in Charles Street. Goyas confirmed that Raza could take over the purchase of 1 Whistlets Close and the property was then purchased in the names of himself and Anawar. He made no mention of any of this in his witness statement.
- 95 I, therefore, wholly reject Raza’s evidence that 1 Whistlets Close was his property. It is plain to me that it was a family property in which the whole family (including all the Claimants) lived at times. It was a property which Goyas has, in the last few years, occupied with his family. Goyas, as the eldest son, was a carer for his parents at that property and, subsequently, at the neighbouring property at 3 Whistlets Close, when his parents left 1 Whistlets Road to live in that property. It is difficult to see how 1 Whistlets Road could be regarded as belonging solely to Raza.
- 96 The most that can be said by Raza about the ownership of this property is that it is held beneficially by him and Anawar.
- 97 How, then, are the beneficial interests in the property held?
- 98 I cannot see any basis upon which the Claimants can contend that there was some common intention, agreement or understanding that 1 Whistlets Close was to be Goyas’ property and was to be held by Anawar and Raza on trust for Goyas. That claim was made for the first time in the Reply and Defence to Counterclaim, though it was subsequently included in the amended paragraph 4 of the Particulars of Claim, for which permission to amend was given by me on the first day of the trial.

- 99 The evidence of the alleged common intention, agreement or understanding is based on evidence which is not just tenuous and weak but inherently inconsistent and unreliable. Neither Goyas nor Anawar deal with how that intention, agreement or understanding came about in their witness statements. Although paragraph 3 of Rufjan's witness statement states that "it has always been intended that 1 Whistlets Close ... was being held for ... Goyas", no particulars are given in support of this premise. In addition, no mention of this is made in the Written Agreement.
- 100 The most that the Claimants can be say about the common intention, agreement or understanding is that it came about after the purchase of 1 Whistlets Close. That this is so came from Anawar's oral evidence. He indicated that the property had "originally" been purchased on the "understanding" that it was to be a family home but later that understanding changed to an "understanding" that it was to be Goyas' house as he was the carer for his parents. Quite apart from the fact that neither he nor Goyas was unable to provide any particulars of this understanding, it is difficult to see how the "understanding" could have been a common one, still less how it could have been formed at the time of the purchase of the property, which is an essential requirement for the Claimants' claim on that basis to succeed. Nor, for those reasons, can I see how it was intended that Goyas would have what is effectively a life interest in the property.
- 101 However, the Claimants argue that even if I do not reach the conclusion that 1 Whistlets Close is held on trust solely for Goyas, I should find that the property is held on trust for all the Claimants and Raza in equal shares. That is based on the premise that the deposit, and a significant amount of the purchase monies, came from the sale of 21 Connaught Street, as is shown by Goyas' bank statement at page 61 of Bundle 2. Raza says that this cannot be

correct as there is a significant chronological disparity between the dates of sale of 21 Connaught Street (which took place in April 1994) and the purchase of 1 Whistlets Close (which took place some 18 months later on 25 August 1995, as to which, see the copy transfer at page 12 of Bundle 7). I do not see that this point has any substance in the context of this case. There will usually be some passage of time between the sale of a property and the purchase of another. However, the other point made by Raza has considerable force: although Goyas has provided a bank statement purportedly showing the net proceeds of sale of 21 Connaught Street being paid into his bank account, there is none showing the payment of that or any amount purporting to represent those net proceeds of sale coming out of his account. I agree with Mr Strutt that this makes it difficult for the court to reach the conclusion that 1 Whistlets Close is held for all the brothers equally.

102 In my judgment, therefore, there is neither any basis nor any good reason to depart from the general principle that equity should follow the law. It follows that 1 Whistlets Close is held by Anawar and Raza in equal shares.

103 The additional question which arises in the context of this property is whether I should make an order for the sale of the property and whether Goyas should deliver up vacant possession of the property for the purpose of that sale. I have not heard detailed submissions on this issue. I will defer my decision on the issue until I do.

