Neutral Citation Number: [2023] EWHC 2979 (KB)

Case No: QB-2019-000183

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/11/2023

Before :

MASTER DAGNALL

- -

Between :

LENKOR ENERGY TRADING DMCC	**Claimant**
- and -	
IRFAN IQBAL PURI	**Defendant**
- and -	
ENERGY PLUS LIMITED	**Respondent**

- -
- -

James Collins KC and Philip Jones (instructed by **Mackrell Solicitors**) for the **Claimant**
Elizabeth Fitzgerald (instructed by **Farrer & Co LLP**) for the **Respondent**
The Defendant was not represented and did not appear.

Hearing dates: 3-5 July 2023

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Approved Judgment

This judgment was handed down remotely at 2pm on 23 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER DAGNALL

MASTER DAGNALL:

Introduction

1. This matter concerns the beneficial interests in two houses ("the Properties"), being 8 Brendon Street, London W1H 5HE (registered at HM Land Registry under Title No. LN72533) and 28 Brendon Street, London W1H 5HE (registered at HM Land Registry under Title No. LN80874). The Claimant, Lenkor Energy Trading DMCC (which I will call "Lenkor") and which appears before me by James Collins KC leading Philip Jones of counsel, asserts that, while each of the Properties is registered with absolute freehold title with the registered proprietor being shown as the Respondent, Energy Plus Limited (which I will call "Energy") and which appears before me by Elizabeth Fitzgerald of counsel, each are beneficially owned, in whole, but if not in whole then in part, by the Defendant judgment debtor, Irfan Iqbal Puri (whom I will call "Irfan") and who does not appear, and whose asserted beneficial interests Lenkor seeks to make the subject of final charging order ("the FCOs").

2. Energy contends that it is the beneficial owner; and, if that is wrong, that Irfan only owns a limited partial beneficial interest with the majority being owned by others and in particular Mohammad Puri ("Mohammad") one of Irfan's children. Energy accordingly seeks for me both to determine and declare the true position (as also does Lenkor) and to set aside the existing interim charging orders ("the ICOs") which Master Davison granted on 23 August 2022 and to dismiss the application, originally made by Notice of Application dated 23 August 2022, for the FCOs.

3. On 6 December 2022 Master Davison directed that the Court should resolve the issue "whether or not the Defendant has an interest in the properties in respect of which the ICOs might be granted." And on 14 March 2023 Master Davison directed that the issue and whether the ICOs should be continued should be listed before me.

General History and Documents

4. Elements of the history are common-ground and in any event I am satisfied on the basis of the evidence before me, on the balance of probabilities, that such have been proved. However, there are various disputes regarding what happened at various times during the history, and I either resolve them or record them when setting out the following.

The Puri Family

5. Mazhar Iqbal Puri ("Mazhar") was the patriarch of the Puri family which family was historically located in Pakistan. Mazhar was the father of Irfan and other children ("the Siblings") one of whom was Shahina Puri, and the husband of Zarina Puri; and Irfan is married to Naveen Puri ("Naveen") and is the father of Mohammad and also three other children ("the Other Children") being Abdullah Puri, Natasha Puri and Ibrahim Puri. Mazhar died in 2003. This is all common-ground and I find it to be the case. However, there is a dispute as to what was the extent of Mazhar's assets although Energy says that they were substantial and spread across various jurisdictions including Pakistan.

The Incorporation Of Energy

6. On 1 August 1994 Energy was incorporated under the laws of the Cayman Islands with 100 issued shares, shown on its register of members as having been originally issued to Fairfield Nominees Limited but on 8 August 1996 as having been vested in Caversham Nominees Limited and Caversham Holdings Limited (which, together with Caversham Secretaries Limited, I will call "Caversham" and all of which were of "Malzard House", Jersey).

7. Very few of the corporate records of Energy have been produced by Energy, or anyone else. Some have appeared from the documents which were disclosed into the public domain as part of what have been called "the Panama Papers"). There are no documents available for the early years. It is in dispute as to who set up and who beneficially owned Energy, or assets held in its name, and when.

The 1996 Document

8. There exists, signed by Mazhar, a document ("the 1996 Document", which bears a one hundred Rupee duty stamp, and an Advocate's signature and stamp with a date of "08 Jul 1996", and a notary's signature and stamps dated "17.7.96", and which appears to be intended to be formal in nature) which reads:

"**DECLARATION**

I Mazhar Iqbal Puri son of Mohammad Shareef Puri holder of Pakistan National Identity Card number 517-34-253086 residing at D-47 Block-6, P.E.C.H.S., Karachi hereby declare that I own Energy Plus Ltd. ("Energy") a nonresident company registered under the laws of the Cayman Island with registration number 55296, incorporated on 1st August 1994.

It is declared for good order and record that I registered Energy for personal and family investments, for which I have allocated GBP 1,200,000.00 (One Million Two Hundred Thousand Pounds) for purchase of appropriate properties in London. I have appointed my son Irfan Iqbal Puri ("Irfan") as my authorized attorney to purchase and manag (sic) all such purchased properties for the benefit of the family. All other children have been made aware of Energy and my instructions to Irfan, to which they agree.

This declaration is being made for record to ensure that my wishes behind registration of Energy are executed and that none of my children enter into any conflict after my death.

> This original certificate will remain in my possession while a copy hereof is being handed over to each of my children for record.
>
> [signed]
>
> Mazhar Iqbal Puri
>
> 17th July, 1996."

9. The 1996 Document is only before me in copy form. In a witness statement of 28 June 2023, Thomas Dobson, a solicitor at Farrer & Co. LLP ("Farrers"), solicitors for Energy, stated that following, Mr Dobson had been told, discussions between Irfan and Mohammad, both an Omair Nisar ("Nisar"), a lawyer in Pakistan (who acts for one of Mohammad's companies), and Mohammad, told Mr Dobson that: the 1996 Document existed; and had been held by another Puri family member (Akbar Puri); but had been physically delivered to Nisar by hand by an unknown person. Nisar then electronically sent to Mr Dobson the 1996 Document as it is before me. Mr Dobson stated that Nisar had opined that under Pakistan law and practice, the original of the 1996 Document might have been thought not to require preservation. I asked Mr Collins KC whether he accepted that the 1996 Document was authentic and he said that the Claimant was not asserting that it was a forgery. In view of that concession, and as was supported by Mr Dobson's evidence and where the 1996 Document appears to me to be credible both as a document and in context, I regard the authenticity as having been proved on the balance of probabilities and that I should proceed on the basis that it is authentic.

The Acquisition and Registration of the Title of the Properties

10. 8 Brendon Street was transferred by a Land Registry Transfer dated 20 September 1996 ("the 1996 Transfer") for £360,000. The Transfer was written to be to Energy, but with the name IRFAN IQBAL PURI crossed out in favour of a handwritten insertion of Energy's name, of "Haring Ross Gagrat and Gardi, 5 Richbell Place, London WC1N 8BZ".

11. 28 Brendon Street was transferred by a Land Registry Transfer dated 30 September 1997 ("the 1997 Transfer") for £362,500. The Transfer was written to be to Energy, of "Haring Ross Gagrat and Gardi, 5 Richbell Place, London WC1N 8BZ". I refer to the firm of Haring Ross Gagrat and Gardi as "HRGG".

12. On 6/7 October 1997 HRGG submitted an application to the Land Registry to register the 1996 Transfer although with a DX address in Wembley and which resulted in Energy being registered with the title to 8 Brendon Street. On 25 November 1997 HRGG made a similar application with regard to 28 Brendon Street and which resulted in Energy also being registered with that title. I note that HRGG's covering letter gave the 5 Richbell Place address and the Wembley DX number and also a "Property & Private Client Dept." address at 273 Preston Road, Harrow ("the Harrow Address"), and also listed as a consultant "H.D. Gardi" and as Associated Offices "Gagrat and Gardi, Legal Consultants" at an address in Dubai ("the Dubai Address").

13. There is no dispute as to the authenticity of the above documents. I have no other documents regarding the acquisition or funding of the purchases of the Properties and none have been disclosed by Energy, notwithstanding an order for standard disclosure

made by Master Davison on 15 March 2023. Mohammad asserts that he has carried out a search and made enquiries of the directors and others referred to in the corporate records (being those mentioned below) but other documents relating to the purchase or being corporate records have not been located.

The Corporate Records of Energy

14. The next corporate document which I have for Energy is part of a Cayman Islands Annual Return referring to an Annual General Meeting held on 2 November 1998 and which states that the shareholders in Energy were Caversham Nominees Limited and Caversham Holdings Limited (i.e. "Caversham"), who owned 50 shares each, both with Jersey addresses being "Malzard House". I have a similar part of a Cayman Islands Annual Return referring to an Annual General Meeting held on 4 November 1999.

15. I then have a Cayman Islands Annual Return referring to an Annual General Meeting held on 28 December 2000. This states that the shareholders in Energy were Caversham, who owned 50 shares each, both with Jersey addresses being "Malzard House"; the company secretary was Caversham Secretaries Limited (also of "Malzard House", Jersey); and the directors were Raymond Terrence Gibson ("Gibson" described as "businessman" of Sark), Walter George Petre ("Petre" described as "businessman" of Sark) Simon Boyd de Carteret ("Carteret" described as "engineer" of Sark) and Nicholas John MacDonald Bell ("Bell" described as "accountant" and also of the Malzard address in Jersey, and who signed the document).

16. I then have a Cayman Islands Annual Return dated 31 December 2001: the shareholders and secretary being shown as Caversham; and the directors were Gibson described as "businessman" of Sark, Petre and Carteret each described as "businessman" and of "Harris Crichton Bell" of Malzard House in Jersey, and Bell described as "businessman" and of the Harris Crichton Bell address of Malzard House in Jersey.

17. The 31 December 2002 Cayman Islands Annual Return of Energy showed: Caversham as shareholders and secretary; Gibson, Carteret now said to be "Electronics Engineer" of Sark, and Bell as directors. Walter George Petre was shown as having resigned as a director in 1997.

18. The Register of Members shows that Caversham transferred all 100 shares to Irfan on 26 June 2003.

19. The 31 December 2004 Cayman Islands Annual Return of Energy showed, although only as a partial document: the sole shareholder as being Irfan of address unknown; and the director as being Hasmukh D Gardi ("Hasmukh" of the Dubai address).

20. The 31 December 2005 Cayman Islands Annual Return of Energy showed: the sole shareholder as being Irfan of address unknown; the secretary as being a Cayman Islands Company, Trulaw of the company's Cayman Islands registered office address; and the directors as being Hasmukh and Surekha H Gardi ("Surekha" also of the Dubai Address). The 31 December 2006 Annual Return shows the same but with Hasmukh (said to be a solicitor) now also the secretary. The 31 December 2007, 2010, 2011, 2012, 2013 and 2014 returns show the same (with the Trulaw registered office name mutating to become "H&J Corporate Services (Cayman) Ltd but which may well just have been a renaming of that company).

21. The Register of Members shows Irfan's 100 shares as being cancelled, and 100 new shares being issued to Mohammad on 24 February 2015.

22. The 31 December 2015 Cayman Islands Annual Return of Energy shows the same as before but with: the shareholder now being Mohammad; and an additional director being Sanjiv Kumar Patel ("Patel") of Dubai. The 31 December 2016 Cayman Islands Annual Return of Energy shows the same except that Surekha is no longer a director.

23. On 30 December 2022 Energy applied to be registered as an overseas company in this jurisdiction stating that Mohammad was a beneficial owner to the extent of more than 25% of its shares and being a person of significant influence or control over it.

24. There is no dispute as to the authenticity of the above documents, although they are said to be (and to an extent clearly are) incomplete.

The 2001 Documents and the 2001 Charge

25. There is before me a set of documents, which I conclude are authentic (and which did not appear to me to be disputed), dated 19 March 2001 ("the 2001 Documents") as follows:

    i) One is a typed note ("the 2001 Note") on notepaper of Jaleel Brothers Ltd of Pakistan and which appears to have been a "Puri" company (as its address and contact details have "Puri" elements, and it is said that Irfan conducts business through it). It states that Irfan is the son of Mazhar and is said to trade in petroleum imports to Pakistan and that the family business has existed for 40 years and engages in high volume imports with little competition. Irfan is said to be the leading entrepreneur. It is said that the "group has also made huge earnings in the property trade". The typed element is undated. There are three sets of handwriting on the document. One says "File Note : Mr Irfan Puri & Mrs Naveen Irfan : A/C No: 330211. The second says "Mrs Naveen Irfan is the Puri. Passport copies of b holders enclosed in the" and letters and words are clearly missing. There is a signature and "Sajjad Habib Manager 21/08/96". The third says "Mr Islam please" with a signature and "19/03/01"

    ii) The second document is on the notepaper of Habibsons Bank Limited ("HBL") and is signed "10.03.2001". It refers to the 330211 account which is said to be that of Mr & Mrs Puri and to have been opened in 1996, with Mr Puri being involved in importing petroleum and being a very prominent businessman. Mr Puri is said to be wishing to have a new account designated and to have funds transferred into it

    iii) The third is dated 19.3.2001 and is an instruction to HBL in London regarding an Account 330434 of Irfan and Naveen to act on telephoned or faxed instructions. It bears various signatures which seem to be those of Irfan and Naveen

    iv) The fourth is dated 19.3.2001 and is an account opening form for Account Number 330434 of Irfan and Naveen (giving a Pakistan address and a UK address in Norfolk Crescent, London). It bears various signatures which seem to be those of Irfan and Naveen

v) The fifth is dated 19.3.2001 and is a declaration for Account Number 330434 of Irfan and Naveen (giving a Pakistan address) to the effect that they are entitled beneficially to the interest on the account and are non-resident.

26. There is before me a copy document dated 3 July 2001 ("the 2001 Charge"), which I regard as being authentic, being a copy of an All Monies charge granted by Energy (whose address is said to be "c/o [the Harrow Address]" securing all liabilities of "the Chargor" and "the Borrower" (and who are both Energy itself) over 8 Brendon Street. The copy document has a stamp on it of "Alan Ross & Partners" ("ARP") dated 30/7/01 and certifying it as a true copy. I also have a copy application to the Land Registry made by ARP who are said to be of the Harrow Address to register the 2001 Charge; and I find that the registration occurred.

Arnfield Limited

27. Arnfield ("Arnfield") is a British Virgin Islands company; and certain of the Panama Papers seem to indicate that its shareholders are Irfan and Caversham.

HD1 Developments Limited

28. I have before me annual returns from 2008 and 2009 of a company HD1 Developments Limited ("HD1DL") which show Irfan (with a Dubai address) and Mohammad (with 8 Brendon Street as his address) as its directors. In 2014 that companies' address becomes an address in Huddersfield with the company secretary becoming one Mohammad Tayssir Ismail ("Ismail" whose address is stated to be in Stanmore, Middlesex). I find these documents to be authentic (and which is not disputed).

8 Brendon Street Documents

29. I have before me Barclays bank account ledgers showing Irfan as the holder of an account with 8 Brendon Street as his address "since 26 May 04"; and more recent (2022) statements of a Barclays account of Mohammad's showing 8 Brendon Street as his address. I have Council tax demands and services bills addressed to Irfan and Naveen at 8 Brendon Street for 2022. I find these documents to be authentic (which is not disputed).

30. I have before me a series of assured shorthold tenancy agreements for rooms within 28 Brendon Street from 2019 to 2022 and where the landlord is shown to be " T I Management" and which are signed on its behalf by "M T Ismail" or "T Ismail" (and who I infer to be Ismail). I have correspondence before me from the City of Westminster with T I Management and Ismail regarding 28 Brendon Street being a House in Multiple Occupation ("HMO"). I find these documents to be authentic (and which is not disputed).

31. There is, however, one assured shorthold tenancy agreement for a room in 28 Brendon Street dated 01/01/20 where the landlord is shown at "HD Developments c/o T I Management". Mohammad says that this is an error, and it does not seem to me that I need to decide whether or not it was, although I have noted that, even if it was by error, HD1DL has, at least, appeared on relevant paperwork at one point.

Tax Documents

32. I have been taken to tax material regarding the Properties. I have before me a witness statement from Aman Hayer of 25 May 2023 who is a chartered tax adviser and a director of Wheawill & Sudworth Limited ("W&S"), accountants, of the Huddersfield address. She was not sought to be cross-examined and I accept her evidence and I find the following facts.

33. W&S had been instructed by HD1DL, by its then directors Irfan and a Glen Bayat, from 2001, where HD1DL owned a large property in Huddersfield. At some point soon after 2001, they were asked by Irfan to file overdue tax returns for Energy in relation to the Properties. They filed ordinary tax returns for 28 Brendon Street and its rental income for the years 1998-2022 albeit that those for the earliest years were (obviously) late and out of time.

