



Neutral Citation Number: [2024] EWHC 2782 (Ch)

Case No: PT-2018-000661

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

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

Date: 8/11/2024

**Before:**

**MASTER CLARK**

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**Between:**

- (1) MOHAMMED KHALID RAJA  
(2) SAIRA ZEENAT RAJA

**Claimants**

- and -

- (1) ATM LAW  
(2) ABYEZ AHMED  
(3) MOHAMMAD GHAZANFAR  
(4) ~~THE YORKSHIRE BUILDING SOCIETY~~

**Defendants**

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**The Claimants in person**  
**The Second Defendant in person**  
**Nora Wannagat (instructed by DKLM LLP) for the Third Defendant**

**Hearing dates: 9 May and 29 October 2024**  
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**Approved Judgment**

This judgment was handed down remotely at 10.00am on 8 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Master Clark:**

1. This is a trial of two preliminary issues concerning a property, 45 Morrab Gardens, Ilford, Essex, IG3 9HG (“the Property”). The first claimant, Mohammed Raja, is the sole registered proprietor of the Property. He bought it on 14 March 2008 for £352,000, part of which was provided by a loan secured by a charge in favour of Santander UK Plc.
2. The procedural background is complex, and it is not necessary to rehearse it in full.
3. The third defendant, Mohammad Ghazanfar, is a judgment creditor of Mr Raja in the total sum of £94,944.17 (“the judgment sum”), plus interest comprising the sums due under the following orders:

	£
(1) order dated 28 January 2016 in Bow County Court claim B24YP218	80,469.77
(2) order dated 13 July 2016 in Bow County Court claim B24YP218	2,150
(3) order dated 13 January 2017 in Bow County Court claim B24YP218	110
(4) order dated 17 August 2017 in High Court claim HQ17X02053 (“the High Court claim”)	11,214

4. On 10 October 2017, Mr Ghazanfar applied in the High Court claim for a charging order over the Property in the sum of £105,940.29, being the judgment sum, plus interest and costs. On 17 November 2017, an interim charging order (“the ICO”) was made on that application.
5. The ground on which the charging order application is opposed is that Mr Raja does not have any beneficial interest in the Property. This is set out in Mr Raja’s witness statement dated 7 March 2018, to which he exhibited a “Confirmatory Trust Deed” dated on its face 14 March 2008 (“the Deed”). The parties to the Deed are expressed to be Mr Raja and his wife, Saira Raja, the second claimant. It is witnessed on its face by Suleman Noorani Bhageloo. The terms of the Deed are:

“WHERE AS:

1. The trustee will be the registered proprietor of the property, 45 Morrab Gardens, Ilford. Essex, IG3 9HG when title will be registered at H M Land Registry under Title Number Z385OZ.
2. The Trustee wishes to confirm and declare that, he has held the property on trust for the Beneficiaries as mentioned in paragraph below

NOW THIS DEED WITNESSETH as follows –

The Trustee HEREBY DECLARES that from the purchase he has held the Property on Trust for the Beneficiaries absolutely and that the Trustee Hereby

AGREES AND FURTHER DECLARES that he will at the request and cost of the Beneficiaries transfer the Property either to the Beneficiaries or to such other person or persons at such time or appoint in such manner, or to otherwise deal with the same Beneficiaries shall direct or appoint will at all times execute and enter into such documents deeds and performs such cither acts as may be necessary to produce the appropriate registration or entry at H M Land Registry to give effect to such dealing.

IT IS ALSO HERBY WITNESSED as follows.

At all the time from the purchase of the property I shall hold 50% shares of the property as trustee for my wife Saira Zcenal Raia who has an equal beneficial ownership with me of the property. Property is in very bad condition and almost like a shell which needs lot of spending for renovation and my wife will fund me for building works to make it inhabitable Because I am heart patient so I now gift the remaining 50% of my shares in the property in equal ratios to my sons and daughters, namely Waqas Raja, Kausar Raja, Waqar Raja and Alisha Raja. Accordingly, after this transfer, **I have no financial share or beneficial interest whatsoever in the said property.** Consequently. as Trustee, I declare that I hold the Property in trust for the beneficiaries and totally for their absolute benefit and will deal according to and as mentioned in the above paragraph. In order to complete purchase, I am borrowing deposit money from Mr Bashir .Ahmed and Mrs Zahida Ahmed of 40 Brisbane Road, Ilford, 1G I 4SL and have signed an agreement with them for equal share on profit and loss basis but my intention is to pay their investment off whenever possible.”  
(emphasis added)

