Neutral Citation Number: **[2023] EWHC 2631 (Ch)**

Claim No: **PT-2021-00456**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE (ChD)

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

Date: 20 October 2023

Before:

MR HUGH SIMS KC (sitting as a Deputy Judge of the High Court)

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Between:

MRS KULJINDER KAUR THANDI **Claimant**

- and –

MR TRIPATPAL SAGGU **Defendant**

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- -

The Claimant appearing in person (assisted by a McKenzie Friend)
Mr Jeff Hardman (instructed by **Mills Chody LLP**) for the **Defendant**

Hearing dates: 4-7 October 2023

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APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was handed down remotely with circulation to the parties or their representatives by email. It will also be released to the National Archives for publication. The date and time for hand-down is deemed to be 10:30am on 20 October 2023.

MR HUGH SIMS KC:

Introduction

1. The subject of this trial is a mixed-use property located on Northend Road in Dartford, Kent, called 7 Parkside Parade ("7 Parkside Parade" or the "property")[1]. The main issue arising is whether or not there was a valid contract for sale of 7 Parkside Parade made in 2018. There is tension in the law of real property between legal certainty, represented by the formality requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 ("the 1989 Act"), and the application of equitable doctrines, in particular, that of proprietary estoppel and constructive trusts. An issue in this case is how that tension should be resolved where at least some of the relief sought in equity closely resembles enforcement of an invalid contract.

2. The claimant, Mrs Thandi, is the freehold registered proprietor of 7 Parkside Parade. The defendant, Mr Saggu, is managing director of a construction company called Earlswood Interiors Limited ("Earlswood Interiors"), which operated from premises situated at Unit 20 Mulberry Court, Bourne Road, Crayford, Kent DA1 4BF. In 2017 Earlswood Interiors carried out construction work at Mrs Thandi's home, called 8 Heather Drive, also located in Dartford, Kent. Following substantial completion of the works an issue arose as to whether or not Mrs Thandi still owed Earlswood Interiors some money, principally for additional works to that originally quoted for. Mr Saggu continued to chase Mrs Thandi for payment in the latter part of 2017 and the early part of 2018. In early 2018 Mrs Thandi and Mr Saggu had discussions where they agreed Mr Saggu would purchase 7 Parkside Parade from Mrs Thandi for the sum of £270,000. Mr Saggu alleges this was a binding contract and complains Mrs Thandi withdrew from the sale and this was a breach of contract by her. This is denied by Mrs Thandi who says the agreement was an oral one, impliedly subject to contract and did not comply with section 2. Mrs Thandi also argues that her signatures to the relevant documents were procured as a result of undue influence and/or under duress.

3. Mrs Thandi is the claimant as Mr Saggu had registered a unilateral notice against the registered title to protect his alleged interest in the property and Mrs Thandi issued proceedings on 19 May 2021 to have the notice removed so she could carry out a refinancing exercise with MT Finance. On her application for an interim injunction heard by Mr Justice Adam Johnson on 2 September 2021 (see [2021] EWHC 2842 (Ch)) an order was made requiring Mr Saggu to cancel the notice on the basis of undertakings given by Mrs Thandi. These were intended to enable Mrs Thandi to refinance, but also to provide some protection to Mr Saggu, in relation to the property, in the event that his claimed interest in the property was successful. The undertakings granted by the claimant included

[1] The property is sometimes referred to as 7 Parkside Parade and sometimes 5-7 Parkside Parade – nothing turns on that and no-one suggested at trial this was anything other than a different description for the same property.

that she would not dispose of any interest in either the property or her then residence, 8 Heather Drive, until the conclusion of the proceedings or further court order. Mrs Thandi also owns another property at 11 Chaucer Way, Dartford DA1 5JU, but the undertaking did not extend to that property.

4. Mr Saggu subsequently issued a counterclaim seeking, amongst other things, specific performance of the contract for sale, alternatively damages. In the counterclaim Mr Saggu claims, if specific performance is not granted, damages, alternatively restitution, for the sum of: (i) £15,000 based on a waiver of fees said to be owing by Mrs Thandi to Earlswood Interiors (and subsequently assigned to Mr Saggu); (ii) £5,000 paid by Mr Saggu to Mrs Thandi by way of deposit; (iii) £2300 for reimbursement of legal costs on the aborted sale; and (iv) the difference between the sale price and the market value of the property. The market value of the property has recently been assessed by a jointly instructed expert, Mr Dunsin, as being £345,000, an uplift of £75,000 on the price of £270,000. He also gives an opinion that the property was worth the same figure as at July 2018.

5. Subject to one significant qualification, the main issues for determination by me arising from the parties' statements of case are:

   (1) what was agreed by Mrs Thandi and Mr Saggu in relation to the sale of 7 Parkside Parade;
   (2) whether the agreement satisfied the formality requirements of section 2(1) of the 1989 Act;
   (3) whether or not any agreement was impliedly "subject to contract" such that it was not immediately binding and enforceable;
   (4) whether the agreement was in other ways not binding or enforceable;
   (5) whether that agreement was entered into under undue influence and/or duress;
   (6) whether that agreement was (i) breached, (ii) was terminated or abandoned/rescinded, (ii) should be specifically performed, or (iii) damages awarded in lieu; or
   (7) if there was no valid or enforceable agreement, whether the property should be transferred or some other lesser relief should be granted either (i) in satisfaction of an equity arising under the doctrine of proprietary estoppel or (ii) pursuant to a constructive trust; or
   (8) whether Mrs Thandi should be required to make a payment under the common law and/or in restitution in favour of Mr Saggu for any monies transferred under the invalid agreement.

6. The qualification concerns the order sought for transfer of the property, or specific performance. On the first day of trial I was informed that the lender, MT Finance, had taken steps to enforce its security over 8 Heather Drive and 7 Parkside Parade. 8 Heather Drive is now under offer and/or contracts have been exchanged. In relation to 7 Parkside Parade completion was due to take place

on 16 October 2023 with an unrelated third party. The Defendant explained to me that they understood there was unlikely to be any equity available from the sale, due to the charge in place from MT Finance, but I was not provided with any documentation to enable the precise position to be identified. In these circumstances, the issue of whether or not I should grant specific performance for the sale of 7 Parkside Parade to Mr Saggu has been overtaken by events, and no longer strictly arises, though it may have some significance for costs and I shall briefly address it below. The claim based on a constructive trust also falls away, and was not pursued in closing. The proprietary estoppel remains of potential relevance, however, in the event that I conclude the agreement failed to satisfy the formality requirements of section 2(1) of the 1989 Act. Any conclusions I reach on it may also be significant for costs purposes, which by the time of this judgment are significantly greater than the sums now in issue.

My approach to the evidence and the witnesses

7. Judges will usually assess the reliability of witnesses against the contemporaneous documents. The fallibility of human memory is now well recognised. In commercial cases this may result in little, if any, reliance being placed on witnesses' recollections of what was said in meetings and conversations, and instead findings of fact being based on inferences drawn from the documentary evidence and known or probable facts: see *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), Leggatt J (as he was then) at [15] to [22]. This does not mean however that no reliance is to be placed on witness testimony in all business and property disputes, or that *Gestmin* lays down any general principle for the assessment of evidence: see *Martin v Kogan* [2019] EWCA Civ 1645 at [88]. The court should, nevertheless, ordinarily, start with and pay particular regard both to the documents and to motive when assessing disputes of fact. This is emphasised in the oft-cited statement of Robert Goff LJ in *The Ocean Frost* [1985] Lloyd's Rep 1, at 57 where he said: "*It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence … reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth*." These observations have since been applied in a number of cases: see *R (Bancoult No 3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UKSC 3 at [100] to [103]. I also have in mind the recent guidance given by Males LJ in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 at [48] to the effect that these observations concerning the use of contemporaneous documents as the best guide to ascertaining the truth may apply with even greater force to a party's internal documents, such as emails and instant messaging.

8. This case presents some unusual challenges in relation to reliance on the documentary record because Mrs Thandi's ability to read and write English is a fact in issue in the case. Mrs Thandi claims not to have understood some of the

key documents in the case which she signed, she says, under pressure. English is not Mrs Thandi's first language and she is not wholly fluent in English. She was born in India and her first language is Punjabi (also sometimes spelt, Panjabi). She came to England in or about 2003, when she was in her early twenties, to reside with her husband at 8 Heather Drive. She has since had two children. Her husband died in 2014. At the time of the events in question in this case she was a single parent working part time at a bakery. She derived most of her income from rent from 7 Parkside Parade and 11 Chaucer Way. In her first statement made in these proceedings, in support of her application for an injunction, Mrs Thandi stated, at paragraph 4: "*I speak Basic English, but I would not feel comfortable giving evidence in English; I also do not read or write any English.*" This statement, and the other statements relied on by Mrs Thandi for trial, were created with the assistance of a translator. For the purposes of making these statements her solicitors attended on her and, with the assistance of an interpreter, created a first draft statement in English which was then translated into Punjabi. Final statements were then prepared in Punjabi, which Mrs Thandi is fluent in speaking, reading and writing. This statement, and other statements relied on for trial, were then translated back into English, and, as verified by the translator, mirrored the content of her Punjabi language statement.

9. Mrs Thandi gave oral evidence at trial using the assistance of an interpreter. At times she was able to give her evidence in English, and to listen to and respond to questions, without the need of the interpreter. At other times she used the services of the translator. Mr Hardman, counsel for Mr Saggu, submitted that it was noticeable that Mrs Thandi gave her evidence in Punjabi when she was asked questions about her English language abilities but at other times demonstrated that she could read and speak in English. It was submitted that Mrs Thandi could read and speak in English.

10. In assessing Mrs Thandi's evidence I have reminded myself of the relevant passages in the Equal Treatment Bench Book concerning communication with witnesses from different cultures and the use of language interpreters. These emphasise that a witness should not be required to give all their evidence via an interpreter, and the manner in which evidence is given may not be the same as a person whose first language is English. In particular, it is suggested that certain speakers of Asiatic languages may tend to set out the background to the matter before coming to the main part of their answer. I bear all those matters in mind when assessing Mrs Thandi's evidence.

11. I conclude that what was said in Mrs Thandi's first statement about her lack of English language abilities is not accurate. It was wrong to suggest she does not "*read or write <u>any</u> English*". During the course of her oral evidence it was clear that Mrs Thandi could read some English and indeed she referred to certain passages in her witness statement and pointed out what she said in them when responding to certain questions without the aid of an interpreter. It is also

apparent from the documentary record that Mrs Thandi sent some text and WhatsApp messages which were sent in her name and on her mobile telephone. Mrs Thandi ultimately accepted in her oral evidence that she could read and write some English, and what she had said in her first statement was not entirely accurate. She emphasised however that there was nevertheless some English she did not understand. In reading and responding to written communications she said she was regularly assisted by her children, and others who understood English better than her.

12. I accept that there are likely to have been occasions when Mrs Thandi was assisted by others in her written communications, in sending emails and letters. I conclude however that this process is likely to have resulted in her having a reasonably good, albeit not perfect, understanding of those communications. In relation to instant messages she sent on her mobile telephone, in particular, I conclude she is likely to have sent those herself without any great assistance from others, and her ability to understand and converse in day-to-day English had, by the time of the events in question, become reasonably good. She had by this time been living in England for over 15 years and she struck me as a reasonably intelligent person. Moreover, when other documents were prepared in her name I conclude that, in the main, they are likely to have represented what she intended to say at the time. I consider it inherently unlikely, and improbable, that Mrs Thandi would have concluded it was sensible for her to be routinely sending messages in her name if they did not reflect what she understood and intended to be sent at the time. I conclude she was capable of understanding what was being sent and received, even if this involved help from others. This is particularly so for documents she signed.

13. In reaching those conclusions as regards Mrs Thandi's English language abilities I place principal reliance on my assessment of Mrs Thandi's evidence in the witness box and my observations of her during the course of trial, including observing her asking many questions of witnesses in English and, at times, via the interpreter. Those conclusions are also broadly consistent with other third parties who have interacted with her. I mention three of those here.

14. The first is a letter written by solicitors called Chancellors Lea Brewer LLP ("CLB"), based in Bexleyheath, Kent, who Mrs Thandi visited on 27 June 2018 to discuss the sale of the property to Mr Saggu. In that letter it is recorded as follows:

"As mentioned above, my costs estimate does not cover the costs of translation . When you attended my offices, you were accompanied by Mrs Saggu who was there to assist you as an interpreter.

I hope you do not mind me saying that my impression was that you had a good grasp of English but that, as is natural for anyone when dealing with lawyers, you find the legal language and process intimidating.

For that reason, I think it is sensible to have someone who can act as an interpreter, especially as this is a complex transaction both in legal terms and factually.