The properties registered in Raza's sole name

(i) Raza's evidence

104 Paragraph 17(iv) of the amended Particulars of Claim states, *inter alia*, that those properties which were purchased in the sole name

of Raza "being 19 Spencer Bridge Road, 6 Boothville Green, 29 Pitstone Road, 13 Plantagenet Square and 14 Trinity Avenue [though 14 Trinity Road is now in the joint names of Raza and his wife] belong to the parties in the proportions to which they contributed to these purchases under constructive or resulting trusts...". Raza's denies that allegation. His response is summarised in paragraph 18 of his witness statement, the relevant extracts of which are in the following terms:

- "18.1 In July 2000, I purchased 19 Spencer Bridge Rd, Northampton for £38,000 in my sole name with a deposit of approximately £3,000, with the remainder of the purchase price being funded by a mortgage with NatWest Bank.
- 18.2 In September 2001, I purchased 6 Boothville Green for £57,000.00 in my sole name with a deposit of £12,000 and a mortgage of about £45,000.00. After purchasing this property, I obtained planning permission for takeaway use and shortly after began trading there myself as a fast-food takeaway outlet. I named this business "Chez Raj". After a few years of trading, I leased the property out in 2006 and it continues to be operated as a fast-food outlet.
- 18.3 I can confirm that I paid the deposits to purchase both of the above properties; none of the Claimants made any contributions and they do not assert as such in the Particulars of Claim. It is also the case that the acquisition of these properties was not funded by taking equity or rental income from any other property; prior to their purchase the only property I owned was 1 Whistlets Close which was my home and therefore not rented out.
- 18.4 In August 2003, I re-mortgaged both 19 Spencer Bridge Road and 6 Boothville Green which released equity of £80,000. I was seeking to accumulate funds as I was actively looking to purchase more properties. In June 2006, I took advantage of a good interest rate offered by MBNA and took a cash advance of £10,000. In September 2006, as property values increased, I again re-mortgaged 19 Spencer Bridge Rd and 6 Boothville Green to release a further £80,000. As a result, by September 2006 I had £170,000.00 at my disposal for investment.
- 18.5 Over time, I went on to purchase additional properties using equity from these initial two properties. The system I adopted was to release the equity following increases in the value of the properties to help fund the next purchase. At that time property values were growing rapidly.
- 18.6 In October 2006, I purchased 13 Oliver Rd, Bletchley, Milton Keynes for £92,000 and I paid for this in cash without a mortgage. This property was purchased in the joint names of Goyas and Anawar as well as myself, but I can confirm that they made no contributions towards the purchase. They consented to being put on the title on the footing that they had no beneficial interest in that property. At this time I was in the process of buying two other properties in my sole name (as referred to below) and I added Goyas and Anawar to the title of 13 Oliver Road as I had been told by a mortgage broker that additional names on the title would facilitate the process of obtaining secured lending on that property in the future.
- 18.7 In November 2006, I purchased 29 Pitstone Rd, Northampton in my sole name for £92,500 with a deposit of £15,000 and a mortgage. I paid the deposit and none of the Claimants made any contribution towards the acquisition of this property.
- 18.8 In December 2006, I purchased 13 Plantagenet Square, Northampton in my sole name for £98,000 with a deposit of about £15,000 and mortgage. Again,

I paid the deposit and none of the Claimants made any contribution towards the acquisition of this property.

