Neutral Citation Number: [2022] EWHC 894 (Comm)

Case No: CL-2021-000412 & 000413

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 13/05/2022

Before : MR JUSTICE ANDREW BAKER

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Between :

INVEST BANK P.S.C.	**Claimant**
- and -	
(1) AHMAD MOHAMMAD EL-HUSSEINI	**Defendants**
(2) MOHAMMED AHMAD EL-HUSSEINY	
(3) ALEXANDER AHMAD EL-HUSSEINY	
(4) ZIAD AHMAD EL-HUSSEINY	
(5) RAMZY AHMAD EL-HUSSEINY	
(6) JOAN EVA HENRY	
(7) VIRTUE TRUSTEES (SWITZERLAND) AG	
(8) GLOBAL GREEN DEVELOPMENT LIMITED	

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Tim Penny QC and Marc Delehanty (instructed by **PCB Byrne LLP**) for the **Claimant**
Daniel Warents and Emma Hughes (instructed by **Streathers Solicitors LLP**) for the **First, Third and Fourth Defendants**
Louise Hutton QC (instructed by **Fladgate LLP**) for the **Second Defendant**
Jamie Riley QC and Tom De Vecchi (instructed by **Stewarts Law LLP**) for the **Fifth, Sixth and Eighth Defendants**
Tiffany Scott QC (instructed by **Edwin Coe LLP**) for the **Seventh Defendant**

Hearing dates: 21, 22 February 2022

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Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.
Copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. The claimant ('the Bank') is a public shareholding company established in Sharjah, UAE and listed on the Abu Dhabi Securities Exchange, with retail and corporate banking activities in the UAE and Lebanon. The first defendant ('Ahmad') is a Lebanese businessman against whom the Bank says it has judgment debts from proceedings brought by it in Abu Dhabi. The claims in those proceedings were made on what the Bank says were personal guarantees given by Ahmad in connection with credit facilities granted to two UAE companies. The total said to be due under the judgments is c.AED 96 million (equivalent to c.£20 million).

2. The second to fifth defendants ('Mohammed', 'Alexander', 'Ziad' and 'Ramzy', collectively 'the Sons') are Ahmad's sons by his marriage to the sixth defendant ('Joan'). Ahmad and Joan say they divorced in 2017. Further to its suspicions about Ahmad's dealings with his assets at that time, and by reference to certain evidence arguably inconsistent with the claimed divorce, the Bank does not admit that Ahmad and Joan are not still married (or at least managing their financial affairs still as if married).

3. The Bank seeks to pursue by this Claim:

    (1) Primary debt claims against Ahmad, suing on the UAE judgments, alternatively on the underlying alleged guarantees.

    (2) Secondary claims, which variously involve the other defendants, for relief relating to assets against which, directly or indirectly, the Bank wishes to assert an entitlement to enforce Ahmad's liability to it (if any), namely (collectively, 'the Claim Assets'):

        (a) two London properties, 9 Hyde Park Garden Mews ('9HP') and 32 Hyde Park Garden Mews ('32HP'), the latter of which is a corner property also referred to as 43 Sussex Place;

        (b) the proceeds of sale ('the Proceeds') of a third London property, 18 Hyde Park Square ('18HP'), as to which the basic facts are that 18HP was transferred to the seventh defendant ('Virtue Trustees'), a Swiss entity operated by Kendris AG ('Kendris'), a professional services company, as trustee of a trust known as the Spring Blossom Trust, established by Ahmad as settlor on 4 April 2017, the beneficiaries being Joan and the Sons, and Virtue Trustees sold the property some months later at a fair market price, to a buyer unconnected to Ahmad or his family, and transferred almost all of the net proceeds of sale to Joan;

        (c) shares ('the UK Shares') in the eighth defendant ('Commodore UK'), previously named Commodore Contracting Company Limited, a company incorporated in this jurisdiction; and

(d) US$15 million in cash ('the US$15m') said to have been held by Medstar Holdings SAL ('Medstar'), a Lebanese company that appears to have been owned and controlled by Ahmad at all material times.

4. Prior to the events upon which the secondary claims focus, legal title to 9HP and 18HP was held by Marquee Holdings Ltd ('Marquee'), a Jersey company that has since been dissolved. It was not in dispute that there is a serious issue to be tried on the Bank's claim that Marquee was ultimately wholly owned and controlled by Ahmad, albeit (as to control) the Bank acknowledges that Marquee's directors were individuals from Kendris. The Bank asserted that Marquee held that title for and on behalf of Ahmad as beneficial owner of the properties. The defendants disputed that there is a serious issue as to that, i.e. they said it was fanciful to suggest that Marquee was not the beneficial owner.

5. It was common ground, in contrast, that Ahmad was legal and beneficial owner of 32HP before the events of 2017.

6. The Bank alleges that Ahmad took steps in relation to the Claim Assets in 2017 by which to disguise his (beneficial) ownership of them or to cause them to be transferred within his family with a view to putting them beyond the reach of, or otherwise prejudicing the interests of, his creditors. In that regard, the Bank says that it was not Ahmad's only major creditor, alleging that there were also substantial debts owed to Doha Bank, First National Bank and Al-Fujairah Bank, and a possible liability on an allegation of misappropriation of funds relating to entities referred to as Rheinmetall and Federal Development. It also says that Ahmad's steps taken with a view to avoiding his creditors extended also to properties in Ibiza (owned by a BVI company that was transferred to Joan), Lebanon, Berlin, France and Canada.

7. In respect of the Claim Assets, the Bank seeks to claim:

(1) declarations that Ahmad holds the beneficial interest in 9HP, 32HP and the UK Shares, legal title to which is now held variously by the Sons,

(2) relief under s.423 Insolvency Act 1986 ('IA 1986') as regards all of the Claim Assets (but in the alternative to (1) as regards 9HP, 32 HP and the UK Shares), on the basis that the steps allegedly taken by Ahmad in 2017 relating to each of the Claim Assets involved a transaction or transactions at an undervalue entered into by him for the purpose of putting assets beyond the reach of or otherwise prejudicing the interests of his creditors within s.423(1)/(3).

8. The applications that remain live (aside from issues relating to costs of various matters raised but ultimately not pursued, which are to be dealt with after this judgment is handed down) are:

(1) the Bank's application, resisted by the Sons, to amend to pursue against them a s.423 claim in respect of the US$15m, and the Bank's application, resisted by Alexander, to amend to pursue against him a s.423 claim in respect of US$250,000 said by the Bank to have been received by him from Joan out of the Proceeds, various other proposed amendments not being (or not remaining) contentious;

(2) applications by Ahmad, Alexander and Ziad seeking to set aside permission to serve the Claim on them outside the jurisdiction so far as it makes:

(a) the declaratory relief claims, and/or

(b) the s.423 claims currently pleaded concerning assets other than 32HP (to the s.423 claim in respect of which no objection is taken at this stage);

(3) an application by Mohammed challenging jurisdiction in respect of the claims currently pleaded against him, which concern his UK Shares, or seeking a stay of those claims, and an alternative application by him for summary judgment dismissing those claims.

9. The points argued all concern the substantive merits of the (proposed) claims, and the argument proceeded on the basis that there was no material difference in the present case between (a) the need for there to be a serious issue to be tried on the merits as a pre-requisite for any grant of permission to serve proceedings out of the jurisdiction, (b) the need for there to be a real as opposed to fanciful prospect of success so as to defeat an application for summary judgment and (c) the need for a claim proposed to be introduced by amendment to have arguable merit sufficient for it to be appropriate (other things being equal) to grant permission to amend in the face of resistance.

10. The argument at the hearing also proceeded on the basis that, as to matters of fact, those equivalent threshold merits tests fall to be determined by reference to the case pleaded by the Bank except where allegations made by it can be shown on a summary argument to be demonstrably untrue or unsupportable (see *HRH Emere Godwin Bebe Okpabi v Royal Dutch Shell* [2021] UKSC 3, [2021] 1 WLR 1294, *per* Lord Hamblen at [22], reiterated in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45, [2021] 3 WLR 1011, *per* Lord Leggatt at [100]). I do not accept a submission made by the Bank in the written reply submissions it provided after the hearing (see paragraph 14 below) that it should not be limited to the case pleaded or proposed (after amendment) to be pleaded. Where a claimant has presented its case in fully pleaded form, prepared by experienced solicitors and counsel expert in the field, the defendants and the court are entitled to proceed on the basis that the case pleaded is the best case it is thought can be pleaded, unless and until an application (or revised application) to amend is put forward. I return to this at the end of this judgment (see paragraphs 130-131 below).

11. Finally, as regards the way in which the contentious issues were dealt with, the argument proceeded:

(1) on the basis that there is a serious issue to be tried whether Ahmad engaged in a concerted effort to keep assets out of the hands of creditors, as alleged by the Bank, but also

(2) as was clarified fully by a helpful intervention from Mr Penny QC during Mr Warents' submissions, on the basis that the Bank is not in a position to allege, and therefore does not presently allege, that any of the Sons, in agreeing to receive or receiving Claim Assets, had any dishonest intent or shared Ahmad's purpose (as alleged) of hiding assets from, or (in a s.423 sense) defrauding, his creditors.

12. The Bank accepted in consequence that paragraph 84.2 of the Particulars of Claim, an original plea (not a proposed amendment) alleging that the transfers of 9HP, 32HP and the UK Shares, respectively to Ziad, Ramzy and the Sons (25% each), were sham transactions, ought to be and would be struck out in any final Amended Particulars of Claim filed following my determination of the contentious parts of the amendment application.

The Hearing

13. The examination of the apparent strength of the Bank's intended claims at this stage is summary in nature. That is clear from paragraphs 9-10 above, is very well known, and was accepted and avowed by all parties in this case. Yet they threw at the exercise: hearing bundles running to over 6,000 pages; nearly 160 pages of skeleton arguments and associated materials; and authorities bundles containing some 142 tabs and over 3,600 pages. The witness statements were improperly replete with argument, the documentary material was for the most part unopened to the court, and there did not appear to have been any attempt to follow the guidance in section F12.4 of the Commercial Court Guide that authorities bundles should only include authorities to which it was likely I would be taken at the hearing on propositions that were contentious between the parties.

14. The oral argument took up two very full days, sitting until 5.30 pm on the second day, and even then there was no time left for a reply by the Bank, let alone the time on the second day the parties had imagined might be available for argument on the costs points to which I referred in passing in paragraph 8 above. I therefore directed Mr Penny QC to reduce into writing what he would have said in reply if we had sat on for another hour. I am grateful for his efficiency in producing that written note promptly following the hearing, but I do not believe (since it ran to some 28 pages and cited 7 new authorities) that it was limited as directed to a written version of what would have been Mr Penny QC's oral reply if time had permitted.