Mrs Saggu is the buyer's mother and therefore is not independent (as she stated herself). I am not saying that she would not try to help you in a fair and proper way but you should consider whether you need the assistance of someone else .”

As I have mentioned I found Mrs Thandi to have a reasonably good grasp of English, though there were times where the use of an interpreter was of some assistance in enabling Mrs Thandi to communicate fully.

15. The second is a letter from Dartford Legal Services Limited, dated 19 October 2018. This was a letter written on Mrs Thandi's behalf to the Land Registry, in relation to the property and in opposition to Mr Saggu's unilateral notice. In it they refer to Mrs Thandi being an Indian National who does not understand English Law and whose spoken English is not fluent. I agree with those observations. I have no doubt that Mrs Thandi is not well versed in English law and her spoken English is not fluent. But she was able to make herself understood in English for most of the time when asking and responding to questions during trial. I do not consider she was shy in persisting when she might feel that others did not understand her properly either.

16. The third is the evidence of Mr Saggu, Mrs Saggu and Mr Bajwa, each of whom had communications with Mrs Thandi. I will return to make some general observations about their oral evidence below, but it is apparent from the documentary record that they sent, or provided, all documents concerning the construction works at 8 Heather Drive to Mrs Thandi in English. At no time did she tell them, or they consider, that she was unable to understand those documents, such as the quotations. In addition, they explained in their evidence they spoke to her in English and they did not have any difficulties in communicating in English with her. I accept that evidence, though I bear in mind that at times the parties and their witnesses did not always speak in English and would also sometimes speak in Punjabi.

17. In these circumstances, and whilst I must approach the documentary record with caution as regards what it discloses in relation to what Mrs Thandi understood and agreed, I am satisfied when written communications took place in this case between Mrs Thandi, on the one hand, and Mr Saggu and Mr Bajwa on the other, that in general terms Mrs Thandi is likely to have understood most, if not all, of their contents, whether because she was able to read and write them herself without any assistance, or with assistance from others, such as her son and daughter. When making findings of fact below I have particular regard to

written communications internal to Mrs Thandi, instant messages, and to documents which Mrs Thandi accepts are accurate.

18. Before I move on to other witnesses I should also record some brief overall observations as regards Mrs Thandi's reliability as a witness. Having heard her evidence I have concluded I need to treat with caution the oral evidence she gave. I conclude she was defensive in aspects of her oral evidence and tended to emphasise aspects of her case which she perceived would be beneficial to her, rather than answering the question asked of her. She did make some suitable concessions, which is to her credit. Her evidence as to her interactions with solicitors she was put in touch with, to progress the sale of the property to Mr Saggu, however, are flatly inconsistent with the documentary record. Those documents, which I shall return to below, show that Mrs Thandi's recollection of events is not entirely reliable, and I should be slow to accept Mrs Thandi's evidence where it is not consistent with the contemporaneous documents.

19. Mrs Thandi also called Mr Joseph Asombang as a witness. He had produced a statement for her, dated 21 June 2021, in the context of the injunction application. He also attended at trial to give evidence, and to assist Mrs Thandi as a McKenzie Friend, by reason of the fact that Mrs Thandi's solicitors ceased to act for her on 26 September 2023. This occurred due to Mrs Thandi's inability to afford their fees. At the start of trial, I ruled that in the exceptional circumstances of the case, having regard to the lack of legal representation and the dispute concerning Mrs Thandi's English language abilities, Mr Asombang could also assist Mrs Thandi in representing her at trial. This was not opposed by Mr Saggu. I therefore granted Mr Asombang rights of audience under sections 27 and 28 of the Courts and Legal Services Act 1990, though on occasions Mrs Thandi also directly addressed me and participated alongside Mr Asombang. There was little of any controversy in the evidence of Mr Asombang, since his statement was mainly concerned with events and communications which he assisted Mrs Thandi with after the dispute in this case arose. To the extent any of his evidence was controversial I shall address it when I make further findings on the facts.

20. Mr Saggu gave oral evidence concerning his interactions with Mrs Thandi in a generally straightforward manner. There were three aspects of his evidence however which give me cause for some caution as to the reliability of his evidence. The first point is that he was at times defensive, and in particular he sought to distance himself from communications sent on behalf of Mrs Thandi relating to works carried out at 8 Heather Drive, concerning a statutory demand served on her and Earlswood Maintenance, which he was involved in. Those matters tend to suggest Mr Saggu either did not always pay attention to details, and rushed into things, or that he was willing to present information which he knew not to be accurate because it suited him to do so at the time. Whichever is the case this impacts on Mr Saggu's reliability as a witness. Secondly, his witness statement was shown in oral evidence to be not an entirely reliable

record, as illustrated by a passage in his witness statement concerning the instructions to his solicitors in relation to the sale of the property, which Mr Saggu accepted was not accurate when measured against the documentary record. Thirdly, and which I will come back to, I think he has a tendency to rush into things and does not always consider the detail carefully. This also impacts on his reliability as a witness.

21. Mrs Surinder Kaur Saggu is Mr Saggu's mother and she was called as a witness to the signing of the sale contract documents signed by Mrs Thandi in 2018 and relied on by Mr Saggu. I found her in general to be a straightforward witness concerning the events she was a witness to. Mrs Saggu did have a lack of recall in relation to dates and times. She was keen to emphasise her age in defence of her lack of ability to recall dates and times, albeit this characteristic is not restricted to those who are more elderly, and Mrs Saggu is not particularly elderly, being in her sixties, and she struck me as an intelligent woman. She was also at times, understandably, prone to emphasise aspects which supported her son's position, but in general, and subject to some qualifications, I conclude I can accept her evidence where it is consistent, or not inconsistent, with the contemporaneous documents.

22. Mr Rashpal Bajwa, who was a manager working for Earlswood Interiors was also in my judgment a generally straightforward witness who was generally seeking to tell the truth. There were times in his evidence when he had a hesitancy to accept things (such as whether a snagging list was in his handwriting) and I conclude this should result in me treating his evidence with some caution. There were also times during his evidence where he was slow to respond, or appeared to be making points which might serve to assist Mr Saggu. There were also times when he stated he could not recall matters. When he did so I am satisfied he genuinely could not recall the events in question.

23. In general, therefore, where there was a conflict of evidence between that of Mr Saggu, and his witnesses, and Mrs Thandi, I prefer the evidence of Mr Saggu and his witnesses. However, I do not accept the entirety of the evidence of Mr Saggu, or his witnesses, in particular where it is inconsistent with the contemporaneous documents. As explained further below that documentary record sheds a different light on the case than advanced by either side.

The facts

24. Mrs Thandi became the registered proprietor of 7 Parkside Parade on 20 October 2015. The value stated as at that date was £350,000. It is an end of terrace, two-storey building with retail premises on the ground floor and residential accommodation on the first floor.

25. By 2017 Mrs Thandi was interested in having works carried out at her home at 8 Heather Drive. According to her solicitors' letter of 19 October 2018 her

central heating boiler had broken down and the house required new windows. Mrs Thandi visited Bathroom World UK Limited to make some purchases to undertake repairs to her house. Mr Saggu's company, Earlswood Interiors, shared the same premises as Bathroom World, at Unit 20 Mulberry Court. Bathroom World was Mr Saggu's brother's business. Mr Saggu was at Unit 20 when Mrs Thandi visited and he indicated his company could assist with renovation work. Mr Saggu visited 8 Heather Drive to discuss the works with Mrs Thandi and subsequently provided her with a quotation for the proposed renovation works, on 22 February 2017, in the total sum of £56,560 (inclusive of VAT – the sums I refer to below in relation to the renovation are all inclusive of VAT). A revised, final quotation, was issued on 29 March 2017, following a visit the day before, in the total sum of £56,500. In the notes to this quotation, which I shall also refer to below as the original quotation, as it was the first quotation covering the renovation works, it stated the works were due to start on 18 April 2017 and would take approximately 10 weeks to complete. Mrs Thandi was happy with the quotation and the works commenced in or about April 2017. They took considerably longer than originally forecast, with works only substantially completing in October 2017. Given that these works provide relevant context to the agreements which came to be reached in 2018 concerning the sale of 9 Parkside Parade it is necessary to consider them further below.

26. Earlswood Interiors' quotation did not cover any external windows, and in this respect Mrs Thandi entered into a separate contract, initially with a company called Anglian Windows, to whom she paid a deposit on 20 March 2017. She subsequently decided to change that contract to another company called Star Windows and Glazing Limited, which company Mr Asombang worked for at the time.

27. As is not uncommon, after works had commenced additional or variation works were discussed and agreed. This resulted in Earlswood Interiors issuing Mrs Thandi with additional quotations in relation to those variations.

28. On 19 May 2017, Earlswood Interiors issued two quotations to Mrs Thandi in relation to variations. The first was entitled an "*En Suite Upgrade*", which referred to "*upgraded tiles*" shown to Mrs Thandi on a recent visit and to "*upgrade the sanitaryware goods to the new ranges selected in the catalogue at the house*". The additional sum claimed was £1500. Mrs Thandi's oral evidence was that this was a mistake on the part of Earlswood Interiors, perhaps it related to another property, and this should have been covered in the original quotation issued to her in March 2017. However, there is no evidence Mrs Thandi complained of this at the time, and the document clearly is referring to 8 Heather Drive. I find that this quotation was provided to Mrs Thandi and accepted by her and the work was carried out. I also find that the second quotation, also issued on 19 May 2017, and for the "*Bathroom Suite Upgrade*", also referring to upgraded tiles and sanitaryware goods, and in the sum of £2,000 was issued to Mrs Thandi, accepted by her at the time, and the work was carried out.

29. On 30 May 2017, a further quotation was issued referring to "*Chimney Works & Daughters Sliding Wardrobe*", in the total sum of £11,200. Mrs Thandi accepts this quotation was issued and that she agreed to those additional works being carried out and they were carried out.

30. On 20 June 2017, Earlswood Interiors provided to Mrs Thandi a quotation for "*Kitchen Upgrade*" for £10,300.16. Whilst Mrs Thandi originally challenged this quotation in her written evidence, in oral evidence she accepted this was a variation and additional to the original quotation.

31. On the same day Earlswood Interiors provided to Mrs Thandi a quotation referring to "*Electrical Socket & Switches Upgrade*" in the total sum of £500. Mrs Thandi stated in her evidence that the original quotation included all such works. Under the heading "*Electrical Works*" in the original quotation it is stated "*Electric rewire complete house including spotlights, new twin & earth cables and a new consumer unit. Also to look into the front gate electrical issue as agreed.*" In my judgment this point is ambiguous and it is not clear whether the original quotation covered those works. However, I find that Mrs Thandi accepted the quotation at the time and the works proceeded without any complaint from her at the time.

32. On 7 July 2017, Earlswood Interiors provided to Mrs Thandi a quotation entitled "*Ground Floor New Ceiling Charge*" to repair and replaster a ceiling for £1,000. Mrs Thandi took issue with this on the basis that the original quotation included plastering, however this quotation expressly provides that no extra plastering charge is being applied, and instead the additional works are due to the need to take off the old ceiling due to seeing damage to it prior to works being commenced. I find this quote was accepted and the works were carried out.

33. On 8 July 2017, Earlswood Interiors provided to Mrs Thandi a quotation for the supply and installation of "*Upstairs Doors*" at a cost of £900. I understood Mrs Thandi to accept in oral evidence these works were agreed and in any event I find that this quote was accepted and the works were carried out.

34. On 20 July 2017, Earlswood Interiors provided to Mrs Thandi a quotation entitled "*Archway Charge*" to change the configuration of a doorway from a square to an arch at a cost of £500. Whilst initially this was disputed by her, Mrs Thandi accepted in her oral evidence that this quote was accepted and the works were carried out.

35. On the same day, Earlswood Interiors provided to Mrs Thandi two quotations for "*Extra Kitchen Units*" and *"Worktop for Extra Kitchen Units"*, for the supply and installation of extra kitchen units for £600 and a quartz worktop over those units in the sum of £1000. Whilst Mrs Thandi disputed that these should have been treated as extras, I find that these quotes were accepted and the works

were carried out. There is a text message referring to the quartz worktop, with confirmation from Mrs Thandi that she agreed to this.

36. The total sum of the quotations which were issued and accepted by Mrs Thandi therefore is just over £86,000.

37. There is no dispute that Mrs Thandi paid £71,000 between 28 March 2017 and 7 July 2017. Mrs Thandi originally claimed that this was against a total balance of £66,760, since in her written evidence she only accepted that the additional quotation dated 30 May 2017 referring to "*Chimney Works & Daughters Sliding Wardrobe*", in the total sum of £11,200, was justified in addition to the original quotation in the sum of £56,560. In fact the final original quotation was for £56,500, and in her oral evidence Mrs Thandi accepted variations going beyond the additional quotation issued on 30 May 2017.

