



Neutral Citation Number: [2020] EWHC 1174 (Ch)

Case No: BL-2019-001448

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 18 May 2020

Before :

MR ASHLEY GREENBANK
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between:

Ashank Patel	<u>Claimant</u>
- and -	
Mohammad Babar Iqbal	<u>Defendant</u>

Donald Lilly, counsel (instructed by Stokoe Partnership Solicitors) for the Claimant
The Defendant was debarred from defending this claim
by order of His Honour Judge Jarman QC on 17 January 2020

Hearing date: 1 May 2020

This judgment was handed down by Mr Ashley Greenbank (sitting as a Deputy Judge of the High Court) remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 18 May 2020 at 10.30 am.

Mr Ashley Greenbank:

Introduction

1. This claim relates to a written contract, which is contained in a deed dated 17 December 2018 (the “Deed”). The Claimant, Mr Ashank Patel (“Mr Patel”), and, the Defendant, Mr Mohammad Babar Iqbal (“Mr Iqbal”), are the parties to the Deed. Mr Patel and Mr Iqbal entered into the Deed following Mr Iqbal’s admission that he had misappropriated funds from a property development business, which he carried on jointly with Mr Patel and Mr Ikramul Haq (“Mr Haq”).
2. I will deal with the terms of the Deed in more detail below but, in summary, under the Deed, Mr Iqbal agreed to: (i) pay a proportion of the proceeds of the sale of certain properties and realizations of various assets to Mr Patel; (ii) hold such sums on trust for Mr Patel until payment is made; (iii) cause a payment of £400,000 to be made to Mr Patel by a company controlled by Mr Iqbal; and (iv) hold his interests in various companies on trust for Mr Patel.
3. No payments have been made by Mr Iqbal to Mr Patel pursuant to the Deed. Mr Iqbal has not entered into any declarations of trust pursuant to the Deed.
4. Mr Patel brought these proceedings to enforce the terms of the Deed. Mr Iqbal has been debarred from defending the claim and his Defence and Counterclaim have been struck-out pursuant to an order made by His Honour Judge Jarman QC (sitting as a High Court Judge) on 17 January 2020. That order was made after Mr Iqbal failed to provide an adequate affidavit of means as required by an order of Zacaroli J on 5 August 2019, when he made a worldwide freezing injunction against Mr Iqbal up to the sum of £5,000,000.
5. Mr Iqbal was adjudged bankrupt on 17 March 2020 upon a petition presented by the Commissioners for Her Majesty’s Revenue and Customs (HMRC).

The hearing

6. I was provided with a bundle of documents by Mr Patel's advisers. The bundle included an affidavit and two witness statements given by Mr Patel and an affidavit prepared by Mr Haq. Mr Patel and Mr Haq attended the hearing and gave evidence. I have accepted their evidence except to the extent that I have identified otherwise below.

Background facts

7. At all relevant times, Mr Patel and Mr Iqbal operated a property development business. In 2014, Mr Haq joined this business as an equal partner and in 2015, a Mr Alpesh Patel ("Alpesh Patel") also joined, also as an equal partner.
8. I use the term "partner" loosely. The precise form of the business is not entirely clear: it may have operated as partnership at will or possibly on orally agreed contractual terms on a project-by-project basis. At least in the period before Alpesh Patel joined the business, it was not formally documented and operated on the basis of trust and confidence.
9. The commercial structure typically used by the business was that, once a property development project had been identified, a new company would be incorporated to hold the legal and beneficial title to the property. A separate company would be used for each project (each an "SPV"). The SPV would acquire the property in question using a combination of funds provided by high net worth individuals and with debt financing arranged by the partners. The exact identity of the directors and shareholders of the SPV would vary from project to project, often based upon the needs of the investors. The identity of the shareholders would often not reflect the agreed profit shares of the participants in the project: any shareholders would take distributions of profit on trust and hold them first for payment to the investors, with the balance divided among the partners. Mr Iqbal was often the registered shareholder for the business.