15. Costs schedules filed by Streathers Solicitors LLP, Fladgate LLP and Stewarts Law LLP representing between them the defendants other than Virtue Trustees indicate aggregate costs incurred by those defendants of c.£680,000. Though Virtue Trustees took a neutral stance on all applications and played no part in the hearing, they nonetheless attended by solicitors and leading counsel. Adding the costs (no doubt non-trivial) of Virtue Trustees' legal representatives' non-participatory attendance, and the costs (I envisage very substantial) on the Bank's side, to the £680,000, I expect that over £1 million has been spent on this current exercise.

16. Even in the context of claims for c.£20 million, what I have just summarised is a disproportionate and unreasonable approach to the proceedings, wasteful of the parties' and the court's resources. It represents the kind of interlocutory battling that is readily explicable only by a failure to focus on what was sensibly required to do justice to any applications that might reasonably be pursued. It was unnecessary for matters to be dealt with so expensively. To the extent that serious points were raised, a properly focused effort to tackle them, keeping a careful eye on the summary nature of any assessment of the merits at this stage, and making sensible use of the guidance provided by the Commercial Court Guide, should have enabled them to be dealt with at much lesser cost.

17. Two days might still have been appropriate for the oral argument, but preparation for that argument should not have required counsel to get on top of such a vast amount of material, and it should have been possible for the argument itself to be better focused, enhancing its quality and allowing more time for important points to be developed and for dialogue with the court. That said, and to be fair to counsel, the oral argument was quite well focused, and very well presented; but that served only to emphasise the huge wastefulness, of time and cost, in what had preceded it. It rather suggested that it was only the imminent prospect of having to present the oral argument to the court that engendered a proper sense of focus and perspective, too late to save the parties from incurring unreasonable and disproportionate costs.

Points of Law

18. Two discrete points of law arise, on which Mr Warents took the lead in arguing the case for the defendants, as to the proper construction of s.423 of IA 1986. The points arise thus:

    (1) For there to be a claim under s.423, a person (to whom I shall refer as 'the debtor') must have entered into a transaction at an undervalue (s.423(1)) for the purpose of "*putting assets beyond the reach of*", or "*otherwise prejudicing the interests of*", his creditors[1] (to which I shall refer as 'the impugned purpose').

    (2) 32HP aside, each of the Claim Assets was held not by Ahmad but by a company said to have been wholly owned or controlled by him, prior to being transferred, so the Bank alleges, at an undervalue.

    (3) This question may therefore arise, namely: where an asset transferred at an undervalue is held by a company and an individual by whom it acts in respect of the transfer does so by virtue of his sole ownership or control of the company, is there, without more, and on the proper construction of s.423(1), a transaction entered into by the individual, either with his company or with the transferee (or both)?

    (4) The further question may arise whether, on the proper construction of s.423(3), the impugned purpose requires that the asset the subject matter of a transaction at an undervalue must have been beneficially owned by the debtor.

19. Mr Warents submitted that the first question must be answered in the negative. That was mandated, he said, by ordinary principles of company law deriving from the basic rule that a company is a distinct legal person, just as those principles mandated a negative answer to the question whether a company with a sole director who owns all of its shares holds or controls its assets in accordance with that person's direct or indirect instructions (*Group Seven Ltd v Allied Investment Corporation Ltd* [2013] EWHC 1509 (Ch), [2014] 1 WLR 735, *per* Hildyard J at [64]-[65]; see also *Lakatamia v Su* [2014] EWCA Civ 636, [2015] 1 WLR 291, *per* Rimer LJ at [50]-[52]). To equivalent effect, a sole director of a company that is a director of another company, acting as such (i.e. acting as the controller of the corporate director), is not constituted,

[1] More fully, the statute refers to a person making or who may at some time make a claim against the person entering into a transaction, and the interests of such a person in relation to such claims, but the singular includes the plural, and I shall use 'his creditors' and the 'interests of his creditors' as shorthand since nothing in the present applications turns on that aspect of the statutory language.

without more, a *de facto* or shadow director of the other company (*In re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180, *per* Millett J (as he was then) at p.184, approved in *Revenue and Customs Commissioners v Holland et al.* [2010] UKSC 51, [2010] 1 WLR 2793).

20. That is because, Mr Warents argued, when the individual in question so acts, i.e. does no more than act as the instrument by which his company acts, he is not treating with his company, or directing or instructing it to act, he *is* his company. There is thus no transaction to which the individual, as distinct from the company, is privy.

21. Those submissions seem to me correct in principle, and they are supported by the authorities cited by Mr Warents. I shall call the contrary notion the 'self-dealing fallacy', that is to say the false notion that where an individual does no more than act as the instrument by which his company acts the individual enters into a transaction with the company, or with the party with whom, thus acting by the individual, the company deals.

22. However, Mr Warents took the argument further, submitting in effect that if an asset, transferred with a view to defeating creditors, is an asset of a company owned or controlled by the debtor, and the transfer will be and is effected by the company, acting by the debtor, then as a matter of law there *cannot* be a transaction entered into by the debtor within the meaning of s.423(1), whatever the surrounding facts and circumstances. That conclusion does not follow from the basic principle invoked by Mr Warents, and from which the authorities he cited flow, that companies are separate legal persons.

23. His prior submissions are correct, leading me to answer the question I posed in the negative, because that question was whether, *without more*, the acts of the debtor which are the acts of the transferor company involve the debtor in entering into any transaction (see paragraph 18(3) above). If the debtor has taken steps going beyond those which amount to steps taken by his company under the doctrine invoked by Mr Warents, the character and legal effect of those other steps cannot be prescribed by that doctrine. That doctrine says that certain actions by the individual constitute the actions of his company, not dealing of any kind between the individual and the company or between the individual and the third party with whom, by those actions, the company deals. Whether *everything* the individual does that leads to or otherwise relates to a transfer of an asset at an undervalue by his company (acting by him) is an action of (the individual acting as) the company, under that doctrine, or whether, rather, some of it is action by the individual acting as such, on his own behalf and not as the company, must depend on the particular facts of any individual case.

24. Thus, in the present case, suppose the transfers of 9HP, 18HP and 32HP, to Ziad, Virtue Trustees and Ramzy respectively, followed a discussion between Ahmad, Joan and the Sons about what to do with those elements of the family's extensive assets, and implemented a collective, family decision they then reached that those properties should go to Ziad, Joan (in the form of the Proceeds because there was also a family decision that 18HP should be sold) and Ramzy. The fact that, strictly, 9HP and 18HP were owned by Marquee, whereas 32HP was owned by Ahmad, and that 18HP would be transferred to Virtue Trustees as trustee of the Spring Blossom Trust, for sale by them, rather than to Joan directly, for sale by her, might or might not feature in such a discussion and decision, indeed might or might not even be known except to Ahmad.

To my mind, it would be entirely natural to say in that case that Ahmad, Joan and the Sons had thereby entered into an arrangement amongst themselves concerning the properties, and thus (in particular) to say that Ahmad had entered into such an arrangement with (each and all of) Joan and the Sons.

25. Whether the posited arrangement should be called a transaction depends on what that word means. For example, dictionary definitions of a transaction range from an instance of buying and selling to an exchange or interaction between people. Here, the context is the statute and it provides a definition. By s.436 of IA 1986, "*"transaction" includes a gift, agreement or arrangement and references to entering into a transaction shall be construed accordingly*". For my purpose, therefore, 'transaction' extends to an agreed plan pursuant to which an asset will come to be transferred and is not limited to the action or actions by which the transfer is effected.

26. If authority were needed for that proposition beyond the plain words of the statute, it may be found in *Feakins v Department for Environment Food and Rural Affairs* [2005] EWCA Civ 513, [2007] BCC 54. The Court of Appeal there rejected an argument that the only 'transactions' were the sale of a farm by NatWest as mortgagee and the surrender of a tenancy over the farm, by the combination of which a transfer away of a substantial net value represented by the farm was effected but neither of which was entered into by the debtor (see at [22], [31]-[32], [34], [49] and [71]-[78]). The notion advanced for the debtor (see at [34]), that "*although the debtor may initiate a sale, unless he actually sells he does not enter into a "transaction" for the purposes of the section*", was rejected. It was held, rather, that "*"transaction" includes an "arrangement" (see s.436); and "arrangement" is, on its natural meaning and in the context of s.423, apt to include an agreement or understanding between parties, whether formal or informal, oral or in writing*" (see at [76]). That notion extended to the overarching plan agreed between the debtor and his fiancée pursuant to which (a) NatWest would be caused to sell the farm and (b) the debtor's tenant company, acting by him, would surrender the tenancy.

27. In *Feakins,* as in *Akhmedova v Akhmedov* [2021] EWHC 545 (Fam), [2021] 4 WLR 88 to which I turn next, the ultimate beneficiary, receiving the net value so as, in the debtor's purpose, to put it out of the reach (direct or indirect) of his creditors, was acting dishonestly, aware that the debtor had that impugned purpose. In *Feakins,* that was the debtor's fiancée; in *Akhmedova*, that was the debtor's son. But that is not a necessary ingredient under the statute, although it might be a factor in considering what relief to grant: see *4Eng Ltd v Harper et al* [2009] EWHC 2633 (Ch), [2010] 1 BCLC 176. Indeed, Mr Warents accepted that the question of impugned purpose is a question as to the subjective state of mind of the debtor only. No doubt a finding at trial, if made, that the debtor did not communicate to anyone that his purpose was the impugned purpose would fall to be weighed in the balance when considering whether the allegation of impugned purpose had been made out; but it would not determine that issue as a matter of law.

28. In *Akhmedova,* Mr A was held to have engaged in wide-ranging efforts to avoid having to honour the English court's order that he pay c.£450 million to Mrs A in settlement of her financial claims against him arising out of their divorce. In summary, as Gwynneth Knowles J put it at [6], Mrs A was "*the victim of a series of schemes designed to put every penny of [Mr A's] wealth beyond her reach. The strategy was designed to render [Mrs A] powerless by ensuring that, if she did not settle her claim … on [Mr*

A's] terms, there would be no assets left to enforce against. Their eldest son, Temur, confirmed in his oral evidence that [Mr A] would rather have seen the money burnt than for [Mrs A] to receive a penny of it. Regrettably, those schemes were carried out with Temur's knowledge and active assistance."

29. An argument of principle was raised by Mr A to the effect that a debtor could not have acted with the impugned purpose if after any impugned transaction(s) had been implemented he was left with sufficient assets to meet his liabilities. That argument was rejected. The various assets and the steps taken in relation to them that had been investigated at trial therefore fell to be considered in turn.

30. One such asset was a valuable property in Moscow, a substantial office building in the Central Administrative District less than 20 minutes' walk from Red Square. The Moscow property was owned by companies owned or controlled by Mr A, namely Sunningdale (a Cypriot company) and its wholly owned Russian subsidiary, Solyanka Servis. The property comprised four separate freehold titles, and each was owned originally (so far as material) by either Sunningdale or Solyanka Servis.