38. In summary, by July 2017 quotations had been issued for just over £86,000 and £71,000 had been paid. The works were not completed until September 2017, but Mrs Thandi complained the works were still not properly completed, and she refused to pay any further monies. Mr Saggu and Mr Bajwa gave evidence to the effect that the works were substantially complete and that Mrs Thandi was broadly happy with the work but that she avoided or failed to respond to their requests for payment. I find that by the end of 2017 and into early 2018 Mrs Thandi knew that Earlswood Interiors were looking to payment from her for an additional £15,000 and that she had concluded she was likely to have to pay this to them, subject to the completion of any snagging works. In her witness statement, Mrs Thandi referred to being put under pressure by Mr Saggu and Mr Bajwa to pay the sum of £25,000. I am satisfied that Mr Saggu and Mr Bajwa demanded monies of this order later in 2018, but I have concluded Mrs Thandi has mistakenly conflated those demands with the demands which were made for payment before April 2018, and which were in the lesser sum of £15,000. Whilst I do not doubt that Mrs Thandi felt under pressure to make those payments, I do not find there was any illegitimate or unwarranted pressure on the part of Earlswood Interiors but instead that Mrs Thandi felt under financial pressure, not only to pay Mr Saggu, but also to fund expenses concerning her children's activities, and in relation to the external window work carried out by Star Windows and Glazing.

39. I reject any arguments by Mrs Thandi that £15,000 was not due and owing because she paid Mr Bajwa the sum of £10,000 in cash. Mrs Thandi contested the £15,000 on the basis that the total sum of £86,000 claimed for the works wrongly appeared to include a sum for the windows supplied by Star Windows and Glazing, whereas in fact it did not. I also reject her contention that £10,000 was paid in cash to Mr Bajwa on account of the windows which was due to be paid to Star Windows and Glazing. Mr Bajwa was able to show and I accept that any cash sums paid to him were included in the sum of £71,000.

40. It was in this context that Mrs Thandi and Mr Saggu had discussions about the potential sale of her property at 7 Parkside Parade to Mr Saggu in April 2018. Mr Saggu's evidence is that during one of the conversations he had with Mrs Thandi about her finances she mentioned to him that she had a shop at 5-7 Parkside Parade and that she was interested in selling it and that she wanted to find someone who could move fast on the purchase. He asked her how much she wanted for it and they agreed on a sale price of £270,000. I accept that evidence which is similar in terms to the evidence of Mrs Thandi. In her evidence she said that the sum of £270,000 was agreed and a 10% deposit was to be paid on exchange of contracts. She refers to a contemporaneous handwritten note which she says was made by Mrs Saggu at a meeting which took place at Mr Saggu's house on or about 1 April 2018, and which she says reflects what was agreed orally. Mrs Saggu denied the note was made by her. The handwritten note is undated and is in the following terms:

"*Shop address:-*
5-7 Parkside Parade
Northend Rd
Dartford
DA1 4RA

Lodis [sic] – semi commercial.
Flat above.

Selling price £270,000.000

Mr Saggu has gree [sic] £5000.00

We make [word "verbal" inserted here] agreement – please read.

We quick deal (sale) Mr [s crossed out] Saggu can give another £5000.00"

41. There are then some details about solicitors and after that in brackets at the bottom is written:

"*(270k x 10% = 27k exchang 5 [tick added] 5 in 2 weeks and 17 in 4 week*"

42. Mrs Saggu had no recollection of any meeting at her home at the beginning of April 2018, and as I have noted above denied writing the note. Mr Asombang, on behalf of Mrs Thandi, asked her to copy out the note in her own handwriting whilst she was giving evidence. I was provided with a copy of this in closing and he made submissions in closing to me that I could conclude from a reading of the document Mrs Saggu created in the witness box that the writing on the handwritten note was her handwriting, despite Mrs Saggu's best efforts to alter her handwriting style in the witness box. I am unable to so conclude from reading the document created by Mrs Saggu and comparing it with the

handwritten note she was asked to replicate in the witness box. In my judgment the process carried out by Mr Asombang is not a safe one. If handwriting analysis is to be undertaken it should be carried out by reference to documents which were created at about the time of the document which is being scrutinised. It should not be carried out in a witness box. I did not object to this exercise being carried out as Mr Hardman took no objection at the time, but in my view it is not an exercise to be encouraged. Save perhaps in a very clear case, where handwriting comparison or analysis is required such analysis will usually benefit from an expert opinion. I was not provided with handwriting expert opinion. Ultimately however the question of who created the early April 2018 handwritten note is something of a distraction having regard to the evidence of Mrs Thandi and Mr Saggu. I have already recorded Mrs Thandi's evidence above, which was to the effect that what was stated in the note was an accurate reflection of what had been agreed by her and Mr Saggu at an early stage.

43. As for Mr Saggu, his witness statement for trial stated at paragraphs 27 and 28 as follows:

"I have been shown an undated handwritten document that outlines the terms of the sale. I recall that this handwritten document was drawn up before the first official agreement was signed. It is my recollection that this document was no more than a heads of terms that was drawn up quickly over conversation at my house (where I lived with my mother), and that it was superseded by agreement signed on 22 April 2018.

"I do not recognise the majority of the handwriting on this document as either my own or mothers, so I assume that it was the Claimant herself who wrote this document, as we were the only three in attendance on the day the agreement to sell Parkside was reached."

44. It is therefore apparent that, whilst the author is in issue, both Mrs Thandi and Mr Saggu are in agreement that the note records what was agreed in early April 2018. The difference between them lies in the fact that Mr Saggu says it was a "heads of terms" type document which was superseded by the three signed letters (the first of which is referred to by him as the "first official agreement"), whereas Mrs Thandi contends it was never overtaken by those letters, which were to record loans being made to her. There are difficulties with both those cases.

45. The principal difficulty with Mrs Thandi's case is that she signed the three letters (referred to in paragraph 47 and following below). I am satisfied she appreciated the agreement involved a mechanism by which Earlswood Interiors/Mr Saggu would be paid for the outstanding debt. A difficulty for Mr Saggu's case is that the note itself cannot all have been made at a meeting which preceded the three letters. I so conclude because it has details on it, such as a tick next to the first "5" indicating this had been paid. In addition, the sentence "We make [word "verbal inserted here] agreement – please read" might suggest

there was an agreement in writing – there would be nothing to read if not. This may suggest the word "verbal" was added. However, it is also possible the "please read" reference is recording a reminder or direction to Mrs Thandi to read out what had been agreed, as recorded on this note, even if only agreed orally, when instructing solicitors. These points were not explored in evidence with Mrs Thandi or Mr Saggu. This is because neither Mrs Thandi nor Mr Saggu suggested that the terms did not reflect what was agreed in early April 2018. I should be slow to reject this as regards what it records in terms of the key terms where this is their common position, and the point was not explored to the contrary in cross-examination. In addition, on one interpretation this is how it could be read (putting to one side some immaterial additions or alterations which may have been made to it later). As appears from the documents which follow this note, the terms it records in relation to the deposit (i.e. 10% of purchase price on exchange) persisted up to the date solicitors were engaged, at the end of June 2017. This is a major difficulty with Mr Saggu's case: later documents show the parties did not intend the contents of the note to be superseded as regards a 10% deposit, and in particular the terms of the deposit feature in later documents which were sent after the "*official agreement*" (i.e. the signed letter/s) relied on by Mr Saggu. Accordingly, I find that whilst the note reflected matters which had been agreed between Mrs Thandi and Mr Saggu concerning the sale price and the 10% deposit before solicitors were instructed, neither it, nor the three letters which followed, represented the entire agreement between the parties.

46. So far as the purchase price, Mr Saggu explained in his evidence that when he became aware Mrs Thandi was interested in selling the property he asked her what it was worth and she told him between £280,000 and £290,000. Having regard to the stated value of the property when it was transferred into Mrs Thandi's name, of £350,000, and subsequent valuation evidence, this appears to be a low valuation, though the valuation ascribed to the property when it was registered in Mrs Thandi's name was not a market sale according to Land Registry documents. Mr Saggu said he did some mental maths and talked Mrs Thandi through his thoughts. He said that he told her that if she sold Parkside at £290,000 she might get £285,000 after fees and expenses and that she still owed Earlswood Interiors £15,0000 and so she would have £270,000 left. He says he suggested the purchase price of £270,000 on the basis as part of the deal he would pay Earlswood Interiors the £15,000, which was an effective sale price of £285,000 to Mrs Thandi. He says Mrs Thandi was keen to go ahead and they shook hands on the deal. I accept this evidence and that Mrs Thandi agreed to sell the property to Mr Saggu based, in broad terms, on those calculations.

47. The next relevant document in time is a letter dated 22 April 2018 addressed to Mrs Thandi and which was signed by Mrs Thandi and Mr Saggu. This is the first of three such letters provided to Mrs Thandi and which she signed, she says as a result of undue influence and pressure or duress being exerted on her by Mr Saggu. I find that Mrs Thandi entered into the agreement with Mr Saggu

willingly, as she wanted a quick sale and Mr Saggu had showed himself as being willing to enter into such an arrangement and provide her additional monies "upfront" to assist her in funding expenditure which she would otherwise find it difficult to meet. In my judgment Mr Saggu did not make any unwarranted demands or put any illegitimate pressure on Mrs Thandi. The duress Mrs Thandi complains of is based on the fact that certain of the meetings between her and Mr Saggu took take place in the presence of her children. I accept and find that her children, who were teenagers, were present, but I reject Mrs Thandi's evidence that as a result she felt under pressure to sign the letters or that simply by their presence what was said could be said to amount to duress. Mrs Thandi freely executed the letters at the time because she wanted a quick deal and it appeared to provide a solution to her problems. In referring and quoting from the letters below I gratefully adopt passages from the judgment of Master Teverson on Mrs Thandi's failed summary judgment application ([2023] EWHC 1379 (Ch)).

48. The letters are type written and have Mr Saggu's address in the top right hand corner. The letter of 22 April 2018 reads as follows (including any typographical errors):

"Dear Mrs Kuljinder Thandi (Kinder) Residing at 8 Heather Drive Dartford DA13 3LE

I am paying you £2,000.00 cash today as a deposit toward the purchase of 5-7 Parkside Parade Erith DA1 4RA. This is knows as the Londis comprising of two corner retail units that's inside are opened into one. This includes the flats above the Londis and the land at the rear including the double garage.

The purchase price is fixed and agreed between both parties at £270,000 and a £2,000 deposit is being paid today 22/4/18 which will come off the sale price leaving a total balance for Mr TS Saggu to pay of £268,000 this is a full and final balance for the purchase. Both parties to pay their own legal costs.

The agreement is that the price remains fixed and TS Saggu completed on the property sale as soon as the mortgage and funds are in place. Both parties will find independent Solicitors who can draw up the agreements for the sale and do the necessary checks for the banks purposes. By signing below Kinder agrees to give any further information required in aid or not to delay the Solicitors or the sale for as the lender so they are comfortable to lend and complete on the deal.

By signing Mr T Saggu will also have a duty to waive the £15,000 owed to his company for works undertaken at Kinder's residence at 8 Heather Drive Dartford DA13 3LE earlier in 2017. This credit note will be insured by Mr T Saggu on completion of the purchase 5-7 Parkside Parade.

Mr T Saggu will also as a gesture of good will carry out the listed task that his staff member has recorded on Saturday 21/4/18 at Kinder's property and this list will be emailed over to Kinder week of 23/04/18 to avoid any confusion for both parties. This work will be carried out again on completion however Mr T Saggu may choice to carry out certain jobs prior to completion at his own will.

This is an agreement that has been made by both parties at their own will and in a view that they both will benefit for their own personal reasons. By both signing below this will mean they both agree to the above and will carry out their own duties and obligations to each other/both parties. This has been drafted by Mr T Saggu and his family have read and approved the document. Kinder and both her children have also read and approved the document before signing So everyone can agree that the agreement is fair to both parties and reasonable."

Beneath the last paragraph is typed:-

"Seller	*Buyer*
Date:	*Date:*
Name:	*Name:*
Sign:	*Sign"*

Under the "Seller" heading, there is inserted in manuscript the date 22/4/18, the Name Mrs Kuljinder Kaur Thandi and her signature. Under the "Buyer" heading is inserted in manuscript the date 22/4/18, the name Mr Tripatpal Saggu and his signature.

On a second page is typed:-

"Payment received for £2000.00 cash on the 22/4/18 by Mrs Kuljinder and she is to sign to confirm receipt of payment for both parties' records."