6. The evidence before the court included the following documents.
7. The first is a declaration of trust (in very similar terms to the Deed) dated 18 January 2018 (“the 43MG Deed”) in respect of the adjoining property, 43 Morrab Gardens. On its face, it gives 50% of the beneficial interest in that property to Mrs Raja, and 50% to the same 4 children as are named in the Deed. The witness shown on the face of that deed is Ayub Ismael Patel.
8. The second is a contract of sale dated 25 July 2014 between Mr Raja and Amir Chaudhry (“the Contract”), by which Mr Raja agrees to sell the Property for £440,000.
9. The third is a declaration of trust dated on its face 7 September 2015 between Mr Raja and the second defendant, Abyez Ahmed. This recites that Mr Raja agreed by the Contract (as later varied) to sell the Property to Mr Ahmed for £440,000. It then declares that Mr Raja holds the Property on trust for Mr Ahmed, and that the entire beneficial ownership of the Property is transferred to him.

10. On 30 September 2015, a Unilateral Notice was entered onto the Land Registry title for the Property in respect of the Contract, with the named beneficiary being Mr Ahmed.
11. This claim was commenced 12 June 2017. It primarily concerned 43 Morrab Gardens.
12. The Rajas' case as to how 43 Morrab Gardens was held is set out in the Particulars of Claim dated 26 June 2017, and signed personally by each of the Rajas:
  - “2. C2 is wife of C1 and has lived together in the house 43M since the purchase. There was a understanding between C1 and C2 that the property 43 M is held by C1 upon trust for the C1 and C2 in equal shares and this was mentioned by C1 to C2 on various occasions before the purchase and after the purchase of the property. In particular, the topic about the shareholding of C1 and C2 of the property was dealt with soon after the purchase in February 2008, when C1 said to C2 that **although the property is held in my name, as discussed before, I am holding 50% of your share in trust. In due course, I will transfer your share into your name. Unfortunately, the Claimants have not in the time since 2008 made time to deal with this transfer due to the various issues that are dealt with below.**
  - ...
  4. 4. C2 has a beneficial interest in 43M under a **constructive or resulting trust ...**”  
(emphasis added)
13. On 28 June 2018, an order was made transferring the High Court claim to the Chancery Division.
14. On 5 January 2019, a bankruptcy order was made against Mrs Raja, on Mr Ghazanfar's petition.
15. On 25 February 2019, Nigel Fox and Duncan Lyle, both of Baker Tilly Creditor Services LLP, were appointed joint trustees in bankruptcy of Mrs Raja.
16. On 25 January 2022, they disclaimed any interest that Mrs Raja had in the Property, pursuant to section 315 of the Insolvency Act and Rule 19.2 of the Insolvency (England and Wales) Rules 2016. The effect of that disclaimer was to vest that interest (if any) in the Crown.
17. On 27 April 2022, the Treasury Solicitor as nominee for the Crown disclaimed at common law any interest of Mrs Raja in the Property.
18. By an order dated 11 October 2022, Master Teverson (sitting in retirement) ordered the trial of two preliminary issues:

- (1) Whether the First Claimant ceased to have any beneficial interest in the property known as 45 Morrab Gardens, Ilford, title number Z38502 under and by virtue of the terms of a Trust Deed dated 14 March 2008 and whether the property was thereafter held upon trust by the First Claimant as to 50% for his wife, the Second Claimant and as to the remaining 50% for the Fifth to Eighth Defendants in equal shares or whether the First Claimant continued to have a beneficial interest in the property and if so what interest;
  - (2) The effect of the bankruptcy order made on 25 January 2019 in relation to the Second Claimant and the effect of the Disclaimer dated 28 January 2022 by the trustee in bankruptcy under section 315 of the Insolvency Act 1986 as amended and of the Notice of Common Law Disclaimer dated 27 April 2022 by the Treasury Solicitor as nominee for the Crown and whether the interest of the Second Claimant or her estate in bankruptcy if any in the property thereby automatically vested or re-vested in the First Claimant.
19. The trial was listed on 17 August 2023. Mr Raja and his witnesses did not attend. The Rajas' counsel applied for an adjournment on the basis that Mr Raja had suffered a medical emergency. I granted that adjournment on terms that Mr Raja filed evidence setting out the medical or other evidence for his non-attendance. The trial was relisted for 9 May 2024.
  20. On 9 May 2024, Mr and Mrs Raja filed Notice of Change reflecting the fact that their solicitors were no longer acting for them. At the trial on 9 May 2024, they applied unsuccessfully to adjourn the trial. However, partly due to technological issues and to the adjournment application, there was insufficient time for submissions, and the trial was adjourned to 29 October 2024.
  21. Mr Ahmed supported Mr Ghazanfar's position on the preliminary issues.