31. In April 2018, Sunningdale transferred ownership of the part of the property it owned to Solyanka Servis. Then in June 2018, Sunningdale transferred all the shares in Solyanka Servis to Temur either for nothing or for less than 10% of the value of the property (and therefore of the shares), depending on whether a purchase document purporting to record a purchase price of RUB 50m had created any real obligation on Temur to pay that price. Mr A's (and Temur's) purpose, the judge held, was to put (the value of) the property out of Mrs A's (direct or indirect) reach in any attempt she might make to enforce her rights.

32. On that, the judge noted (at [330]) that Mrs A could have enforced against the shares in Solyanka Servis by seeking a charging order in Cyprus over the shares in Sunningdale and then the appointment of a receiver over Sunningdale's assets by way of equitable execution. In fact, Mrs A did seek such relief, but (*ibid*) "*she was too late because [Mr A] and Temur had already managed to move the assets again. By causing Sunningdale to divest itself of its interest in Solyanka Servis, and therefore rendering his interest in Sunningdale worthless, [Mr A] intentionally prejudiced [Mrs A's] ability to enforce her judgment.*"

33. At [329], the judge concluded that:

"*All the conditions for the grant of relief under section 423 IA are satisfied. First, the fact that [Mr A] was an indirect owner of the shares in Solyanka Servis through Sunningdale does not affect the ability to grant relief in respect of the transfer of those shares to Temur. The statute applies where a person enters into a transaction at an undervalue and with the prohibited purpose. The word "transaction" in section 423 IA is given a very wide construction which includes formal or informal arrangements. A transaction can also include bringing about the sale of an asset by another person: in … Feakins …, relief was granted where the relevant person brought about the sale of the farm through the medium of its mortgagee, NatWest Bank, to a third party. Section 423 is engaged because [Mr A], as a person, arranged the transfer of Sunningdale's shares in Solyanka Servis, which is a transaction for the prohibited purpose. This reading of section 423 is plainly correct because, otherwise the protective purpose of*

the statute could easily be sidestepped by a sophisticated debtor simply causing companies he owned to transfer their assets away."

34. I respectfully agree with all of that, on the basis of the arrangements agreed between Mr A and Temur described in the judgment, pursuant to which *inter alia* Sunningdale agreed to transfer and/or transferred its shares in Solyanka Servis to Temur. To the extent that Gwynneth Knowles J expressed herself in general terms as to the meaning and effect of s.423 of IA 1986, I agree with that also, subject to one clarification or, it may be, qualification.

35. As I have already said, where the debtor does no more than take steps that amount to the taking of steps by his company, acting by him, there will be no transaction entered into by the debtor, only a transaction or transactions entered into by the company. In *Akhmedova* at [329], *supra*, Gwynneth Knowles J was careful, as I read her judgment, to express the conclusion as being that "*[Mr A], as a person, arranged the transfer …*". It is clear from her findings of fact that that was something agreed by Mr A with Temur and done pursuant to that agreement. The conclusion, articulated in those terms, seems to me properly to distinguish Mr A, acting for himself and in his own interests in agreeing with Temur what was to be done, from Mr A acting as Sunningdale (if and to the extent he did so as part of implementing what he had agreed with Temur). If what Gwynneth Knowles J said were read as meaning that steps taken by Sunningdale (acting by Mr A) amounted, by themselves, to Mr A entering into a transaction with another, then that was not necessary to the decision in *Akhmedova* and I would respectfully differ.

36. On the basis of the statutory language and the Court of Appeal decision in *Feakins*, as confirmed by the decision in *Akhmedova*, the example I posited in paragraph 24 above *would* amount to or involve a transaction entered into by Ahmad, for the purpose of s.423.

37. Mr Warents submitted that the approach taken in *Akhmedova* would leave no or little room for the company's distinct legal identity, and the principle that flows from it, as stated in paragraph 20 above, to make a practical difference. The suggestion was that a debtor who wants his company to divest itself of assets at an undervalue, so as indirectly to frustrate his creditors' ability to enforce their rights against him, can be expected to have wider interactions with prospective recipients than merely those by which the company, acting by him, agrees to effect or effects relevant transfers.

38. I am not in a position to make any finding as to whether that suggestion as to the practical realities is correct, but that does not matter. The furthest the suggestion could take Mr Warents' argument would be a conclusion that it would be a rare case in which a debtor looking to strip a company he owned or controlled of its assets, whereby indirectly to avoid or prejudice the interests of his personal creditors, could do so in practice in such a way as allowed him to rely on the company's separate legal personality to say that he had not personally entered into any transaction for the purpose of s.423. However, there is no reason to suppose that Parliament intended that not to be a rarity.

39. To the contrary, in fact, it serves better the protective purpose of the statutory provision that it should be a rarity. The proposition of law stated in paragraph 20 above means it is possible to envisage an asset-stripping exercise that does not engage s.423, because

Parliament legislated in terms of the debtor entering into a transaction with another. For example, an unsolicited and unheralded gift of property by a debtor's company, acting by the debtor without reference to any other, would appear not to be caught. However, that it may be possible for some debtors on occasion to sidestep the protective regime of s.423 is no reason to suppose that was intended to be easy, or routine, or (to put it the other way round) that it was not intended to be more common to find that s.423 has been engaged if there has been asset-stripping for the purpose of avoiding creditors.

40. Mr Warents made a related submission that it was surprising, if the approach taken in *Akhmedova* is correct, that it has taken 35 years in the life of IA 1986 before a case has so clearly said so. I disagree. Until *Feakins*, nearly 20 years after IA 1986 was enacted, there was no authority confirming squarely that the focus was not exclusively upon the dispositive transaction(s). The statutory language was plain enough nonetheless, and in *Feakins* the Court of Appeal confirmed that it meant what it said. In *Akhmedova*, some 15 years or so after *Feakins*, Gwynneth Knowles J has done no more, ultimately, than apply and confirm some of the effects of the Court of Appeal's decision. If I am adding anything now to the learning on s.423, it is only the clarification provided by paragraphs 34-35 above.

41. Finally on the first point of law arising, Mr Warents submitted that his argument on the scope of s.423 was supported by the fact that:

    (1) materially the same concept of a debtor entering into a transaction at an undervalue is also used in s.238 and s.339 to entitle the administrator or liquidator of an insolvent company (s.238), respectively the trustee in bankruptcy of a bankrupt individual (s.339), to seek relief to reverse the effect of the transaction, and

    (2) in those contexts, Parliament paid particular attention to the possibility of transactions with related parties, by creating rebuttable presumptions, for the purpose of s.238 and s.339 respectively, that a transaction at an undervalue between a company and a connected party (as defined) and a transaction at an undervalue between an individual and an associate (as defined) will have been entered into at a time when the company, respectively the individual, was unable to pay its debts or became so in consequence of the transaction: see s.240(2) and s.341(2).

    In that connection, Mr Warents referred me to extracts from the Cork Report[2] that led to IA 1986, as well as to the statutory language.

42. In my view, the connected parties / associates provisions to which Mr Warents referred have no impact, for the present case, on what it means for a debtor to enter into a transaction, as defined by the statute. There is no difficulty about, or created by, their application if the approach I take to what that means, as summarised below, is adopted.

43. That brings me to the second point of law, namely whether s.423 of IA 1986 is limited to transactions relating to assets beneficially owned by the debtor.

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[2] Insolvency Law and Practice – Report of the Review Committee (June 1982, Cmnd 8558)

44. The Cork Report, after referring to s.172(1) of the Law of Property Act 1925, the predecessor to s.423, and to difficulties with it, recommended that it be repealed and re-enacted so that it would be clear, *inter alia*, "*(b) that the necessary intent is an intent on the part of the debtor to defeat, hinder, delay or defraud creditors, or to put assets belonging to the debtor beyond their reach, and that such intent may be inferred …*" (*ibid*, at para.1215). The disjunctive form makes it questionable whether "*assets belonging to the debtor*" was a universal qualifier limiting the recommendation. That paragraph of the Cork Report is referred to in a brief history of the background to s.423 given in *IRC v Hashmi* [2002] EWCA Civ 981, [2002] BCC 943, *per* Arden LJ (as she was then) at [21], but the court there was not dealing with and did not touch upon the current point, even *obiter*.

45. Whether or not the Cork Report had in mind that any new provision should be limited to assets belonging to the debtor, Parliament used no such language. There is no such limit in the definition of transaction in s.436 (see paragraph 25 above), or in the definition of the impugned purpose in s.423(3), *viz.* "*the purpose – (a) of putting assets beyond the reach of a person who is making, or who may at some time make, a claim against him, or (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.*" The powers of the court where s.423 has been engaged concern "*any property transferred as part of the transaction*" (s.425(1)(a)), and an order made "*may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction*" (s.425(2)). Protections are built in for good faith purchasers or other recipients, one of which concerns "*any interest in property which was acquired from a person other than the debtor … in good faith, for value and without notice of the relevant circumstances*" (s.425(2)(a)).

46. On that statutory language, in my view it is impossible to say that it is a pre-requisite of a transaction entered into by the debtor, for it to fall within s.423, that it concern an asset beneficially owned by the debtor, and cannot extend to an arrangement made with a view to a transferee acquiring at an undervalue an asset owned by a company owned by the debtor, with a view to putting that asset beyond the (indirect) reach of the creditor in any attempt they might make to enforce their rights against the debtor. A contrary conclusion would not be open to me in any event, given *Feakins*. There it mattered not that the farming tenancy, the surrender of which *gratis* was or produced the element of undervalue in the arrangements as a whole that was necessary for Mr Feakins' fiancée to generate value for herself that his creditors could not reach except through s.423, belonged to a corporate vehicle and not to Mr Feakins personally. A contrary conclusion would also require me not to follow *Akhmedova*, but I am not persuaded that Gwynneth Knowles J's decision in that case is clearly wrong such that I might consider not following it. In fact, I find myself in respectful agreement with it, subject to the clarification or, if that is what it is, qualification, that I have mentioned.