Below this is typed:-

"*Date:*
Name:
Sign:"

There is written alongside in manuscript the date 22/4/18, the name Mrs Kuljinder Kaur Thandi and her signature.

49. It is common ground the agreement as reflected in this letter was signed in Mrs Thandi's house. It is also common ground that Mr Saggu gave Mrs Thandi the £2000. It can be seen that there are several manuscript notes on the document which have been initialled by the parties. This notwithstanding Mrs Thandi says she didn't understand the meaning of this document. Whilst I accept Mrs Thandi may not have understood every single word in the document, or checked all of it for completeness, I find that she understood the majority of it, and that by

signing it she was agreeing to sell the property to Mr Saggu and in return was receiving the benefit of an immediate cash sum, even before exchange of contracts. I find she also knew that she would benefit from a waiver of any sum due and owing to Earlswood Interiors on completion of the purchase and that Mr Saggu would procure this by such means at his disposal. Mr Saggu and Mrs Saggu say this document was provided to Mrs Thandi and read out to her and she indicated her assent to it. Mrs Saggu recalls Mrs Thandi told her at the meeting, on being asked if she wished Mrs Saggu to read it and interpret it in Punjabi that she said "*No I understand it fully and aunty this is not the first time I'm buying or selling a property.*" I find this is what Mrs Thandi told her.

50. In my judgment however neither the first letter, or the letters which followed it, represented the entire agreement between the parties concerning the sale. As I have already found above, an additional part of their agreement was that a deposit of 10% would be payable on exchange, even if Mr Saggu had agreed to make and was willing to pay smaller deposit sums in advance of exchange.

51. By a notice of assignment dated 25 April 2018 Earlswood Interiors notified Mrs Thandi that the debt of £15,000 was assigned to Mr Saggu. Mrs Thandi signed to acknowledge receipt of this notice. I am satisfied that Mrs Thandi was able to understand that this was the document which enabled Mr Saggu to be in a position to procure the waiver of the debt she owed to Earlswood Interiors, in the event that completion occurred.

52. On 30 May 2018 Mrs Thandi was served with a statutory demand in respect of a debt owed by her to Star Windows and Glazing, who Mr Asombang worked for at the time, in relation to the external windows. At an earlier point in time (in or about September 2017) Star Windows and Glazing also served a statutory demand on Earlswood Materials, presumably because the order form signed by Mrs Thandi had both "Earlswood" and "Thandi" as names in the heading. It is an unusual feature of this case that Mr Saggu signed off on an application to set aside a statutory demand which relied on a letter in support (dated 2 October 2017) which suggested that Mrs Thandi had paid Star Windows and Glazing a cash payment of £10,000 when this was not true and Mr Saggu, his brother, Mr Bajwa and Mrs Thandi all knew this not to be true. This dispute, as between Mrs Thandi and Star Windows and Glazing, was subsequently compromised on 3 September 2018, and further monies were paid by Mrs Thandi to Star Windows and Glazing. Mr Asombang subsequently has assisted Mrs Thandi in her dispute with Mr Saggu.

53. Mr Bajwa gave Mrs Thandi a further £1,000 on 31 May 2018 and £2000 on 4 June 2018. Therefore by mid-June 2018 a total of £5,000 had been advanced by Mr Saggu to Mrs Thandi. The additional payments, in May and June 2018, are evidenced by letters dated 31 May 2018 (the second letter) and 4 June 2018 (the third letter). The second and third letters are in substantially the same form as the (first) letter dated 22 April 2018. Mr Saggu's evidence is that they were all deposits towards the agreed purchase. Mrs Thandi says she thought all of these

sums were loans being made to her to help her with expenses, such as to fund one of her children going on a school trip. I accept that Mrs Thandi explained to Mr Saggu she needed these monies, but I conclude Mrs Thandi knew that these monies were being paid as deposits, or advances, on the purchase price of the property in the event that it eventually proceeded to exchange and completion. This is consistent with the contemporaneous note which Mrs Thandi and Mr Saggu both referred to in their witness statements and which I have already referred to above.

54. The second letter dated 31 May 2018 records that a further £1,000.00 cash was being paid on that day as a further deposit towards the purchase of 5-7 Parkside Parade. The remainder of the first paragraph and the second, third, fourth and fifth paragraphs contain the same wording as the letter of 22 April 2018 except that in the second paragraph it is recorded that the total balance for Mr Saggu to pay was £267,000. The letter dated 31 May 2018 was signed by Mrs Thandi under the heading "Seller". It was signed by Mr Bajwa as the person making payment on Mr Saggu's behalf. On the second page, the receipt of the £1,000 cash was confirmed by Mrs Thandi (referred to as "Kinder", short for "Kuljinder") with her name and signature. Mrs Thandi's son Ronak Thandi, then aged 14, signed as a witness.

55. As regards the second letter, Mrs Thandi stated in her written evidence that: *"The second time, Mr Saggu called me and insisted that I come to his office in Crayford because he wanted to urgently discuss some things with me, he did not tell me what it was about. When I turned up at his office, Mr Saggu was not there. Mr Bajwa gave me the second agreement and insisted that I should sign it. At this time, Mr Saggu had not finished off the works as he had promised when I signed the first agreement and when I mentioned this to Mr Bajwa he told me that he did not know what the document was about and that I should speak to Mr Saggu, but he insisted that I sign the document. Therefore, I signed the second agreement and left."* Mr Bajwa's evidence was that he felt under a duty to explain this second letter to Mrs Thandi and read it out to her. His evidence was that Mrs Thandi was well aware of its contents and said to him "*I know what we are doing Rash hurry up I need to go*". Again, I conclude that Mrs Thandi knew in general terms what she was signing, even if she did not understand all the detail, and that Mr Bajwa has accurately recalled what she said to him.

56. The third letter dated 4 June 2018 records that a further £2,000 in cash was being paid that day as a further deposit. It records in the second paragraph that this left a total balance for the Defendant to pay of £265,000.00. This letter was again signed by Mrs Thandi and by Mr Bajwa on behalf of Mr Saggu. The signatures were witnessed by a Mr Franklin.

57. As regards the third letter Mrs Thandi stated in her written evidence: "*Very much like the above instance, Mr Saggu once again rang me asking me to come*

to his office at Crayford and said that I had to sign yet another document if he was to finish off the works. I therefore again went to Mr Saggu's office in Crayford when again I was met with Mr Bajwa. As with the last time, Mr Bajwa said that I had to sign the third agreement, but he insisted that I should speak to Mr Saggu if I wanted any explanations." I accept Mrs Thandi's evidence in relation to this letter and that Mr Saggu had intimated to her that if she wanted him to finish off with the snagging works she should sign the further letter, or agreement, and I also accept her evidence that Mr Bajwa indicated to her that if she had any further queries in relation to this she should speak to Mr Saggu. Mr Bajwa did not have a good recollection of the event when this third letter was signed other than he remembered it being a briefer meeting. However, by this time I conclude Mrs Thandi knew well that what she was being asked to sign was to acknowledge that she was receiving a further part of the deposit monies which had been agreed to be paid to her by Mr Saggu for the property.

58. By the end of June 2018 both parties approached solicitors to progress the sale of the property.

59. On 27 June 2018, Mrs Thandi met with solicitors called Chancellors Lea Brewer LLP ("CLB") and was accompanied by Mrs Saggu. In the letter from CLB sent to Mrs Thandi on 13 July 2018 her attendance on that date with Mrs Saggu is recorded by Mr Peter Daniels. In the letter Mr Daniels of CLB confirms that they would be pleased to act for Mrs Thandi in the sale of the property to Mrs Saggu at the price of £270,000 and enclosed with this letter their terms of business and other documentation to facilitate the progression of the sale. The scope of the retainer was to act for Mrs Thandi in relation to the proposed sale. In it he noted that Mr Saggu had agreed to pay CLB's costs up to £1750 plus VAT and reasonable disbursements. The letter also recorded that Mrs Thandi had "*already entered into agreements dated 22 April 2018 and 31 May 2017 with your buyer, and which you produced to me, setting out additional provisions to be included in the documentation (so far as they remain relevant)*". The letter refers to the buyer's solicitors wishing Mrs Thandi to give replies to enquiries before exchange and wishing to exchange by no later than the 31 July 2018.

60. Also on 27 June 2018 Mr Saggu instructed Manak Solicitors. At 17:07 he sent an email to Kemesha Lynch at Manak Solicitors which identified the solicitors acting for the seller as CLB and stated as follows:

"Hi Kemesha,

This is the solicitor acting for the seller if you can make contact we want to exchange in 2 weeks giving the seller another 5k and the remaining 17k to make up the 27k 10percent by the end of July and then have a [sic] open completion which will be around 2-3 months while mortgage is in place."

61. This email supports my conclusion that a 10% deposit, or £27,000, was agreed by the parties, payable on exchange. What is recorded in this email closely resembles what is recorded in the undated handwritten note (which the parties suggested was created some time in early April 2018) and shows it remained part of the agreement and had not been superseded by the letters. It also shows, if the agreement concerning the 10% deposit was made after the three letters (albeit this was not a case advanced by either side) then the three letters did not contain all the terms which had been agreed by the time solicitors were instructed.

62. On Manak Solicitors' file there is also an undated handwritten attendance note of the solicitor, which refers to the property transaction, and which in my judgment is likely to contain information provided to them by Mr Saggu. It indicates that £5,000 had been paid already with another £5,000 to be paid in July, and a further sum of £17,000 on exchange. Against those three entries is written "*Deposit 10%*". This is consistent with the earlier handwritten note. It is also consistent with the email of Mr Saggu sent on 27 June 2018. This all reinforces my conclusion that it was a term of the agreement between Mr Thandi and Mr Saggu that Mr Saggu would pay a 10% deposit and the sums he had paid to date represented part of the deposit to be paid, but not all of it. I also note in this attendance note there is reference to the contract being a "conditional contract" and completion was to be within 12 months and subject to finances and satisfactory searches. At the end of it against "costs" it suggests that it was agreed Mr Saggu would pay both sides' costs.

63. On 5 July 2018 at 11:40 Manak Solicitors emailed CLB copies of the draft contract (incorporating the Standard Commercial Property Conditions of Sale, 3rd Edition), freehold title and copy lease registered against the freehold title. This draft contract referred to a back-stop completion date of 31 July 2019, which is broadly consistent with what the attendance note suggested had been agreed so far as completion is concerned. So far as the deposit provisions of the draft contract are concerned, whilst this is not completed in clause 7a and b, it suggests at clause 7c that the parties may have agreed a deposit of 10%. Mr Saggu said as follows in paragraph 29 of his fourth statement:

"*I would also like to clarify an inconsistency regarding the amount of the deposit noted in the draft contact for sale drawn up by the solicitors I appointed to act for me in respect of the purchase of Parkside, Manak solicitors. In that contract, it states that the deposit payable would be 10% of the purchase price This was never the agreement between myself and the Claimant - I can only assume that this was put into the draft contract by Manak solicitors without any input from me."*

64. Mr Saggu accepted in his oral evidence, in the light of the email of 27 June 2018, which I have already referred to above, that this was not an accurate statement. The suggestion (rather than the statement) that a deposit of 10% had

been agreed came from Mr Saggu. Whilst he continued to maintain that the 10% deposit was not what he had agreed with Mrs Thandi I reject that evidence. Whilst the 10% deposit had not been mentioned in the three letters I conclude it nevertheless did form part of what had been agreed between Mrs Thandi and Mr Saggu in relation to the sale of the property.

65. During July and August 2018 Mr Saggu became concerned about the lack of progress in relation to the sale and chased Mrs Thandi in a series of texts which went unanswered. On 11 July 2018, he wrote: *"Hi Kinder. Do you have the papers ready? Thanks".* On 13 July 2018 Mr Saggu wrote: "*Hi Kinder. We need to sort out things today. They want to book Valuers in and the Solicitor is waiting to hear from you we are exchanging next week. Call me urgent. Thanks."* On the same day, CLB sent an email to Mrs Thandi enclosing a client care letter which referred to the meeting which took place on 27 June 2018 and which I have already referred to above. In that letter one of the things CLB requested Mrs Thandi to provide was suitable identity documentation. Ultimately Mrs Thandi failed to provide such documentation to CLB to satisfy themselves they could act for her.