- 18.9 In January 2007, I purchased 88 Windsor Crescent, Northampton for £118,000. I paid for this property in cash with the assistance of unsecured loans of about £60,000 obtained from friends and associates and I paid the balance from my own resources, which by this stage included some of the rental income from the other properties. None of the Claimants made any contribution towards the acquisition of this property. This property was purchased in the joint names of Goyas, Anawar and Shuhail and myself; as in relation to 13 Oliver Road, I felt that additional names on the title would facilitate obtaining secured lending in the future as by this stage I had built up a good relationship with banks and lenders.
- 18.10 In March 2007 I took a cash advance from MBNA of £16,000 and in March 2008 a further cash advance from MBNA of £20,000. In March 2008, I also re-mortgaged 1 Whistlets Close, thereby raising equity of £135,699. From these monies I repaid the £60,000 that I had borrowed from friends and associates to purchase 88 Windsor Crescent.
- 18.11 In April 2008, I purchased 34 Kingsley Park Terrace, Northampton for £250,000. This purchase was funded by the balance of the monies I had already accumulated and a further £135,000.00 borrowed from friends and associates. None of the Claimants made any contribution towards the acquisition of this property. It was purchased in the joint names of Goyas, Anawar and myself for the same reasons as set out above.
- 18.12 In September 2008 I purchased 16 Kingsley Park Terrace, Northampton for £240,000 and 146-150 Wellingborough Road, Northampton for £660,000. The entire combined purchase price of £900,000 was funded by lending from Lloyds which was secured against the properties and against my new existing properties at 13 Oliver Rd, 34 Kingsley Park Terrace and 88 Windsor Crescent. Both these properties were purchased in the names of Goyas, Anawar and myself for the reasons set out above.
- 18.13 In 2008, I decided to try my luck in the restaurant business again by setting up a restaurant (that I named the "Maharaja Restaurant") at 146-150 Wellingborough Road. Due to my previous convictions as a result of incidents of fighting in my restaurant in Long Buckby I could not obtain a premises license. I therefore asked Goyas if he would allow me to use his name on the premises license, to which he agreed. Despite investing a lot of my time, hard work and effort, I was unable to make it a success and it was not a profitable business. Therefore, in July 2017 I closed the Maharaja Restaurant and granted a lease of the whole of the premises comprising 146-150 Wellingborough Road to Mr Cannon and his wife Mrs Day. I have a mutual understanding with them by which they are allowed to sublet the property, should they wish to do so. I should make it clear that no premium was paid for the lease.
- ...
- 18.15 From mid-2009 I started to build up and accumulate funds to make further property investments. In June 2009, I obtained an unsecured business loan of £40,600 from Lloyds Bank. In February 2010, I received an insurance pay out of £10,000 from Axis Adjusters Europe in respect of vandalism caused to one of my properties. In December 2010, I took out a further cash advance of £23,500 from MBNA. By this time, I was actively looking to purchase more properties. Every now and again I was also paying off my existing loans from friends and associates as and when required; I still owed around £61,500 at this time.
- 18.16 In March 2011 I purchased 25 St Leonards Road, Northampton for £170,000; this property is also known as "Delhi Cottage". The purchase was funded by unsecured loans of some £149,000 and bank borrowing of some £21,000. The property was purchased in the joint names of Goyas, Anawar and myself for the same reasons as set out above. I note that when interviewed by HMRC, Goyas confirmed that 25 St. Leonards Road was my property and that he had nothing to do with it despite being named on the title.

18.17 In August 2011, whilst property prices were still low due to the recession, I decided to buy a new family home for myself, my wife and children. I considered selling my existing home, 1 Whistlets Close, but decided against it as I did not feel it would realise its true value. I chose 14 Trinity Avenue, Northampton as a new family home, which I purchased in my sole name for £413,000... I therefore funded the purchase by unsecured borrowing from friends and family, including Goyas, Anawar, Rumel and my sisters. The source of those funds had to be verified by my bank and conveyancing solicitors. I have since repaid all the monies borrowed from family, save for £15,000 still owed to Goyas, though I did previously try, unsuccessfully, to sell 14 Trinity Avenue to repay the borrowings.

.....

18.19 In 2014 I again started to accumulate funds with a view to further property investment. In February 2014, I took a cash advance from MBNA for £22,836 and a personal loan from Lloyds for £20,000. In April 2015, my wife took out a loan from Lloyds for £15,000 which she made available for property investment. In September 2015, I received an insurance pay out of £30,036 from Towergate Insurance in respect of a property damage claim. In January 2016, I re-mortgaged 19 Spencer Bridge Road and 6 Boothville Green, thereby raising equity of £210,000.

....

18.22 ... I took steps to repay my unsecured borrowings from family and friends. In June 2017, I obtained an unsecured loan of £25,000 from Hitachi Finance; also, in June 2017, I received an insurance pay out of £9,000 from Marker Study Insurance in respect of a car accident. In June 2018, I re-mortgaged 13 Plantagenet Square, Northampton for £120,000 and 29 Pitstone Road for £108,750. In October 2018, 34 Gloucester Avenue was mortgaged and my third share of the equity released was £51,000. In May 2019, my wife re-mortgaged 2 Boothville Green and gave me £230,000.