### **Evidence**

22. Mr Ghazanfar has no direct knowledge of the relevant events, so did not call any witnesses.
23. The court file includes Mr Ahmed's second witness statement dated 26 June 2018, in which he states at [13]:

“I wholly endorse the Third Defendant's observations in respect of the 2008 Deeds of Trust and their likely validity. I can confirm that at no time in any of his dealings with me did [Mr Raja] ever allude to the existence of such deeds ...”

24. However, Mr Ahmed did not seek to give oral evidence, so his evidence remains untested by cross-examination, and this diminishes its weight.
25. The Rajas' evidence relevant to the preliminary issues comprised:
- (1) Mr Raja's witness statement dated 7 March 2018;
  - (2) Mrs Raja's first witness statement dated 7 March 2018;
  - (3) Witness statement dated 7 March 2018 of Suleman Bhageloo;
  - (4) Witness statement dated 7 March 2018 of Ayub Patel (though this was not in the hearing bundle, and was only sent to the court by Mrs Raja on 29 October 2019);
  - (5) Witness statements all dated 20 December 2018 of Waqas, Kausar, Waqar and Alisha Raja;
  - (6) Mrs Raja's second witness statement dated 20 December 2018;
  - (7) Mrs Raja's third witness statement dated 24 August 2023;
  - (8) Mr Patel's second witness statement dated 24 August 2023.
26. At the hearing on 7 May 2024, Mr Raja attended by remote video from Indonesia. The authorisation by the competent judicial authorities in Indonesia for the taking of evidence by video conferencing was required for him to give oral evidence. Mr Raja had not taken any steps towards obtaining this. I did not therefore permit him to give oral evidence.
27. I heard oral evidence from Mr Patel and Mrs Raja. Mr Bhageloo has not attended any of the 3 hearings listed. The reason put forward for his non-attendance at the hearing on 29 October was that he "is today appearing in another court hearing which he decided to prioritise to attend so court can check his attendance today in another court in London today." This is obviously completely unsatisfactory as an explanation.

*Mr Patel*

28. When Mr Patel joined the hearing on 9 May 2023 he was travelling on a bus in London. That was plainly inappropriate. He got off the bus, and I permitted him to give evidence remotely from a quiet place, albeit in a public space.
29. Mr Patel is not shown as a witness of the Deed, although he is, as noted, shown as a witness of the 43MG Deed, and his first witness statement was to that effect. However, in his second witness statement, he referred to himself as a witness of the Deed. In his oral evidence, he accepted that he had not signed the Deed. He provided no support for the Rajas' case.

*Mrs Raja*

30. Mrs Raja's first witness statement in opposition to the charging order application was in substance identical to Mr Raja's statement of the same date:

- “5. I object to the charging order against both properties as I have 50% beneficial interest in the properties as the beneficial interest has been previously created by the way of trust deeds dated 18-01-2008 and 14-03-2008 in respect of 43 Morrab Gardens and 45 Morrab Gardens, Ilford, Essex respectively - see attached trust deeds [5-7] & [8-10].
6. I understand from my legal advisers that the court should have regard to the factors set out in sections 14 and 15 of the Trusts of Land and Appointment of Trustees Act 1996 and the judge deciding this matter will need to have to have regard, under section 15(1)(a), to the intentions of the person or persons (if any) who created the trust.
7. As I have 50% beneficial interest and the remaining 50% beneficial interest of my children created by the trust deeds in 2008 because there is no beneficial interest of my husband so, this application should be dismissed as no equity is available for the charge to "bite on", (see case of *Hughmans Solicitors v Central Stream Services Ltd & Anor* [2012] EWCA Civ 1720).
8. Further, I understand from my legal advisers that, relying on *United Bank of Kuwait PLC v Sahib* [1997] Ch 107, the Court of Appeal Judge held that the charging order, which did no more than secure a judgment debt, was not created for "valuable consideration" for the purposes of section 29 of the Land Registration Act 2002 and hence did not enjoy priority over an earlier unregistered equitable interest.
9. Accordingly, as the third defendant does not have priority under these circumstances and his application for the registration of the charge should be dismissed.”