34. However, under modern tax legislation, there is an "Annual Tax on Enveloped Dwellings" ("ATED") where, as here, a foreign company, Energy, owns UK residential property worth more than £500,000, and which provisions had been ignored by Energy until about 2022. I have been provided with extracts from HMRC's relevant technical guidance which provides that:

    i) An "Entitled" owner is required to file returns in relation to all such property. "Entitled" means "beneficially entitled" and does not apply to a mere trustee, in which situation the question then arises as to the nature and status of the beneficial owner(s) and whether they are non-resident. Thus a corporate trustee holding on trust for individuals does not need to file any returns

    ii) Where a property is let on a commercial basis and is not at any time occupied or available for occupation with anyone connected with the owner, the company must still file a return but can claim relief from the ATED

    iii) In 2022, but only in 2022, ATED returns were filed both for 8 Brendon Street (resulting in ATED tax being charged and paid) and for 28 Brendon Street (with letting relief being claimed) for the years from 2016 onwards.

The Lenkor Transactions

35. In these proceedings on 23 January 2020 ("the 2020 Judgment") Master Davison granted summary judgment in favour of Lenkor against Irfan for (Dubai currency) AED 123,272,048 together with accrued interest and costs (the then value in GBP being about £38.4 million), and Irfan's various appeals against that judgment have failed. It is that judgment which is the subject matter of these charging order applications and of the ICOs.

36. The summary judgment was itself an enforcement of a civil liability held to exist by the Dubai courts arising from Irfan's having signed cheques drawn on the account of IPC Commodities DMCC ("IPC Dubai", a company owned and controlled by Irfan) which cheques had not been honoured by the drawer, IPC Dubai, and where, in Dubai law, Irfan incurred personal liability.

37. The cheques arose from a 2014 transaction ("the Sale Transaction") between Lenkor, IPC Dubai and a buyer of petroleum products ("the Products") located in Pakistan ("the Buyer") under which the Buyer purchased the Products from Lenkor at a price of about $55 million (eventually altered to a recalculated figure of Pakistan rupees "PKR" after $4 million had been paid to IPC Dubai), and which payment IPC Dubai guaranteed. The intention was that the Buyer would pay IPC Dubai, and IPC Dubai would pay Lenkor.

38. Unknown to Lenkor (or at least its main or current management), a situation ("the Diversion") was then created by Irfan and Mohammad whereby a "contract of sale" was entered into between IPC Dubai, IP Commodities Limited ("IPC Pakistan" being a company previously owned by Irfan but of which Mohammad was a director and substantial shareholder, other directors and shareholders being various of the Other Children) and the Buyer, whereby the Buyer actually paid IPC Pakistan at IPC Dubai's nomination. The equivalent of $31 million was so paid to IPC Pakistan but none of those monies (or the previously paid $4 million) was paid over to Lenkor.

39. Lenkor say, and have said, that this was effectively a fraud upon them; and Lenkor commenced an Arbitration under the Sale Transaction contract (which resulted in an Award requiring IPC Dubai to pay over the $4 million and the equivalent to $31 million; and none of which has been paid) and various other proceedings to seek to obtain the monies in Pakistan, Dubai and here.

40. The failure by IPC Dubai to honour the cheques resulted in Irfan, as signatory and under the law of Dubai, both incurring a direct civil liability to Lenkor and also committing criminal offences, and for which he was arrested on 8 March 2015, and imprisoned between 9 June 2015 and 29 May 2017. Lenkor, when obtaining the 2020 Judgment, chose not to seek the full face value of the cheques but rather to limit the amounts to what they said had been dishonestly taken from them by way of the Diversion.

41. Lenkor's above version of these matters is set out in witness statements from Thomas Spencer of 26 July 2019 and James Atton of 20 January 2023 neither of whom has Energy sought to have cross-examined. In his evidence, to which I will come in due course, Mohammad appeared to accept the generality of the above course of events, and said that: (1) he had been asked by persons (then) involved in the Buyer to engage in the Diversion, including for the equivalent of $31 million to be subsequently paid out from IPC Dubai; however, (2) he did not know and had not been able to ascertain to whom (or how, or to where) those monies had been paid.

42. Technically, Energy is not bound by the earlier judgments in these proceedings, or those of the Dubai and other courts, except that it has to accept that Irfan is a judgment debtor under the 2020 Judgment and that the other judicial decisions actually exist. However, Energy has not sought to contest Lenkor's above history, and which is supported by documents attached or referred to in the witness statements (as well as elements of Mohammad's evidence), and I find it to be proved on the balance of probabilities.

The WFO Proceedings

43. In support of the Arbitration, Lenkor applied for and obtained worldwide freezing orders against IPC Dubai on 9 January 2015 from Males J and against Irfan on 11 July

2017 ("the 2017 WFO") from His Honour Judge Waksman QC (as he then was). The 2017 WFO required Irfan to provide information as to his assets and bank accounts.

44. In consequence, Irfan made an affidavit of 24 July 2017 ("the 2017 Affidavit"). He gave a list of assets which he said he owned and which included the following statements:

"5.3 No. 8 and No. 28, Brendon Street, London, United Kingdom. Estimated value of my interest: PKR62,997,445/£461,993.

5.3.1 the registered proprietor of these two separate properties is Energy Plus Limited (see paragraph 8.6 below) a company registered in Cayman Islands. I believe that Energy Plus Limited would acknowledge that I have an interest arising from an informal settlement in these properties to the value of PKR62,997,445/£461,993 but my interest is not registered as a charge on the property. The title registers for the properties confirmed that they each have a mortgage with Habibsons Bank….

8.6 Energy Plus Limited I do not have any direct or indirect legal or beneficial interest in the above company. I do not have any power and/or control over any share in this company nor is there any third party who holds or controls this asset in accordance with my direct or indirect instructions as defined in paragraph 6 of the Order. However, as mentioned above, I have an interest in two properties (House No. 8 & 28, Brendon Street, London, UK) owned by this company to the extent of PKR62,997,445/£461,993 only."

45. No other evidence has been adduced from Irfan and he has not been called as a witness in relation to the charging order applications.

Energy's witness evidence

46. Energy has adduced a witness statement from Aman Hayer to which I have referred above. Aman Hayer was not sought to be cross-examined and I accept her evidence as I refer to above.

47. Energy also adduced two witness statements from Mohammad dated 2 December 2022 and 25 May 2023; and he gave evidence on affirmation verifying them and was cross-examined, re-examined and asked questions by me.

48. I have reminded myself when considering Mohammad's evidence that with regard to witnesses:

i) The Court's appreciation of a witness and of the reliability or weight of their evidence (and each part of it) is an holistic matter, involving considering all of their evidence as given together with the surrounding material (here including both documents and the inherent likelihoods of events), which is merely part of the wider holistic process of weighing together all the evidence and material before the court (including both documents and the inherent likelihoods of events) when deciding issues of fact (as to which I deal further below)

ii) Even where a witness is saying what they believe to be the accurate truth; the process of human memory is fallible and that it is easy for a witness to have mis-

remembered or to have created a false memory by, for example, continually thinking about the subject or trying over-hard to remember it or discussing it with others or simply through the ordinary processes of the subconscious including the natural desire (to some extent) to justify oneself and one's past conduct. This is all the more so when events have taken place a substantial time ago (and in this case various key events took place over 25 years ago, and when Mohammad was a child), or were fleeting in nature, although it is possible for witnesses to refresh their memories helpfully, for example from contemporaneous documents. However, none of this means that a recollection should be simply disregarded as the memory may be perfectly genuine, and there may be particular reasons why a particular conversation or event may have "stuck", and accurately so, in a person's mind

iii) The actual giving of their evidence by a witness is important, and it needs to be assessed. Although there are dangers in seeking to assess a witness' demeanour when giving evidence as such an assessment may be affected by numerous factors (including cultural, educational, psychological and psychiatric), there may be matters affecting weight including whether and how they are prepared and able to engage with the questioning process

iv) The mere fact that a witness is being actually or apparently evasive does not mean that the witness is being deceitful, and there may be alternative explanations including, for example, embarrassment

v) The mere fact that a witness is being actually, or apparently deceitful (or just evasive) regarding one or more matters does not necessarily mean that the witness is being deceitful (or just evasive) regarding other matters. It may affect the weight to be given regarding what is being said about those other matters, but a witness may often lie about one event while telling the truth about others.

49. In his first witness statement, Mohammad:

i) described the Properties and stated that when they were acquired the ultimate beneficial owner of Energy was Mazhar; but that, in or around 2001, Mazhar, having received a cancer diagnosis, decided to divide the beneficial ownership in Energy between Irfan and Irfan's children, that is to say Mohammad and the Other Children, with 25% of the Energy shares being beneficially owned by Irfan, and the remaining 75% split between the various Other Children, none of this being documented

ii) referred to Mazhar having died in 2003 and stated that in January 2014 he, Mohammad, had reached agreement with Irfan and the other children with a view to Mohammad acquiring all of their beneficial interests in Energy for himself, this agreement(s) not being documented except by way of the shares transfer being recorded in Energy's corporate records. He said that the total agreed payments were PKR 235,500,000 of which PKR 62,997,445 were to be paid to Irfan, this being calculated to reflect both his 25% beneficial interest and various sums he had spent on a renovation of 8 Brendon Street. Mohammad said that the agreement was that these sums were to be paid over a period of two to three years without any suggestion that Irfan would retain any beneficial interest in Energy or the Properties in the meantime. Mohammad went on to

say that in or around 2015, Irfan had requested that some of the outstanding monies be paid by Mohammad direct to Mohammad Farogh Nassem & Co and to Nisar & Nisar, these being two Pakistani law firms who were acting for Irfan, and to whom Irfan owed legal fees. Mohammad says that he paid PKR 47,250,000 (what was said to be an equivalent to $400,000 according to Lenkor and $120-180,000 according to Mohammad, although there seemed to be some movement by both sides towards a figure of $250,000) to those two firms, and that a balance of PKR 15,747,445 remains due and owing but on an unsecured basis. Mohammad said that the contents of the 2017 Affidavit were incorrect and that Irfan had since in a conversation confirmed to Mohammad that he had forgotten to take account of the sums paid to the Pakistan lawyers.

50. In his second witness statement, Mohammad expanded on those matters, in particular as follows:

i) with regards to the original purchases he referred to the 1996 Document stating that he had no knowledge of the circumstances or the reasons for which it was made. However, he then said that he had always understood from conversations with Irfan, Naveen and others in the family that Mazhar had provided the acquisition monies. He said that the Puri family operated on a typical cultural basis of having a patriarch, here Mazhar, who had made the key decisions. Mohammad said that Irfan had recently confirmed that purchase funds of £1.2 million had been provided by Mazhar (I note that only £650,000 were spent on the Properties) in order to purchase the properties

ii) as far as 8 Brendon Street was concerned: between 1996 and 2003 Mazar, his wife Zarina and their daughter Shahina had lived there; after Mazar's death Zarina continued to live there until she died in 2021; and also from 2004 to the present time Natasha Puri, Abdullah Puri and Ibrahim Puri (being the Other Children of Irfan) had lived there, as had Mohammad between 2004 and 2010 and also whenever he comes to the United Kingdom. Mohammad said that Irfan had never resided at either of the Properties but might have used it as a banking address for convenience.

iii) 28 Brendon Street and the rooms within it had been let with the rent proceeds from such lettings being paid to the agent TI Management and then onto Mohamed or to other members of "my family" on his instruction having deducted a Commission fee of 10%, but that no written agreements to such effect existed

iv) Mohammad said that he paid his mother Naveen £15,000 each month which she used to pay her own personal expenses and to pay the outgoing on the Properties including utility bills which were managed by his sister Natasha Puri

v) Mohammad said that Irfan and he were now in dispute with regards to an unrelated business transaction

vi) Mohammad repeated his assertions that he had agreed with Irfan and the Other Children for him to purchase their beneficial interests in Energy and that the payments had been made to the lawyers in Pakistan

vii) Mohammad said that he believed that the shares in Energy had been held by nominee companies between 8 August 1996 and 26 June 2003 because Mazhar, the then beneficial owner, resided in both the UK and Pakistan where individuals are liable to pay tax on global income and he wished his involvement not to be known. However, when Irfan became beneficial owner of Energy, he was resident in Dubai where the same tax difficulty did not exist and so that he could hold the shares in his own name, and that Irfan did so notwithstanding the interests of his children because at that point they were minors and underage

viii) Mohammad said that he decided to purchase the beneficial interests in Energy because his own family were living in 8 Brendon Street

ix) Mohammad stated that his understanding had always been that Energy owned the properties both legally and beneficially and therefore that when he agreed his purchase he was not buying the beneficial interests in the Properties but rather in the shares in Energy.

51. Mohammad was cross-examined extensively. Much of this related to what had happened to the monies paid by the Buyer for Lenkor's petroleum products. Mohammad said that he had acted on the instructions of a Mr Salim Butt, said to be connected to the Buyer, and of Irfan, and had been content to permit IPC Pakistan to be used as a conduit for the monies, without seeing any documentation to justify the transactions, as that had happened before and his own finance team had dealt with the payments of relevant tax and appeared to regard all this as proper. He said that some of the monies had been used to purchase shares in the Buyer, and that he had been told that they "could not be repatriated due to sanctions". He said that he trusted the various qualified finance professionals and was not concerned with the source of the funds or where they had gone and could not recall what had happened. It was Mr Butt who had dealt with to what accounts the Lenkor monies were paid out by IPC Pakistan and Mohammad could only say that they were connected to various individuals related to the Buyer and that "we are still looking". Mohammad said that he had had nothing to do with the Lenkor transaction and that various documents linking him with inspections and testing of the Products only related to some bio-diesel samples that he was marketing and had shared with a person involved for unrelated reasons.

52. Mohammad said that the litigation with Lenkor had caused a break-down in the relationship between himself and Irfan. He had therefore taken all the remaining profits (the Lenkor monies already having been paid out) out of IPC Pakistan, believing this could be done by a controlling owner without need for documentation or board/shareholder resolutions etc., and sold it and moved to Dubai. The result was that a Mr Khan, and associate of Irfan and who had worked for the Buyer, had taken over what was essentially an empty shell.

53. Mohammad said that Energy owned the Properties and that he, Mohammad, had wished to buy them and therefore told his own chief financial officer to do what was required for Mohammad to take it over. Mohammad said he did not require any documents himself; and that only later had he sought to obtain Energy's historical documents, and had spoken to those of the past directors who were still alive, the contact point being Gardi (i.e. Hamukh), but without obtaining any more than has been disclosed in this litigation.

54. Mohammad said that when he took over Energy in 2014, he learnt that Habibsons Bank had a mortgage but that the only relevant bank account which it secured had been closed in 2014. He said that it had been used to borrow monies to fund Mazhar's being treated for cancer from 2001.

55. Mohammad said that he believed that Mazhar had provided £1.2 million but could not say what might have happened to the £400,000+ which would have remained after purchase of the Properties.

56. Mohammad said that he believed that the Siblings had no interest in the Properties notwithstanding the terms of the 1996 Document. He said that he was told that the Siblings had received properties from Mazhar in Pakistan, Malaysia and London which had equalised their ceasing to have any interests in Energy (or the Properties). He referred to a recollection of a conversation which he overheard when aged about 12 where Mazhar had said to Irfan and the Siblings that there needed to be a discussion regarding inheritance due to Mazhar's having cancer. He recalled that all of them then locked themselves in a room and that he had then assumed that that discussion took place. Mohammad said that he understood that Irfan was given 25% of Energy for himself with the rest to be held by Irfan for Mohammad and the Other Children, with the Siblings receiving other properties elsewhere, and that was why Irfan had managed the Properties until 2015.

57. Mohammad said that in 2014, when he had decided to buy-out Irfan and the Other Children, he had not seen it as necessary to make any written agreements with them or the Siblings. In 2015 he had paid Irfan's Pakistan lawyers in cash, without any documentation. This was done in order to conceal the transactions from the Pakistan tax authorities. He denied that this was an invention. He said that he had been paying the Other Children for their interests by way of regular payments and funding education costs etc.

58. Mohammad said that the utility bills were addressed to Irfan and Naveen because they had a joint bank account and it was convenient for Naveen to be registered for and to pay them, and not because Irfan owned the Properties. He said that £15,000 per month to Naveen came from his own business and not from the Lenkor monies. He repeated that Irfan had not lived at the Properties.

59. Mohammad said that so much was dealt with in cash and undocumented in relation to the running of the Properties and the rentals from 28 Brendon Street because he was simply the owner and in effect "Energy" and felt he could deal with his own property (even if owned through a company) without need for documentation. He denied that the ATED documentation had been created to bolster his case in this litigation.