47. The upshot, and the approach I therefore adopt when examining the Bank's proposed s.423 claims, below, is as follows:

    (1) if and to the extent that the Bank relies on steps taken by Ahmad that, on analysis, amount to steps taken by a company controlled by him, acting by him, be that Marquee, Medstar, or any other such company, those steps cannot themselves amount to or involve the entry into by him of any transaction for the purpose of s.423 IA 1986;

(2) subject always to (1), the fact that the Bank's case complains that an asset, beneficially owned not by Ahmad but by a company owned or controlled by him, was given away or otherwise disposed of at an undervalue, does not in law prevent s.423 from applying;

(3) in a case falling within (2) above,

(a) whether s.423 applies will depend upon whether Ahmad did something other than take steps that fall within (1) above, and if he did then upon an examination of the nature and effect of those steps, and

(b) the taking of steps by Ahmad that fall within (1) above, or a need (or agreement or expectation) that such steps be taken, as part of implementing an arrangement entered into with another or others (by reason of other steps taken by Ahmad), does not prevent s.423 from applying.

s.423 Claims – General

48. The starting point must be the Bank's pleading of the transactions it says were entered into by Ahmad at an undervalue so as to engage s.423. That starts at paragraph 87 of the draft Amended Particulars of Claim with a plea that:

"*the transfers of the Trust Assets (insofar as … the beneficial interest in those assets was not retained by Ahmad) and/or the transfer of [18HP] (encompassing transfers of the [Proceeds]) and/or transfers of the Ziad and Virtue Transferred Marquee Shares (insofar as the Ahmad-Marquee Directions were effected and had the effect of transferring beneficial interest in those shares, which is not admitted, and insofar as the same were not part of transactions transferring the legal title to [9HP] and [18HP], which is denied) and/or the transfer of the shares in Commodore Netherlands and/or the Medstar Transaction (the "**Transactions**") were transactions defrauding creditors within the meaning of section 423 of the 1986 Act*" (underlining to identify proposed amendments).

49. In what follows, I shall adopt the capitalised term 'Transactions' from that plea. Thus, when I refer to a Transaction concerning an asset, I am referring to that which, in paragraph 87 of the draft Amended Particulars of Claim, the Bank alleges was a transaction at an undervalue relating to that asset, entered into by Ahmad with the impugned purpose so as to fall within s.423.

50. Paragraph 88 of the pleading opens by repeating that the Transactions "*are "transactions" within the meaning of section 423 and 436(1) of the 1986 Act*", as the introduction to six sub-paragraphs, 88.1 to 88.5 (including 88.2A), as to which:

(1) Sub-paragraph 88.1 concerns 32HP.

(2) Sub-paragraph 88.2 concerns 9HP, 18HP and the Proceeds.

(3) Sub-paragraph 88.2A concerns "*the Ziad and Virtue Transferred Marquee Shares (if the Ahmad-Marquee Directions were given and complied with … and constituted independent transactions …)*", which I shall need to unpack.

(4) Sub-paragraph 88.3 concerns the UK Shares.

(5) Sub-paragraph 88.4 concerns the shares in Commodore Procurement Services FS BV ('Commodore Netherlands'), a Dutch company.

(6) Sub-paragraph 88.5 concerns the Medstar Transaction, as the Bank has defined it.

51. What I have just summarised is not a helpful or clear way to plead the Bank's several causes of action under s.423. It does not follow the guidance set out in section C1.1 of the Commercial Court Guide to plead, one claim at a time and one allegation at a time, the essential ingredients of each claim (see C1.1(c)-(e), (g), (j) in the 10th Edition, applicable when the Particulars of Claim were first pleaded; C1.1(c)-(f), (h) in the 11th Edition, applicable to any Amended Particulars of Claim to be pleaded now). The use of the contentious label 'Trust Assets' is also objectionable (*cf* section C1.1(i) of the Guide (10th Edition, now section C1.1(j) (11th Edition)).

52. Any claim under s.423 requires (1) a debtor, (2) who entered into a transaction with another, (3) at an undervalue, (4) with the purpose of either (a) putting assets beyond the reach of his creditors or (b) otherwise prejudicing the interests of his creditors. Now,

(1) In this case, plainly the debtor, so the Bank says, is Ahmad. Separately for each alleged s.423 transaction, the first task of the Particulars of Claim, therefore, should have been to plead:

(2) what transaction the Bank says Ahmad entered into, how, when and with whom,

(3) how it is said that transaction was at an undervalue, and

(4) Ahmad's purpose, according to the Bank, in entering into that transaction;

pleading in the case of each of (2) to (4), with clarity and separately, (i) the allegation made, and (ii) particulars of that allegation sufficient to enable the defendants to know and understand the case they have to meet.

53. For present purposes, the sole focus is upon element (2), i.e. the transaction (if any) it is said that Ahmad entered into, how, when and with whom. It is not suggested that there is no serious issue to be tried as to elements (3) and (4) (undervalue and impugned purpose) if there is a viable claim of a transaction entered into by Ahmad. I consider below, therefore, element (2), one claim at a time, identifying as best I can the separate s.423 claims raised given that the Bank's pleading has not been structured in that way. When I do so, the further difficulty with the Bank's pleading emerges that some of its 'particulars', of a given allegation that a Transaction was a s.423 transaction, do not particularise that allegation but rather allege arrangements different from, or wider than, the Transaction.

54. Although 32HP is one of the tendentiously labelled 'Trust Assets', it does not feature in the consideration of the individual s.423 claims below. 32HP was owned by Ahmad and transferred by him to Ramzy, so there is no issue but that Ahmad entered into a transaction, with Ramzy, in respect of it. Indeed, there is no issue but that it was a transaction at an undervalue, if Ahmad did not retain beneficial ownership, since the

transfer was for nil consideration, i.e. by way of gift. The questions in relation to 32HP will therefore be whether Ahmad still owns the property beneficially and whether, if not, his transfer of the property to Ramzy was for the impugned purpose.

s.423 Claim – 9HP

55. The Transaction concerning 9HP is its transfer to Ziad by Marquee on 27 June 2017 for nil consideration although it was worth £4.5 million, if (contrary to the Bank's primary case) Ahmad was not the beneficial owner of 9HP after that transfer. Without more, that could not be a s.423 transaction, since it was a transaction between Marquee and Ziad.

56. Earlier in the pleading, the Bank alleges that in June 2017, Marquee was owned by a BVI company administered by Kendris called Norton Corporate Services Inc ('Norton BVI'), subject to a declaration of trust by Norton BVI dated 25 April 2016 declaring that it held the shares in Marquee as nominee for Ahmad ('the 2016 Trust'). Complicating matters, the Bank pleads further that:

    (1) Ziad and Virtue Trustees, by letter to Norton BVI dated 19 April 2017, purported to instruct Norton BVI to transfer the shares in Marquee, as to 34.69%, to Ziad, and as to 65.31%, to Virtue Trustees, terminating the 2016 Trust.

    (2) That letter was sent purportedly on the basis that Ahmad had directed Norton BVI to hold the shares in Marquee no longer for himself but, as to 34.69%, for Ziad, and as to 65.31%, for Virtue Trustees as trustee of the Spring Blossom Trust.

    (3) The Bank does not accept that any such direction was given by Ahmad, or complied with by Norton BVI, and pleads that so far as the Bank is aware (although its knowledge does not seem to me to be material) the purported instruction given jointly by Ziad and Virtue Trustees was not implemented by Norton BVI.

57. Unpacking that complication, the Bank's pleaded case is thus that in June 2017, when Marquee transferred 9HP to Ziad, Ahmad was the beneficial owner of Marquee, in that Norton BVI owned all the shares in Marquee but held them, as nominee, on trust for Ahmad under the 2016 Trust; and the Bank does not plead an alternative case to any different effect.

58. On the second aspect of that, the Bank's non-admissions as to any instruction by Ahmad as beneficiary of the 2016 Trust and as to any implementation of the joint letter said to have been sent to Norton BVI by Ziad and Virtue Trustees in April 2017 do not amount to an alternative case. They appear, rather, to be an embarrassing anticipatory response to a plea that no defendant has yet made, and it may be no defendant will ever make, that Ahmad was not the beneficial owner of Marquee, pursuant to the 2016 Trust, in June 2017 when it is said to have given away 9HP and 18HP (as referred to below), to Ziad and Virtue Trustees respectively. Those non-admissions are part of the Bank's proposed amendments, being proposed new paragraphs 59A, 59B and 59C. Come what may, there should not be permission for those paragraphs to be introduced as presently proposed.

59. Against that pleaded background, I turn then to paragraph 88.2 of the Bank's pleading, for (what should be) its particulars of the allegation that the 9HP Transaction, *viz.* the transfer of 9HP by Marquee to Ziad for nil consideration, was a transaction entered into by Ahmad.

60. The first plea, at paragraph 88.2(a), is that 9HP was "*beneficially owned by Ahmad and transferred by Marquee as nominee or agent for Ahmad*". On the premise there alleged that Marquee held a bare legal title to 9HP, Ahmad being the beneficial owner of the property itself and not merely the beneficial owner of Marquee, I would say there was a serious issue to be tried whether, in transferring 9HP to Ziad, Marquee was acting as nominee or agent for Ahmad. If it was so acting, then the transfer would have been a transaction entered into between Ahmad (acting by Marquee) and Ziad.

61. The pleaded premise of beneficial ownership in Ahmad refers to the Bank's allegation, earlier in the pleading, that under Marquee's ownership, Ahmad held the beneficial interest in 9HP "*by way of Marquee holding [it] on express or resulting or constructive trust or as nominee for him, or otherwise*". I find it more natural to consider that when assessing, as I do later, whether there is a serious issue to be tried as to whether Ahmad was the beneficial owner of 9HP *after* Marquee gave it to Ziad.

62. As will be seen below, when I do so, I conclude that there is no serious issue to be tried to the effect that Ahmad beneficially owned 9HP during Marquee's ownership. For that reason, the s.423 claim alleged by paragraph 88.2(a) does not raise a serious issue to be tried.

63. The second plea, at paragraph 88.2(b)(i), is that 9HP was transferred to Ziad by a company (i.e. Marquee) owned and/or controlled by Ahmad and therefore the transfer was "*caused and/or directed by Ahmad*". That plea is bad in law. It purports to found a conclusion that Ahmad caused or directed Marquee to do something upon nothing more than the fact that Marquee did something and the fact that Marquee was owned or controlled by Ahmad. It falls foul of the proposition I stated at paragraph 47(1) above (*a fortiori*, in that no step taken by Marquee, acting by Ahmad, is alleged, only his ownership or control of Marquee).

64. In a written submission provided in response to a confidential draft of this judgment, the Bank drew attention to the fact that in paragraph 54.1 of its pleading, it alleges that Ahmad was in a position to direct or instruct Kendris concerning Marquee, as an element of its case for saying that Marquee was ultimately under Ahmad's control. That does not improve paragraph 88.2(b)(i) of the pleading, or change its plain meaning. It does not make the pleaded Transaction a transaction entered into by Ahmad. The suggestion may be that the Bank wishes to allege a transaction between Ahmad and Kendris, by way of direction or instruction to have Marquee transfer 9HP to Ziad; but as things stand, that is not what it has pleaded or proposed to plead.