31. Mrs Raja's second witness statement went into somewhat more detailed:

- “3. I was living since 2009 with my husband and children at 43 Morrab Gardens. Before we bought pair of semi detached bungalows 43 Morrab and 45 Morrab in 2009, we used to live at 2 Westrow Gardens in the same neighbourhood. We both decided to buy both properties and we agreed that my husband will sign a trust deed before even he completes so I can get money from Pakistan from my mother to invest here in uk. I also invested my own saving into both properties. These both houses were in shell condition so we spent lot of money to make these inhabitable.
4. I was always under impression that I am safe with trust deeds and I was keeping in a file. My husband went into depression problem after the age of 55 and without my knowledge he was dealing with 2<sup>nd</sup> defendant and was trapped by the 2<sup>nd</sup> defendant tricks and started trusting him. I was not aware of my husband dealings with 2<sup>nd</sup> defendant and the other people because I

never interfered with him and always trusted him. When I got letter through the door that we are trespasser in our own house and then was unable to find original trust deeds. My husband told me that 2<sup>nd</sup> defendant took from me on a promise to return but now refusing to return to me both trust deeds and the limited company which 2<sup>nd</sup> defendant took for couple of month to sell the company asset and in case if asset not sold then will return the company but refused to do so.”

32. In her third witness statement, she said:

“As a 2<sup>nd</sup> claimant I am only protecting my interest and my children interest in both houses 43 Morrab Gardens, Ilford IG3 9HG and 45 Morrab Gardens, Ilford, IG3 9HG as details are mentioned in PoC. My condition of part funding was subject to a trust deed which my husband created in 2008. So, I sold my jewellery and got funds from my parents in Pakistan to help in buying and developing both houses which were in shell condition at the time of purchase.”

33. Mrs Raja was not fluent or confident in English. She was unable to explain the inconsistencies between her evidence as to the 43MG Deed and her case as to 43 Morrab Gardens as set out in her particulars of claim in this claim (see paragraph 39 below).

34. She also gave inconsistent evidence as to whether she knew that Mr Raja was selling the Property in 2015. When first asked, she said she did not know. She then said that she did know; and when asked why she did not try to stop him, she referred to personal circumstances. She then reverted to saying that she did not know that Mr Raja was selling the Property. Because of these inconsistencies, and the absence of any documentation to support her evidence, I do not consider that any significant weight can be given to it.

### **Discussion and conclusions**

35. The burden of proof to show that Mr Raja disposed of his beneficial interest in the Property by the Deed is on the Rajas. In my judgment they have not satisfied that burden for the following reasons.

36. First, Mr Bhageloo has not given oral evidence, and his evidence has not therefore been tested by cross examination. As the only independent witness of the Deed, he is a key witness. No good reason has been provided for his not attending court on any of the 3 occasions when he could have done so. I draw an adverse inference from his not being called by the Rajas, and do not give any weight to his evidence.

37. Secondly, the Deed was first mentioned and relied upon following the interim charging order, nearly 10 years after the Deed is said to have been made. There is no reference



to it in any document in evidence that pre-dates that order. That absence undermines the submission that it existed before the order.

38. Thirdly, the originals of both the Deed and the 43MG Deed have not been produced. Mr Raja's evidence is that he gave the originals to Mr Ahmed, who then refused to return them. However, Mr Raja's evidence is untested by cross examination, unsupported by any contemporaneous correspondence or other documents, and contested by Mr Ahmed. I do not accept it.
39. Fourthly, the factual basis for the Deed is unsupported by any documentary evidence, either as to the funds said to have been provided by Mrs Raja for the renovation works to the Property, or as to the works themselves.
40. Fifthly, if the Deed had been made when the Rajas say it was, then the Rajas' case as to 43 Morrab Gardens case in the particulars of claim would have been based on the 43MG Deed, not as it was, on a constructive or resulting trust. This absence is strongly indicative of the 43MG Deed and the Deed not existing as at 26 June 2017.
41. I am not therefore satisfied that the Deed is a genuine document, in the sense that it was executed on the date on its face. I find that it was made after the interim charging order, and for the purpose of defeating Mr Ghazanfar's recovery of the judgment sum from Mr Raja.
42. In these circumstances, it is not necessary to decide the second preliminary point.