18.23 As a result I was able to repay my unsecured borrowings and was in fact left with a modest surplus.”

105 I can see little or no documentary evidence that the properties purchased in Raza’s sole name came from funds belonging to him or that the payments made to service the mortgages which were obtained to fund their purchase were made solely by him or from his resources.

106 I have referred above to the income and funds which Raza had at his disposal to fund the purchases of the Joint Properties or to service the mortgage payments which relate to those properties. Very much the same observations apply to the properties purchased in Raza’s sole name.

107 In the context of making documents available to support his premise that the purchases and the mortgage payments came from

his sources, his disclosure has been woeful and the evidence upon which he has sought to rely contradictory and unconvincing.

108 The transactions which relate to the purchase of these properties were not insubstantial. Yet there is no documentation which substantiates what Raza says. Those documents I have seen provide little support for what he has to say. There are no accounts produced by him to demonstrate these transactions, and those documents which he has produced (such as bank statements) are, at best, ambivalent and incomplete, but largely support the contrary position.

109 Examples of the unreliability of Raza's account include the following:

109.1 In para 18.7 of his witness statement, Raza stated that he purchased 29 Pitstone Road, in his sole name for £92,500 with a deposit of £15,000 and a mortgage. He claimed to have paid the deposit for the purchase and stated that "none of the Claimants made any contribution towards the acquisition of this property." This was incorrect, as the documents at pages 170 and 171 of Bundle 2 demonstrate. Page 171 contains a completion statement for the purchase of the property in which the balance of the purchase monies for the property was payable in two amounts, both of which are seen (from the bank statement at page 170) to be coming out of Rumel's account. Raza accepted this but said that those cash payments were paid in Rumel's account by him. Neither he nor, it has to be said, Rumel has produced any bank statements confirming that.

109.2 Likewise, Raza said that he purchased 13 Plantagenet Square, Northampton in his sole name for £98,000 with a deposit of about £15,000 and mortgage. He claimed to have paid the deposit himself, stating that none of the Claimants had made any contribution towards the acquisition of this property. However, the documents at pages at 187 and 188 of Bundle 2 show that the amount was paid by Rumel, though there are no corresponding bank statements which show how the cash was deposited in Rumel's bank account.

109.3 Raza's explanations about why these amounts had to pass through Rumel was disingenuous. On one occasion, he claimed to be in Plymouth and, therefore, needed to channel the amount through the accounts of one of the brothers in order to proceed with the purchase. I utterly fail to see why this would have been necessary, given that the funds could just as easily have been transmitted to his solicitors from his account. In addition, he said that he was having difficulties in his marriage and wished to keep the monies which he had paid to Rumel in cash from his restaurant takings from his wife. He said none of this in his witness statement. Mr Strutt, on behalf of Raza, makes the point that none of the documents included in the bundles can demonstrate that Raza's explanation that he paid the monies to Rumel is incorrect. Nor has Rumel provided evidence (whether written or oral) to controvert the account given by Raza about where he says the monies came from. It must follow from that Raza's account has to be accepted. I wholly disagree. The lack of documentation to which Mr Strutt refers is entirely down to Raza. Raza has not produced any documents (in compliance with his duty of disclosure) to show how he managed

to accumulate and pay the cash which he alleges he paid to Rumel. It ill-behoves him to refuse to provide the documentation that would substantiate how he says he paid the cash and then claim that because there was no documentation to controvert what he was saying, his account must be correct. The plain fact is that I have found the evidence of Raza, in large parts, to be completely untruthful and am unable to accept his account of matters simply because he says that is what happened. That said, it is also right to point out that Rumel might have been able to produce bank statements showing how the amounts were deposited into his account. He too has failed to do so.

109.4 The £30,036 that Raza received from Towergate Insurance in September 2015, as referred to at paragraph 18.19 of his statement, was not his money but was paid in respect of damage to 146 – 150 Wellingborough Road. That property is registered in the names of Raza, Goyas and Anawar, though it is one of the Joint Properties, to which Raza claims to be solely entitled.