66. Mr Saggu was becoming frustrated with the lack of progress and sensed that Mrs Thandi was no longer keen on progressing the sale. On 15 July 2018 Mr Saggu sent a message to Mrs Thandi stating: *'Hi Kinder, please let me know what you plan in the morning I don't want to waste anymore money or time. Thanks Trip.'* On 19 July 2018, CLB chased Mrs Thandi via email to sign the client care letter, provide her original passport, and her replies to the CPSEs. On 27 July 2018, Manak Solicitors wrote to CLB exasperated at the lack of progress and notified them that Mr Saggu would *'withdraw from this transaction and as per the parties original agreement demand the return of £25,000 in respect of the monies already paid by our clients to the seller and our clients' legal costs and disbursements incurred so far.'* In the light of this letter and similar later communications I can understand why Mrs Thandi may consider Mr Saggu had wrongly demanded payment of the sum of £25,000. The letter is somewhat confused, but I infer from this time that Mr Saggu was adding to the £15,000 the £5,000 monies he had paid to Mrs Thandi, as part of the deposit, and monies wasted on solicitors, which Mr Saggu had agreed to pay on both sides. On 30 July 2018, CLB sent a further chasing request (this time by way of letter) for Mrs Thandi to sign the client care letter and provide the relevant documentation.

67. On 6 August 2018, Mr Saggu sent a text message to Mrs Thandi requiring that she pay him the sum of £25,000 in the following terms:

"Hi Kinder
I don't want to buy the shop no more it's taking too long. So let me know how and when you can pay me back the £25,000 you owe me. You have caused me lots of problems with not paying on time. If I don't hear from you then I'm sorry

I will have to let my solicitor do what he needs to get the money I am owed. Thanks"

68. On 10 August 2018, Mrs Thandi attended CLB at their offices and provided a copy of the CPSE2 form, the terms of business acceptance form, and a certified copy of her passport. In her oral evidence Mrs Thandi denied she had signed any documents or provided any further documents to CLB to facilitate the progression of the sale but I reject that evidence as being inconsistent with the contemporaneous documents issued by CLB. It was noted by CLB that the certified copy ID was dated in 2015. As such, CLB insisted upon production of Mrs Thandi's original passport before the firm would agree to act for her on the sale.

69. On 11 August 2018, Mrs Thandi wrote to a police officer, DS Stephen Biddiss, and confirmed that she was *"in touch with a solicitor so I can sell a property and then try to move house. The solicitor is in need of my original passport to then be produced at their offices. Here are his contact details and I will let him know that you will be in touch"*.

70. On 15 August 2018, at 20:45 Mrs Thandi sent the following email to CLB:

'Hi Peter,

I came into your office today and gave in a copy of my passport to your assistant, I am aware that you need the original passport so it can be produced in the office. However due to personal reasons my passport is with the Kent Police and I have told them about this situation. I have then forwarded your contact details to the detective in charge of my case. He said that he would contact you soon. If that is not the case here are his contact information and you can contact him yourself;

71. The email went on to provide the police officer's contact details.

72. On 23 August 2018, Mr Saggu sent a screenshot to Mrs Thandi of an email he had received from his solicitors which said: *"Dear Trip, I have spoken to the seller's solicitor. They have not had acceptable photographic ID from the seller. They are also awaiting relies to CPSE6 and CPRSE7. Kind regards. Lorraine"*. Mr Saggu followed up this screenshot with a further message to Mrs Thandi on the same day stating*: "What ID do you have? Why have you not completed the forms?".* Despite Mrs Thandi alleging that she cannot read or write any English, and never instructed solicitors, she replied: *"I give them my ID 2 time and I give them forms too. Ok and I give them number the parsons [sic] who had my ID. Thank you"*. At the same time, Mrs Thandi forwarded a screenshot of correspondence sent to her by CLB on the same day at 17:32. These documents show that Mrs Thandi, at this time, seemed to be making efforts to progress the sale.

73. By September 2018, Mr Saggu was becoming increasingly frustrated with the lack of progress in relation to the sale and the issue concerning proof of ID. He pleaded with Manak Solicitors to assist with the ID issue so that Mr Saggu didn't *"have to keep calling her every other day"* - this being a reference to Mr Saggu's frequent communications with Mrs Thandi. In an email in response from Mr Manak of Manak Solicitors sent to Mr Saggu on 5 September 2018 at 13:24 Mr Manak explained that he could not assist Mr Saggu with the issues in relation to Mrs Thandi's ID and said "*I am afraid no one can assist you with this predicament and I hate to say "I told you so" but I did. I would repeat that you need to slow down with your deal making…*".

74. On 20 September 2018, Mr Saggu sent a further text message to Mrs Thandi stating: *"Hi Kinder. Please decided [sic] what you would like to do regarding the sale of the shop and the debt owed to us I can't wait anymore for payment I will have to take legal action to recover the money owed to us as you have dont [sic] anything regardless all the reminders and support we gave given you. Thanks. Trip."*

75. On 2 October 2018, Mr M Martinez sent a letter before action on behalf of Mr Saggu to Mrs Thandi. The letter demanded the repayment of the total sum £22,100 to Mr Saggu within 14 days from the date of the letter failing which proceedings in the County Court might be issued. The letter stated that in addition to the debt, Mr Saggu could also sue for specific performance of the contract *"meaning that he can ask the Court to order you to transfer the property to him."*

76. On 8 October 2018, Mr Saggu caused to be entered in the charges register to the title to the property (title number P148518) a unilateral notice "*in respect of Contracts for sale dated 22 April 2018, 31 May 2018 and 4 June 2018*". These documents are referred to together in the Particulars of Claim as "*the Letters*". A unilateral notice was registered against the property in favour of Mr Saggu on 12 October 2018.

77. On 9 October 2018, Mrs Thandi attended CLB's offices but failed to produce acceptable ID. As such, CLB confirmed that they could no longer act for her. This meeting is recorded within a contemporaneous attendance note which states as follows (underlining emphasis added):

"Attending Mrs Thandi on 09 October 2018 interview at the office. Start time 9:58. As we were still in reception I asked Teresa Elphick if she had taken a copy of the evidence of ID (which she told Teresa that she had bought in). As Teresa had not, I asked if I could see that and she produced her driving licence. I said that was not good enough and the evidence of ID was the ID that I had set out in my letter to her of 14 September namely a bank statement no more than three months old, a mortgage statement no more than three months old or

an HMRC self-assessment statement HMRC Tax demand within the current financial year where I needed to see the originals. She said that she couldn't bring these in as she had spoken to Detective Sargeant Biddiss who said that this would be a breach of her bail conditions. I said I was very surprised that proving her address would be regarded as a breach of bail conditions but without evidence of ID I could not move the matter on any further and we could not act. She asked if I could write a letter to that effect. I said I had already done that in my letter of 8 October 2018 which I had also emailed to her yesterday. She then said that she had spoken to her buyer and had agreed with him that she would return all the money that she had been paid and that she was going to pay our costs and she would want to do that. I said that I had an undertaking for costs and in the circumstances I would be asking the buyers solicitors to pay these costs and then leave Mrs Thandi to liaise with a buyer about refunding any legal costs. She asked if she needed to bring in evidence of ID which she said wasn't a problem except that it would get her into trouble with Steve Biddiss (as she called him). If she did. In the circumstances I said that clearly we couldn't act any further and I did not need her to bring in her evidence of her address ID and we would be ceasing to act."

78. I conclude from this attendance note prepared by CLB that by this time Mrs Thandi had decided she did not wish to proceed with the sale to Mr Saggu. In it she is recorded as saying that she had agreed with Mr Saggu that she would return all the money that she had been paid and she would cover CLB's costs. I conclude from this that Mrs Thandi recognised that she would need to return any benefits or advances she had, to date, received in anticipation of the sale of the property to Mr Saggu.

79. On the same day, CLB sent an invoice to Mrs Thandi for the sum of £930.60 which referred to various attendances and instructions. This invoice was eventually paid by Mr Saggu, in accordance with his previous undertaking to do so.

80. On 19 October 2018 Mrs Thandi instructed Dartford Legal Services Limited to write to HM Land Registry to remove the unilateral notice. Within this communication, Mrs Thandi asserted that she sold the property at an undervalue and only signed the letters under duress.

81. On 6 August 2019 Mr Saggu sent to Mrs Thandi draft High Court proceedings drafted by counsel.

82. On 10 June 2020 Mrs Thandi wrote to Mr Saggu indicating that she would pay the sum of £20,000 to him under protest. It was stated that this open "offer" was only open until 12 June 2020.

83. In a further unusual turn of events on 14 June 2020, Mr Asombang (being the person who served a statutory demand on behalf of a creditor, Star Windows

and Glazing, against Mrs Thandi and also against Earlswood Maintenance (a company owned by Mr Saggu's brother, but for whom he also worked) wrote to Mr Saggu on Mrs Thandi's behalf denying any liability to make payment of £15,000. Mr Asombang stated that Mrs Thandi would be forced to apply to remove the notice at the Land Registry. Mr Saggu questioned Mr Asombang's motives for becoming involved in assisting Mrs Thandi. Mr Asombang stated he became involved in assisting Mrs Thandi since he considered she had been taken advantage of by Mr Saggu. I do not need to make any findings in relation to this satellite issue.

84. By letter dated 16 June 2020 Mr Omar Faruk, Barrister, wrote on behalf of Mr Saggu to Mrs Thandi asking for payment of £25,000 by 31 June 2020.

85. On 30 June 2020, Mrs Thandi instructed Fahri LLP, who wrote to Mr Saggu and demanded the removal of the notice, contending that the letters were invalid on the basis that the documents did not include the words "*the seller agrees to sell"*. This is the genesis of various arguments raised as to the formalities of the contract for sale.

86. On 8 July 2020, Mrs Thandi applied to remove the notice, which was accompanied by a letter to HM Land Registry. Within this correspondence Mrs Thandi stated as follows in relation to the contract for the sale of 7 Parkside Parade:

"What I understood about all three agreements was that I was agreeing to selling my property at 5-7 Parkside to Mr Saggu for a sum of £270,000. This was on the basis of a 10% deposit on exchange, with £5,000 paid immediately and additional £5,000 paid within 7 days and the balance of £17,000 paid within 4 weeks.

This was all recorded in our agreement which was hand written by Mr Saggu mother, at his home as we discussed this, a copy of which is at page 40. During this discussion at no time did Mr Saggu allege that I was indebted to him or his company for works that had carried out at my home.

This was because I was not indebted to him or his company. All though the agreement is undated I can confirm it was written on or about the 1/4/2018. It reflected our verbal agreement at the time, which was a straightforward arrangement for me to sell my property at 5-7 Parkside for the sum of £270,000, where exchange of contract with 10% deposit was to take place by 6/4/2018.

The agreement also confirmed Mr Saggu solicitors as Manak solicitors with the individual who would deal with the sale, named Surinder Singh Manak. At page 63 is a copy of a letter dated 5/8/2018 form [sic] the defendant solicitors confirming his instruction as per his text message on the 18/09/2018 that he did not want to proceed ahead with the purchase.

Mr Saggu was owed nothing and lost nothing when the purchase did not proceed ahead. Applying and registering of the unilateral notice by Mr Saggu was an act of him behaving vexatiously, as he was unable to get me to sell my property to him. What I now understand is that had the sale proceed ahead at £270,000 I would have been selling my property at an undervalue."

87. The letter states that Mrs Thandi acknowledges she signed the letters and understood that she was selling the property to Mr Saggu for £270,000 with a 10% deposit. That is consistent with my analysis of the evidence as recorded above. Mrs Thandi however gave evidence that the letter was sent by Mr Joseph Asombang without her instructions. Mr Asombang gave a witness statement in which he stated he did not consult Mrs Thandi on the letter, though in oral evidence it became clear that he was not suggesting the source of the information in the letter was not Mrs Thandi, but simply that he did not read back through the letter line by line with her before it was sent. In my judgment the letter was broadly an accurate reflection of what Mrs Thandi told Mr Asombang at the time. It contains some accurate details in relation to what she agreed with Mr Saggu as regards the deposit, but is inaccurate insofar as it suggests Mrs Thandi did not have a debt to Earlswood Interiors (which had then been assigned to Mr Saggu) or that the proposed relief of this debt did not form part of her deal with Mr Saggu.

88. On 16 July 2020, Mr Asombang wrote to Mr Saggu on Mrs Thandi's behalf threatening High Court proceedings to expedite the removal of the notice. It is apparent from the communication sent from Mrs Thandi to HM Land Registry that the urgency stemmed from a need to refinance the loans secured against the property. On 26 July 2020, Mrs Thandi wrote to HM Land Registry seeking to expedite the removal of the unilateral notice.

89. By a report and valuation dated 19 March 2021, the property was valued at £320,000. On 20 July 2023, it was ordered by consent that the parties had permission to rely on the evidence of a jointly instructed expert as regards the current value of the property. This has confirmed that the property is now worth £345,000. However, such valuation has been overtaken by the fact that, as referred to above, the property has now been sold by the lender, MT Finance. Contracts have been exchanged at a purchase price of £344,000 with completion due on 16 October 2023.