65. Third, by paragraph 88.2(c), the Bank pleads that the transfer of 9HP by Marquee to Ziad is "*only properly explicable*" as a transfer of 9HP by Ahmad to Ziad after the grant of 9HP by Marquee to Norton BVI as a dividend *in specie* and a further dividend "*up through the company structure to Ahmad as the ultimate beneficial owner*". The last part of that, as just quoted, makes no sense, since the pleaded case is that Norton BVI held the shares in Marquee as nominee, on trust for Ahmad. There is thus not alleged to have been any further corporate structure 'up through' which there might have been

dividend declarations. More fundamentally, however, a transfer of 9HP by Marquee to Ziad is readily explicable without imagining the declaration of a dividend *in specie* by Marquee. It is fanciful to suppose that a dividend *in specie* needs to have been declared, or to be treated as having been declared, to explain the pleaded transfer to Ziad.

66. The fourth and final plea, however, is different in kind. At paragraph 88.2(d), the Bank alleges, further or alternatively, that 9HP "*was transferred to Ziad pursuant to an arrangement made between Ahmad, Ziad, Norton BVI and/or Marquee. The [Bank] will rely on the facts and matters pleaded in paragraphs 85.1(b)(i) and 85A(a) above as to Ahmad's control of Marquee as supporting the same.*"

67. That is an allegation of an arrangement made between Ahmad and (one or more of) Ziad, Norton BVI and Marquee, that provided for the transfer of 9HP to Ziad to be effected by Marquee. In contrast to the second plea (see paragraph 63 above), on the approach I set out in paragraph 47 above, the claim that such an arrangement amounted to or involved a transaction entered into by Ahmad, for the purposes of s.423, could not be dismissed summarily as bad in law. It would be by nature like the example I posited in paragraph 24 above, which I consider to be within the scope of s.423 in light of the statutory language and the authorities (see paragraphs 25-36 above).

68. However, that is *not* an allegation particularising how the 9HP Transaction, *viz.* the transfer of 9HP by Marquee to Ziad, was a transaction entered into by Ahmad capable of engaging s.423. This is the further difficulty with the way the Bank's case has been pleaded to which I alluded in paragraph 53 above.

69. As an allegation of a wider family arrangement capable of being a transaction entered into by Ahmad for the purpose of s.423, pursuant to which 9HP came to be transferred to Ziad by Marquee, this fourth plea is unparticularised. That may be a result of its not having been identified in the drafting for what it is, namely a separate allegation, different in kind from the allegation that the 9HP Transaction itself (as defined) fell within s.423. The associated plea that the Bank will rely on what it has pleaded as to Ahmad's control of Marquee as "*supporting the same*" is similarly lacking in proper analysis or clear meaning.

70. In that last regard, the plea I am currently examining cross-refers only to pleas asserting as fact that Ahmad was the ultimate beneficial owner of the shares in Marquee, and/or controlled Marquee, such that he had power "*to control the transfer of [9HP] (and [18HP])*". It is not arguable that it follows from that asserted fact that an arrangement within the family must have been entered into. If the intention was, or is, to claim that it is to be inferred, from Ahmad's effective control over 9HP (as alleged) and (it may be) other matters, that a family arrangement was made, and that *that arrangement* (pursuant to which Marquee transferred 9HP to Ziad) is the s.423 transaction in respect of which relief is sought, that is not the case presently pleaded, or proposed to be pleaded.

71. I conclude that the Bank has not pleaded (or, as it stands, proposed to plead) any claim raising a serious issue to be tried to the effect that Ahmad entered into a transaction concerning 9HP that might be capable of engaging s.423 of IA 1986.

s.423 Claim(s) – 18HP and the Proceeds

72. As regards 18HP, there are two stages: first, the transfer of 18HP by Marquee to Virtue Trustees; second, the distribution of the Proceeds. To be clear, that is not to say, in concept, that there might not be a single s.423 transaction that encompassed both stages, depending on the facts. But it is necessary to be clear that those two separate stages were involved, since here the pleading of the Transaction (as defined by the Bank) obscures that, pleading that it means "*the transfer of [18HP] (encompassing transfers of the … Proceeds)*". That is incoherent, since the transfer of 18HP to which the Bank refers was a transfer to Virtue Trustees completed in June 2017, whereas the transfers of the Proceeds to which the Bank refers were transfers of the proceeds of a sale of 18HP by Virtue Trustees in December 2017.

73. Thus, the transfer of 18HP to which the Bank refers was a transfer by Marquee, for nil consideration, to Virtue Trustees, as trustee of the Spring Blossom Trust, on 27 June 2017, the date on which 9HP was also transferred by Marquee (to Ziad). There is the same pleaded background to that of Ahmad's beneficial ownership of Marquee at that time (via Norton BVI and the 2016 Trust), and the same proposed additional plea, for which I shall not grant permission, concerning directions the Bank does not allege, even as an alternative case, were given by Ahmad or acted upon by Norton BVI in respect of the 2016 Trust.

74. The sale generating the Proceeds that were transferred came six months later, on 21 December 2017, when Virtue Trustees sold 18HP to an arms-length purchaser for £8.25 million, generating net proceeds of just over £8 million. As I mentioned at the outset, the Spring Blossom Trust was established by Ahmad on 4 April 2017, with Joan and the Sons as the beneficiaries.

75. The Bank pleads that, following the sale of 18HP, Virtue Trustees transferred US$4 million and a little over £5 million to Joan, by bank transfers by way of distributions to her from the Spring Blossom Trust:

    (1) on 20 February 2018, of US$1 million and US$3 million;

    (2) on 18 October 2018, of £4 million;

    (3) on 5 March 2019, of £500,000; and

    (4) on 12 June 2019, of £512,323.65.

    Those receipts by Joan are referred to by the Bank collectively as the 'Joan 18HP Proceeds'.

76. On 12 and 13 November 2018, according to the Bank's pleading, Alexander received distributions from the Spring Blossom Trust either by direct transfer or by discharge of debts on his behalf of US$2,335 and CHF 37,140. The Bank also pleads that on 7 March 2018, Joan gave Alexander US$250,000, derived from the first tranche of Joan 18HP Proceeds received by her in February 2018. Even if Ahmad had no involvement in the use of the Proceeds to benefit Alexander, directly or via Joan, the Bank has an arguable case that Alexander provided no value for those benefits so that remedies under s.425

of IA 1986 might therefore be available in respect of those benefits if they were, directly or indirectly, the proceeds of a s.423 transaction relating to 18HP.

77. As regards the transfer of 18HP to Virtue Trustees:

(1) paragraphs 88.2(a), 88.2(b)(i) and 88.2(c) of the draft Amended Particulars of Claim make materially the same allegations as they do in relation to the transfer of 9HP to Ziad. They fare no better as attempts to raise an arguable case of a s.423 transaction entered into by Ahmad concerning 18HP than they do in relation to 9HP;

(2) paragraph 88.2(b)(ii) adds a plea that Virtue Trustees sold 18HP (and distributed the Proceeds) pursuant to the terms of the Spring Blossom Trust, "*which it is to be inferred were determined by Ahmad as settlor and/or in accordance with Ahmad's wishes as settlor*". The establishment of the Spring Blossom Trust, by Ahmad as settlor, must at least arguably have amounted to or involved a transaction entered into between Ahmad and Virtue Trustees as trustee. But that is not the Transaction said to have been entered into by Ahmad at an undervalue with impugned purpose so as to engage s.423;

(3) if the intention was, or is, to claim s.423 relief on the basis of some wider, overarching arrangement within the family, or set up between Ahmad and Kendris, or as the case may be, extending to the establishment of the Spring Blossom Trust, the transfer of 18HP by Marquee, and then its sale following the transfer, for the benefit of the Trust and thereby, ultimately, for the benefit of Joan and/or one or more of the Sons as beneficiaries of the Trust, that is not the case that is presently pleaded or that, as things stand, the Bank is asking for permission to plead;

(4) paragraph 88.2(d) is irrelevant (as it concerns only 9HP), but now paragraph 88.2(e) pleads that 18HP "*was transferred to Virtue … pursuant to an arrangement between Ahmad, Virtue, Norton BVI, Marquee, the beneficiaries of the SB Trust and/or the onward recipients of the Joan 18HP Proceeds*". As in paragraph 88.2(d), it is said further that the Bank will rely on its allegation that Ahmad was the ultimate beneficial owner of Marquee and/or controlled Marquee such that he had power to control the transfer of (9HP and) 18HP as "supporting the same". As with my comments on paragraph 88(d), that does not particularise a case that the transfer of 18HP (a transaction entered into between Marquee and Virtue Trustees) was a transaction entered into by Ahmad. If the intention was, or is, to make a claim akin to the hypothetical example I gave in paragraph 24 above, that is not what has been pleaded or is proposed to be pleaded.

s.423 Claim – Ziad & Virtue Transferred Marquee Shares

78. The cumbersomely labelled 'Ziad and Virtue Transferred Marquee Shares', as defined by the Bank's pleading, is the beneficial ownership of 34.69% and 65.31% of Marquee that Ziad and Virtue Trustees respectively would have had if Ahmad's beneficial ownership of the shares in Marquee under the 2016 Trust had been transferred to them in those proportions. The Bank does not allege that there was any such transfer, and I

have said already that permission will not be granted, in their present form, for the proposed paragraphs introducing this hypothetical complication.

79. It follows that I shall not grant permission for the introduction of related wording in paragraph 87 of the Particulars of Claim, or for the proposed new paragraph 88.2A pleading hypothetical particulars. If the Bank considers it has a basis properly to plead as a separate, alternative case, a s.423 claim alleging a transaction at an undervalue in the form of a transfer, or an arrangement for the transfer, to Ziad and Virtue Trustees, of beneficial ownership of Norton BVI's shares in Marquee, an application to add that claim by way of amendment would need to be made (as to which, see paragraph 131 below).

s.423 Claim – UK Shares and Commodore Netherlands Shares

80. The UK Shares, presently held as to 25% each by the four Sons, are one of the tendentiously titled 'Trust Assets'. Their transfer to the Sons is therefore a Transaction, as defined by the Bank in paragraph 87 of its pleading, if it did not leave Ahmad owning the UK Shares beneficially.

81. The "*transfer of the shares in Commodore Netherlands*" is likewise a pleaded Transaction, but without any qualifying contingency.

82. It is convenient to consider the factual case alleged concerning Commodore UK and Commodore Netherlands, and the resulting analysis, all together.

83. It is first necessary to introduce various 'Commodore' entities. Thus:

    (1) Commodore Contracting (Offshore) SAL ('Commodore Offshore') is a Lebanese company owned as to 69% by Ahmad, as to 30% by Medstar and as to 1% by Joan. Ahmad is Chairman and Director General; the registered directors are Medstar and Joan.

    (2) Commodore Contracting Company SAL ('Commodore Lebanon') is also a Lebanese company. It is owned as to 58.75% by Medstar, as to 40.25% by Ahmad, and as to 1% by Joan. Ahmad has been Chairman and General Manager; the registered directors have been Medstar and Joan.

    (3) Commodore UK, of which Ahmad was the sole registered director at all material times prior to 7 June 2018, was a wholly-owned subsidiary of Commodore Lebanon until 24 November 2016, when the UK Shares were transferred by it to Medstar.