10. During the period when Alpesh Patel was a partner in the business a more formal structure was adopted. Alpesh Patel ceased to be a partner in the business in 2016. The arrangements between the participants in the business during that period has been the subject of a separate dispute, but it is not relevant to the current proceedings.
11. By the late summer of 2018, there had been significant delays in the development of a number of the projects. For each of these projects, a company called Verdi Construction Limited (“Verdi Construction”) was the building contractor. Mr Patel investigated the delays and discovered that Verdi Construction was suffering severe cash flow problems because it had paid substantial sums to Mr Iqbal personally from amounts that had been paid by the property development business as deposits for construction services.
12. In a series of meetings in November and December 2018, various other irregularities emerged. These included the discovery by Mr Patel that both Mr Iqbal and Mr Haq were beneficially interested in Verdi Construction and its associated companies (the “Verdi Companies”), that Mr Iqbal had diverted a sum of £400,000 from one SPV to discharge a personal guarantee given by Mr Iqbal in respect of one of the Verdi Companies, and various significant invoicing irregularities. Mr Patel estimated his losses to be in the region of £5 million.

The Deed

13. Following these meetings, Mr Iqbal agreed with Mr Patel to take steps to reimburse the funds that had been misappropriated. On 17 December 2018, they entered into the Deed for this purpose.
14. The key provision for the purpose of these proceedings is Clause 3. It provides:
 - “3. Mr Iqbal hereby warrants, represents and undertakes that he shall:

3.1 procure that (a) profits from the proceeds of sale of any of the properties set out at Schedule 1 (below) and (b) return of any capital invested in the above properties set out in Schedule 1 and (c) and (*sic*) any other funds that Mr Iqbal is able to raise (the “Relevant Funds”) are distributed as soon as reasonably practicable as follows:

3.1.1 to Mr Patel, until Mr Patel has received a total of £950,000;

3.1.2 thereafter, to Mr Patel and Mr Haq equally until each has received £3.65 million;

3.1.3 thereafter, to Mr Patel, Mr Haq and Mr Iqbal in the proportions set out in Schedule 2;

3.2 if at any time he comes into possession of Relevant Funds, hold those Relevant Funds on trust for whomever is entitled to them under Clause 3.1 above;

3.3 to (*sic*) transfer by 15 January 2019 a 25% shareholding in Hope Fostering Services Limited (company number 06331561) held by Mr Iqbal (jointly on behalf of Mr Iqbal and Mr Haq) to Mr Patel;

3.4 procure Verdi Construction Limited (company number 09358662) to pay upon demand the sum of £400,000 to an account nominated by Mr Patel;

3.5 execute a declaration of trust in favour of Mr Patel over his 66% beneficial interest Verdi Investments Limited (company number 09221305), Verdi Construction Limited (company number 09358662) and any other associated companies or Special Purpose Vehicle that were formed between February 2014 and November 2018 which hold other properties in which Mr Iqbal holds a beneficial interest whether

such interest is recorded formally or informally. Until such time as a declaration of trust is executed to hold any monies received from such entities to hold on behalf of whomever is entitled under Clause 3.1 above.”

15. Schedule 1 to the Deed contains a list of properties involved in the projects which the business was undertaking and the name of the SPV which had been incorporated to hold the title to the property.
16. Schedule 2 to the Deed sets out the proportions in which proceeds realized by Mr Iqbal in accordance with Clause 3.1 are to be shared once the priority allocations to Mr Patel and Mr Haq in Clauses 3.1.1 and 3.1.2 have been met. It provides for those proceeds to be in the ratios of 35% to Mr Patel, 35% to Mr Haq, and 30% to Mr Iqbal. The Schedule includes a footnote, which reads “10% of the total share of profit (1/3rd of Mr Iqbal’s share of profit) will be distributed as directed by Mr Patel and Mr Haq”. Mr Patel explained that this provision was intended to allow for the distribution of proceeds to other individuals who were employed in the business.
17. Clause 4 of the Deed contains the following provision:

“4. Nothing in this Deed is intended to, or should be taken as, a waiver, release, or compromise by Mr Patel of any rights or claims that he has, or may have in the future against Mr Iqbal, and is without prejudice to Mr Patel’s right to enforce such rights or claims at a later date.”
18. As I have mentioned above, Mr Iqbal has not made any payments pursuant to the Deed. In particular, he has not made any payments pursuant to Clause 3.1. He has not procured Verdi Construction to pay the sum of £400,000 to Mr Patel pursuant to Clause 3.4 even though a demand was made by Mr Patel for payment on 23 May 2019. Mr Iqbal has not transferred his 25% shareholding in Hope Fostering Services Limited (“Hope”) to Mr Patel and Mr Iqbal has not executed declarations of trust in favour of Mr Patel in respect of his interests in the Verdi Companies or any related property owning companies.

19. This is the case even though Mr Iqbal realized funds from the sale of two properties in or around late 2018, which generated sums in the amount of £1,100,000 of which Mr Patel's entitlement under Clause 3.1 would have been £1,025,000. Instead, Mr Iqbal diverted these funds to a bank account, which is believed to be controlled by him.

Procedural history

20. On 5 August 2019, a claim form was issued in relation to these proceedings.
21. On 6 August 2019, following a hearing without notice to Mr Iqbal, Zacaroli J granted a freezing injunction against Mr Iqbal up to the total amount of £5 million. The injunction was continued after an *inter partes* hearing before Nugee J on 4 September 2019.
22. The order of Zacaroli J required Mr Iqbal to provide an affidavit of means within seven working days of his being served with the order. The order was served on Mr Iqbal on 8 August 2019. Mr Iqbal did not provide an affidavit by the due date. He filed an affidavit on 30 August 2019. However, in Mr Patel's view, it contained numerous omissions. Mr Patel applied for an order that Mr Iqbal prepare an adequate affidavit of means. That application was heard by Mr Andrew Simmonds QC (sitting as a Deputy High Court Judge) on 7 November 2019. The judge made an order that, unless Mr Iqbal prepared an affidavit of means in compliance with the order of Zacaroli J, Mr Iqbal should be debarred from defending the claim and his Defence and Counterclaim should be struck out.
23. Mr Iqbal filed a further affidavit on 22 November 2019. Once again, in Mr Patel's view, the affidavit contained a number of material omissions and errors. Mr Patel made an application for a declaration that Mr Iqbal was debarred from defending the proceedings and that his Defence and Counterclaim was struck out in accordance with the order of Mr Andrew Simmonds QC. That application was heard by His Honour Judge Jarman QC (sitting as a High Court Judge) on 17 January 2020. His Honour Judge Jarman

QC made the declaration and granted Mr Patel judgment in the sum of £1,025,000 in relation to the proceeds from the sale of the two properties in late 2018.

The claim

24. Mr Patel now seeks:

- i) a declaration that Mr Iqbal holds all proceeds due to Mr Patel pursuant to Clause 3.1 and 3.2 of the Deed on trust for Mr Patel;
- ii) a declaration that Mr Iqbal holds his 25% interest in Hope on bare trust for Mr Patel with effect from 15 January 2019 by virtue of Mr Patel's entitlement to an order for specific performance of Clause 3.3 of the Deed from that date;
- iii) damages in the sum of £400,000, plus interest, for Mr Iqbal's failure to procure Verdi Construction to pay Mr Patel the sum of £400,000 in accordance with Clause 3.4 of the Deed;
- iv) a declaration that Mr Iqbal holds his 66% interest in the Verdi Companies on bare trust for Mr Patel;
- v) delivery to Mr Patel of all trust property held by Mr Iqbal for him beneficially pursuant to the Deed.