Application of the law to facts and analysis of the issues and submissions

Issue 1 – the agreement

90. As I have found above, the agreement concerning the sale of 7 Parkside Parade to Mr Saggu included terms as recorded in (1) the handwritten note which was substantially created in or about early April 2018 (2) the three signed letters dated 22 April, 31 May and 4 June 2018 (3) Mr Saggu's email of 27 June 2018

(4) Mr Saggu's solicitors' attendance note which I find is likely to have been created in late June or early July 2018 and (5) the draft contract issued in early July 2018.

91. Most significantly for present purposes I conclude that the entire agreement between the parties was not contained in just the three signed letters. In particular I have concluded that the parties had agreed that, whilst Mr Saggu might have been willing to pay monies in advance of exchange, and did so as recorded in the three letters, a 10% deposit, or £27,000, was agreed by the parties, payable on exchange. I also conclude that the parties agreed that Mr Saggu would pay the solicitors' fees and that the parties had agreed a long-stop completion date of 1 year.

92. The agreement in relation to the 10% deposit is not inconsistent with the notion that earlier deposits might be paid by Mr Saggu before exchange, at least if the three letters contemplated there would be an exchange of contracts, or in any event could not be said to rule out an exchange of contracts, as drawn up by solicitors, before completion. As it happens Mr Hardman for Mr Saggu submitted that the letters should be interpreted as contemplating an exchange and completion, even though exchange is not expressly mentioned[2]. The letters contain the following two sentences in the third paragraph:

"Both parties will find Independent Solicitors who can draw up the agreements for the sale and do the necessary check for the banks purposes. By signing below Kinder agrees to give any further information required in aid or not to delay the Solicitors or the sale for as the lender so they are comfortable to lend and complete on the deal."

93. It is somewhat ambiguous from this whether the parties agreed there would be exchange following completion. However, as an aid to interpretation of this document I am entitled to take into account the fact that, as I have found, the parties agreed a deposit of 10% was payable on exchange. This supports Mr Hardman's submission as to how the letters should be interpreted. In addition, the agreement was not just in writing, but also included matters orally agreed, including the 10% deposit on exchange, as set out in the early April 2018 handwritten note, even if the tranches and timing had not been agreed by that time, and some details in that respect were added later. In these circumstances I am entitled to have regard to matters which both preceded and post-dated the three signed letters in order to ascertain what was agreed: see the decisions of the Court of Appeal in *Maggs v Marsh* [2006] EWCA Civ 1058 at [24]-[26], and see also *Crema v Cenkos* [2010] EWCA Civ 1444 at [34].

[2] I note in passing that in Mr Saggu's second statement, which he did not rely on for trial purposes, he stated "*At no time did I expect that further contracts needed to be drawn up to be signed*". This passage is recorded in the judgment on Mrs Thandi's failed summary judgment application at [58] [2023] EWHC 1379 (Ch). However the interpretation point Mr Saggu's counsel was advancing may be advanced as it is concerned with the objective interpretation of the contract not what Mr Saggu subjectively may have thought.

94. Mr Hardman also submitted that the early April 2018 handwritten note was merely recording negotiations between the parties and as such it was not admissible as an aid to interpret the 3 letters (based on the line of cases dating back to *Prenn v Simmonds* [1971] 1 WLR 1381). However, ultimately he accepted the question of whether or not the agreement was fully contained in the 3 letters, or not, was a question of fact. In addition, in my judgment the early April 2018 handwritten note was not recording negotiations, but was recording (at least as regards the price and the 10% deposit) what was agreed. Indeed, both parties submitted it recorded what was agreed at that time. Mrs Thandi's case was that the essence of what was agreed remained unchanged, and did not include what was contained in the three letters. Mr Saggu's case was that it was a heads of terms type document and was superseded by the 3 letters. Neither case is correct in my judgment. I have found that the term as to the deposit set out in the 18 April 2018 handwritten note was agreed in addition to what is set out in the three letters.

95. So far as the agreement in relation to the solicitors fees, or costs, there is the oddity that in the three letters it is stated that the parties would each pay their own costs, whereas it is clear that Mr Saggu and Mrs Thandi appreciated and agreed that it would be Mr Saggu who would pay the costs. This might mean that the three letters did not, in fact, reflect the true intention of the parties. Whilst there is no claim to rectify the three letters there is a plea by Mrs Thandi that she does not admit the three letters contains the entire agreement. I conclude that the parties must also have agreed that Mr Saggu would fund Mrs Thandi's costs and I conclude the wording in the letters meant that whilst Mr Saggu would fund her legal costs, ultimately this would be resolved as an item to come off the sale proceeds on her side of the account. In other words the additional term agreed beyond the three letters was that whilst she was ultimately responsible for paying the legal costs he would fund them and then recoup that funding from the sale proceeds. This is an additional term of their agreement which is not recorded in the letters.

96. The third question is the agreement so far as a back stop for completion is concerned. The three letters provide for completion to take place "*as soon as the mortgage and funds are in place*" but it is silent as to a backstop date for completion. In these circumstances there is no difficulty in concluding that this also formed part of the agreement between the parties even though it was not recorded in the three letters. I am less certain this term was agreed by the time of the three letters, but I conclude it had been agreed by the time of solicitors being instructed in July 2018.

Issue 2 – the formality requirements – section 2 of the 1989 Act

97. The material parts of Section 2 of the 1989 Act provide as follows:

"2.—(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each…
(3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.
(5) …nothing in this section affects the creation or operation of resulting, implied or constructive trusts."

98. The justification for the formalities requirements set out in section 2(1) are the need for certainty, consumer protection, encouraging the standardisation of transactions and the uniqueness of land: see *Yaxley v Gotts* [2000] Ch 162 at 188-190; *Matchmove Ltd v Dowding* [2016] EWCA Civ 1233. Subsection 2(5) provides a relief valve whereby equitable doctrines may intervene to offer protection against harsh consequences. There remains some debate as to whether or not and in what circumstances proprietary estoppel may be said to fall within section 2(5) or operate where section 2(1) applies even if it does not fall within section 2(5). I shall return to consider that debate under issue 6 below.

99. The way Mrs Thandi's section 2 case was pleaded may be said to fall under two headings.

100. The first is that the three letters were deficient in failing to identify Mrs Thandi as the proprietor, Mr Saggu as buyer, Mrs Thandi as the seller, or that there was an obligation on Mr Saggu to buy and Mrs Thandi to sell. I reject this first head of Mrs Thandi's case. On a proper interpretation of the three letters (each of which was treated as superseding the previous one when signed) they at least impliedly if not expressly identified Mrs Thandi as the proprietor, Mr Saggu as the buyer, Mrs Thandi as the seller and Mrs Thandi was obliged to sell and Mr Saggu to buy the property at the agreed "fixed" price of £270,000 (less any payments on account). The letters make no sense if this is not the case and these points are nit-picking points of no real substance, particularly when it is borne in mind that the letters were not drafted by a lawyer.

101. The second head of challenge is that the three letters did not contain all the terms agreed between the parties, and in this respect attention is drawn to the 27 June 2018 email from Mr Saggu which refers to, amongst other things, the 10% deposit.

102. This brings into sharp focus the requirement that, for the agreement to be valid it must contain "*all the terms which the parties have expressly agreed in one document*" which is critical to this case. As made clear in the case law and commentary on section 2(1) this means what it says: there will be no contract if only the main terms are recorded: see Megarry & Wade 9th Edn at 14-027 and the case of *Enfield LBC v Arajah* [1995] EGCS 164. It only takes one agreed term not to be in the written document to render the contract of sale invalid: see

Grossman v Hooper [2001] EWCA Civ 615 at [20], and *Ruddick v Ormston* [2005] EWHC 2547 (Ch).

103. In this case I conclude there is at least one term which was expressly agreed between the parties but which did not form part of the signed letters. I have found there were three: that a 10% deposit would be paid on exchange, that Mr Saggu would fund the legal costs of Mrs Thandi in the instruction of solicitors, and that completion would take place within a year. I am satisfied that at least the first two of these terms were agreed before and at the time of each of the three letters. I conclude the third of them was most likely agreed after them. If all of these terms had been agreed after the date of the three letters an interesting question would have arisen as to whether or not Mr Saggu could have sought to rely on the agreement as set out in the three letters. The argument would be that whilst the contract for sale at those later dates could not be enforced but instead the contract as represented by the earlier agreement as set out in the three letters could. Ultimately however this question does not arise on the basis of the findings of fact I have made, and was not a position urged on me by either side, so I do not consider it further here. Suffice it to say I have strong doubts as to whether or not the court would be satisfied that a varied or superseded contract could be resurrected in this way, or that a court would be satisfied it should grant performance of the earlier contract in these circumstances.

104. I should add that I do not consider the fact that there were three letters means that the "one document" requirement of section 2(1) is a problem. Whilst there are three letters they effectively replace each other and are in identical terms, apart from updating the cash deposit advances which had been paid to Mrs Thandi.

105. In conclusion, therefore, on issue 2, I find that the agreement for the sale of the property did not satisfy the formality requirements of section 2(1) of the 1989 Act in that it did not contain all the terms which the parties had expressly agreed in one document. It might be argued that this result is harsh on Mr Saggu however the policy objectives of the section need to be remembered. Requiring parties to adhere to the formality requirements promotes legal certainty and has other wider advantages. If there is any harshness in outcome equitable doctrines may be pleaded, as they have been in this case. In addition, there may be other remedies to obtain the return of any monies advanced under the invalid contract, as have also been pleaded in this case. I return to these points under issues 7 and 8 below.

Issue 3 – the "subject to contract" issue

106. Having regard to my conclusions above I do not need to determine whether or not any agreement was impliedly "subject to contract" such that it was not immediately binding and enforceable. This was the subject of some argument on a summary judgment made in this case, which was dismissed: see [2023]

EWHC 1379 (Ch). It was also argued before me and so I will briefly address it here. In doing so, where appropriate, I will set out the submissions made on behalf of Mrs Thandi and Mr Saggu before Master Teverson as recorded at [2023] EWHC 1379 (Ch).

107. The three letters in this case were not marked subject to contract, so the question arises whether or not on a true construction of them they should be read implicitly as being "subject to contract", and that the parties did not intend themselves to be bound immediately: see *Winn v Bull* (1877) 7 ChD 29 at 32, per Jessel MR.

108. The main argument raised by Mrs Thandi in this respect was to draw attention to the fact that the letters provided: "*Both parties will find Independent Solicitors who can draw up the agreements for the sale and do the necessary check for banks purposes*". Mrs Thandi might also point to the wording indicating the conditional nature of the agreement, requiring a mortgage to be in place first. In the circumstances, so the argument went, any agreement between the parties was subject to formal exchange of contracts and/or further agreement between the parties. Mr Hardman submitted that this was to ignore the wider context and language of the letters, and on a proper reading of the letters they were conditional subsequent contracts: Mr Saggu was only required to proceed if finance could be raised (after the usual and necessary searches had been carried out). He drew my attention to the discussion in Megarry & Wade 9th Edn at 14-007 and two decisions in support of this.

109. In the first, *Branca v Cobarro* [1947] KB 854, there was an agreement for the sale of a farm. This provided that it was *"a provisional agreement until a fully legalised agreement, drawn up by a solicitor and embodying all the conditions herewith stated, is signed".* It was held that the provisional agreement was binding until it was superseded when the formal agreement was drawn up and signed; execution of the formal agreement was not a condition which had to be fulfilled before the parties were bound.

110. In the second, *Ely v Robson* (in the Court of Appeal [2016] EWCA Civ 774) an agreement was reached in which it was expressly recognised in view of its complexity that counsel's advice would be obtained in the drawing up of a settlement agreement and associated trust deed. The Court of Appeal upheld the judge's conclusion at first instance that the parties intended themselves to be bound (and which opened up the gateway to the conclusion that the property in question was held on a constructive trust).

111. The short point is simply because the parties might agree their solicitors should draw up the agreements and do the necessary check for the banks purposes does not mean they did not intend to be bound immediately by what they had agreed. In many cases this may be the obvious conclusion to be drawn

from an agreement to instruct solicitors to draw up agreements for sale, but it is not invariably or automatically so.

112. There are contra-indications in this case that, notwithstanding the parties intended solicitors to be instructed to draw up agreements, and those agreements would have included exchange and completion, nevertheless the parties intended what was agreed in the letters to be binding immediately. Mr Hardman cited a number of factors in support of this conclusion, such as the relative formality of the document (as compared with other exchanges) and that it provided for the parties to be sign and for witnesses. The most persuasive is the last paragraph in the letters which stated as follows (underlining added by me):

"*This is an agreement that has been made by both parties at their own will and in a view that they both will benefit for their own personal reasons. By both signing below this will mean they both agree to the above and will carry out their own duties and obligations to each other/both parties. This has been drafted by Mr T Saggu and his family have read and approved the document. Kinder and both her children have also read and approved the document before signing So everyone can agree that the agreement is fair to both parties and reasonable*"

113. This paragraph, and the underlined sentence in particular, strongly suggest that the parties did intend themselves to be bound immediately by what was agreed, even if they contemplated instructing solicitors and that furthermore detailed agreements would follow. Cf with *Branca v Cobarro* [1947] KB 854 at 857 per Lord Greene MR.