110 There is also considerable substance in Mr Darton's description of Raza's explanation about some of the documents which he was taken through as being "simply incredulous". He questions, for example, how Raza can say that he re-mortgaged 19 Spencer Bridge and 6 Boothville Green for £80,000 in August of 2003 and (again) in September of 2006. As these properties had been bought in July of 2000 and September of 2001 for £38,000 and £57,000 respectively (as he claimed in his witness statement), they could not possibly have increased in value by so much as to allow for re-mortgages totalling £160,000 to be taken out on them in just

six years, particularly as they also secured initial advances of £80,000. I wholly agree with Mr Darton.

- 111 However, the most incredible part of the account that Raza gave about how he found the funds to make purchases with (other than those which he claimed came from the receipts of the restaurant business he operated from 146-150 Wellingborough Road, mortgages or re-mortgages) is how much money he claims to have borrowed from friends and relations.
- 112 It must have been plain to Raza that he would not have been able to explain the various transactions which form the subject of the issues that arise in the Claim by reference to the takings, mortgages and re-mortgages to which he referred. He, therefore, alleged, that he borrowed substantial sums of money over time from his friends and relations. As Mr Darton contends, and I accept, he simply did so to “bridge the gap” in order to bolster up the untruthful account which he had given to explain how he managed to purchase these properties.
- 113 One person that he claimed to have repaid was Mrs Moula for the debt of his father to Mrs Moula’s father. I have already indicated why I am unable to accept his evidence in relation to that. I need say nothing further about that.
- 114 But he said that there very many other persons from whom he borrowed money. The details of those persons – and the amounts allegedly lent by them – are included at pages 274 to 249 of Bundle 3. Those details appear to be based on letters which they sent to HMRC to support what Raza was saying to HMRC about how he obtained funds to purchase the various properties in which he claimed an interest. None of them provided a witness statement (other than Mr Abdullah Karabulut who provided a witness statement dated 25 August 2020, both refuting Raza’s account and

stating that the letter allegedly emanating from him about his having taken a loan from Raza was false) or came to court to support Raza's account, despite the fact that Raza was expressly put on notice that the Claimants required Raza to prove the making and repayment of the loans¹². Mr Karabulut failed to appear to be questioned on his witness statement, despite being summonsed by the Claimants to do so. I cannot see any basis upon which I can give any credence to what Raza had to say. Nor did Raza call the two individuals he claimed had lent him money – Mr Abdul Haleem and Mr Wahid Ullah – despite stating that he intended to call them: see the order dated 17 July 2020, amended on 28 July 2020.

115 What HMRC makes of the information provided by those persons (and whether HMRC can satisfy themselves that the loans and/or repayments are or were genuine) is, as I have already indicated, not a matter for me to decide on. However, I am entirely satisfied that, for the purposes of the issues which arise in the Claim, on the material placed before me, there is no truth in Raza's assertion that he borrowed those funds from such persons¹³. I do not necessarily reject the suggestion which he appeared to make that it is not unusual in the Bangladeshi community for friends and relations to make unsecured cash loans. However, when he was asked how much was currently due from him to those unsecured creditors, he said that he thought it was in excess of £100,000, stating that he had "no records – not with me". Given what Goyas and Anawar said about the means of some of those persons in their witness statements, which they were not challenged about, it is difficult to see how anything which Raza says about the unsecured loans made to him can be true.

¹² Raza could (with the permission of the Court) have provided witness summaries in respect of these lenders and summonsed them to attend court to give evidence. The only proper inference that the Court can make from his failure to do so is that few, if any of the lenders, would have supported what he had to say.

¹³ I make this finding even if I had not made any adverse inference in relation to his failure to call those persons.

116 In the circumstances, I wholly reject what he says about the loans they made to him.

(ii) 19 Spencer Bridge Road and 6 Boothville Green

117 The timeline document helpfully produced by Mr Strutt sets out the chronology of events leading to the purchase of various properties in the names of one or more of the parties.