60. When giving his evidence, Mohammad was clear and he did seek to engage with and respond to the questions. However, when he was questioned as to what had happened with regard to the Lenkor transactions and the Lenkor monies, I found him to be evasive and I did not regard his answers as being at all full.

61. Although Mohammad was firm as to his role being limited to some marketing of bio-diesel and simply putting other matters to his "finance team" and obeying the instructions of others, the documents and emails appear to show him as having had more of a role in progressing the testing of the petroleum products and the advancing

of their acceptance for the purposes of the Lenkor transactions. While I am conscious that I am in no position to, and I am in no way seeking to, determine disputes regarding the Lenkor transactions, at best, on the evidence before me, Mohammad is someone who simply allowed his own company and its bank accounts to be used as a conduit for the equivalent currency of tens of millions of pounds without any apparent commercial justification and in circumstances which would raise "red flags" as to potential fraud and also potential breaches of tax law (and quite possibly international sanctions). Such raises clear questions as to whether he is or is not a person of commercial probity whose evidence can be trusted.

62. At first sight I cannot see how Mohammad cannot know to which accounts the monies received from the Buyer were paid, and he seemed very evasive when he said, in effect, that that was still being investigated without any outcome as yet. Although this is not directly related to what I have to decide, my instant impression is that he was not being open with the court (I strongly suspect that the true answer is that Mohammad has no intention of revealing precisely what happened with details of relevant accounts and individuals, but, whatever his reasons for that intention, I regard him as not being open with the court in any full sense as to what he does or does not know and why).

63. I also note that on his own evidence as to the dealings with the Pakistan lawyers (and whether his evidence is correct or not), Mohammad is someone who is prepared to engage in large-scale undocumented dealings in cash designed to enable high-value tax evasion. Whether or not that is usual practice amongst some lawyers in Pakistan, as Mohammad says, it still involves him saying that he is prepared to be a party to dishonesty, and accepting an absence of basic documentation, in the form of receipts, which would be expected to be a basic commercial necessity.

64. On the other hand, certain of Mohammad's evidence had some "ring of truth" especially: (i) in relation to his description of the conversations regarding Mazhar's desire to divide his family patrimony amongst Irfan and the Siblings, and (ii) Mohammad's treating various company's assets as simply his own to dispose of without requiring corporate documentation in the form of director or shareholder resolutions etc. The first seemed to me to be genuine and to reflect a standard patriarchal model, and the second was both consistent with the level of documentation in this case (where so much is missing that one would expect that at least some might assist Energy's and Mohammad's case) and the way that various lay people treat such formalities of company law as being something of an unreal nuisance.

65. I have therefore treated much of Mohammad's evidence with caution and have had to ask myself carefully as to how much weight I can give it when dealing with disputed matters of fact.

The Parties' Essential Cases

66. Lenkor contends that Irfan has a beneficial interest in each of the Properties over which charging orders can and should subsist, arising from:

    i) The Properties having been acquired using Irfan's money (or, possibly, Mazhar's money for the benefit of Irfan alone) and so that Energy always held and still holds them on (resulting) trust for Irfan; or if that is wrong

ii) The Properties having been acquired using Mazhar's money so that the Properties were held by Energy on resulting or declared (by the 1996 Document) trust for Mazhar, and who:

a) subsequently transferred the beneficial interest in them to Irfan either wholly or at least as to 25% or

b) died leaving or with his Estate (comprising the Irfan and the Siblings and possibly Zarina) determining that at least 25% of the beneficial interest should go to Irfan

67. Energy contends that:

i) The Properties were acquired by Energy beneficially (whoever funded their acquisition) and so that whatever has happened with regard to beneficial interests in the shares of Energy, Irfan has no interest in the Properties which can be the subject-matter of a charging order; but, if that is wrong

ii) Mazhar (and not Irfan) funded the acquisition of the Properties and Mazhar had the entire beneficial interest. Irfan eventually derived from Mazhar a 25% interest in the Properties but that interest he has transferred altogether to Mohammad under the 2014 agreements, alternatively, following the 2015 payments to the Pakistan lawyers, only an interest amounting to a quantified PKR 15,747,445 (i.e. the agreed price less the monies paid in cash by way of the 2015 Payments) is outstanding.

68. These submissions give rise to key factual questions of:

i) Who funded the acquisition of the Properties and whether it was Mazhar or Irfan, and with what actual (or presumed) intentions

ii) What were, if any, the agreements before or after Mazhar's death, and in the absence of such agreements what was the position under the Estate, regarding ownership interests in Energy/the Properties

iii) Whether the asserted agreements were made in 2014 (i.e. "the 2014 Agreements") for Mohammad to acquire any interests of Irfan and, if so, in what terms

iv) Whether Mohammad did make payments of PKR 47,250,000 in 2015 to the Pakistan lawyers (i.e. "the 2015 Payments") in reduction of whatever was outstanding in relation to the 2014 Agreements (assuming they existed).

69. I note that Mohammad is not a party to these proceedings, although he has full knowledge of them, is the sole shareholder of Energy and has given evidence. Mohammad has not sought to be joined. While I have had concerns as to whether I should be determining the beneficial interest position with regards to Irfan and the Properties in ways which will affect Irfan, no-one suggested that I should not do so, and I will consider whether some specific direction should be made as to his status in relation to the Charging Order applications (including so as to ensure that he would

have rights to appeal) when dealing with the orders to be made consequential upon this Judgment.

The Law

70. Both sides have drawn my attention to case-law with regard to the question as to when, as here, a property(ies) is acquired by a private company owned (directly or through nominees) by its funder, that property(ies) is owned beneficially by the funder or is owned beneficially by the company whose shares are owned beneficially by the funder. Although there may be tax differences and other legal consequences arising from those two different legal structures, there is no general economic difference as far as the funder is concerned, since they own either the Properties directly (that is to say in equity they are the beneficial owner) or indirectly by way of their ownership of the entire shareholding of the entity (i.e. the company) which owns the beneficial interest in the Properties.

71. Ms Fitzgerald drew my attention to the general principles that, in the absence of sufficient other reason, beneficial ownership follows legal title i.e. that Energy being the registered proprietor of the Properties would own them beneficially as well as in law.

72. Ms Fitzgerald and Mr Collins both directed me to section 53 of the Law of Property Act 1925 ("Section 53", but accepted that the provisions of sub-section (2) could potentially apply in this case) which reads:

> "53 Instruments required to be in writing.
>
> (1) Subject to the provision hereinafter contained with respect to the creation of interests in land by parol—
>
> (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
>
> (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
>
> (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
>
> (2) This section does not affect the creation or operation of resulting, implied or constructive trusts."

73. I note, that, subject as is dealt with in the cases and textbooks, there is an ancient principle of equity that, where one person purchases property using the funds of another, there is a presumption that they hold it on trust (i.e. a resulting trust) so that

the beneficial interest is in that other, but that that presumption is subject to any relevant common intention or agreement.

74. Ms Fitzergald then took me, in terms of general approach, to *Gany v Khan [2018] UKPC 21* where in paragraph 17 it was stated:

"17. It is convenient to begin with a re-statement of the basic principles by which equity (which in this respect is shared by England and Wales and the British Virgin Islands) provides for identification of beneficial interests arising from a gratuitous transfer of property. First, if either the transferor or the transferee makes a written (or oral) declaration as to those beneficial interests, or they do so together in an agreed form, that will generally be decisive, regardless of the subjective intentions of either of them: see for example *Whitlock v Moree* [2017] UKPC 44. Secondly, and in default of any such declaration, the court looks for evidence from which a common intention as to beneficial ownership may be inferred. This may include evidence of statements made by either party before, at the time of or even after the relevant transfer, the parties' conduct, and the factual context in which the transfer takes place. Sometimes, a choice between possible conclusions as to beneficial interest may properly be arrived at by a process of elimination, whereby the most unlikely conclusions are first removed, leaving the least unlikely as the correct one. Finally, recourse may be had to time-honoured presumptions, such as the presumption of advancement or the presumed resulting trust, where there really is no evidence from which an inference as to common intention may properly be drawn. But these are, in modern times, a last resort, now that historic restrictions on the admissibility of evidence have been removed, and the forensic tools for the ascertainment and weighing of evidence are more readily available to the court."

75. Mr Collins took me to the textbook of Lewin : Trusts : 20th Edn at sections 10-019—023 and 10-049 as follows:

"10-019 When property is purchased and transferred into the name of a person other than the purchaser, a resulting trust arises in favour of the purchaser if there is a presumption of a resulting trust which is not rebutted by evidence that he intended a gift, or if the purchaser establishes that it was his actual intention that the property purchased was not to be owned beneficially by the person in whose name the purchase was made. A presumption of resulting trust arises only when the purchase is made in the name of a person who is in equity a stranger to the real purchaser. Hitherto, where a purchase has been made in the name of a person who is not in equity a stranger to the real purchaser, such as his spouse or child, then a presumption of gift, called the presumption of advancement, has arisen in favour of the nominal purchaser. Where this presumption has applied, the real purchaser has been able to establish a resulting trust in his favour only by evidence of his actual intention rebutting the presumption of advancement. When, if ever, section 199 of the Equality Act 2010 comes into force, the presumption of advancement will be abolished, except in relation to anything done before, or in relation to any obligation incurred before, that date. The presumption of advancement has generally been considered to apply only to purchases by a father or husband, and not to those by a wife or mother, the House of Lords having recognised as long ago as 1969 that the presumption arose in circumstances when women's role in society was very different to now. It is now tolerably clear that the presumption of advancement applies without gender discrimination, so in principle will apply to purchases by a mother in the name of her child and of a wife in the name of her husband.

The remainder of this section should be read subject to these points. It would appear that it does not apply as between unmarried couples, but it would almost certainly be held to apply as between civil partners in the same way as spouses.

10-020 It has been seen above that the presumptions of resulting trust and of advancement are, compared with evidence of actual intention, of only limited significance in relation to the establishment of resulting trusts that arise on gratuitous lifetime transfers in the circumstances there considered. The Court of Appeal (in the context of a purchase by a father in the name of his child) has more recently indicated that the law applies presumptions only where there is no evidence of the intention with which a transfer is made, and the court did not draw any distinction in this regard between voluntary transfers and purchases, nor between the different kinds of relationship to which the presumption of advancement applies. We will, nonetheless, approach this topic in the traditional manner, by considering first the presumptions that arise, and secondly the manner in which they may be rebutted.

Presumption of resulting trust

10-021 The general rule is that when real or personal property is purchased in the name of a stranger, a resulting trust is presumed in favour of the person who paid the purchase money, if he did so in the character of purchaser.

Land

10-022 The rule was long ago established in relation to land:

"The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser; whether in one name or several, whether jointl[y] or *successivè*; results to the man who advances the purchase money[92] … and it goes on a strict analogy to the rule of the common law, that where a feoffment is made without consideration, the use results to the feoffor."

Personalty

10-023 The rule also applies to personalty. Thus if a bond is taken or an annuity, stock, shares, chattel interests, or a lottery ticket are purchased, in the name of a stranger, there is a presumption of a resulting trust in favour of the person who paid the purchase money in the character of purchaser."

"10-049 The person who claims to be the real purchaser must show that he provided the purchase money as purchaser. If he was a mere lender then his claim to be the real purchaser will fail. In most cases the person who claims to be the real purchaser pays the purchase money direct to the vendor, and, so long as it is clear that he was not a lender, there should be no difficulty in showing that it was he who was the provider of the purchase money in the character of purchaser. Cases where a property is acquired on mortgage are considered in § 10-087."

76. Ms Fitzgerald and Mr Collins then took me on historical survey of the modern leading cases in this area.

77. The first was *Arab Investment Syndicate Limited v Hiseman (CA unreported 15 February 1994)* where a husband had purchased a property in the name of a Cayman Island company whose shares were held on a discretionary trust in order to ensure that the asset was beyond the reach of his creditors but he could exercise a form of indirect control by giving directions to the trustees. It was held that "It is clearly of the essence of such an arrangement that the company should own its assets beneficially." This was notwithstanding that the husband had told his wife that this was being done for her benefit, as it was held that the husband had not wanted to give her any actual beneficial interest because he wanted to set up a situation where creditors could not attack the transaction as being some sort of fraudulent disposition by him to her. The result was that the court held that the beneficial interest was in the company. This seems to me to be a case where the court held that this was the funder's (and by extension also the company's) actual intention and agreement between them, although it was also held that "The burden is, of course, upon [the wife] to demonstrate the circumstances in which the trust in her favour can be inferred. Prima facie the company, as legal owner, is also beneficial owner."

78. Ms Fitzgerald next took me to *Stockholm v Garden (unreported 26 October 1995)* where a Princess had agreed to purchase a property and then procured for it to be bought in the name of a company with the Princess funding the purchase using funds borrowed from her mother, and being the beneficial owner of the shares of the company. As here, there were no financial documents dealing with the basis of the purchase. It was held that there was no resulting trust in favour of the Princess or her mother but that the beneficial interest was in the company, in particular as follows:

> "These findings are not, it seems to me, inconsistent with the ladies' undoubted intention that the property should be available as a London home for both of them. Had Mr Lowe taken the trouble to obtain further instructions from Princes Madawi, he might have suggested that some part of Garden's share capital should be owned by Princess Hend, and I have little doubt that a suggestion would have been welcomed by Princess Madawi. But there was nothing particularly surprising about Princess Madawi owning all the shares; in a way it mirrored the situation in Riyadh, where Princess Hend was sole owner of the house where she and Princess Madawi lived when they were both in Saudi Arabia. As Lord Bridge said in Lloyds Bank v Rosset [1991] 1 AC 107, [1990] 1 All ER 1111, at page 130 of the former report, neither a common intention to renovate a house as a joint venture, nor a common intention that a house is to be shared, throws any light on the parties' intentions as regards beneficial ownership. For these reason I think that it is Princess Madawi's intentions, and hers alone, that I am concerned with.
> The other point that I have to come back to is the significance of the transfer being made to a company whose whole share capital belonged to Princess Madawi. If (as in McGrath v Wallis [1995] 2 FLR 114, [1995] 3 FCR 661,) a father and son both contribute to the purchase of a house which is transferred to the son alone, the question whether beneficial ownership corresponds to, or differs from, legal ownership - however it is resolved - has serious financial consequences for the parties. If they fall out and the house has to be sold during the father's lifetime, it affects the destination of the proceeds of sale; if they retain the house until the father dies, it affects how much he has to leave by his will.
> The position is quite different if the house belongs to a private company. If a private company is sole legal owner of the house, and the occupier of the house is sole legal and beneficial owner of all the company's shares, then (so long as both parties remain solvent) there is no basic economic difference between the company being sole beneficial owner of the house, and being a nominee for the occupying shareholder. There will be incidental differences - for instance, the tax implications - and these may be of some practical importance, as has been seen. But at a basic level a wholly-owned company cannot be seen by its shareholder either as a potential rival to him in claims to ownership of property, or as a potential recipient of bounty from him (see, in a different context, IRC v Levy [1982] STC 442 56 Tax Cas 68). What goes out of one economic pocket comes straight into the other.

In these circumstances I can see very little room for the application of the traditional presumptions as between Princess Madawi and Garden. I do not discount them completely but I must look first for evidence of actual intention before having recourse to the judicial last resort. From the evidence of Princess Madawi herself (who gave evidence clearly and candidly, though with understandable gaps in her recollection) I find that she did decide that Garden was to be the owner of the property, even if she reached that decision with some reluctance because of Miss Hassan's advice against it. That decision (reached on the understanding that she would be shareholder, but without any advice or thought as to the possibility of nominee ownership and a resulting trust) seems to me to be conclusive evidence of her intention that Garden should indeed be the owner - in technical terms which were not explained to her, that Garden should be beneficial as well as legal owner. The position cannot in my judgment be affected by both ladies having subsequently contributed to the cost of repairing, improving and equipping the property. I can see no evidence that their sharing of these expenses, which was natural in the circumstances, marked any change of common intention or was capable of creating any trust which did not exist beforehand.
I reach this conclusion on my findings as to Princess Madawi's own intentions, without adopting a submission (made to me by Mr Briggs in opening, and repeated more tentatively in reply) as to a client being bound by his solicitor's intentions, if the client has decided to leave a matter to the solicitor. There may be some such principle, especially in the field of artificial tax avoidance (see IRC v Fitzwilliam [1993] 3 All ER 184, [1993] 1 WLR 1189) but its scope is not clear and it cannot, on any view, be of completely general application. If I had to inquire into Mr Lowe's intentions I should have great difficulty in deciding what they were, not only because of his very imperfect recollection of his advice but also because of his rather imperfect understanding of what he was advising on. Instead I base my conclusion, as I have indicated, on what Princess Madawi said about her own decision to accept her solicitor's advice, and her own likely understanding of his brief explanation of the reasons for it."