114. But for the section 2(1) issue, therefore, I would have concluded that the letters were not impliedly to be read as being "subject to contract" or that the parties did not intend to be bound by them.

Issue 4 – other enforceability or validity issues

115. I should also briefly deal with two other arguments raised by Mrs Thandi and one point not pleaded.

116. The first is that any agreement is unsupported by consideration. The principal argument is that the debt that was waived was owed to Earlswood Interiors, rather than to Mrs Thandi personally. This argument is hopeless in my judgment given that it was expressly agreed in the letters that benefits were being obtained by Mrs Thandi from the agreement, and indeed she received cash payments on each letter being signed. I also note that the promise to procure a waiver of a debt may provide consideration passing to Mrs Thandi.

117. Mrs Thandi also relied on an estoppel argument which ran along the lines that if she failed on her section 2(1) or subject to contract points then the parties

both proceeded on the common assumption there would be an exchange of contracts and they would not be bound until that took place. I do not find that argument convincing and if required to do so would have rejected it.

118. The third point is that Mrs Thandi complained she did not understand the nature of the agreement as set out in the three letters, but she did not plead a "*non est factum*" defence. Whilst Mrs Thandi was a litigant in person at trial (assisted by Mr Asombang), she had solicitors and counsel until a week before trial and they had prepared a comprehensive case on her behalf before they ceased to act for her. In the circumstances I do not consider it appropriate to permit Mrs Thandi any indulgences in relation to new defences she might have pleaded, such as "*non est factum*", mistake or misrepresentation.

119. I would in any event briefly note here that a plea of *non est factum* is extraordinarily difficult to establish according to the leading decision in *Gallie v Lee* [1971] AC 1004 and is not available to someone who did not take elementary steps to check the nature of what they are signing. Moreover, Mr Hardman provided convincing examples of why Mrs Thandi was not mistaken as she was taking steps to push ahead with the sale. On the basis of my findings of fact above, I have concluded Mrs Thandi had her own commercial objectives in wanting to proceed with a quick deal and I reject any suggestion she was mistaken or lacked a general understanding of what she was doing, including in relation to the signing of the letters.

Issue 5 – undue influence and/or duress

120. Whilst, again, this issue is not necessary for me to determine, in my judgment this vitiation argument/defence would likely have failed, mainly for the reasons I have already identified at paragraph 47 above. I would also add that in order to raise the presumption of undue influence (according to *Royal Bank of Scotland v Etridge (No 2)* [2001] UKHL 44), there has to be a relationship of trust and confidence and a transaction calling for an explanation. The particulars of such a relationship do not appear to be pleaded. I also note that the particulars of influence which are pleaded appear to be more examples of pressure for the purposes of duress, but Mrs Thandi's evidence did not repeat/detail any threats. For similar reasons to those already set out in paragraph 118 above, it would not be fair to Mr Saggu to develop the undue influence case further in the circumstances. Threats of some sort are a necessary part of a duress argument too. I repeat, simply because Mrs Thandi's children were present as witnesses, or she felt under some general financial pressure, is insufficient to amount to unlawful duress in this case, in my judgment.

Issue 6 – breach, termination/abandonment, and specific performance

121. None of these issues arise for determination in the light of my conclusions above. I would also add for completeness however that if I had found that the agreement as set out in the three letters was binding and valid under section 2(1)

of the 1989 Act I would not have acceded to an order for specific performance. The grant of specific performance is a discretionary remedy and I would not have exercised my discretion to grant such a remedy in this case in circumstances where: (i) Mr Saggu stated as early as August 2018 he did not want to proceed; (ii) whilst both he and Mrs Thandi then did subsequently appear to take some further steps to see if the contract could proceed (including by discussing the issue of the provision of identity documents for Mrs Thandi) that did not take place over a long period of time; (iii) Mr Saggu was soon, again, simply demanding that Mrs Thandi return his monies and pay the outstanding debt which was due and owing – he blew hot and cold; (iv) the price which was agreed, according to Mr Saggu, was not intended to provide him any great commercial advantage in the purchase of the property, but instead gave him an asset at a price taking into account the deduction of the debt of £15,000; and (v) if the price agreed was at a substantial undervalue, as the expert evidence suggests may be so (though this was not explored in detail at trial), this occurred in circumstances where no independent advice had been received by Mrs Thandi as to its true value, and Mr Saggu knew this to be so. This does not provide an auspicious background for a claim in equity for the transfer of the property to gain an advantage in relation to an uplift in value if Mr Saggu's advances to Mrs Thandi and the remaining debt can be otherwise recovered.

Issue 7 – reliance on equitable doctrines

122. In view of the fact that the property had been sold Mr Hardman did not press his constructive trust case in closing, but he did maintain his proprietary estoppel argument, insofar as was necessary for him to do so. He did so on the basis that whilst the primary remedy he had been seeking was an order for transfer, ultimately the relief sought was to remedy any unconscionability arising from any proprietary estoppel. In other words he sought the minimum equity to do justice depending on such findings as I made concerning proprietary estoppel.

123. The way that Mr Saggu's case is pleaded is that he should have "*equitable satisfaction of the promises made by the Claimant under the doctrine of proprietary estoppel, with the form of remedy to be determined by the Court, for example an order transferring the Property to the Defendant*" (paragraph 70(c) of the Defence and Counterclaim). In essence, the counterclaim thus formulated seems to seek the enforcement of the promise and, up to trial at least, the principal relief sought was a transfer of the land. The concern with that is that giving effect to such a relief would arguably undermine the impact of the 1989 Act; cf *Actionstrength Ltd v International Glass Engineering* [2003] UKHL 17, [2003] 2 AC 541. This was essentially the problem identified by Lord Scott in *Cobbe v Yeoman's Row Management Limited* [2008] 1 WLR 1752 where he observed (obiter) at [39] that a further problem with the proprietary estoppel argument in that case was

"29. … Section 2 of the 1989 Act declares to be void any agreement for the acquisition of an interest in land that does not comply with the requisite formalities prescribed by the section. Subsection (5) expressly makes an exception for resulting, implied or constructive trusts. These may validly come

into existence without compliance with the prescribed formalities. Proprietary estoppel does not have the benefit of this exception. The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the section 2 prescribed formalities, but would be specifically enforceable if it did, can become enforceable via the route of proprietary estoppel. It is not necessary in the present case to answer this question, for the [oral "agreement in principle"] was not a complete agreement and, for that reason, would not have been specifically enforceable so long as it remained incomplete. My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute…".

124. This speech commands respect, especially given it was concurred in by Lords Hoffmann, Brown and Mance too. However, in the later decision of *Thorner v Major* [2009] 1 WLR 776 at [99] Lord Neuberger concluded that the section 2(1) issue was not a concern in a case which was without any contractual connection (no contract was contemplated or pleaded). There are also observations in *Thorner* to the effect that *Cobbe* was a commercial case and the fact that *Thorner* involved an informal family relationship was also a relevant distinguishing factor.

125. In order to counter these potential difficulties arising from, in particular, the dicta in *Cobbe*, Mr Hardman raised and relied on the judgment of Snowden J (as he then was) in *Howe v Gossop* [2021] EWHC 637 (Ch), which involved an appeal concerning the interaction between section 2(1) and proprietary estoppel.

126. At paragraph [20] Snowden J recorded that it was common ground between the parties that in order to establish a proprietary estoppel three things needed to be satisfied:

"i) the owner of the land must have encouraged the claimant by words or conduct (that could be active or passive) to believe that the claimant has or will in the future enjoy some right or benefit over the owner's property that is not merely personal in nature; and that the claimant must have reasonably believed that those words or that conduct was seriously intended to create that right:
ii) the claimant must have acted to his detriment in reliance on the belief that he has or will acquire some right over the owner's land: and
iii) that it must be unconscionable for the owner to act in such a way as to defeat the expectation that the claimant had been encouraged or induced to believe."

127. These three characteristics, or elements, are reflective of guidance given in earlier cases, such as *Thorner* at [29], though, as noted by Lewison LJ in *Davies v Davies* [2016] EWCA Civ 463, at [38], including by reference to the decision in *Jennings v Rice* [2002] EWCA Civ 195 at [56], they are not watertight compartments and the essence of the doctrine is to do what is necessary to avoid an unconscionable result.

128. The first instance judge found in *Howe v Gossop* these three characteristics or elements were satisfied and concluded that an estoppel could be relied on, even though the promise which was relied on was a promise contained in an agreement which was not compliant with section 2(1) of the 1989 Act. It should be noted however that it was relied on as a defensive measure against a claim for possession. At [52]-[54] Snowden J noted the significance of this as follows:

"52. I accept that the instant case is factually different from Thorner (where there was no contract at all) and Sahota v Prior (where the relevant assurance founding an estoppel was given entirely outside the agreements for sale and leaseback). In the instant case, on the facts found by the Judge, the only promise given by Mr. and Mrs. Howe upon which Mr. and Mrs. Gossop could rely was a promise in the unwritten, and hence invalid, agreement for sale of the Green Land and the Grey Land to Mr. and Mrs. Gossop for release of a debt of £7,000.

53. But what, in my judgment, is important, is that Mr. and Mrs. Gossop were not asserting a proprietary estoppel in an attempt to enforce the agreement that had been reached in March 2012. As set out above, they raised the proprietary estoppel argument in order to defeat the claim for possession against them by Mr. and Mrs. Howe.

54. Nor was it Mr. and Mrs. Gossop's pleaded case that the unconscionability of Mr. and Mrs. Howe seeking possession of the Green Land should be remedied by an order for sale of the Green Land to themselves in accordance with the terms of the oral agreement of March 2012. Instead, like the respondents in Sahota v Prior, their pleaded case was that the equity which they contended had arisen operated to prevent Mr. and Mrs. Howe seeking to assert their legal right to possession and should be given effect by a declaration that they be entitled to a licence to occupy the Green Land for their lives or until they sold Lea Farm".

129. Accordingly, Snowden J concluded that satisfying the equity in this way did not contradict the terms of policy of section 2 as regards the validity of contracts for sale of land if that section was applicable: see at [55].

130. Mr Hardman also drew my attention to Snowden J's conclusions at [64] where he stated (having considered whether or not the facts of a case needed to be "exceptional" before a proprietary estoppel could be found to exist) that:

"Pulling those threads together, I consider, first, that the passage upon which Mr. Cameron relied in paragraph 15-020 of Megarry & Wade is directed (as were the judgments in Cobbe and Herbert v Doyle) at a case in which the claimant is seeking to use estoppel to obtain an order enforcing a contract for sale of an interest in land that does not comply with Section 2. I do not consider that it is intended to undermine the broader point to which I have referred, namely that Section 2 does not inhibit the grant of equitable relief on the basis of a proprietary estoppel provided that such relief does not amount to enforcing a non-compliant contract."

131. The difficulty with this passage for Mr Saggu however is that the formulation of the estoppel relied on in this case very much looks like an attempt to enforce a non-compliant contract relying on the same promises as set out in the letters.

132. This is not a situation where the parties never intended to have an agreement (as in *Cobbe* and *Thorner*) and therefore the reliance on proprietary estoppel to obtain the property arguably may be said to fall on the side of the line of using that doctrine to enforce an unenforceable contract contrary to the 1989 Act.

133. There are two contrary arguments however which may be made against this, and which are discussed in *Howe v Glossop* at [45]-[48]. The first is that where a proprietary estoppel is found the relief which may be granted could include holding that certain land is held on a constructive trust. If such a constructive trust is found then because section 2(5) expressly carves this out it cannot be said to give rise to any undermining of the intention of the legislature. This arguably is at least part of the justification for the approach taken by Beldam LJ in *Yaxley v Gotts* [2000] Ch 162. The difficulty with this argument on the facts of this case is demonstrated by the fact that the constructive trust argument has been dropped by Mr Hardman in closing: it is difficult to make out a constructive trust in relation to a future right to acquire and in particularly in circumstances where no order for transfer can now be made. The second argument, which would not suffer the same difficulties on the facts of this case, is that proprietary estoppel is not affected by section 2(1) at all because section 2(1) regulates the requirements of a contract for the sale or other disposition of an interest in land and a proprietary estoppel claim, even if promise based, is distinct from a contractual claim. This seems to be the view favoured by the authors of Snell's Equity and Megarry & Wade and which Snowden J appears to have been attracted by, though did not need to decide, in *Howe v Glossop*: see at [48].