118 The properties at 19 Spencer Road and 6 Boothville Green were purchased after 1 Whistlets Close was purchased. Goyas and Anawar accept that neither of them made any contribution towards those purchases from their funds, though Anawar's name was included on the mortgages for the purchases. I believe it to be accepted by the Claimants that, at that stage, there was no rental income from any jointly owned properties which could have been used to fund those purchases. Although rent was being received in respect of 2 Margaret Street by Raza, he was accounting for it to Barik, so it cannot be said that the amount of the rents was used to fund the purchases¹⁴. Raza contends that on that basis, it cannot be challenged that any funds for the purchases came from any person other than himself, even though Anawar was a party to the mortgages which related to them, particularly as Raza claims also to making the mortgage payments from his own resources. I am unable to accept that this leads to the inescapable conclusion that Raza paid for the purchases from his own resources or from income or capital to which he was solely entitled.

119 It is difficult to see what resources Raza had to fund the purchases of the properties at 19 Spencer Bridge Road and 6 Boothville Green. In paragraph 6 of his witness statement, Raza said that he was

¹⁴ However, it is, at least, possible that Raza might have obtained the purchase monies for the property from Barik out of the rents which he collected, though it is not for me to speculate whether this happened or not.

running a restaurant at 12 High Street, Long Buckby, Northamptonshire, known as "the Ancient Raj" which he described as "very basic" due to his limited finances. It is also clear that, at that stage, he had a very modest income – see, for example, paragraph 17 of Anawar's witness statement in which he says that Raza was receiving "no meaningful income for him from there." It is difficult to see how he could have accumulated the funds to be able to afford the purchases. He did not have any savings and the restaurant was not profitable. By the mid-1990s, Raza was having sufficient difficulties with the running of the restaurant that he felt forced to sell it, which he said he did for a profit.

120 The Long Buckby business was operated by him, though the partners in the business were Goyas, a Mr Ali Akbar and a Mr Harun Miah), both of whose "shares" in the business were purchased by the Miah family.

121 The properties at 12 High Street and 2 & 4 Brington Road, where the business of the Ancient Raj was run, were registered in the names of Goyas and Raza. The Claimants say that the funds used to purchase the properties at 19 Spencer Road and 6 Boothville Green must have come from the sale of those properties or from the "family pot", rather than from the Raza's resources as he simply did not have the means to purchase those properties at the time. I am not going to speculate about where the funds may have come from. That may be a matter for the court to decide on the taking of the account to which I refer in this judgment. What I am satisfied about is that they simply could not have come from (or solely come from) Raza's resources.

(iii) 29 Pitstone Road and 13 Plantagenet Square

122 I have already dealt with the purchase of 29 Pitstone Road and 13 Plantagenet Square for the reasons set out above. It is likely that

Rumel has some interest in it, as do one or more of the other claimants, so far as it can be demonstrated the mortgages from those properties were paid from any of the Joint properties. That matter will have to be determined on the taking of the account.

(iv) Beneficial entitlement in Raza's Properties

123 I am satisfied, therefore, that the Claimants are entitled to a share in Raza's Properties by reason of the contributions which have been made either from the proceeds of sale of properties in which they had an interest (whether they were "family assets" or otherwise) or from the income of those or other assets in which they have a beneficial interest. However, there is insufficient information for me to determine the precise entitlement of the Claimants to an interest in Raza's Properties because the extent of those contributions is not clear on the material available to me. In addition, Raza may be entitled to credit in respect of matters such as any mortgage payments made by him and any improvements to any property carried out by him. Mr Darton appeared to suggest that the precise extent of the parties' beneficial interest would need to be determined upon the taking of an account or upon a proper enquiry being made to determine those contributions. I understood Mr Strutt to be accepting that proposition if I determined that issue against Raza¹⁵. In the circumstances, I am prepared, in principle, to direct that those entitlements should be subject to the taking of that account or the making of that enquiry.

(iv) 14 Trinity Avenue

¹⁵ I am bound to say that this has to be correct. Despite the wisdom expressed in many cases (see, for example, *Stack v Dowden* itself, at [61]), particularly those concerning cohabiting couples, of a "holistic" approach to the determination of the beneficial interest of the parties in a property, this is not an appropriate case for that to be done. In any event, I am not in a position to do so without a considerable amount of further documentation.