79. Ms Fitzgerald then took me to *Nightingale v Mehta [2000] WTLR 901*. The Judge here held that where there was a genuine challenge (as in that case and also here) the burden was on the judgment creditor to show that the judgment debtor had a beneficial interest in the relevant property so as to justify the making of the charging order. This was a case of a foreign company, whose shares were vested in a discretionary trust, being transferred a property but where the transfer was funded by the judgment debtor. It was held, though, that the beneficial interest was held by the company as follows:

"Over and above those matters Mr Munby submitted, and I agree, that the proper and natural inference from the decision by an individual to purchase a property in the name of a company and provide it with the funds to do so, especially where the company is controlled by the individual, is that the company should be the beneficial as well as the legal owner of the money and then the property. This is well illustrated in *Stockholm Finance Limited v Garden Holdings Inc & ors (unreported) 26 October 1995* …

… Although not a director or shareholder of Omdeep and not a beneficiary of the Lotus Trust, Mr Mehta effectively controlled both Omdeep, through having undated letters of resignation of the three directors, and the Lotus Trust (and through the Lotus Trust the shares in Omdeep) through his power, while protector, to appoint new trustees of the Lotus Trust and, through the exercise of that power and the exercise of his power as

protector, his further powers to procure the appointment of whatever beneficial trusts he might wish. The existence of this control renders it all the more likely that Mr Mehta's intention (as provider of the funds) was that Omdeep should become and remain the beneficial — and not just the legal — owner of the property.
I therefore conclude that, although he provided the purchase monies, Mr Mehta did not become the beneficial owner of No 8."

80. Ms Fitzgerald further took me to *Jones v Kernott [2011] UKSC 53* dealing with implied and resulting trusts in a married/partners relationship context and paragraphs from the judgment; first as to how the individuals may be found to have had a relevant intention as to beneficial interests under the older law, as follows:

" Inference or imputation?

26. In Stack v Dowden Lord Neuberger observed (paras 125-126):

"While an intention may be inferred as well as express, it may not, at least in my opinion, be imputed. That appears to me to be consistent both with normal principles and with the majority view of this House in *Pettitt [1970] AC 777* , as accepted by all but Lord Reid in *Gissing v Gissing [1971] AC 886* , 897H, 898B-D, 900E-G, 901B-D, 904E-F, and reiterated by the *Court of Appeal in Grant v Edwards [1986] Ch 638* at 651F-653A. The distinction between inference and imputation may appear a fine one (and in *Gissing v Gissing [1971] AC 886* , at 902G-H, Lord Pearson, who, on a fair reading I think rejected imputation, seems to have equated it with inference), but it is important.

An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements. An imputed intention is one which is attributed to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended, whereas inference involves concluding what they did intend."

Rimer LJ made some similar observations in the Court of Appeal in this case [2010] EWCA Civ 578, [2010] 1 WLR 2401, paras 76-77.

27. Both observations had been to some extent anticipated as long ago as 1970 by Lord Reid in his speech in *Gissing v Gissing [1971] AC 886* , 897:

"Returning to the crucial question there is a wide gulf between inferring from the whole conduct of the parties that there probably was an agreement, and imputing to the parties an intention to agree to share even where the evidence gives no ground for such an inference. If the evidence shows that there was no agreement in fact then that excludes any inference that there was an agreement. But it does not exclude an imputation of a deemed intention if the law permits such an imputation. If the law is to be that the court has power to impute such an intention in proper cases then I am content, although I would prefer to reach the same result in a rather different way. But if it were to be held to be the law that it must at least be possible to infer a contemporary agreement in the

sense of holding that it is more probable than not there was in fact some such agreement then I could not contemplate the future results of such a decision with equanimity."

28. The decision of the House of Lords in Gissing v Gissing has been so fully analysed and discussed that it is almost impossible to say anything new about it. However it may be worth pointing out that their Lordships' speeches were singularly unresponsive to each other. The only reference to another speech is by Viscount Dilhorne (at p 900) where he agreed with Lord Diplock on a very general proposition as to the law of trusts. The law reporter has managed to find a ratio for the headnote (at p 886) only by putting these two propositions together with some remarks by Lord Reid (at p 896) which have a quite different flavour. We can only guess at the order in which the speeches were composed, but the third and fourth sentences of the passage from Lord Reid's speech, set out in the preceding paragraph, suggest that Lord Reid had read Lord Diplock's speech in draft, and thought that it was about "an imputation of a deemed intention."

29. This sort of constructive intention (or any other constructive state of mind), and the difficulties that they raise, are familiar in many branches of the law. Whenever a judge concludes that an individual "intended, or must be taken to have intended," or "knew, or must be taken to have known," there is an elision between what the judge can find as a fact (usually by inference) on consideration of the admissible evidence, and what the law may supply (to fill the evidential gap) by way of a presumption. The presumption of a resulting trust is a clear example of a rule by which the law *does* impute an intention, the rule being based on a very broad generalisation about human motivation, as Lord Diplock noted in *Pettitt v Pettitt [1970] AC 777* , 824:

"It would, in my view, be an abuse of the legal technique for ascertaining or imputing intention to apply to transactions between the post-war generation of married couples 'presumptions' which are based upon inferences of fact which an earlier generation of judges drew as to the most likely intentions of earlier generations of spouses belonging to the propertied classes of a different social era."

That was 40 years ago and we are now another generation on."

81. I was then taken to paragraph 36:

"36. In the meantime there will continue to be many difficult cases in which the court has to reach a conclusion on sparse and conflicting evidence. It is the court's duty to reach a decision on even the most difficult case. As the deputy judge (Mr Nicholas Strauss QC) said in his admirable judgment [2009] EWHC 1713 (Ch), [2010] 1 WLR 2401, para 33 (in the context of a discussion of fairness) "that is what courts are for." That was an echo (conscious or unconscious) of what Sir Thomas Bingham MR said, in a different family law context, in *Re Z (A Minor) (Identification: Restrictions on Publication) [1997] Fam 1* , 33. The trial judge has the onerous task of finding the primary facts and drawing the necessary inferences and conclusions, and appellate courts will be slow to overturn the trial judge's findings."

82. I was then taken to the conclusions as to the principles to be applied in alleged "common intention" "personal relationship" cases:

"51. In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who

are both responsible for any mortgage, but without any express declaration of their beneficial interests.

(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.

(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.

(3) Their common intention is to be deduced objectively from their conduct: "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party" (Lord Diplock in *Gissing v Gissing [1971] AC 886* , 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in Stack v Dowden , at para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, "the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property": Chadwick LJ in Oxley v Hiscock [2005] FAm 211 , para 69. In our judgment, "the whole course of dealing … in relation to the property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).

52. This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above.

53. The assumptions as to human motivation, which led the courts to impute particular intentions by way of the resulting trust, are not appropriate to the ascertainment of beneficial interests in a family home. Whether they remain appropriate in other contexts is not the issue in this case."

83. Both counsel took me to *Prest v Petrodel [2013] UKSC 34* where the Supreme Court analysed the correct approach where a husband had funded the purchases of properties which had been vested in companies wholly owned and controlled (directly or through intermediate entities) by him. The Supreme Court emphasised the existence of the "corporate veil" which divides the company itself from its shareholders.

84. In paragraph 49, the judgment dealt with the arising of a resulting trust where the husband had himself transferred a property to a company gratuitously (without more in the form, for example, of a declaration as to beneficial ownership):

> "49. Of the other five properties owned by PRL, the first category comprises the three properties (Flats 4 and 5, 27 Abbey Road, and Flat 2, 143 Ashmore Road) acquired by the company in December 1995 and March 1996, in each case for a nominal consideration of £1. Since no explanation has been forthcoming for the gratuitous transfer of these properties to PRL, there is nothing to rebut the ordinary presumption of equity that PRL was not intended to acquire a beneficial interest in them. The only question is who did hold the beneficial interest. Flat 4, 27 Abbey Road was transferred by the husband, who had originally bought it in his own name in 1991, before PRL was incorporated. There is therefore an ordinary resulting trust back to the husband, which is held by him subject to the charges in favour of Ahli United Bank and BNP Paribas. Flat 5, 27 Abbey Road was transferred to PRL by the husband's younger brother Michel. He had acquired title shortly before at a time when he could not have paid for it himself. The wife's evidence was that the husband paid for it. Again, there is no evidence to rebut the ordinary inference that the husband was the beneficial owner of the property at the time of the transfer to PRL, and that the company held it on a resulting trust for him. The leasehold interest in Flat 2, 143 Ashmore Road was transferred to PRL by the wife. The rather curious chain of title before that is summarised above. The circumstances suggest that the husband must have provided the purchase money and was the beneficial owner when the legal estate was held by Jimmy Lawrence and also at the time of its transfer from him to the wife. Either it then became the beneficial property of the wife (which is what equity would initially presume); or else it remained in the beneficial ownership of the husband, which is what I would on balance infer from the wife's evidence that the transfer was procured by the husband without her conscious involvement. In either case, the company as the legal owner can be required to transfer this property to the wife. I conclude that the husband was at all relevant times the beneficial owner of all three properties."

85. In paragraph 50, the judgment dealt with the arising of a resulting trust where the company had funded a purchase but from money provided by the husband (such not having been provided by an evidenced capital subscription or loan):

> "50. The freehold interest in 143 Ashmore Road and Flat 6, 62–64 Beethoven Street come into a different category. Flat 6, 62–64 Beethoven Street is known to have been acquired by PRL from the husband in August 1998 for substantial consideration. Since PRL had not begun operations at that stage, I infer that the purchase money must have come from the husband. Virtually nothing is known about the terms of acquisition of the wife's interest in the freehold of 143 Ashmore Road, except that the husband says that the money came from PRL. I infer for the same reason that PRL was funded by the husband. In itself, that is consistent with PRL being the beneficial owner if, for example, the husband provided the money to the company by way of loan or capital subscription. But there is no evidence to that effect, and I would not be willing to presume it in the absence of any. I conclude that the husband was the beneficial owner of these two properties."

86. The approach to be taken was further summed up in paragraph 52 albeit in a matrimonial context:

"52. Whether assets legally vested in a company are beneficially owned by its controller is a highly fact-specific issue. It is not possible to give general guidance going beyond the ordinary principles and presumptions of equity, especially those relating to gifts and resulting trusts. But I venture to suggest, however tentatively, that in the case of the matrimonial home, the facts are quite likely to justify the inference that the property was held on trust for a spouse who owned and controlled the company. In many, perhaps most cases, the occupation of the company's property as the matrimonial home of its controller will not be easily justified in the company's interest, especially if it is gratuitous. The intention will normally be that the spouse in control of the company intends to retain a degree of control over the matrimonial home which is not consistent with the company's beneficial ownership. Of course, structures can be devised which give a different impression, and some of them will be entirely genuine. But where, say, the terms of acquisition and occupation of the matrimonial home are arranged between the husband in his personal capacity and the husband in his capacity as the sole effective agent of the company (or someone else acting at his direction), judges exercising family jurisdiction are entitled to be sceptical about whether the terms of occupation are really what they are said to be, or are simply a sham to conceal the reality of the husband's beneficial ownership."

87. The *Nightingale* decision was not actually cited to the Supreme Court or considered in *Prest* and this was commented on in *NRC v Danilitskiy [2017] EWHC 131* where a recently formed company (Opal Stem) was funded by the judgment debtor (with no evidence that it was by loan or capital subscription – see paragraph 31 of the judgment) to acquire the property. The deputy High Court Judge analysed the position on a purchase as follows:

"37. Whether an asset legally vested in a company is beneficially owned by the company's effective controller is a highly fact-specific issue.

38. Absent anything to the contrary, Opal Stem's legal title carries with it the beneficial interest in the Property. NRC submits however that, taking such evidence as is available as a whole, when Mr Danilitskiy purchased the Property in the name of Opal Stem then, given in particular that he provided the purchase price, a resulting trust was presumed in his favour with the result that he acquired the beneficial interest.

39. There are, in my view, a number of facts which together support the presumption of a resulting trust in the present case. I emphasise, in particular, the following:

1. Opal Stem had only recently been incorporated and was incorporated for the purposes of holding title to the Property. It appears to have had no other assets, no operations and no bank account.

2. The acquisition of the Property was arranged by and occurred on the instructions of Mr Danilitskiy.

3. Mr Danilitskiy paid the purchase price of the Property out of his own resources. There is no evidence that the monies were advanced by Mr Danilitskiy to Opal Stem by way of loan or capital subscription.

> 4. Whilst the Property may not, it appears, ever have been the main matrimonial home, it was purchased as a home for the family for themto use whilst they were staying in London.
>
> 5. There is no evidence that any rent was in fact paid by Mr Danilitskiy for use of the Property and no evidence that the terms on which he was permitted to use it were otherwise than, in practice, gratuitous.

40. There is one further aspect that, in my view, needs to be addressed. If a person transfers property to trustees of a settlement previously made by him, it has been held that there is no presumption of a resulting trust for him; the presumption is that he wants to add the property to the trust fund. There is, for similar reasons, a potential issue as to the natural inference to be drawn where a property is purchased by a company which is owned and controlled by the person who provides the purchase price. In this case the evidence indicates that, at the relevant time, Mr Danilitskiy was the beneficial owner of Opal Stem's shareholder, Clapham Investments.

41. In *Stockholm Finance Limited v Garden Holdings Inc.* (unreported, 26 October 1995)… [see citations above]…

42. In *Nightingale Mayfair Limited v Prakash Mehta [2000] W.T.L.R. 901* … [see citations above]…

43. Neither *Stockholm Finance* nor *Nightingal*e appear to have been cited to the Supreme Court in *Prest v Petrodel Resources Ltd*.

44. I do not find it easy to reconcile the inference which Blackburne J described as natural, with the analysis of the facts in Lord Sumption's judgment at [43] to [51]. There is, in my view, a question as to whether and in what circumstances the inference that Blackburne J referred to is indeed the proper and natural one. In *Nightingale* there was, however, unchallenged evidence that the underlying intention was that the company should be the beneficial owner of the property for tax reasons. These tax objectives could only have been achieved, under the structures adopted, if the company owned the property beneficially. One can see why, in these circumstances, there was no scope for the operation of the presumption of a resulting trust. In *Stockholm Finance*, Robert Walker J did not go further than to say that one needs to look first for evidence of actual intention before having recourse to the judicial last resort.

45. In the present case, there are various possible reasons why Mr Danilitskiy may have chosen to purchase the Property in the name of Opal Stem. Some of those reasons might have indicated that Opal Stem was intended to be the beneficial owner of the Property and some that it was not. However, although he plainly has relevant evidence to give on this critical question and could have been expected to provide it on behalf of Opal Stem, there is no evidence from Mr Danilitskiy, or indeed anyone else, one way or the other. Nor have I been provided with copies of any board minutes of Opal Stem which assist on this issue, even assuming that such ever existed. In the absence of such evidence, I am not prepared to assume that Mr Danilitskiy intended to transfer the purchase monies to Opal Stem for its benefit nor that he intended Opal Stem to hold the beneficial interest. To the contrary, in my view the appropriate inference which is to be drawn from the decision that he should not give evidence, is that his evidence would not support Opal Stem's case.

46. Each case ultimately depends on the facts. In the present case, I conclude that, taking the facts as a whole, the presumption of a resulting trust applies such that, when Mr Danilitskiy purchased the Property in the name of Opal Stem, he and not Opal Stem acquired the beneficial interest. I add that I would have reached the same conclusion on the basis of the available evidence, even if I had not also drawn an adverse inference from Mr Danilitskiy's failure to give evidence.

47. The parties referred me to a number of additional authorities in this context. They are, in my view, all decisions on the facts of the particular case and accordingly I do not need to say much about them.

48. Mr Lord relied on the judgment of Hoffmann LJ in *Arab Investment Syndicate v Hiseman* (Unreported, 15 February 1994)… [see citations above]… In that case, therefore, there was evidence as to why the property was purchased in the name of the company and that evidence was inconsistent with any trust being inferred in favour of Mrs Hiseman. There is no similar evidence in this case. The decision does not assist Opal Stem.

49. Mr Milner referred to *JSC BTA Bank v Solodchenko [2015] EWHC 3680 (Comm)* . The issue in that case was, like in this case, whether a property was beneficially owned by the shareholder of the company in whose name the property had been purchased. Phillips J held, on the facts, that it was, referring to paragraph 52 of Lord Sumption's judgment in *Prest v Petrodel Resources Ltd*. It appears that the property in that case was not the matrimonial home and, although there was no evidence of exactly how the properties had been funded, he inferred that the necessary monies had been provided by the shareholder or sourced by him, such as to give rise to a presumption of a resulting trust.