    (4) Commodore Insaat Taahhut Yatirim Sanayi Ve Ticaret Limited ('Commodore Turkey') was a Turkish company, incorporated in April 2013 and dissolved in December 2017. Its sole shareholder and director was Commodore Offshore. Its only asset was 100% of the shares in Commodore Netherlands, acquired in September 2013 from Ferrostaal Industrieanlagen GmbH.

84. Ziad was appointed a director of Commodore Netherlands in November 2013 and thereafter, the Bank alleges, Commodore Netherlands (a) secured a valuable contract for the construction of a market in Niger in 2015, which it completed in or around

March 2017, (b) purchased a commercial property in the Netherlands in August 2016, which it sold in July 2021, and (c) secured, prior to mid-March 2017, a valuable government contract relating to a hospital construction project in Burkina Faso. The Bank's case is therefore that the shares in Commodore Netherlands had substantial value in early 2017.

85. The Bank then pleads that:

(1) the UK Shares were transferred by Medstar to the Sons (25% each) on 28 February 2017; and

(2) Commodore Turkey transferred 100% of the shares in Commodore Netherlands to Commodore UK on 16 March 2017.

86. The Bank's further allegation is that:

(1) Commodore UK was given to the Sons, by the transfer of the UK Shares for nil or nominal consideration, at a time when it was "*essentially dormant*", but

(2) Commodore UK in fact had substantial value at that time, in that

(3) (so the Bank says is to be inferred) Commodore UK was given to the Sons in contemplation that the then valuable Commodore Netherlands would be transferred to Commodore UK.

87. Turning then to the s.423 claims pleaded, the Transactions are (i) the transfer of the UK Shares, i.e. the transfer of Commodore UK, to the Sons and/or (ii) the transfer of the shares in Commodore Netherlands to Commodore UK. What passes for particulars of how those transfers are said to have been transactions entered into by Ahmad appears in paragraphs 88.3 and 88.4 of the draft Amended Particulars of Claim, respectively. They are in materially similar terms.

88. Paragraphs 88.3(a) and 88.4(a) allege that the share transferor was in each case a company beneficially owned and controlled by Ahmad (Medstar for the transfer of the UK Shares to the Sons, Commodore Turkey for the transfer of Commodore Netherlands to Commodore UK), "*and so the transfer was … caused and/or directed by Ahmad*". That plea is bad in law, like the plea that because Ahmad beneficially owned or controlled Marquee, and Marquee transferred 9HP to Ziad, that transfer was therefore a transaction entered into by Ahmad (see paragraph 63 above). The Bank again sought to argue otherwise in the written submission responding to the confidential draft of this judgment to which I referred in paragraph 64 above. I have not misunderstood, as the Bank there suggested, that Ahmad was a director of the transferor, Commodore Turkey. Rather, I have found wanting the claim that the pleaded Transaction, *viz.* the transfer by Commodore Turkey to Commodore UK of the shares in Commodore Netherlands, was a transaction entered into by Ahmad. If the Bank's further submission was meant to notify a wish to assert a transaction between Ahmad and another or others said to have resulted in the share transfer by Commodore Turkey, in my judgment that is not the case pleaded.

89. Paragraphs 88.3(b) and 88.4(b) assert that the share transfers can only be explained properly if a dividend *in specie* is imagined in favour of Ahmad of the UK Shares,

respectively of the shares in Commodore Netherlands. As with the equivalent plea in relation to 9HP and 18HP, in my view there is no basis for that other than imagination (see paragraph 65 above).

90. Finally, paragraphs 88.3(c) and 88.4(c) are very like paragraphs 88.2(d) (concerning 9HP) and 88.2(e) (concerning 18HP / the Proceeds). Thus, it is said that the transfers of the UK Shares, respectively the shares in Commodore Netherlands, were effected pursuant to an arrangement between, in the case of the UK Shares, "*Ahmad, the Sons, Medstar and/or Commodore UK*", and in the case of the shares in Commodore Netherlands, "*Ahmad, Commodore Turkey and/or Commodore Offshore … and Commodore UK*". It is said, in both cases, that the Bank "*will rely on the facts and matters pleaded in paragraphs 77 to 82 above*"; but those just set out the Bank's case to the effect that the transfers took place for nil or nominal consideration although the shares being transferred had substantial value.

91. As with paragraphs 88.2(d) and 88.2(e), those final pleas do not particularise any case that the Transactions (as defined), i.e. the share transfers by Medstar and Commodore Turkey respectively, were transactions entered into by Ahmad. As regards the references to Medstar, Commodore UK, Commodore Turkey and Commodore Offshore, it is not apparent that the Bank is alleging anything done by them otherwise than by Ahmad as their *alter ego*, so that the plea appears to be bad in law in any event. As regards the reference to the Sons, in connection with the transfer of the UK Shares by Medstar, the conclusion is the now familiar one, namely that if the intention was, or is, to make a claim akin to the hypothetical example I gave in paragraph 24 above, that is not what has been pleaded. There is no proposal to amend in relation to these share transfers as (allegedly) transactions entered into by Ahmad, save for corrections, immaterial for present purposes, of a typographical error in paragraph 79.1 of the pleading and a figure in paragraph 82.1.

92. Mr Penny QC referred me to an explanation in Ahmad's witness statement for the present applications, saying that Commodore Netherlands was transferred from Commodore Turkey to Commodore UK "*because of suspicions about the conduct of the individuals involved in the management of Commodore Turkey and Commodore Netherlands. … Further, my son, Ramzy, expressed an interest in taking on the business in the Netherlands, but rather than arranging for the shares in Commodore Netherlands to be transferred to him alone, I decided that I would make arrangements for my sons to have an equal interest in Commodore Netherlands. In my view Commodore Netherlands is worth very little, if anything. It is disappointing for me that the business I arranged to be transferred to my sons has proven to be nothing more than a burden and source of problems for them.*" (my emphasis). Were some further or different application to amend to be made founded upon that evidence, the proposed new plea would need to be scrutinised for viability as I have been scrutinising what has been pleaded so far. Mr Penny QC's understandable wish to draw Ahmad's turns of phrase to my attention does not assist the Bank in an examination of the claim it has (so far) pleaded or proposed to plead.

93. I conclude that there is no serious issue to be tried, as to whether Ahmad entered into any transaction, on the s.423 claims that are pleaded by the Bank in relation to the transfers of the UK Shares and the shares in Commodore Netherlands, by Medstar to the Sons and by Commodore Turkey to Commodore UK respectively.

s.423 Claim – the US$15 million

94. This possible claim involves a further corporate vehicle, Mistar Investment Group Holding SAL, incorporated in Lebanon on 8 May 2017 ("Mistar"). The Sons are the registered owners of 99.6% of the shares in Mistar, each holding 24.9%, and the Sons are Directors. The remaining 0.4% of the shares are held by a principal of a Lebanese law firm identified as the founders of Mistar. The Bank alleges that, and there is obviously a serious claim to the effect that, the 0.4% residual founders' shareholding is held as nominee for the Sons, and that Mistar is thus beneficially wholly owned by the Sons in equal shares. In what follows, I shall overlook the founders' shareholding and treat Mistar as simply the Sons' company for present purposes.

95. The Sons' four-way split of Mistar was created in two stages. First, Alexander and Ziad were Directors of Mistar upon incorporation and owned Mistar equally between them from incorporation or, it may be, from a date shortly after incorporation. Second, on or about 23 August 2017, Mohammed and Ramzy joined their brothers as Directors and took over half of their shares, split equally, so as to leave all four Sons owning Mistar in equal shares.

96. In mid-April 2017, the Bank says, Ahmad procured a payment to be made to Medstar of around €27.7 million. Mistar was incorporated, as I have noted, on 8 May 2017. On 17 May 2017, Medstar attempted to pay US$15 million to Mistar, derived (it is plausible to suppose) from the funds received by Medstar in mid-April. For reasons that are presently obscure, the intended recipient bank, for account of Mistar, rejected the transfer of funds ordered by Medstar. The Bank seeks permission to amend to plead, by way of inference, that:

    (1) the attempted transfer of US$15 million to Mistar was without commercial purpose and for no or inadequate consideration, and its purpose was to benefit the Sons through their ownership of Mistar;

    (2) a substantial sum (whether the originally intended US$ 15 million or some other amount) was "*ultimately transferred (on date(s) currently unknown to the [Bank]) by Medstar to the benefit of the Sons for no (or inadequate) consideration, whether by way of transfer(s) to Mistar or otherwise*".

97. I have no doubt that there is a serious case to be tried as to the first inference. The second is said by the Bank to arise, given the first, from the fact that the attempted transfer only failed because of a refusal by the recipient bank to accept it, not because it was rejected by Mistar, from the fact that Mohammed and Ramzy joined Mistar in August 2017 despite the failure of the attempted transfer, though (it is said) Mistar would have been an entity without assets or business unless it had received funds from Medstar as Medstar had intended, from the impugned purpose with which Ahmad was acting in relation to his assets at that time (as alleged by the Bank), and from the fact that no explanation has been provided by Ahmad for the attempted transfer, despite requests in the solicitors' correspondence.

98. From this suggested beginning, that is the supposition that on a date or dates unknown, an unknown amount of money was transferred by Medstar to the benefit of the Sons by means unknown but perhaps by way of a transfer to Mistar, for no or inadequate consideration, the Bank proposes to plead a claim under s.423 on the basis that:

(1) the US$15 million bank balance that Medstar attempted to transfer to Mistar was beneficially owned by Ahmad and Medstar was acting, if it did transfer funds to the benefit of the Sons, as nominee for Ahmad (draft Amended Particulars of Claim, paragraph 88.5(a));

(2) Medstar as transferor "*was beneficially owned and controlled by Ahmad and so the transfer was accordingly caused and/or directed by Ahmad*" (*ibid*, paragraph 88.5(b));

(3) if Mistar was not beneficially owned and controlled by the Sons at the material time, then it was beneficially owned and controlled by Ahmad and "*the transfer of shares in Mistar to the Sons was accordingly caused and/or directed by Ahmad*" (*ibid*, paragraph 88.5(c));

(4) the posited transfer of funds by Medstar is only properly explicable as a transfer by Ahmad after a dividend in respect of those funds by Medstar in favour of Ahmad (*ibid*, paragraph 88.5(d)); and/or

(5) the posited transfer of funds "*will have been pursuant to an arrangement between Ahmad, Alexander, Ziad, the other Sons, Medstar and/or Mistar*" (*ibid*, paragraph 88.5(e)).

99. The second and third of those proposed allegations are instances of the self-dealing fallacy, so I refuse permission for them come what may. The fourth proposed allegation is bad for the same reason that I found other such allegations wanting. In short, it is not sensibly arguable that the only way to explain a transfer of funds by Medstar (if there was one) to the Sons, or for their benefit, is to suppose that Medstar first declared a dividend in favour of Ahmad in the amount transferred.