- 124 There is no issue that the amount of £382,000 that Raza paid towards the purchase of 14 Trinity Avenue for £413,000 was provided from monies which he had borrowed from friends and relations, including Goyas and Ms Sony Haroon, the sole principal of Sony Sadaf Haroon, the firm of solicitors instructed on behalf of the Claimants in the Claim. There can be no question, therefore, that Raza is entitled to a substantial proportion of the beneficial interest in that property. Despite this, I was informed that the Claimants nonetheless claimed an interest in the balance between the two sums – amounting to £31,000 – and presumably any costs and disbursements paid towards the purchase.
- 125 However, on 23 November 2020, I was informed that 14 Trinity Avenue was transferred by Raza into the joint names of himself and his wife. I was not provided with any information beyond that fact. I had already expressed the view, at the commencement of the trial, that I was not going to make any determinations in relation to a Third-Party Property and that continues to remain my view. Of course, at the time, neither the Claimants nor counsel knew that Trinity Avenue was in the joint names of Raza and his wife. While on the basis of the material placed before me, it is difficult to see what better right she may have to be entitled to any beneficial interest in the property (other than in respect of any interest which Raza has), it is correct that she should have every right to argue otherwise.
- 126 Mr Darton suggested that I might wish to make her a party to the Claim so she could be involved in the taking of the account. Plainly, if the court found that the balance belonged to Raza or to her and Raza together (as opposed to any of the Claimants), it would determine the matter once and for all, without the need for the Claimants to issue fresh proceedings to determine the beneficial entitlement of the parties and Raza’s wife to that property.

127 I can see the wisdom of Mr Darton's suggestion. However, I take the view that this would not be appropriate for several reasons, principally these: first, the procedure for taking an account is summary in nature. It will not usually, therefore, involve the court in making detailed orders for, for example, disclosure or hearing oral evidence, though, of course, here is no reason why the court should not make such orders in an appropriate case; second, the taking of the account is likely to be significantly more time-consuming and expensive to her than having her position determined by a separate claim. The account will deal with all Raza's Properties whereas the separate claim would only need to deal with 14 Trinity Avenue, in respect of which the only dispute which would arise is how the sum of £31,000 and disbursements were paid, and could even be brought in the County Court; third, once the account was taken, the position concerning 14 Trinity Avenue could become certain, thus avoiding the possibility of a fresh claim having to be brought against her; and, finally, the scope of the account is limited: it would largely decide what interest (if any) each of the parties have in Raza's Properties, rather dealing with the substantive issues arising between them, such as whether she is entitled to have the benefit of any protection if she has given money or money's worth for the transfer of the property in her name. That said, I will not stand in the way of Mr Darton's suggestion if Mr Strutt agrees to it as well.

2, Margaret Street

128 Raza does not claim to be entitled to any share in 2 Margaret Street. However, he was collecting the rent to that property at various times until he handed over the keys of the property to Rufjan, which the Claimants allege was on 6 January 2018. The Claimants have been collecting the rent for the property since that

date¹⁶. However, they maintain that they have not had an account of the rents which he collected since Barik died on 19 August 2010 until the date when the keys to the property were handed over and seek an account of those rents for that period.

129 There is no issue that Raza accounted for the rents to 2 Margaret Street to his parents until his Barik died in 2010. However, the Claimants claim that he has failed to do so since that date until 6 January 2018.

130 The Claimants do not set out in their pleadings or written evidence when Raza first started accounting for the rents. Raza's own evidence was inadequate on the point. He stated that he had accounted for all the rents and stopped collecting the rents after the keys were handed to Rufjan on 6 January 2018. When he was asked about how he had accounted for the rent to Rufjan, he initially claimed that it was in cash. When he was asked whether he did so in cash on every occasion, he stated that he would need to "check his records" to make sure – records which he appeared to accept were never disclosed to the Claimants. He also appeared, disingenuously, to suggest that he thought the Claim was all about who "owned the properties". He is not an unintelligent person. He well knew that this case was at least about accounting for rent which did not belong to him – as is clear from the manner in which the Claim was initially formulated by the Claimants when it was brought as a Part 8 claim and the witness statement of Anawar dated 12 September 2018 in support thereof.