50. That the answer in any particular case depends on the facts, is also illustrated by the decision of Robert Englehart QC, sitting as a Deputy Judge of the High Court, in *United Overseas Bank Ltd v Iwuanyanwu [2001] All ER (D) 40* , see in particular at [29]-[30]."

88. Ms Fitzgerald also took me to *Princess Tessy of Luxembourg v Prince Louis of Luxembourg [2018] EWFC* 77 where there was a transfer which recorded a joint tenancy between husband and wife but with the purchase monies having been funded by a third party (ADB) who claimed the entire beneficial interest in the property.

89. At paragraph 61 the Judge said:

"61. *Prima facie* , the transfer of the legal title to a property will carry with it the absolute beneficial interest in the property conveyed. In the circumstances, a person who is not the legal owner of the property who asserts that he is the beneficial owner has to be able to establish a trust of land under which the legal owners hold their legal interest on trust for the beneficial owner. A trust of land can be created expressly, by means of fully satisfying the requirements of s 53(1) of the Law of Property Act 1925 , or by operation of law, by means of a resulting trust (in circumstances where the property is purchased in the name of the legal owner with the money of the beneficial owner) or a constructive trust (in circumstances of common intention between those concerned, a change of position on the part of the beneficiary and a finding that it would be unconscionable to deny the claim). Section 53(2) of the Law of Property Act

1925 provides that the requirement in s 53(1)(b) that the trust be evidenced in writing does not affect the creation or operation of resulting, implied or constructive trusts. The burden of proof lies on the person asserting the existence of a trust of land."

And with regarding to resulting trusts:

"72. With respect to resulting trusts, when real or personal property is purchased in the name of a stranger (in equity), a resulting trust is presumed in favour of the person who paid the purchase money, if he did so in the character of purchaser (*Rochefoucauld v Boustead [1897] 1 Ch. 196*). With respect to real property, this principle has a very long pedigree. In *Dyer v Dyer (1788) 2 Cox 92* at 93, Eyre LCB observed that:

"The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser; whether in one name or several, whether jointly or successivè; results to the man who advances the purchase money. This is a general proposition, supported by all the cases, and there is nothing to contradict it; and it goes on a strict analog to the rule of the common law, that where a feoffment is made without consideration, the use results to the feoff or. It is the established doctrine of a Court of equity, that this resulting trust may be rebutted by circumstances in evidence."

73. The modern approach concerning the establishment of a resulting trust is that such a trust can be established by evidence of the intention of the purchaser (see *Kyriakides v Pippas [2004] 2 FCR 434* at [74] and [76]) or, absent such evidence, by way of a presumption that is not rebutted by evidence of a counter presumption of advancement or an intention to make an outright transfer (see *Vandervell v I.R.C. [1967] 2 A.C. 291* at 312 and *Westdeutsche Landesbank Girozentrale v Islington LBC [1996] AC 669* at 708A).

74. A *vital* ingredient in creating a resulting trust is establishing that payment of the purchase money for the property was made in the character of a purchaser. In most cases, the person who claims to be the real purchaser pays the purchase money direct to the vendor, and, so long as it is clear that he was not a lender or giving a gift, there should be no difficulty in showing that it was he who was the provider of the purchase money in the character of purchaser (see Lewin on Trusts (19th Edtn.) at [09-049]). In *Hashem v Shayif & Anor [2008] EWHC 2380 (Fam); [2009] 1 FLR 115* Munby J (as he then was), made clear at [114] that:

"…whether A provided the money by way of gift, or by way of loan, or *qua* purchaser is, in the final analysis, a simple question of fact, to be determined in the light of all the evidence as to the relevant circumstances, including, subject to the rule in *Shephard v Cartwright [1955] AC 431* (see per Viscount Simmonds at page 445), the parties' evidence as to their intentions at the time.""

90. And at paragraphs 110-117 it was held and concluded that:

"110. I am, of course, acutely aware that there exists in this case a TR1 that purports to contain an express declaration of trust in favour of the husband and the Grand Duke, upon which purported express declaration the wife seeks to rely. I am likewise, of course, acutely aware of the principle in *Goodman v Gallant* that where a relevant

conveyance contains an express declaration of trust which comprehensively declares the beneficial interests in the property or its proceeds of sale, there is no room for the application of the doctrine of resulting or constructive trusts unless and until the conveyance is set aside or rectified and that, until such an event, the declaration contained in the document speaks for itself. However, on the evidence that is before the court in this particular case, I am satisfied that Mr Leech must succeed in his argument as to the ownership of the beneficial interest in the former matrimonial home, based on the express terms of s 53(1)(b) of the Law of Property Act 1925 .

111. The declaration of an express trust purportedly evidenced by the TR1 can only be effective if, at the time they purported to declare it, the husband and the Grand Duke were "able" to declare a trust of the beneficial interest for themselves for the purposes of s 53(1)(b) of the 1925 Act. However, at the time they purported so to declare, I am satisfied that the beneficial interest in the former matrimonial home was vested in the ADB under a resulting trust for the following reasons.

112. It is important to note that this is not a 'consumer context case' in which a couple in an intimate relationship jointly purchase a property in which they intend to reside, perhaps with the assistance of a mortgage, and in the transfer document execute an express declaration of trust over the property in favour of themselves, thereby setting out their beneficial entitlement as part of the purchase they have made. In this case, the purchase monies for the former matrimonial home were provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and paid to the vendor by the ADB. The documentary evidence before the court confirms that the money in question was paid from the bank account of the ADB It is common ground between the parties that the intention was that, on any sale of the former matrimonial home, the monies provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal would be returned to the ADB as the proceeds of sale. I am satisfied that there is nothing in the evidence before the court to suggest that the monies originally provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal constituted a loan or a gift to husband and the Grand Duke.

113. In the circumstances, satisfied as I am on the unchallenged expert evidence before the court that it is more likely than not that the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and the ADB have separate legal personalities, I am satisfied that the purchase monies from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal were paid to the vendor of the former matrimonial home by the ADB in the character of a purchaser. Further, on the evidence before the court, I am satisfied that at the time the purchase monies from GroBherzogliches Fideicommiss / fidéicommis grand-ducal were paid by the ADB it was the settled intention of the ADB, the Grand Duke and the husband that the ADB would hold the beneficial interest in the property. I derive that conclusion from the following matters:

i) As I have noted, the property was purchased by the ADB with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal.

ii) As I have also noted, the wife herself concedes that upon any sale of the former matrimonial home the proceeds of sale would return to the ADB.

iii) Whilst the *compromis de vente* completed in relation to the former matrimonial home contains omissions in terms of the husband's signature and a date, its existence in

my judgment evidences an intention that the ADB would hold the beneficial interest in the property purchased with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal. Firstly, by reason of the distinction the existence of the *compromis de vente* creates between the manner in which the property in US property was purchased. When using *private* funds of Grand Duke to purchase the US property, no *compromis de vente* was drafted by the ADB. When using funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal to purchase the former matrimonial home a *compromis de vente* was completed by the ADB. Whilst Mr Ewins emphasised the similarities between these two property transactions, in my judgment it is the differences between the manner in which the respective properties were purchased that are more significant. In particular, the fact that when the funds came from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal as distinct from the private funds of the Grand Duke, a *compromis de vente* designed, as I am satisfied it was, to evidence the ADB's interest was employed. Secondly, by reason of the fact that, whilst incomplete, the terms of *compromis de vente* themselves constitute evidence of the intention of the husband, the Grand Duke and the ADB that the ADB would retain the beneficial interest in the former matrimonial home.

iv) The statement of the husband accepts he holds no share of the beneficial interest in the property. Whilst this might be regarded as a self-serving statement in the context of these proceedings, and therefore of lesser weight, it is consistent with the other matters I have set out in this paragraph.

114. Within the context of this evidence of intention, having regard to the modern approach to resulting trusts set out in *Kyriakides v Pippas* , I am satisfied that it is not necessary to go on to consider the operation of the presumption. In these circumstances and having regard to the legal principles set out above, I am satisfied that the effect of the matters set out in the foregoing paragraphs was to create, upon the payment of the purchase monies from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal by the ADB, a resulting trust of the beneficial interest in the former matrimonial home in favour of the legal entity that provided the entirety of the purchase monies for that property. Whether the beneficial interest in the former matrimonial home is owned under the resulting trust by the ABD, which paid the purchase monies, or the GroBherzogliches Fideicommiss / fidéicommis grand-ducal, which provided the purchase monies, is perhaps a point of some nicety. However, it is not necessary to decide that point for the purposes of the decision this court has to make. The key point is that the purchase monies did not, I am satisfied, come from the husband or the Grand Duke and they did not intend to own the beneficial interest in the property.

115. I remain cognisant of the principle in *Goodman v Galant* . However, whilst in *Goodman v Galant* the Court of Appeal stated that there is no room for the application of the doctrine of resulting or constructive trusts "unless and until the conveyance is set aside or rectified", in *Pankhania v Chandegra* I perceive the point as having been expressed in somewhat less absolute terms, with the Court of Appeal stating that there is no room for the application of the doctrine of resulting or constructive trusts unless the defendant has "established a case for setting the declaration of trust aside". Within this context, it seems to me that, given the foregoing evidence before this court, it would be artificial in this case to proceed on the basis of the TR1 when it is plain on that evidence that the husband and the Grand Duke were not "able" to declare a trust of the beneficial interest by reference to the terms of s

53(1)(b) of the Law of Property Act 1925 and, as Mr Leech submits, any application to set aside the declaration on the grounds of mistake would be bound to succeed (accepting that no such application is before the court). A trust of the beneficial interest in the former matrimonial home was not the husband's and the Grand Duke's to declare. In short, you cannot declare an express trust in a beneficial interest that is not yours (or, to indulge in the Latin, *nemo dat quod non habet*).

116. I have, of course, given careful consideration to the contrasting arguments advanced by the wife in support of her case that the husband *does* own a share of the beneficial interest in the former matrimonial home. I have dealt with the wife's contentions regarding the TR1 in detail above. With respect to the wife's assertion that some of the funds provided for the purchase of the US property constituted a gift to the husband from his mother, which funds were subsequently used to purchase the London property, as very properly accepted by the wife of her own volition, no corroborating evidence of the conversation said to ground that assertion is before the court or exists. The assertion was not raised by the wife prior to the hearing (she stating, perhaps understandably, that she had not appreciated the continuing legal significance of the disposal of Florida property within these proceedings). Further, the wife did not challenge Mr Wildgen's evidence that the funds to purchase the US property were provided by the ADB from the Grand Duke's 'private' funds and appeared to accept during her evidence that the proceeds of sale from the US property were returned to the ADB in their entirety. In any event, as I have noted above, the chronology makes clear that the former matrimonial home was paid for by the ADB with funds from GroBherzogliches Fideicommiss / fidéicommis grand-ducal prior to the sale of the US property. With respect to the wife's argument regarding the omissions in the *compromis de vente,* whilst it is plain that the husband did not sign that document and that the document is undated, those omissions do not act to alter my conclusions as to what intention is evidenced by the terms of that document within the context of my finding that the ADB paying for the former matrimonial home with funds from GroBherzogliches Fideicommiss / fidéicommis grand-ducal. Finally, with respect to the email from Mr von Habsburg, as I have already set out I am satisfied that Mr von Habsburg's description of the parties as owners in his email of 11 August 2011 is a term of art or a shorthand, rather than an accurate description of the manner in which the former matrimonial home was held following the transaction.

117. It follows in the circumstances that I must conclude that the husband does not own a share of the beneficial interest in the former matrimonial home. In the circumstances, I am satisfied that the beneficial interest in the former matrimonial home does not fall for distribution in these financial remedy proceedings between the husband and the wife."

91. Mr Collins also took me to *Re: Smith : SFO v Litigation Capital [2021] EWHC 1272* where the Judge held at paragraphs 604-605:

"604. In the context under consideration, a nominee is someone who owns property, but holds it on a bare trust for the principal absolutely, effectively dealing with the property as the principal directs, including conveying it to the principal so as to terminate the trust: see *Lewin* , 1-028. Whether property is held by someone in the capacity of a nominee is essentially a question of fact. Lord Sumption, in Prest v Petrodel Resources Ltd *[2013] UKSC 34; [2013] 2 AC 415, [52]* , observed [see citation above]… :

605. There are number of matters which may support the conclusion that the apparent owner of property in fact holds it as a nominee for someone else: whether someone other than the alleged nominee exercises control over the asset (Phoenix v Cochrane [2017] EWHC (Comm), [17(5)]); whether the apparent owner uses or allows the asset to be used in a manner which advances someone else's interests rather than its own (Prest, [52]); who paid for the asset, which may support a conclusion that it is held on constructive trust (*Lewin*, 10-019) and whether the person alleged to be the "real" owner had a motive to disguise his or her ownership (*JSC BTA Bank v Solodchenko & Ors [2015] EWHC 3680, [8]*)."

The Parties' Submissions

92. Ms Fitzgerald submitted in summary (in expansion of what I have already set out above) that:

(1) It was Mazhar, and not Irfan, who had provided to Energy the monies to fund the purchases of the Properties

(2) In any event, on the evidence there was insufficient to displace the general rule that the beneficial ownership would reflect the legal ownership. Further, as a matter of law, it should be held that when a deliberate decision had been taken, and all the more so where (according to Mohammad and should in any event be inferred) that had been done for tax reasons, to vest the Properties in Energy, that was sufficient to defeat any presumption (which in any event, even following *Prest* would be weak) of a resulting trust. Therefore, whoever provided the purchase monies, Energy held the Properties both legally and beneficially, and any dealings respecting the ownership of the Shares in Energy (legal or beneficial) was irrelevant to the question of beneficial interests in the Properties

(3) If that was wrong:

i. Irfan, who had not provided the purchase monies, would only have received a limited interest (no more than 25%) of the Properties from Mazhar or Mazhar's Estate; and

ii. If Irfan had only held such a limited interest (or even if Irfan had originally held a larger interest), he had disposed of it entirely to Mohammad, and also where Mohammad had made the 2015 Payments as part payment of the price. She did accept that in some circumstances Irfan could retain a proprietary interest in relation to the unpaid element of the price but contended that that possibility was excluded by the dealings between Mohammad and Irfan.

93. Ms Fitzgerald further submitted in particular in detail that:

i) Mohammad's evidence as to the history and various transactions should be accepted

ii) The fact that few documents had been produced from the Energy side should not lead to any adverse inferences being drawn; and Mohammad had done all that could have reasonably been done to locate historic documents which had

simply been lost over time. Likewise no inferences should be drawn from the fact that Irfan had not been called to give evidence and especially where Mohammad said that he was estranged from and in dispute with Irfan

iii) It was perfectly possible for the owner of a company simply to give money to the company for it to own and use where, as the owner had full control, it caused them no economic prejudice and might have tax and other advantages

iv) The 1996 Document was not only authentic but good evidence of monies being given by Mazhar (not Irfan) "for" (the "for" suggesting transfer of full ownership and to be contrasted with a mere providing "to" which might suggest a lesser transfer) Energy with the intention that the resulting purchases would be for the general benefit of the family rather than Mazhar or any particular one or more family members having the beneficial interest in the Properties themselves. The 1996 Document further treated Irfan as a mere attorney for Mazhar. This was all the more so when:

a) There was no evidence of any loan or subscription of capital by Mazhar

b) Mazhar was the patriarch and both owned and was in control of the majority of the family monies and assets (and which he only disposed of during the years leading up to his death)

c) The words used were "for the benefit of the family"

d) There were potential advantages in such an arrangement both for tax and to avoid family conflict

e) There had been a subsequent transfer of the shares in Energy to Irfan; and then to Mohammad and where Mohammad had paid a price; all such indicating that the Shares had real value and were not just the ownership of a nominee company which owned no property beneficially and therefore had no value

f) This was consistent with the eventual ATED documents where returns would not have been required if Energy was holding 8 Brendon Street on trust for family members rather than owing the Property beneficially itself. The various income tax returns had been completed on the basis that the income received from 28 Brendon Street was that of Energy, and which thus suggested that it had a real beneficial interest

g) This was all consistent with the approach in *Stockholm* and *Nightingale* and the other earlier cases and which had not been cited in *Prest* and from which *NRC* and *SFO* should not have (assuming they did so) deviated

v) The fact that Irfan's name had appeared on the initial version of the 8 Brendon Street transfer:

a) Was an error, which is why it was altered, and the solicitors thereafter (and including in relation the land registry and 28 Brendon Street generally) referred to Energy

b) Was not inconsistent (in view of the alteration) with Irfan merely having been an agent and not the funder or the beneficiary

vi) Even if the beneficial interests in the Properties had been vested in Mazhar there were no documents to show any transfer of them to Irfan and which would be required by section 53

vii) The explanation for the vesting of the shares in Energy in 2015 was that Mohammad had acquired them by way of the 2014 Agreement, and, possibly also, the 2015 Payments

viii) I should not draw adverse inferences against Energy or Mohammad due to Irfan not having been called to give evidence on their behalves and especially where Irfan and Mohammad were said to be in dispute. In this regard Ms Fitzgerald took me to *Efobi v Royal Mail [2021] UKSC 33 at paragraphs 41-43 and onwards* and submitted that (1) the drawing of adverse inferences arising from a witness not being called is (a) a matter for judicial common-sense arising from (b) a fact-sensitive consideration of (c) here, whether or not Irfan's absence is likely to be due to Energy or Mohammad's or Irfan's (and which of them) thinking that Irfan's evidence, if given and including answers in cross-examination, would be likely to assist Lenkor in relation to particular specific aspects (and/or involve Irfan in perjury), which should lead (d) to particular specific inferences being drawn; And (2) the facts did not justify the drawing of any inferences from Irfan not being called, and, in any event, none in particular.