100. In the fifth allegation, to my mind there is evidently no basis as things stand for an allegation that 'the other Sons', i.e. Mohammed and Ramzy, were privy to any arrangement concerning a transfer at about the time of the attempted transfer of US$15 million that did not go through. Nor is there any basis other than the self-dealing fallacy for an allegation that Ahmad entered into any such arrangement with Medstar or Mistar.

101. Stripped of those obviously unsustainable elements, what is left is a proposed pleading that since Medstar tried to pay US$15 million to Mistar, a company seemingly incorporated, and put into Alexander and Ziad's ownership, solely for the purpose of receiving that payment, but the particular payment route sought to be used failed, at a time when Ahmad was taking steps on a number of fronts to (try to) put assets beyond the reach of the Bank and other creditors, the probability is that Medstar found another way to effect payment of (up to) US$15 million to Mistar, ultimately for the benefit of some or all of the Sons, and the further probability is that all of that would have been by arrangement between Ahmad, Alexander and Ziad. I am just persuaded, on balance, to consider that there is a serious issue to be tried to that effect rather than pure speculation by the Bank.

102. There is ample evidence relied on by the Bank for it to be realistically possible that after a trial the court may find that Ahmad was using Medstar merely as a temporary nominee receptacle for the €27.7 million, building on a finding that it is also credible to suppose

might be made that Ahmad was taking that money for himself, until he could move the funds on so that, ostensibly, they were no longer under his control.

103. Subject to one other point, I would therefore be content to grant permission to amend, limited to an allegation of a transfer by Medstar to Mistar after the failure of the attempted transfer of US$15 million on 17 May 2017, and limited to the allegations proposed by paragraphs 88.5(a) and 88.5(e) (but without the reference to the other Sons, Medstar or Mistar as parties to the alleged s.423 arrangement).

104. The other point to consider is a question of appropriateness of forum, but on analysis it is an aspect of threshold merits, rather than an issue of *forum conveniens* for the purpose of permission to serve out. In the latter sense, this jurisdiction is plainly the *forum conveniens* for the determination of a properly arguable claim to relief under s.423 of the 1986 Act. However, it is recognised that whether relief should be granted under s.423 may be affected by the degree to which there is any connection between the impugned transaction and this jurisdiction: see, for example, *Suppipat et al v Narongdej et al* [2020] EWHC 3191 (Comm) at [57]-[76] and the various authorities considered by Butcher J there.

105. This case is one, like *Suppipat* itself and like *Avonwick Holdings Ltd v Azitio Holdings Ltd* [2018] EWHC 2458 (Comm), summarised by Butcher J in *Suppipat* at [67]-[69], in which the litigation already properly pursued here might reasonably be found after a trial to be a sufficient connection to justify the grant of relief. The Bank may not be able to submit, as the claimant did in *Suppipat* (*ibid* at [66]), that the factual enquiry for the proposed s.423 claim in relation to the US$15 million will overlap "*almost entirely*" with the matters to be investigated on other claims; but the overlap will still be very substantial.

106. The additional point on the appropriateness of this court involving itself by the grant of relief under s.423, if the primary elements of the claim are made out at trial, does not deflect me from the conclusion that there should be permission to amend.

Trust Claims – General

107. The Bank's pleading again fails to plead separately, as it should, its various, separate, causes of action. The compendious claim, at paragraphs 83-84 of the draft Amended Particulars of Claim, is that there should be a declaration that 9HP, 32HP and the UK Shares are owned beneficially by Ahmad, on the basis that "*It is to be inferred that [they] were intended by Ahmad to be, or to remain, beneficially owned by [him] such that the transfers were made to the recipients as nominee, or as trustee for Ahmad, in that [they] are held on either express or resulting or constructive trusts for [him]*". The pleaded construct is not easy to follow and may be incoherent, namely an inferred intention on the part of Ahmad (only) as to beneficial ownership in him 'such that' there were transfers to nominees or trustees 'in that' there were express, resulting or constructive trusts.

108. That unpromising start notwithstanding, I turn to examine the individual cases relating to 32HP, 9HP and the UK Shares respectively.

Trust Claim – 32HP

109. The transfer of 32HP was fully documented, through solicitors, as a gift by Ahmad to Ramzy. It is not alleged that Ramzy was aware (if this be the case) that Ahmad intended only to gift a bare legal title, or would have been so aware but for shutting his eyes to the obvious, or anything of that kind. As a result, in my view there is no serious issue to be tried here to the effect that Ramzy took 32HP as trustee for Ahmad, so that 32HP remained beneficially owned by Ahmad.

110. Mr Penny QC relied on the fact that in April 2018, that is nearly a year after the transfer of 32HP, a restriction was entered at the Land Registry in favour of Joan, preventing any sale of or other dealing with 32HP without her written consent. There is evidence of Joan being used as an asset-holding nominee for Ahmad. Whether that is the nature of her interest under the restriction over 32HP is a serious issue that cannot be resolved without a trial; on the material available to the Bank at this stage, it is certainly a real possibility.

111. I agree with Mr Penny QC that the restriction over 32HP is an unusual feature most readily consistent with the idea that Joan (and therefore Ahmad, if she was acting as nominee for him) has a beneficial interest in 32HP. In evidence for the current applications, it is said that placing this restriction over 32HP was a maternal act to protect Ramzy from feckless action in relation to such a valuable property, and to meet concerns over what might happen if a future marriage ended in divorce. I do not think the Bank, or the court, can fairly be expected to accept that kind of evidence blind, without a proper opportunity to test it through disclosure and a trial. Moreover, it is not immediately obvious why at least the second element (concerns over the consequences of a divorce) do not, if anything, reinforce the possible inference that at all events by April 2018 Ramzy was not the sole beneficial owner of 32HP.

112. Furthermore, I also agree with Mr Penny QC that when the circumstances of and surrounding the grant of this restriction are fully investigated, if indeed they prove an intention on the part of Ramzy to hold 32HP on trust for Joan (as nominee for Ahmad), that proof may well come in the form of, or include, documentary material that will satisfy the requirement for writing of s.53(1)(b) of the Law of Property Act 1925. If that proof is not forthcoming, then as things stand the claim will fail.

113. Mr Penny QC noted in his skeleton argument that in principle the formalities requirement might not defeat the Bank's claim. Specifically, Mr Penny QC submitted that:

    (1) if Ahmad relied to his detriment or significantly altered his position in reliance on an agreement that he was to have a beneficial interest, then there might be a common intention constructive trust, for which he cited *Samad v Thompson* [2008] EWHC 2809 (Ch) at [127] – [129];

    (2) if Ramzy was knowingly privy to Ahmad's dishonest scheme (as alleged) to defraud creditors, then he might not be entitled to retain the beneficial interest, for which he cited *Mumford and Grant on Civil Fraud* (1st Ed.) at 9-015.

    However, the Bank has no pleaded case to the effect of either premise, so it is unnecessary in this judgment to consider whether it is correct that in either such case

Ramzy as transferee could not rely on s.53(1)(b) to deny the claim asserted by the Bank that Ahmad had a beneficial interest in 32HP.

114. It is far from clear that the case as to Ahmad's beneficial ownership of 32HP under an express agreement will fall out in the Bank's favour at trial, and Mr Penny QC did not suggest that the true position is anything other than uncertain at this stage. However, there is in my view a serious basis for the contention that at all events by April 2018 Ramzy held 32HP on trust for Joan as nominee for Ahmad; and the claim that Ahmad has a beneficial ownership interest in 32HP requires a trial.

115. I shall however require that the Bank's pleading is narrowed to conform with the conclusion of this judgment, which is that the only arguable claim is of an express declaration of trust of 32HP by Ramzy in favour of Joan, as nominee for Ahmad, at this stage capable of a proper plea by way of inference from matters of fact the Bank can allege even if incapable of full or final particularisation. In his reply submissions, Mr Penny QC advanced the novel suggestion that because the relief sought was a declaration that Ahmad is beneficial owner of 32HP, claims of express, resulting and constructive trust do not amount to separate causes of action to be examined for the purpose of asking whether there is a serious issue to be tried. I do not accept that. The claim that Ahmad owns 32HP in equity because there has been a declaration of trust to that effect by Ramzy (satisfying the 1925 Act as to formalities) is not the same cause of action as the claim that Ramzy's legal title is impressed with a resulting or constructive trust. In any event, the factual bases for those different claims (or ways of putting a claim, as Mr Penny QC would have it) are sufficiently distinct that as a matter of discretion I would not allow the permission to serve out to stand except on condition that the pleaded claim is narrowed in the way I have just described.

116. The s.423 claim advanced in respect of 32HP is also properly pleaded and will need to proceed to a trial. That was not in issue on the present applications. I mention it again here though to observe that, given the basis on which I have now concluded that there is a properly arguable claim of beneficial ownership in Ahmad, that claim and the s.423 claim appear not to be strict alternatives in the case of 32HP. As matters now stand, there is room for the truth to be that (a) the transfer to Ramzy was absolute, by way of gift, but was a transaction at an undervalue for the impugned purpose (if it is proved at trial that Ahmad had that purpose) *and* (b) Ramzy effectually declared a trust in favour of Joan (as nominee for Ahmad) at some point thereafter, but in any event by April 2018. If the latter is made good at trial and Ahmad's beneficial interest is held to be 100%, then it may be that the s.423 claim based on the former adds nothing; but at this stage I could not say that 100% beneficial ownership in Ahmad is the only possible outcome of a successful trust claim in respect of 32HP.

Trust Claim – 9HP

117. The claim that 9HP is beneficially owned by Ahmad was put primarily on the basis that at the time of the transfer of 9HP by Marquee to Ziad:

(1) Ahmad beneficially owned or controlled Marquee (which it is accepted the Bank has a proper basis to allege and take to a trial) and/or

(2) Ahmad (i.e. rather than Marquee) beneficially owned 9HP,

and was then said to follow from facts (as alleged) that (a) the transfer to Ziad was for no or inadequate consideration, (b) a restriction was subsequently entered to prevent Ziad from disposing of 9HP without Joan's consent (in the same way and at the same time as with 32HP), (c) the transfer to Ziad occurred at a time when Ahmad was at risk of being pursued by his creditors and was taking steps designed to put property out of their reach.

118. I did not understand it to be suggested that the fact Ahmad owned or controlled Marquee, whereby to be in a position to bring about a transfer of 9HP to Ziad, could arguably give rise to a trust of 9HP *in favour of Ahmad* upon or following the transfer to Ziad, at all events bearing in mind that (as with 32HP) it is not alleged that Ziad knew or understood that the transfer was not intended to be a gift to him. The primary basis put forward for a trust claim in respect of 9HP, as summarised above, therefore does depend on there being a viable claim that Marquee held 9HP on trust for Ahmad prior to the transfer to Ziad.