131 I am unable to accept that Raza accounted for the rent to Rufjan as he alleged following the death of Barik. That this is so is also clear

¹⁶ In his closing submissions, Mr Darton suggested that the date was 6 July 2018. I cannot see any reference to that date in my notes. In any event, the Schedule expressly states that the date was 6 January 2018. Although at para 4 of her witness statement, Rufjan states that, as at 5 June 2018, the date of the making of that statement, Raza "has continued to fail to account for the rents", she appears from what she then goes on to say ("collected on behalf of the family") to be referring to the rents in respect of the Joint Properties, rather than 2 Margaret Street.

from paragraph 2 of Rufjan's witness statement dated 5 May 2018 in which she expressly states that. It is plain to me that he should account for the rents for that property from the date of his death until Rufjan's death on 12 November 2019. It is common ground between the parties that the accounting for the rent from that date for this and the other properties – as to which, see paragraph 132, below – does not give rise to any limitation issues. Indeed, it is accepted by Mr Strutt that no part of the Claim gives rise to such issues.

Account of rent for other properties

132 Raza accepts that he has not accounted for rent in respect of any of the Joint Properties. He says that this was because he owned those properties beneficially, to the exclusion of the Claimants. On the basis that I have found that assertion to be incorrect, he should account for the rent which has received in respect of the properties. The same has to apply to any property which is in his sole name, to the extent that I have found that the Claimants may be entitled to a beneficial interest in them.

XI **RAZA'S COUNTERCLAIM**

133 Given the determinations I have made, and the reasons for them, Raza's counterclaim must be dismissed.

XII **SUMMARY OF ORDERS I MAKE IN THESE PROCEEDINGS**

134 The substantive orders I make in the Claim arising from this judgment are these:

134.1 Other than 1 Whistlets Close, a declaration that the Joint Properties are beneficially held in the shares set out in the TR1s;

- 134.2 A declaration that 1 Whistlets Close is held by Anawar and Raza in equal shares;
- 134.3 A declaration that Raza's Properties are beneficially held by the parties according to the contributions which they have made, including any contributions from the income or capital of any family property or any other property in which they have or had a beneficial interest; The taking of an account to determine the respective interest of the parties, based on the declaration referred to in paragraph 134.3, above;
- 134.4 The taking of an account of the rent and other payments which Raza has received in respect of the Joint Properties and any rental or other income received in respect of Raza's properties (so far they are attributable to any beneficial interest to which the Claimants are entitled to those properties) from Barik's death to the date of the taking of the account (credit being given to Raza in respect of any amount due to him, such as in relation to any mortgage payments made by him and any improvements to any property carried out by him);
- 134.5 The payment of any amount which is found due to the Claimants from Raza arising from the taking of the aforementioned accounts;
- 134.6 The dismissal of the counterclaim.
- 135 In the same way as in the Business and Property Courts of England and Wales, the taking of the account would be undertaken by a Chancery Master, in the present case, it should be taken by a specialist Chancery District Judge, i.e. a District Judge who is

authorised to do Chancery work in the Business and Property Courts in Birmingham.

136 I will hear submissions on whether I should make any orders for sale of any of the Disputed Properties and whether and, if so, when orders for vacant possession relating to those properties should be given.

XIII MATTERS ARISING

137 Issues relating to costs and any other matter arising from this judgment (such as directions relating to the taking of the account) may be dealt with when judgment is handed down. I will ask my clerk to list the matter for a hearing, with an estimated length of half a day. It may be necessary for the hearing to take place remotely.

138 It would also be helpful for the skeleton argument to include the parties' submission on any issue which arises.

139 In due course, it will be necessary for counsel to lodge an approved minute of an order to reflect the orders I have made. However, that can await the further hearing when I hope it will be possible for all outstanding issues to be determined.

XIV ACKNOWLEDGMENTS

140 I again express my deep and sincere gratitude to counsel, both for the manner of the presentation of their clients' case and for their cooperation throughout the trial.