94. Mr Collins submitted in summary (in expansion of what I have set out previously) that:

i) It was Irfan who had provided the purchase monies

ii) Whether it was Irfan or Mazhar who had provided the purchase monies, in the circumstances there was a resulting trust whereby Energy held the Properties on trust for them as the beneficial owner; and the decisions in *Prest* and *NRC* and *SFO* effectively represented a turn in the law from *Nightingale* such that the courts would generally lean towards a resulting trust where a person had funded a purchase by their own nominee company

iii) If it was Mazhar who was the beneficial owner then by his own lifetime or testamentary (even on an intestacy) dispositions or by Irfan and the Siblings making arrangements following his death, Irfan became entitled to at least 25% of the equity in the Properties

iv) There was insufficient proof that any transactions had taken place to reduce Irfan's 100% (or 25% or other) beneficial interest; and, if they had, Irfan would have retained at least an unpaid vendor's lien for the outstanding payment price even if (which was disputed) the 2014 Payments had been made.

95. Mr Collins submitted further in detail in particular as follows:

i) *Jones* was distinguishable as relating to acquisition of family homes by those in a personal relationship. *Nightingale*'s and *Stockholm's* reasoning could not survive *Prest* as was made clear in *NRC* and *SFO* and so that the ordinary presumption when a person funded their own nominee company to purchase Property was that the company held only the legal title on trust for that person

ii) Inferences should be drawn adverse to Energy in view of (a) the failure to produce further documents and (b) the failure to call Irfan to give evidence

iii) If the nominee company was intended to own beneficially, it would be expected that documents or other material would exist to show that but none such existed here. There had been no attempt to suggest a subscription to share capital or a loan to Energy which was simply an "off the shelf" company

iv) The circumstances suggested that Irfan had provided the funding or, at least had been agreed to be the beneficial owner, as:

a) Irfan always had very substantial business interests and assets and there was no evidence that Mazhar had any particular (or such a) level of resources

b) Irfan appeared to have dealt with the mechanics of the transaction

c) Irfan's name originally appeared on the 8 Brendon Street transfer document

d) Irfan, or at least Naveen his wife, and his children had been those who mainly occupied 8 Brendon Street, and those who took the benefit of the rentals of 28 Brendon Street

e) The 1996 Declaration, while genuine, should be treated with caution, especially as the Siblings had never taken any apparent interest or role

f) The 2001 Documents and the 2001 Charge suggested that the Properties belonged to Irfan so that he was able to charge them

g) The various involvements of Arnfield Limited and HD1 Developments Limited suggested that Irfan owned both Energy and the Properties, until there was some sort of family restructuring designed to defeat the WFOs; and which restructuring, even if it had occurred to some extent, could not operate in equity to have that effect

h) Caversham transferred the shares to Irfan in 2003 not because Mazhar had died but because Irfan had moved to Dubai in 2003 and no longer faced a tax charge in Pakistan (or the UK) on his global income

i) Irfan recognised in the 2017 Affidavit that he had some substantial interest in the Properties

v) The circumstances suggested that Energy was not intended to be the beneficial owner, including:

a) The fact that the 28 Brendon Street rentals had been treated as family cash. The tax returns merely sought to "regularise" the position after the event and did not reflect any trading by Energy which did not appear to have any contract or contact with the letting agent TI Management

b) The directors of Energy seemed to have no role at all

c) If the 1996 Declaration did have weight, it suggested that Energy was simply a vehicle to hold family asset(s), being asset(s) owned by an individual(s) and with Irfan being Mazhar's (and not Energy's) attorney

d) The past payment of tax on rental income was mechanistic as the Properties were in the name of Energy. The ATED declarations were very recent and simply self-serving; and the fact that they were not filed before 2022 suggested an absence of beneficial ownership in Energy

e) Mohammad, at least, simply treated company assets as belonging to him as the owner of the shares in the company. That reflected the general family approach and a subjective intention that companies (here Energy) simply held the assets on trust for the individual(s) who were the true beneficial owners

vi) Mohammad's evidence as to events in the long past were wholly unreliable (due to his age and limited involvement) as well as being self-serving

vii) Mohammad's evidence as to making the 2014 Agreement to acquire Irfan's beneficial percentage of the Properties was mere self-serving invention without any documentary support. His evidence as to the 2015 Payments was simply unreal and there was nothing to suggest that any payments were made or that they would have related to the Properties. It was wholly inconsistent with the 2017 Affidavit. If anything did occur, it was merely informal and not in writing and neither in general law nor in the light of section 53 (which requires a writing) could it have effected the transfer of any beneficial interest

viii) As to the 2017 Affidavit, not only did it recognise that Irfan had a substantial interest in the Properties, but:

a) The figure of "PKR62,997,445/£461,993 only" is extremely precise and must have been sourced from some document and not simply recollection. However, no such document has been produced

b) Mohammad also referred to the "PKR62,997,445/£461,993 only" figure in his witness statements and accepted that it was correct (although subject to the alleged 2014 Agreement and 2015 Payments), and Mohammad could only be certain of it were it contained in a document but which Mohammad denies

c) and therefore the relevant document has probably been concealed, presumably in order to enhance Mohammad's arguments that Irfan's share has been diminished by the alleged 2014 Agreements and 2015 Payments

d) the financial figures were not a specific quantification of that interest (with others owning whatever was the remainder and Irfan's interest being limited to the particular quantified financial amount) but rather a quantification of the proportion of the then overall family valuation of the interest by reference to what was then then overall family valuation of the Properties, and probably, in reality, 25%

e) the explanation for the vesting of the Shares in Mohammad in 2015 was, possibly, because Irfan was keen to divest himself apparently of his assets where he knew that he had exposed himself to a massive liability to Lenkor although that should not mean that he had actually intended to do so substantively but only to present a misleading picture

ix) Mohammad has chosen not to become a party and should not be allowed effectively to advance a claim that the beneficial interest belongs to him.

Approach to matters of fact

96. In considering the factual issues between the parties, I have had to consider whether the relevant party, on whom the burden of proof lies, has shown to the civil standard of proof, being that on the balance of probabilities (i.e. whether it is simply more likely than not) that any particular historical fact or event occurred. That is something which I have had to do and have done taking into account all the evidence, oral and documentary, as well as counsel's submissions, and where I have been able to come in all respects to actual conclusions (i.e. that particular facts and matters have been proved i.e. been shown to have been more likely than not to have occurred) rather than ever being in a situation where I could not come to an actual conclusion either way and had to fall back on considering upon whom the burden of proof lay in relation to establishing the relevant asserted fact or matter.

97. Indeed, there is an outstanding debate in the case-law as to on whom the burden lies to show that Irfan has a beneficial or other proprietary interest in the Properties over which charging orders may be made. My provisional view is that the burden is actually upon Lenkor to show this since it is a pre-requisite to Lenkor obtaining the orders which it seeks, and the position, at first sight, looking at the legal title (and where equity follows the law) is that Energy is the owner of the Properties in law and equity without Irfan having any interest. However, on the facts as I find (without having to resort to burden of proof) them to be, whether this is right or not does not matter.

98. In considering the issues regarding fact, I have borne in mind that the Court takes into account and tests all of the evidence, oral, hearsay, documentary and expert, considering what weight to give it and then weighing it altogether as an holistic exercise in coming to its conclusions. In doing this the Court, bears in mind:

(a) with regard to witnesses, what I have already set out above

(b) that contemporaneous documents are likely to have reflected what their creator was actually thinking at the time of their creation. Thus they can, to an extent, "speak from the past" although subject to the reliability of the

creator's memory and their desire and ability to record accurately at that time. Likewise if the creator is recording what someone else has told them, if that was also contemporary then there is an increased likelihood that first the recording and second the communicated statement are accurate, although again subject to such matters as timing, general reliability and conscious or subconscious desires to influence. Thus, although the Court must be careful to avoid over-reliance upon them, contemporaneous documents can have an important weight

(c) Inherent likelihoods of events are also important (although these can only be assessed in the light of the other facts thus emphasising how this is an holistic exercise). If an event is inherently unlikely to have occurred then there should be evidence of sufficient weight to displace that unlikelihood before the event will be proved to have occurred. This can be especially true in relation to certain types of misconduct, as it is usually likely that people will conduct themselves in accordance with their social norms, but again this is highly fact sensitive and especially where people's social norms may differ.

99. Certain of the evidence before me is technically "hearsay evidence" being in terms of what someone has been told by another, or what a person has said through a written document. Such evidence is admissible before the Court under the provisions of the Civil Evidence Act 1995 ("the 1995 Act").

100. However, section 4 of the 1995 Act provides that the Court has regards to all the circumstances in considering whether any inferences can be drawn as to the reliability or otherwise of the hearsay evidence including particular factors set out in section 4(2) which reads as follows:

"(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

101. Thus the weight to be given to hearsay evidence is dependent upon all the circumstances including that the relevant persons have not been called to court to swear an oath or affirm (and be subject to both giving a solemn promise to tell the truth and to potential penalties if they do not) or to be cross-examined and have their evidence tested.

102. I have applied the above considerations and approaches in coming to my various factual conclusions.

Discussion

103. While I have sought to consider each factual conclusion holistically on the entirety of the evidence and legal submissions, rather than simply coming to a first factual conclusion and relying on it to justify subsequent factual conclusions, it seems to me that I have to proceed through a chronological history of the beneficial and other proprietary interests and rights in the Properties (and, to an extent, although I am only indirectly concerned in them, the Shares). I make clear that I have considered all the evidence and the various submissions, written and oral, even where I have simply summarised the main material and submissions in view of the length of this judgment.

Who funded the acquisition of the Properties

104. The first question is as to who provided the purchase prices for the Properties where the two possibilities are Mazhar and Irfan.

105. I find on the balance of probabilities that it has been proved that it was Mazhar. I have considered all the evidence, and it seems to me that the following factors have particular weight and lead me to that conclusion:

(1) Mazhar appears to have been the patriarch of the Puri family and where I accept Mohammad's evidence, which is corroborated and supported by the 2001 Documents, that the family business and assets had been established for many years. It seems to me that it is likely that Mazhar had substantial assets of his own, and that there is insufficient evidence to suggest or prove that the family wealth simply stemmed from Irfan commencing his entrepreneurial business(es)

(2) The 1996 Document, which is not suggested by Lenkor to be a forgery and which I find on the balance of probabilities to be authentic, and which on its face appears intended to have substantial legal effect and meaning (being witnessed by two sets of lawyers in 1996). There is nothing to suggest that it was intended to be a fraud on anyone and its wording makes clear that it is intended to declare a position. It states that Mazhar is the provider of £1.2 million to purchase London properties (which the Properties are; and no other purchased properties have been identified,

either at all or so as to render the £1.2 million figure for overall purchases insufficient), and there is a substantial inference that his assets (and see also above) were substantial. I see no reason to disbelieve his assertions that he had that money available and was providing it for these purchases

(3) There is nothing really inconsistent with this in:

a. Irfan being said in the 1996 Document to have been appointed as Mazhar's "authorized attorney to purchase and manage [the Properties] for the benefit of the [i.e. Mazhar's] family." That appointment appears to me simply to have been a matter of convenience and to imply that Irfan was not the funder

b. The 8 Brendon Street transfer having originally been drafted with the inclusion of Irfan's name. The relevant correction is perfectly consistent with the solicitors originally and wrongly using the name of the person instructing them i.e. the attorney/agent Irfan; and, once the 1996 Document is seen, does not evidence weightily (if at all) that the monies were Irfan's

(4) I do not regard the absence of documentary evidence showing from what bank account the monies had come as being material. The events were 25 years ago and it is perfectly natural that the information would no longer be available. It is also unclear (a) whether a Cayman Islands nominee company (or the English solicitors) would have retained relevant documents when money-laundering etc. rules and cultures were very different in 1997 from now (or indeed from after the Proceeds of Crime Act 2002) or (b) whether any relevant documents would prove anything where it would have been perfectly consistent with the 1996 Document for Mazhar to provide the monies to a bank account in the name of Irfan in order for the purchase to take place with Mazhar's monies with Irfan acting as Mazhar's agent. I see no good reason to draw any relevant inferences from such documents not having been produced at the Trial. The same applies regarding oral evidence from the solicitors involved in 1996-7

(5) I do not regard the absence of evidence from Irfan as being material. In one sense Irfan has provided evidence in the form of the 2017 Affidavit (and which does not support, at least to a degree, a contention that Irfan funded the purchases as Irfan would then have had a greater interest than is asserted in the 2017 Affidavit). However, in any event, I do not draw adverse inferences in favour of Lenkor from Irfan's absence here or elsewhere as: (a) it is credible that Mohammad and Irfan are in some dispute as the enormity of Irfan having involved Mohammad in an apparently fraudulent diversion of over $31 million with resultant litigation in various jurisdictions is likely to have strained relations between them whatever was Mohammad's prior knowledge or involvement (even on Lenkor's case, and which Mohammad disputes) (b) it would be surprising if Irfan (whom Energy and Mohammad cannot compel) would wish to give evidence or to attend this court in the light of the history and Lenkor's claims

(6) The initial ownership of the Shares by Caversham is perfectly consistent with Mazhar being the funder of Energy as is the vesting of the shares in Irfan in mid-2003 which coincided with Mazhar's death (or at least incapacitation from his final illness) which would be the natural time for the shareholding to change (and see below). I have considered Mr Collins' contention that the change would be due to

Irfan (being, according to Mr Collins, the true owner)'s residence (and thus tax status) changing (coincidentally with Mazhar's death) at that same time but (i) that change has not been shown and (ii) the fact that the Shares (and the legal control of Energy) change ownership at the time of Mazhar's death is striking. I have also borne in mind that Caversham appears to have had some association with Arnfield (and by extension HD1 Developments) and thus, possibly at an early stage, Irfan; but (i) the nature and details of the association have not been proved and there is no real evidence about it (ii) what happened in due course is not inconsistent with Caversham being Mazhar's nominee company, or at least holding some assets (here the Shares) on trust for Mazhar (and even if Caversham was Irfan's nominee company, it would have been consistent with the 1996 Document for it to hold the Shares for Mazhar)

(7) I do not see the 2001 Documents or the 2001 Charge as being inconsistent with this. The 2001 Charge does not actually secure any obligations other than those of Energy on its own terms as Energy is both "the Chargor" and "the Borrower". In any event, there is no reason in evidence before me as to why Mazhar would not allow Irfan to borrow money on the security of the Properties, and Mohammad's evidence that there was an intention that monies be borrowed to pay medical fees (with the 2001 Charge being used to secure such borrowing) is credible where Mazhar may, as a result of his illness, have had difficulty in dealing with banking matters. Irfan was still Mazhar's agent/attorney and could give instructions

(8) I do not see the various family occupations and involvements with the Properties as inconsistent with Mazhar being the funder. In general the Properties were just being dealt with as family assets, and for the benefit of a wide range of family members, including by Mazhar, Mazhar's wife (and then widow) and various of the Siblings and of the Other Children residing there, and which is consistent with the patriarch, Mazhar, having funded their acquisition and allowing them to be used for the benefit of the family

(9) The making of some sorts of tax returns from about 2001 (or 2003) onwards by Energy is simply consistent with Mazhar having become incapacitated or died and Irfan taking a more active involvement as a result. Irfan was, according to the 1996 Document, the agent/attorney of Mazhar who was managing the Properties and there is no real inconsistency here with Mazhar having been the funder.

Who owned the Properties beneficially following their acquisition

106. The next question is whether the result of the acquisition of the Properties was that Energy held them beneficially (with Mazhar's only beneficial interest having been in the Shares) or whether Energy held them on trust for Mazhar.