119. However, in my judgment there is no such claim. Rather, to my mind it was convincingly demonstrated by Mr Warents from the documentary record that:

(1) The purchase of 9HP in 1994 by Marquee (and its earlier purchase of 18HP in 1989) was funded by lending to Marquee by a trust, the Pavilion Number 2 Trust, associated with Ahmad, and by 1996 Ahmad had taken an assignment of the benefit of that lending so as to be Marquee's creditor in respect of that purchase funding. The arrangements were put in place through a Hill Samuels financial advisory service provider, prior to Kendris taking that role in relation to Ahmad's wealth planning. This emerged from documents obtained by the Bank during the course of the hearing, after Mr Penny QC's opening submissions. They fatally undermine the submission he had made (quite properly in the absence of the documents) that there was no evidence of any loan arrangement between Ahmad and Marquee such that there was a serious case to be tried that 9HP was simply purchased by Ahmad, using his funds but having title registered in Marquee's name.

(2) The legal *and beneficial* ownership of valuable real property by a company owned by a wealthy 'non-dom' was a routine and lawful tax planning arrangement until the special UK inheritance tax regime for non-doms in relation to UK property was abolished with effect from 6 April 2017.

(3) The natural and obvious inference, bearing in mind that in this case, unlike some, there is no allegation that Ahmad had any improper or ulterior motives in the way in which he managed and organised his wealth when these arrangements were put in place, is that Marquee was to be, and was, the beneficial as well as the legal owner of 9HP (and 18HP) (see *NRC Holding Ltd v Daniliskiy et al* [2017] EWHC 1431 (Ch), at [42]-[44]).

(4) With effect from April 2013, the UK introduced an annual tax on enveloped dwellings that applied to 9HP (likewise to 18HP) if, but only if, it was legally *and beneficially* owned by Marquee. Marquee duly submitted enveloped dwelling tax returns from Tax Year 2013-2014 and paid that annual tax charge accordingly. By then, Kendris were involved and the tax returns were dealt with by Kendris on behalf of Marquee.

(5) The change to the inheritance tax regime in relation to UK property held (legally and beneficially owned) by companies that are in turn owned beneficially by a tax non-dom was consulted upon by the UK Government in 2016 (having had its origins, I was told, in a Labour Party law reform pledge for the 2015 General Election campaign), and was introduced as I mentioned above with effect from April 2017.

(6) That change is reason enough for Marquee's ownership of 9HP (and 18HP) no longer to serve any useful purpose.

120. In my judgment, that creates a compelling case to the effect that Marquee was the beneficial owner of 9HP immediately prior to its transfer to Ziad; and the Bank has no credible basis for advancing a contrary case.

121. The case for Ahmad having a beneficial interest in 9HP therefore requires, as with 32HP in Ramzy's ownership, an express trust in writing declared by Ziad over 9HP in his ownership, in favour of Ahmad. As with Ramzy in relation to 32HP, there is no allegation that Ziad appreciated or shut his eyes to an obvious appearance that Marquee was giving 9HP to him to serve the impugned purpose (as alleged) of Ahmad, which might found a possible resulting or constructive trust (I apprehend it would in fact be the latter). That in turn means that I need not enter into the further question whether any resulting or constructive trust on that basis would be in favour of Ahmad rather than in favour of Marquee, given Marquee's beneficial ownership of 9HP prior to the transfer to Ziad.

122. The claim of express trust, by way at this stage of inference derived from the restriction in favour of Joan, the evidence of Ahmad's use of her as a nominee for him, and certain evidence of the treatment of 9HP by Joan as hers, is in my judgment properly arguable, as it is for 32HP. The same requirement arises for the pleading to be confined accordingly.

Trust Claim – UK Shares

123. As clarified (narrowed) by Mr Penny QC in his skeleton argument, the claim said by the Bank to be arguable that the UK Shares are held by the Sons on trust for Ahmad is confined to a claim, said to arise as a matter of inference (no direct particulars being pleaded), that (each of) the Sons has declared an express trust over their shareholding in favour of their father. Thus, as it was put in note form at paragraph 76 of the skeleton argument:

"*76.1 Prior to transfer: Commodore … Lebanon and then Medstar held the beneficial interest.*

76.2 Post-transfer, D1 held the beneficial interest by way of the Recipient Agreement Basis. Agreement between [the Sons] and [Ahmad] and/or Medstar (acting under [Ahmad's] control)."

124. Mr Penny QC's label of 'Recipient Agreement Basis' refers to the case where as part of or upon a transfer, or for that matter at some point subsequent thereto, the transferee of property agrees with a party other than the transferor to hold the transferred property as nominee for and on behalf of that party. I agree with Mr Warents that the slightly

fancy label is not needed – that is a case, perfectly straightforwardly, of an express trust declared by the transferee.

125. Mr Warents accepted that in the case of the UK Shares, no formalities would be needed for the creation of an express trust in favour of Ahmad, just the normal three certainties of intention, subject matter, and object. Here, the difficulty, he submitted, is that there is no credible plea as to intention, that is to say intention on the part of the Sons that their respective UK Shares were held by them beneficially for Ahmad rather than beneficially for themselves.

126. In that regard, the Bank's pleading is as follows (paragraph references, unless otherwise stated, being to the Particulars of Claim – no amendments are proposed that would be material to an analysis of the beneficial ownership claim pleaded in respect of the UK Shares):

(1) Paragraph 85.1(c) alleges that prior to their transfer to the Sons, Ahmad was "*the ultimate beneficial owner of the [UK Shares]. Paragraphs 69 to 72 above are repeated.*" It is clear from the Bank's skeleton argument, as quoted in paragraph 123 above, that this is a reference to Ahmad being the 'UBO' of the corporate structure that included Commodore UK, owned by Medstar at the material time (i.e. just prior to the transfer of the UK Shares to the Sons), Medstar in turn being owned or controlled by Ahmad. It is not an allegation that Ahmad beneficially owned Medstar's assets generally. That is also clear from paragraphs 69 to 72, as cross-referenced in paragraph 85.1(c), and was made explicit later in the Bank's skeleton argument, paragraph 87.3 of which said in terms that "*The Bank does not rely on [Ahmad] as having held the beneficial interest in the [UK Shares] prior to their transfer to [the Sons]*".

(2) Paragraphs 85.2 and 85.4 to 85.6, read together, allege that the UK Shares were transferred to individuals close to Ahmad, namely his sons, for no or inadequate consideration, at a time when Ahmad was at risk of being pursued by creditors and was taking steps to put property in Berlin and Lebanon out of their reach. (For completeness, it seems tolerably clear that the Sons were obliged to pay £25 each for their UK Shares (albeit there may be an issue whether they ever paid), so the arguable allegation appears to be that the transfers were at a very substantial undervalue rather than that they were for no consideration at all.)

127. Here again, in my judgment it is fatal to the Bank's claim as pleaded that it cannot and does not suggest that any of the Sons was aware at all, let alone had in mind in relation to receiving and subsequently holding the UK Shares in particular, that Ahmad was at risk of being pursued by creditors or that he was dealing with property in Berlin and Lebanon in such a way as to put it out of the reach of creditors. Ahmad's uncommunicated motives behind a transfer of the UK Shares by Medstar to the Sons, while central to any s.423 claim (if there be a relevant transaction entered into by Ahmad), cannot arguably justify an inference that any of the Sons, as transferees, agreed to hold their UK Shares for Ahmad and not for themselves.

128. One is left, therefore, with nothing more than an allegation that the UK Shares were (close to) gifted to the Sons, in that they were each asked to pay only the nominal share capital value of £25 at a time when (so the Bank claims) they were pregnant with the relatively imminent receipt of substantial value from a transfer of Commodore

Netherlands to Commodore UK. That to my mind does not arguably justify a possible inference that any of the Sons agreed with Ahmad to receive, or subsequently to hold, the UK Shares transferred to him as nominee for, i.e. on trust for, Ahmad.

Result

129. My conclusions on the principal matters argued on the current applications may be summarised as follows:

(1) The issue, in respect of each of the Bank's claims that was subjected to scrutiny at this stage, is whether it raises a serious issue to be tried, that is to say whether the Bank has a real as opposed to fanciful prospect of success.

(2) That issue falls to be tested, and in each case I have tested it, by examining the viability in law of the claim pleaded (or proposed to be pleaded by amendment), except where there was a serious argument that some essential factual allegation is demonstrably untrue or unsupportable.

(3) The Bank has not pleaded, nor as it stands does it propose to plead (taking account of its draft amendments), a s.423 claim that raises a serious issue to be tried in respect of 9HP, 18HP, the so-called Ziad & Virtue Transferred Marquee Shares, or the UK Shares or the shares in Commodore Netherlands.

(4) There is a serious issue to be tried upon a limited version of the s.423 claim proposed to be introduced by amendment concerning the US$15 million, and I am content to grant permission to amend in line with paragraph 103 above, but not for anything beyond what I have outlined there.

(5) There is a serious issue to be tried to the effect that Ahmad beneficially owns 32HP, likewise 9HP, but not in respect of the UK Shares. The arguable claim in relation to 32HP and 9HP is, however, a limited one, as noted in paragraphs 115 and 122 above.

(6) Come what may, I would not grant permission for proposed new paragraphs 59A, 59B and 59C of the draft Amended Particulars of Claim in their current form, they being no more than embarrassing non-admissions in response to pleas that may or may not be made in defence.

130. In Mr Penny QC's reply submissions, there was a general plea that if the Bank's pleading was deficient, the Bank ought to be given an opportunity to improve it rather than have claims rejected at this stage (whether by declining jurisdiction or staying the claim, summary dismissal, refusal of permission to amend, or the setting aside of permission to serve out, as the case may be). However, the inadequacies of the Bank's case as pleaded are sufficiently substantial, where I have found it to be wanting, in the context of a pleading that is poorly structured and difficult at best, that I do not accede to that plea. The Bank has had ample opportunity to formulate as best it can any case it believes, on advice, it is in a position to assert. It is fair and appropriate to judge the viability of its proposed claims by reference to what it has pleaded, or has proposed by the amendment application it should be allowed to plead.

131. In relation to a number of individual points, and seeking to apply that general plea, it was suggested that if in the judgment upon the applications before the court the conclusion were that some particular claim did not raise a serious issue to be tried, then the Bank would fashion some further or alternative draft amendment to rescue the claim. That is not self-evidently an appropriate way in which to allow the Bank to proceed; but on the other hand, in substance the proceedings are only just getting going and I could not rule out in advance the possibility of entertaining a further amendment application, if made as part of the process of dealing with matters consequent upon this judgment, or perhaps even at some later stage.

132. I intend, and hope, that the conclusions I have summarised above, founded upon the discussion of the issues in the main sections of this judgment, suffice to dispose of the applications presently before the court, enabling the parties to identify and, if possible, agree what orders should be made.