134. I can see why in *Thorner v Major* and *Howe v Glossop* the courts have sought to distinguish the factual scenario, and emphasise the defensive nature of the relief sought. However, looking at the question as a matter of substance, I do not find those distinctions particularly convincing.

135. First, conferring a licence for life in order to defeat a claim for possession is nevertheless granting an interest in land. Whether the doctrine operates defensively or offensively might simply depend on the fortuity of who issued first. A similar point might be said to arise from this case: Mrs Thandi is the claimant and Mr Saggu might be said to rely on proprietary estoppel to defend her claim seeking removal of the unilateral notice, but in substance he is the claimant seeking to establish something positive.

136. Secondly, there is no clear dividing line between commercial cases and informal family cases. Some cases will be commercial but also involve family. This case may be said to be a commercial case, but it has elements of informality. Mrs Thandi had become friendly with Mr Saggu and his mother, going on evening walks with Mrs Saggu. Mrs Thandi referred to Mrs Saggu with the familial term of "aunty", though she was not Mrs Thandi's aunt, and

this is more likely to be an expression of respect and reflecting the Punjabi culture.

137. Thirdly, and perhaps more fundamentally, I see no reason why simply because the parties intended a contract, which then failed through non-compliance under section 2(1), this should preclude a party from inviting the court to grant equitable relief to prevent any unconscionability. I conclude this is so even if the assurance or promise is contained in an agreement rendered "non-contractual" by section 2(1). In that scenario the party relying on an estoppel is not circumventing section 2(1). They are simply being put back into a non-contractual position. Like any other claimant they have to prove the requisite elements of a proprietary estoppel. They are no better off. But equally I see no reason why they should be worse off. My understanding is that this was essentially the point Lord Neuberger made, extra-judicially, in *The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity* [2009] CLJ 537 at 546. There should be no problem using proprietary estoppel, even when dealing with a contract that is void by virtue of section 2(1) the 1989 Act, provided that the estoppel is aimed at doing the "minimum equity" necessary to prevent an injustice. Whilst it may be said to be impermissible to allow the proprietary estoppel to fulfil expectations, as this might undermine the 1989 Act, there can be no objection to estoppel operating to reverse any detriment as a result of the invalid contract.

138. In my judgment, therefore, if the requisite elements of a proprietary estoppel are satisfied then the court should be able to grant relief to remedy any unconscionability. Section 2(1) should not, in my judgment, make the court squeamish in doing so. It does not bring back the doctrine of "part performance" but instead recognises the equity in reversing unconscionable conduct when it is present. Nor does it undermine the policy behind Section 2(1) – the parties are not contractually bound by any contract. If the contract was enforceable it could be enforced without any detrimental reliance, as pointed out in the illuminating discussion of Master Matthews (as he then was) in *Muhammad and others v ARY Properties Ltd and others* [2016] EWHC 1698 (Ch) at [47]. In particular where any detriment which has been suffered can be reversed there is no substantial undermining of the 1989 Act in my judgment.

139. There may be greater problems in a "contractually related" case where the relief sought and granted is the same as enforcing a contract which was rendered invalid by section 2(1), at least as the law is currently articulated. There is difficulty in concluding an "expectation" performance remedy should be granted where a constructive trust cannot be found in the light of the reasoning and conclusions of Lewison LJ in *Dudley Metropolitan Borough Council v Dudley Muslim Association* [2016] 1 P&CR 10 at [33] (with whom Treacy and Gloster LJJ agreed). This appears to disapprove of the approach taken by Bean J in *Whittaker v Kinnear* [2011] EWHC 1479 (QB) at [31] and Mark Herbert QC in *Herbert v Doyle* [2008] EWHC 1950 (Ch). I view this as an essential part of the reasoning of Lewison LJ where the relief sought is tantamount to enforcement of an agreement found to be invalid under section 2(1). It seems to me the more recent decision of HHJ Raeside QC in *Wills an Wills v Sowray* [2020] EWHC (Ch) 939 at [255] was made without any apparent citation or

consideration of the decision of Lewison LJ in *Dudley*. But this authority does not seem to preclude relief which is not enforcing the contract, or similar to enforcement (such as a transfer of the property), but instead some other or lesser relief in the form of a relief of some detriment.

140. Turning to the proprietary estoppel here the promises relied on are in substance the same as those relied on in the letters, the detriment said to be suffered is the advancing of deposits, carrying out snagging works at 8 Heather Drive, and the assignment of the debt from Earlswood Maintenance to Mr Saggu and the payment of legal costs. Whereas previously a transfer of land was sought, this is no longer sought and instead what is sought is: (i) the sum of £15,000 based on a waiver of fees said to be owing by Mrs Thandi to Earlswood Interiors (and subsequently assigned to Mr Saggu); (ii) £5,000 paid by Mr Saggu to Mrs Thandi by way of deposit; (iii) £2300 for reimbursement of legal costs on the aborted sale; and (iv) the difference between the sale price and the market value of the property, some £75,000.

141. I am satisfied that Mr Saggu relied on Mrs Thandi's promises to instruct solicitors and impliedly, if not expressly, to use her best or reasonable endeavours to assist with the process necessary to enable searches to be carried out and mortgage finance to be raised by Mr Saggu when deciding to advance the sum of £5,000 to Mrs Thandi. In this respect some detriment was suffered by Mr Saggu. However, I conclude he did not suffer any detriment by the waiver of fees, since he did not waive any fees: instead Earlswood Interiors assigned him the benefit of the debt claim and he can pursue it from Mrs Thandi. In addition the fact that Mr Saggu agreed that Earlswood Interiors would carry out snagging works is not a detriment as that is being carried out by Earlswood Interiors and even if one overlooks the different legal personalities, on the basis Mr Saggu is a director and shareholder, then I do not see how this could properly be viewed as a detriment as snagging items are items which Earlswood Interiors would, in all likelihood, have been under an obligation to carry out anyway. The expenditure of legal fees was also of some detriment to Mr Saggu but it is also of a fairly modest amount.

142. In these circumstances, whilst I would be willing to recognise that if the 8 Heather Drive fees/debt had been waived by Mr Saggu this could amount to detriment suffered by him which should be remedied this is not the case because that debt has not yet been waived as the contract did not complete and Mr Saggu has the benefit of the assignment from Earlswood Maintenance. If I was wrong about this, I would have been inclined to grant relief to remedy this.

143. I would be inclined to grant relief in relation to the recovery of the deposits of £5,000, though those could equally be recovered as a restitutionary claim so the equitable claim does not add anything.

144. The area where the equitable claim may be said to add something is the claim for an uplift in the value of the property, on the basis that the property was in fact worth £345,000, and Mr Saggu was getting a substantial advantage from the contract since, bearing in mind also the proposed debt waiver, he was only having to "pay" £285,000. This would result in monetary relief of some

£60,000. I bear in mind the latest observations and guidance of the Supreme Court in *Guest v Guest* [2022] UKSC 27 which sets out a two-stage approach to remedying unconscionability. Whilst Mrs Thandi's repudiation is unconscionable in the light of Mr Saggu's detrimental reliance, there are reasons here why something less than full performance will negate any unconscionability caused. As well as encountering potential problems based on the reasoning of Lewison LJ in *Dudley*, the argument for expectation based relief as advanced by Mr Saggu in this case is not very attractive. It amounts to a submission that it would be unconscionable not to ensure he was able to acquire the property at an undervalue. In circumstances where Mrs Thandi had not obtained an independent professional valuation, and Mr Saggu knew this, and the price was negotiated on the basis of a rough estimated valuation by Mrs Thandi which Mr Saggu used to arrive at the purchase price, I find it hard to accept an outcome which does not deliver the uplift in value contended for as unconscionable. On the contrary, whilst I have not found that Mr Saggu himself exercised undue influence, or that the transaction was to Mrs Thandi's manifest disadvantage, and it offered some benefits to Mrs Thandi, in my judgment it would be to confer on Mr Saggu an unwarranted benefit to grant him equitable relief based on such a difference in value. It would amount to him acquiring the property on the cheap, and for a sum which substantially exceeds the sum arrived at, on the basis of the mental calculations which Mr Saggu discussed with Mrs Thandi, and which assumed a valuation of £280,000 to £290,000. The potential benefits to Mrs Thandi of a quick sale do not warrant conferring on Mr Saggu a benefit on the basis of a valuation of some £60,000 more than this, which on his own case was not known to Mrs Thandi.

145. That leaves the question of the legal expenses. The sum claimed is £2300 for reimbursement of legal costs due to the aborted sale process. If I had been satisfied that Mrs Thandi had made no effort to attend on solicitors or assist in the provision of her identity documents then it may be said it would be inequitable for Mr Saggu not to be able to recover all of these costs (on a detriment basis, not a promise, or expectation, basis). I conclude that Mrs Thandi was stringing Mr Saggu along to some degree, and causing him to suffer detriment on the basis of her assurances that she was committed when in fact she was not. However, Mr Saggu knew fairly quickly that she was not committed to the purchase. Indeed, in August 2018 he told her he was withdrawing and demanded payment of the debt, plus the additional £5,000, plus a sum of money going beyond his legal expenses which was not readily justifiable. In my judgment, by this time he was mainly looking to use the purchase of the property in order to obtain a solution to the problem of Mrs Thandi not paying him/Earlswood Interiors. I conclude a large proportion of the legal expenses, though perhaps not all of them, were incurred by Mr Saggu with his eyes open to the risks of Mrs Thandi not completing or proceeding with the instructions. In the circumstances I conclude that whilst Mr Saggu incurred some of those costs in circumstances which do not render it unconscionable to require Mrs Thandi to reverse the detriment he has suffered, it would be unconscionable not to reverse some of this detriment suffered by Mr Saggu. Indeed Mrs Thandi herself appears to have recognised the equity of requiring her to pay the costs she had incurred with CLB on 9 October 2018 when she told them "*she would return all the money that she had been paid and that she*

was going to pay our costs and she would want to do that". Their costs were somewhat less than £1,000 in total, and so at least £1,300 of the costs were incurred by Mr Saggu with Manak Solicitors. That said I do not consider the inequity is limited to the costs of CLB. In my judgment a sum of £1150, representing half of the total legal costs of £2300, is equitable in all the circumstances, to reverse or remedy any unconscionability.

146. In addition, for reasons which I will explain further when considering the next issue, I do not think there is any further substantial unconscionability here which cannot be remedied by the law of contract or restitution.

Issue 8 – common law and/or restitutionary remedies

147. As I have noted above Mr Saggu can still recover the £15,000 from Mrs Thandi. It may be said that Mr Saggu has not pleaded this contractual claim, because his pleaded case is that this fee has been waived and I have found that it has not been. However this could easily be remedied by seeking an amendment to his claim, if any point were taken by Mrs Thandi. Alternatively, he could issue a fresh claim, as the claim is not statute barred. I will hear further submissions from the parties on this issue if it is controversial, but I would be inclined to recognise the validity of this claim in these proceedings without the need for any formal amendments, in order to save costs, if that is accepted by Mrs Thandi.

148. As regards the sum of £5,000 advanced as deposits, these were advanced in relation to an agreement for sale which I have found to be invalid by reason of non-compliance with section 2(1). In the circumstances I conclude the restitutionary claim succeeds in relation to this sum of money, on the basis of the existing pleaded case.

149. I dismiss the restitutionary claim in relation to any of the other sums claimed. I do not consider Mrs Thandi has been unjustly enriched by maintaining her beneficial interest in the property, or its value. Nor has Mrs Thandi been enriched by Mr Saggu paying for the legal expenses incurred in the aborted sale.

Conclusion

150. In conclusion therefore, and subject to any further submissions on the issues of potential amendments to the counterclaim, consequential on the handing down of this judgment, I reject the claim for damages for breach of the contract for sale in relation to 7 Parkside Parade, on the basis that the agreement did not comply with section 2(1) of the 1989 Act. I would also have rejected the claim for specific performance even if I had concluded the agreement was valid and enforceable (if the property had not already been sold to a third party, and the claim for specific performance had been pressed). However, I uphold the fall-back proprietary estoppel claim, a common law debt claim, and a restitutionary claim, to the more limited extent and detriment basis indicated above. I would be minded, subject to any further argument at any consequentials hearing as to the relief to be granted, to order that Mrs Thandi do pay Mr Saggu the total sum

of £21,150 comprising £15,000 for the assigned debt, £5,000 for the deposits paid and £1,150 as a contribution to aborted legal fees. Only the latter sum requires the application of any equitable doctrine of proprietary estoppel, the other sums being capable of remedy under that doctrine, or the other common law causes of action.