107. Either scenario is possible as a matter of law and where Section 53 does not prevent the arising of a resulting trust. As to the law, it seems to me that:

i) A written (or a contemporaneous oral) declaration of trust will exclude a resulting trust. However, none such occurred here

ii) Where there is no material from which to infer an inconsistent transaction (whether subscription of capital, loan or alternative trust) the law will presume

a resulting trust in favour of the funder of an acquisition by their nominee company. As to this:

a) This is simply a sub-set of the wider principle that the law presumes (without more to displace it) a resulting trust in favour of the person who puts a property in the name or another or provides them with monies for the specific purpose that they should acquire it – see *Gany* and Lewin

b) The law as previously stated in *Arab* and *Stockholm* and *Nightingale*, being that, effectively, the Court should approach the matter on the basis that the funder had taken a deliberate decision to structure the acquisition as being by the nominee company in order that it, the nominee company, should own the beneficial interest (such not being of any economic prejudice to the funder who owns the shares in the nominee company) rather than the funder doing so, has been overruled by the more modern case-law, being *Prest*, *NRC* and *SFO*. As to this and the other cases cited to me:

(1) *Jones* proceeds on the basis of "imputed intention" of a resulting trust. While the decision is in a personal relationship context, it does make clear that such an intention is to be presumed unless some other intention can be ascertained whether as having been an express actual state of mind or to be implied as having been the state of mind. The question here, though, is as to whether acquiring through a nominee company is sufficient to lead to such an implication (as was so held in the earlier, but not in the later, cases). In paragraph 53 it was made clear that the scope for implication in cases of personal relationships between individuals was different from (as here) a non-personal relationship case (i.e. where the relationship is between the funder and their nominee creature company)

(2) Prest in the paragraphs I have cited above applies the usual resulting trust presumption to gratuitous (i.e. not by way of loan or capital subscription) funding of a nominee company's acquisition in both a non-matrimonial home (paragraph 50) and matrimonial home (paragraph 52) context. I do not see that the non-citation of the earlier case-law is sufficient to undermine what is a clear Supreme Court authority (and where the panel included such eminent property lawyers as Lord Neuberger (who approved the trust analysis at paragraph 58) and equity lawyers as Lord Walker (who approved the trust analysis at paragraph 104) even apart from the other later case-law

(3) *NRC*, which is binding upon me, both has similar (but only similar) facts to this case, and analyses the law as being set out in *Prest*. I note that in paragraph 49 the Judge approved the analysis by Phillips J in *JSC v Solodchenko [2015] EWHC 3680* (another decision which is binding upon me) of paragraph 52 of *Prest*, being as how I have analysed it above In terms of factual similarities (see paragraph 39 of *NRC*):

1. Energy appears to have been a relatively recently acquired "off-the-shelf" company and which was acquired for the purposes of holding assets to be purchased by using the £1.2million to be made available. It appears to have had no other assets, no operations and no bank account. That is similar to Opal Stem in *NRC*

2. The acquisition of the Property was arranged by and occurred on the instructions of Irfan who was named in the 1996 Document as being Mazhar's agent

3. Mazhar paid the purchase price of the Property out of his own resources. There is no evidence that the monies were advanced by Mazhar to Energy by way of loan or capital subscription.

4. Whilst the Properties may not ever have been the main matrimonial home, 8 Brendon Street was used as a home for the family whilst they were staying in London and this seems to have been a purpose behind its purchase.

5. There is no evidence that any rent was in fact paid by any family member, and certainly not by Mazhar, for use of 8 Brendon Street, and no evidence that the terms on which they were permitted to use it were otherwise than, in practice, gratuitous.

6. I add that there is no evidence that any rental monies for 28 Brendon Street were ever paid to Energy, or that Energy (by its board) ever took any decision regarding them

(4) The *Princess* decision was based on evidence of actual intention but did not seek to criticise the potential for a resulting trust

(5) *SFO*, which is binding upon me, follows Prest and *JSC*.

108. There is nothing to suggest that Mazhar provided the monies by way of loan or capital subscription.

109. I have closely considered the wording of the 1996 Document. That appears to contain:

i) statements that Energy would not own the Properties beneficially because (a) the monies were being provided "for personal and family investments" and (b) the Properties were to be purchased and managed "for the benefit of the family". However, it is possible for aim (b), at least, to have been realised by Energy owning the Properties beneficially because Mazhar could direct Energy (by way of his ownership of the Shares and relationship with directors) to deal with the Properties so as to benefit family members

ii) statements which could be said to suggest that Mazhar would not own the Properties beneficially (and thus possibly that Energy would do so) because the Properties etc. were to be acquired "for the benefit of the family". However, that is a very general phrase, where individual beneficiaries are not identified, and it can just have meant that Mazhar intended to have them used for general

family purposes, and which would not be inconsistent with Mazhar, the patriarch, owing the beneficial interests in the Properties

iii) statements which could be said to suggest that Mazhar's children (being Irfan and the Siblings) would own the Properties beneficially as it might be being said that the Properties were being purchased and run for their benefit; but this ignores Mazhar's own involvement and "personal investments" and that Mazhar clearly intended to retain control and direction.

110. I have to consider the 1996 Document on ordinary principles of considering the various possible constructions and meanings holistically (i.e. altogether as to which is the most likely meaning (including of Mazhar's state of mind) rather than rejecting one after another and being left with a residual meaning) giving proper weight to the words used but also the factual matrix (as known to Mazhar) and the potential commercial and underlying purposes of the document; and together with the other evidence as to the 1996-7 position and intention of Mazhar as the funder, and which I have done.

111. It seems to me that the 1996 Document and the other evidence points overall to Mazhar having declared that, and also and separately having had subjectively, and having expressed objectively, the intention that, he was to own the Properties beneficially, and I so find as a matter of construction and on the balance of probabilities. The factors of particular weight seem to me to be that:

i) Mazhar stated in the 1996 Document that Energy was to be for his "personal and family investments". That suggests that Energy would hold Mazhar's "personal investments" that is to say would be holding (rather than owing) what Mazhar himself owned

ii) While Mazhar stated in the 1996 Document that Energy would hold "family investments" and that the Properties would be purchased and managed "for the benefit of the family", I do not see "the family" as being distinct from Mazhar. The Properties were potentially (and to a degree actually) homes for Mazhar's wife Zarina (and possibly Mazhar as well when in London). The references to "children" were much directed to the situation which would follow Mazhar's death. I see the 1996 Document as seeking to set out what would happen in the future (and possibly designed to avoid the Siblings asking why Irfan was managing these monies and assets) rather than divesting Mazhar of ownership or control

iii) It could be potentially inconvenient if Energy was to own the Properties when they were to be used for the benefit of and potentially distributed among the family including Irfan and the Siblings. A distribution of the Shares would not result in a distribution of the Properties unless they were sold. These obvious problems would not exist to the same extent (albeit they could be overcome by some "in specie" distribution of Energy's assets to Mazhar, but which could have some complexity) if the beneficial ownership of the Properties simply remained in Mazhar

iv) The concept of Mazhar retaining personal beneficial ownership with Energy simply being a holding entity trustee vehicle is very consistent with Mazhar's role as patriarch, holding and directing what he regarded as being the family

assets which, on this model, simply belonged to him but which he could direct from time to time (as he chose and with others complying with his directions) for what he deemed to be the family's proper benefit

v) The absence of any board minutes (or other documents) of Energy, whilst possibly explicable due to the lapse of time, is very consistent with Energy having had no role other than that of being bare trustee

vi) The absence of documentation regarding the managing and use of the Properties prior to Mazhar's death is very consistent with Mazhar simply having been the beneficial owner (and Energy having had no role other than that of being the legal owner)

vii) The concept of the assets being vested in Energy beneficially would have been consistent with Mazhar avoiding tax (at least in Pakistan and possibly in the UK) on worldwide assets but (a) I have no detailed tax law on whether that result would have been legitimately achieved by way of the nominee company owning the assets beneficially (and allowing the family to reside or to take rentals), and (b) I do not see that I can come to a view, on the very sparse evidence before me, on whether Mazhar would or would not have thought that it would be sufficient in practice to avoid tax (even if illegitimately) by not declaring the existence of a beneficial ownership

viii) I do not see Irfan's eventual procuring of Energy (around the time of Mazhar's death, or at least Mazhar's incapacitation) to provide tax returns in relation to the 28 Brendon Street rentals as having sufficient weight to lead me not to conclude that Energy held that property (as well as 8 Brendon Street) as trustee. I have had no submissions as to who would be the correct person to make relevant returns (i.e. trustee or beneficiary). In any event, they were only made towards the end of Mazhar's life and at the instigation of Irfan and I do not know on what basis Irfan decided to do this (which had not, it seems, been done for before 2001) and whether Mazhar had any real involvement with that decision at all

ix) I do not see the ATED documents as being of any real weight at all. While the fact that Energy produced returns and paid the tax shows that it does not now consider itself to be a trustee; that was only done in 2022, and when this Claim had already progressed through various judgments. All that is far too late to have any, or at least any real weight, in terms of what Mazhar intended or, indeed, the other matters which are before me to decide

x) The 2017 Affidavit points to the individuals, or at least Irfan, ending up with beneficial interests in the Properties rather than the Shares. However, it is of limited weight with regard to what Mazhar envisaged and I would have reached the above conclusion without taking it into account.

112. However, even if I had not concluded the above as a matter of construction and/or intention, I would have concluded that there was insufficient evidence (at least to establish on the balance of probabilities) of any express intention, or to found an implied intention, being an intention for Energy to hold the Properties (and the acquisition monies) beneficially, to displace the presumption of a resulting trust which I hold exists

as a matter of law (as stated above) in these circumstances of financing of and acquisition by a nominee company. I conclude that by reason of my weighing of the all the evidence, but in particular the factors and matters which I have identified above in the preceding paragraphs and also those which I have recited in my consideration of the *NRC* decision. It seems to me that that conclusion is fully consistent with the reasoning of the *NRC* decision, on its somewhat similar facts, and that for me to have come to any other conclusion would have been inconsistent with it.

113. I therefore hold that Mazhar owned the Properties beneficially until his death in 2003.

What happened to the beneficial ownership following Mazhar's death

114. The question then arises as to what happened to that beneficial ownership of the Properties following Mazhar's death. There are a number of possible permutations, being:

i) Mazhar actually declaring a trust or assigning beneficial interests either 100% to Irfan or, as Mohammad says (although other percentages are possible), 25% to Irfan and 75% to Mohammad and the Other children

ii) Mazhar dying leaving his estate, under the relevant laws by way of will (of which I have no evidence) or intestacy, which, absent any interest of his widow Zarina (who has died and whose estate would also pass to Irfan and the Siblings, and whose interest in Mazhar's estate under the England & Wales law of intestacy would only have been to a financial sum together with a partial life interest), would result, in the absence of anything express, in Irfan obtaining 25%

iii) Irfan and the Siblings (possibly with Zarina either before or after her death) making an informal (or formal) family arrangement that Irfan would obtain 100% or that Irfan would obtain, as Mohammad says (although other percentages are possible), 25% to Irfan and 75% to Mohammad and the Other children.

115. I note that none of these permutations (unless the Properties simply remained in an unadministered estate, but where the making of charging orders over that to which Irfan would be entitled might well be possible, and which is an outcome for which no-one had contended) result in Irfan, at first sight, being entitled to less than 25% of the beneficial ownership of the Properties.

116. However, it is possible that Irfan became entitled to 100% of the Properties by one or more of these various means, and that would be consistent with all of the Shares having been vested in Irfan in 2003. Nevertheless, having considered all the evidence (and submissions), I regard, on the balance of probabilities, Irfan as only having had a 25% (or possibly a somewhat greater proprietary entitlement than 25%, being that which was set out in the 2017 Affidavit) for the following reasons (although they somewhat inter-relate):

i) I have no evidence of any will having been made by Mazhar or of the terms of any will. I therefore do not think that I can proceed on the basis of any will. Thus the default outcome is one of intestacy and where this is English property,

and also English law presumes that foreign law (in the absence of other evidence) is to the same effect as it; and so the default outcome is that Irfan would receive 25% and the Siblings the other 75% (making 25% for each of Mazhar's children; and which is also consistent with the 1996 Document itself which, in the absence of any other decision by Mazhar, would treat his children equally in terms of ownership of the Properties)

ii) Mohammad was clear that Mazhar had actually arranged for Irfan to receive 25% with Mohammad and the Other Children (i.e. Irfan's children) to receive the other 75%. This has two possible inherent unlikelihoods as to its having happened:

a) The first is that it involves a deprivation of the Siblings of their apparent 75%. However, that has some logic if they were to be given properties elsewhere out of Mazhar's patrimony and which seems credible to me as a matter of common-sense where a patriarch has assets located around the world to distribute. On the other hand, some of the Siblings seem to have lived at 8 Brendon Street from time to time, and it might well be illogical for Mazhar to have deprived them of what would otherwise be their partial ownership

b) The second is that Mazhar could have simply given the entire 100% of the Properties to Irfan, as Mahar's son and successor, who could then choose whether or not to transmit elements on to Mohammad and the Other Children. However, it is quite possible that a patriarch would decide to provide for percentages to go immediately to their grandchildren; and all the more so when they were growing up and might well (as some have done) wish to reside in the Properties

iii) The 2017 Affidavit is very precise as to the level of Irfan's interest in the Properties (and not in the Shares) with a very precise financial quantification. Mohammad states that this represented a calculation of 25% of the then values with an additional amount to represent expenditures regarding the Properties which Irfan had made personally (he having managed them since their purchases). As to this:

a) This seems highly credible as a matter of what would have happened in the past and have been recognised in a discussion between the then interested family members whoever they were

b) There is substantial force in Mr Collins' submission that the 2017 Affidavit contains precise figures (i.e. the "PKR62,997,445/£461,993 only") and which must have been the outcome of detailed discussions and have been likely to have been contained in an (undisclosed) document. As to this:

(1) I find these submissions as having very considerable weight. The 2017 Affidavit says little but it is very difficult to see how these figures (with which Mohammad agreed) could have been generated otherwise. It is possible that Irfan just stated what he would have liked to be the case, without foundation, but the precision is telling

(2) I find it difficult to see how Irfan could have arrived at or recalled these figures (assuming they have any basis in reality) without their having been contained in a document. As stated above, I have doubts as to Mohammad's credibility and it seems to me that, notwithstanding his denial, I should draw an inference that some document, at least in the past, existed to the effect that this was the then (as at its date) quantification of Irfan's interest

c) The concept of others having beneficial interests as well as Irfan is consistent with Mohammad's evidence that various of the Siblings and of the Other Children, and their spouse, have resided and do reside in 8 Brendon Street and appear to share in the proceeds of the rentals of 28 Brendon Street.

117. In the circumstances, I find the 2017 Affidavit as particularly weighty. It was a document made under compulsion, I infer that it was prepared with the benefit of legal advice (as Irfan then had lawyers instructed with regard to the Lenkor litigation in this jurisdiction), and it was prepared in circumstances where Irfan was required to tell the truth both under the WFO and because it was a sworn statement. While Irfan would have had an incentive to seek to minimise his entitlements to the Properties, he deposed to large and very specific amounts which I consider were very likely to have been the product of agreements and to have been recorded in a document.

118. I find on the balance of probabilities agreement(s) were made with the other then interested parties (in part as a reflection of what they understood to be the then situation and in part as an agreed way forward) and so as to bind them and Irfan that Irfan would have a 25% (or slightly greater) interest. However, I would have come to the same outcome as to Irfan's eventual beneficial interest even if I had not so concluded that actual agreements were made; as I regard, for the reasons given above, the default position to be that Irfan would have been entitled to 25% (by way of lifetime disposition by Mazhar or death disposition from Mazhar's estate) and that there is insufficient to prove a departure from that default position.

119. I have weighed in this evaluation of the evidence, the fact that in 2003 Irfan was registered with ownership of the Shares and which could suggest that Irfan had become (or it had been agreed that Irfan had become) the sole i.e. 100% owner of Energy and the assets held by it (i.e. the Properties). However, it would simply have been convenient for one person to hold the Shares, and thus be able to solely liaise with and instruct the directors of Energy and to pass shareholder resolutions, notwithstanding that other family members (whether the Siblings or Mohammad and the Other Children) had proportionate beneficial interests. The natural person to perform that role was Irfan who had always been the manager of the Properties, which point applies whoever were the others interested, but in particular if the others interested were Mohammad and the Other Children as Irfan was their father (and now their effective patriarch). I have therefore taken this point into account but regard it as having been outweighed by the other evidence and, in particular, the 2017 Affidavit but also the absence of other evidence as to anything contrary to what I have termed above as being the default 25% position.

120. I have considered four further difficulties with this analysis. The first is that I do not have evidence, or even statements as to their position, from those who would have been

the other then interested parties. They might have been the Other Siblings, and who would be entitled to be heard if it was to be declared that they did not have interests. The same applies, but to a lesser extent to Mohammad (who I have heard from but who has decided not to seek to take part as a party to defend his possible interest) and the Other Children. However, I do not think that that gives rise to difficulties in coming to my conclusions below. On any of these analyses Irfan would be entitled to 25% at least, and therefore those others cannot complain about that. Further, as stated above, I consider on the balance of probabilities that the 2017 Affidavit reflects an underlying set of agreements between those whom it was agreed were persons beneficially interested in the Properties, and that those agreements were documented so as to be properly binding under Section 53(1) (although they would also potentially give rise to at least a constructive trust under Section 53(2) as detrimental reliance or other continued conduct preventing such agreements being resiled from in equity would have occurred as a matter of course over the subsequent years).

121. The second difficulty is that this analysis does not lead to a particular answer as to who were or were agreed to be the other beneficial owners. Mohammad says that was Mohammad and the Other Children and now Mohammad alone, but it could be the Siblings; either scenario is possible on the evidence before me and I have not heard from any of those other people. However, I do not think that I have to decide that point. I am only concerned with Irfan's beneficial interest, as only that can be the subject of charging orders, and that remains the same whoever are the other beneficial owner(s).

122. The third and fourth difficulties are as to what is the proportion of Irfan's beneficial interest and what is the date (and purpose) of the agreement as to the "PKR62,997,445/£461,993 only" and which might impact upon that question e.g. if it fixed Irfan's beneficial interest as being a specific monetary amount rather than as a proportion the value of which might vary with property prices; or if it provided one element of a calculation of a proportionate beneficial interest based on the agreed or actual values of the Properties as at a particular date. On the other hand, the figures might only be a calculation of what an agreed specific proportion e.g. 25%, was worth in monetary terms at a specific date, and so that it would not matter when that calculation took place because it was simply the fact of a 25% beneficial interest which was what was settled and agreed even if it was being given a notional (but variable for the future) quantification as at one point in time.

123. Ms Fitzgerald and Mr Collins both submitted that if I was to proceed on this basis, I should conclude that Irfan's beneficial interest was 25% although Ms Fitzgerald further submitted that I should find (and see below for my judgment as to this) that the financial figures represented the price which Mohammad had agreed with Irfan should be paid by him to buy-out Irfan's beneficial interest (i.e. as part of the asserted 2014 Agreements).

124. Here I am concerned that Mohammad's evidence was that the financial figures were based on Irfan being entitled both to 25% of the value and to something more based on expenditures which Irfan had made or funded upon the Properties. However, I have no evidence as to either what the relevant calculations were or as to when (which date would be essential in terms of working out what might have then been thought to have been the values of the Properties, and hence the value of 25% of the beneficial interests in them) this calculation was made. I am also concerned that Irfan, who may be

prejudiced by my confining him to 25%, has not been before me although I am also satisfied that Irfan has decided not to be involved in this charging order application.

125. However, having considered the evidence and the parties' submissions, I have concluded that I simply do not have sufficient evidence to conclude, on the balance of probabilities, that there was any agreement (subject to Mohammad's buy-out argument based on the asserted 2014 Agreements, which I deal with below) that Irfan was entitled to any more (or any less or anything different) than 25% of the beneficial interests which it seems to me, for the reasons given above, was the original default position following Mazhar's death and was also confirmed by subsequent agreements between those interested.

126. I have had to consider this on the balance of probabilities and:

i) Irfan (as well as whoever else actually has or had beneficial interests) has chosen not to put before the Court either a calculation of how or evidence as to when the financial figures were arrived at. That is notwithstanding my conclusion, on the balance of probabilities, as set out above, that they were recorded in a documented agreement, and which document I consider that Irfan (at least) has failed to put before the Court, and where it is Irfan whose interest it is that could be enhanced above 25% on this basis

ii) The only person who has stated that the financial figures were more than a quantification of 25% of the value of the beneficial interests is Mohammad and whose evidence I consider should be treated with caution

iii) It would be natural for the relevant parties i.e. Irfan and the other persons who were then beneficially interested, to have sought to quantify a value of Irfan's interest as part of an agreement that he was to have a 25% beneficial interest but without any intent to limit him to that amount or to make it a mere part of a wider mathematical calculation (e.g. based on a then agreed value of the Properties) as to what the proportionate beneficial interest actually was

iv) I would be speculating as to the possible terms of the agreement and document if I was to depart from what I have held to be the original (default) position. Neither Energy nor Lenkor, who are the two actual parties before me, and where Mohammad has chosen not to become a party and Irfan, who is a party, has chosen not to attend, have sought any other figure or outcome (at this point in my analysis) than 25%.

127. I do, however, think that I should afford Irfan some limited protection where he has not attended. I therefore find that Irfan's beneficial interest following Mazhar's death and the dealings which followed it was 25% but I will make provision in the ultimate order that Irfan may apply within a set time from the ultimate order to contend that his percentage was a higher one. In view of the amount which Irfan owes to Lenkor, I suspect that Irfan may not do so, but, and where Lenkor itself only seeks 25% in circumstances where I have rejected its primary case above, I consider that that is the appropriate way to proceed.

<u>Was the 2014 Agreement(s) made and (if so) with what consequences</u>

128. There remain, however, Mohammad's contentions, supported by Energy, that Mohammad made the 2014 Agreement with Irfan to pay the sums of "PKR62,997,445/£461,993 only" for Irfan's beneficial interest (which I have held was 25% although Mohammad would contend that the agreement would extend to any higher proportion) and that (i) the beneficial interest fully vested in Mohammad prior to payment by him and (ii) Mohammad made the alleged 2015 Payments in part payment of that sum leaving only PKR15,747,445 outstanding and that merely as an unsecured debt with no proprietary interests.

129. Mohammad's evidence was that all of this, both the 2014 Agreement and the 2015 Payments, are altogether undocumented. In those circumstances, they would not satisfy Section 53(1) which requires dispositions of beneficial interests to be in writing; but, if monies were paid, they might result in some constructive trust (permitted by Section 53(2)) or some other restitutionary right or proprietary estoppel (and which would be potentially proprietary) at least as to the amounts of the payments.

130. The first question is whether the 2014 Agreement (or any other agreement) was made by Irfan to sell (or transfer) his beneficial interest to Mohammad. That is a question of fact and, having considered all the evidence and submissions, I do not regard that as having been proved on the balance of probabilities but rather the reverse, being that on the balance of probabilities that was not the case. I have considered this holistically with the questions of whether the 2015 Payments (a) were made and, if made (b) were made in relation to the 2014 Agreement (or a similar transaction) – and which I deal with next below.

131. I have come to this conclusion regarding the 2014 Agreement for the following main reasons:

    i) The only direct evidence as to such an arrangement is from Mohammad, and whose evidence I have treated with caution generally for the reasons given above

    ii) The only indirect evidence which I have as to such an arrangement is the fact that Mohammad became registered with the Shares in February 2015 and which might (but only might) suggest the occurrence of a relevant transaction. However, at that point in time the diversion of the monies due to Lenkor had taken place and Irfan was potentially subject to both civil and criminal (in Dubai) proceedings. While Irfan's arrest in Dubai was very slightly later (March 2015 rather than February 2015), I have no evidence to suggest that it was a total surprise as far as Irfan was concerned. In all those circumstances, there could well have been very good reasons apparent to both Irfan and Mohammad that it would be better for the Shares to be vested in a person (Mohammad) who would not be subject to such proceedings and (indeed) eventual incarceration, and would be able to exercise the rights attached to them in favour of the various holders of the beneficial interests (where Irfan only held 25%). Such a course of conduct is also consistent with the involvement of HD1 Developments, which seems now (at least) to be or have become (at least notionally) Mohammad's company, although, again, I have very little evidence with which to assess who was controlling its actions with regard to the Properties at different points in time

iii) The existence of such an arrangement (and subsequent implementation of it by way of the 2015 Payments) is entirely contradictory to what Irfan said about the Properties, and his beneficial interest in them, in the 2017 Affidavit, and in which he recognised that he did not hold the Shares but asserted that he had a substantial quantified interest in the Properties. Irfan made the 2017 Affidavit with the apparent assistance of lawyers, and where he was bound to tell the truth both under the WFO and because he was making an affidavit. Irfan had every reason at that point to seek to downplay the value of his assets in view of the size of the claims against him. All Mohammad could say as to this was that Irfan had told him that Irfan had made a mistake in the 2017 Affidavit. It seems to me that it would be very surprising for that to have been the case where Irfan had had time to consider, the benefit of legal advice, and every reason to deny, or reduce, the size of his beneficial interests

iv) It is inherently improbable that such an agreement at such a substantial price would not have been documented either in an agreement document or at least in notes of some form or another. However, I have no documentary evidence at all, and Mohammad, who would have been expected to have it had it existed, has produced none

v) I do not regard it as proved on the balance of probabilities that the 2015 Payments have been made but rather the opposite (and see below); when, if the 2014 Agreement had occurred, it would have been logical for the payments required by it to have been made, as the seller (Irfan) would expect the buyer (Mohammad) to have paid for what he was being supposed to acquire

vi) I add that I would have come to the same conclusions even if I had concluded (see below) that the 2015 Payments had been made, as I would not have concluded that it had been proved on the balance of probabilities that they were made in relation to a 2014 Agreement (or otherwise in relation to an agreed acquisition by Mohammad of Irfan's beneficial interest), but rather the opposite. In coming to those conclusions, I have weighed all the evidence and submissions, and I have so concluded in particular as (1) any such payments could well simply have been repayments of monies owed by Mohammad to Irfan (who appears to have been the person in whom much of the family wealth was vested even before Mazhar's death, and see, for example, the 2001 Documents, and who was the patriarch as far as Mohammad was concerned (2) the payments could simply have been a case of Mohammad supporting his father, Irfan, who was then being pursued by Lenkor and the Dubai authorities, out of filial loyalty (3) I have no documentary evidence to link them to any 2014 Agreement when such would have been expected, and it is inherently improbable that a link existed without any documents relating to it or evidencing it (4) if the 2015 Payments were made, there is no explanation as to why the balance of the supposedly agreed purchase price was not paid, and which is inherently improbable and would again suggest that there was, in fact, no underlying 2014 Agreement and that the 2015 Payments were made for some other reason(s).

132. While this does not strictly arise in the circumstances of my conclusion that the 2014 Agreements were not made, I have considered Mohammad's contention that they would have had the effect of vesting Irfan's beneficial interests in Mohammad whether or not

the 2015 Payments were made, and with immediate effect, and so as to leave Irfan merely as an unsecured debtor of Mohammad. I consider that that would have been incorrect, for the following reasons:

i) I would not have accepted on the balance of probabilities that there had been any express (or the material from which to imply) any agreement to that effect. I have no evidence to support that apart from a general statement from Mohammad which is entirely self-serving and where I have approached his evidence with caution. It is somewhat inconsistent with the 2017 Affidavit, albeit that that document can be said to suggest that Irfan only had a quantified monetary beneficial interest. However, it is also commercially unlikely and improbable that Irfan would have agreed to an actual divesting of his beneficial interest in favour of Mohammad prior to payment, where normally a seller expects (in the absence of some fully documented agreement) to be paid before they transfer the relevant property and its ownership

ii) Even if there had been an oral agreement to that effect, it would not have had effect to transfer the beneficial interest to Irfan as a result of section 53. The most that could have occurred would have been a constructive trust following the making of the 2015 Payments as part-payment of the price (which I hold below did not occur) on the basis of principles of equity and proprietary estoppel. Further:

a) even if the 2015 Payments had been paid, I doubt, although I do not need to decide, that such a constructive trust would have been imposed for more than the value of the 2015 Payments leaving Irfan with the 25% but subject to such constructive trust; but, if that is wrong then, and as I think Ms Fitzgerald accepted (although this is my view in any event)

b) Irfan would have remained entitled to an unpaid vendor's lien over the beneficial interest to the extent of the unpaid price. That is the usual rule of equity unless excluded by agreement (or inconsistent transaction e.g. an alternative security). I do not regard any such agreement (or inconsistent transaction) as having been proved on the balance of probabilities, but rather the opposite; this being for all the reasons given above but also that such an agreement would have been even more uncommercial on Irfan's part and hence inherently improbable.

133. I also hold that I do not regard it as having been proved on the balance of probabilities that the 2015 Payments were made but rather the opposite. Strictly, what I am considering in relation to the 2015 Payments is both (a) whether they were made and (b) whether they were made so as to be payments of the price of the asserted purchase (i.e. in relation to the 2014 Agreement transaction (or otherwise in relation to Mohammad acquiring Irfan's beneficial interest)). I have set out above as to why I would not consider, even if the 2015 Payments had been made, that they were made in relation to the 2014 Agreements.

134. However, I have also concluded that the 2015 Payments (i.e. payments by Mohammad to lawyers in Pakistan in relation to monies owed to them by Irfan and at Irfan's instigation) were not made (and in any case have not been proved) after considering all the evidence and submissions and applying the balance of probabilities test.

135. This is for the following particular reasons although I have borne all matters in mind:

i) The only evidence that the 2015 Payments were made is that given by Mohammad, which is entirely self-serving, and which I have treated with caution generally for the reasons given above

ii) No evidence has been adduced from the Pakistan lawyers, and who, at first sight, would seem obvious persons to have given it. It is true that Mohammad's evidence was, in effect, that they were involved in non-declaration of earnings and tax fraud, but it is still odd that no evidence has been advanced from them

iii) The story of Mohammad having handed over an amount between $150-400,000 in cash, and without being given any receipt or documentary acknowledgement of the payment is inherently improbable, in particular:

a) In relation to the size and amount of the cash which was supposedly handed over. It would seem odd that Mohammad would have such a large amount available; although I accept that it might have been possible

b) In relation to the Pakistan lawyers' alleged preparedness to accept the cash, they are being said (I) to have desired to engage in local tax fraud in terms of not declaring earnings and (II) to have contravened ordinary accounting practices (which would require documents to record liabilities, payments and satisfaction of liabilities) and (III) to have engaged in a practice which would expose them to substantial risk of involvement in money-laundering. All this would seem inherently improbable conduct, albeit that it is possible

c) In relation to Mohammad's preparedness to hand-over the money without a receipt or other documentary evidence of payment. Mohammad would seem to have exposed himself to the Pakistan lawyers, who Mohammad effectively contends were held out to him as being dishonest (in relation, at least, to their preparedness to deceive the Pakistan revenue authorities), potentially denying that they had been paid any, or part, of what had supposedly been handed over by Mohammad. While Mohammad may have had cultural reasons to believe that such would not occur, his course of conduct would seem uncommercial and inherently improbable

iv) I have no evidence, other than Mohammad's history, as to the existence of any debts owed by Irfan to any Pakistan lawyers to whom the 2015 Payments might have been made. Unless such (or other) debts existed, the 2015 Payments would not have been made (at least so as to discharge any liability of Irfan's, but no other liabilities of anyone have been suggested). However, it is inherently improbable that there would be no evidence, including in the form of a bill or a demand, of such debts. Again it is possible that there was a general desire to avoid any documenting of the existence of anything which might come to the attention of the Pakistan revenue authorities, but that situation seems uncommercial and inherently unlikely both generally and because both

Mohammad and Irfan would not know (or at least be sure as to) what amounts should be paid to the Pakistan lawyers

v) Mohammad's history is simply inconsistent with the contents of the 2017 Affidavit and the statements as to Irfan's entitlement to the "PKR62,997,445/£461,993 only". If Mohammad is correct then Irfan's statements, which were made against his interest (as they would suggest that more was available to his creditors rather than his family) and made under compulsion and with the benefit of legal advice, were wrong. That itself seems inherently unlikely, as does Mohammad's assertion (not supported by any written statement or document from Irfan) that Irfan had simply forgotten that Mohammad had made the 2015 Payments on his behalf and the 2014 Agreement.

136. I have therefore concluded on the balance of probabilities that the 2015 Payments were not made. However, whether or not the 2015 Payments were made, for the reasons given above I conclude that the asserted 2014 Agreement was not made.

Conclusion

137. The consequence of my above rulings of law and findings of fact is that Irfan became and has remained entitled to a 25% beneficial interest in each of the Properties and I will so declare (and without making any finding as to who, apart from Irfan whose interest is limited in my judgment to 25%, beneficially owns the remaining 75%), but subject to my granting a limited permission for Irfan to apply to contend for a higher figure as to which I have referred above. As Irfan has those beneficial interests, and having considered all the circumstances, I will made final charging orders in relation to them.