25. Mr Patel also seeks an account from Mr Iqbal of all sums to which Mr Patel is entitled under Clause 3.1 or Clause 3.5 including the identification of such sums, confirmation of whether or not Mr Iqbal continues to hold them, and if not, when and to whom they were paid or applied.

26. These claims must now be viewed in the light of the bankruptcy of Mr Iqbal. The issues before the court will determine whether particular assets or the proceeds of their disposal form part of Mr Iqbal's estate and so will inevitably affect Mr Iqbal's other creditors.

27. It is perhaps simplest to address the individual claims by reference to the various provisions of Clause 3.

Clause 3.1 and Clause 3.2: Relevant Funds

28. Clauses 3.1 and 3.2 relate to the proceeds of disposal of various property interests. They seek to provide Mr Patel (and to an extent Mr Haq) with an increased right to proceeds from the disposal of properties that were part of the business as set out in Clauses 3.1.1 to 3.1.3. They also require Mr Iqbal to raise other funds and to make payments of those funds to Mr Patel and Mr Haq in accordance with the provisions of the same waterfall.

Mr Patel's submissions

29. Mr Lilly makes three points in relation to the operation of Clause 3.1 and Clause 3.2 on behalf of Mr Patel.

- i) First, he points out that a substantial proportion of the proceeds for which Mr Iqbal is required to account to Mr Patel and Mr Haq under this provision are not proceeds, which belong to Mr Iqbal in any event. This follows from the way in which the various property investments were held. Mr Iqbal was usually the registered shareholder in the relevant company. He received the proceeds of disposal of any investment on trust for the business partners as a whole. The shares of those proceeds belonging to Mr Patel and Mr Haq should clearly not be part of Mr Iqbal's estate in bankruptcy. Clauses 3.1.1 to 3.1.3 adjust those profit sharing ratios. Clause 3.2 applies the same trust to those increased and adjusted profit shares. It would not be appropriate in these circumstances to regard the proceeds received by Mr Iqbal as belonging to Mr Iqbal's estate beneficially and then distributed to the other parties pursuant to a contractual obligation in Clause 3.1.
- ii) Second, and for similar reasons, even if Mr Patel receives distributions under paragraphs (a) and (b) of Clause 3.1 in the full amount provided by paragraphs 3.1.1 and 3.1.2, Mr Patel will not be compensated fully for his estimated losses. The additional profit share that he would receive would be of the order of £2.5 million, when his estimated losses were already of the order of £5 million. Mr Lilly said that it was necessary to include paragraph (c) in Clause 3.1 for this purpose. If Mr

Iqbal could realize sufficient funds from other sources to meet the priority shares of Mr Patel and Mr Haq, he would then be entitled to participate in future business profits in something broadly equivalent to his previous profit share.

- iii) Third, Clause 3.2 should be construed as creating a trust over all of these proceeds as they accrue and to apply equally to proceeds accruing before or after the presentation of the bankruptcy petition. If it did not, the proceeds to which Mr Patel would be entitled under the Deed – some of which represented funds to which Mr Iqbal was never entitled – would fall into Mr Iqbal’s estate in bankruptcy. Furthermore, if the provision was construed as an acquisition of proceeds by Mr Iqbal with a subsequent disposition of those proceeds to the other partners, following the presentation of the bankruptcy petition, that transfer would be void under section 284 Insolvency Act 1986. That would prevent the restoration of funds misappropriated from the business, which was the purpose of the Deed.

30. Mr Lilly argued that his construction of Clause 3.2 was consistent with the operation of an equitable assignment by Mr Iqbal of his entitlement to future payments. He referred to the decisions of the House of Lords in *Tailby v. Official Receiver* (1888) 13 App Cas 523 (HL) (“*Tailby*”) per Lord Macnaghten at page 543, the Court of Appeal in *Raiffeisen Zentralbank Osterreich AG v Five Star General Trading LLC* [2001] QB 825 per Mance LJ at [80] and the decision of the House of Lords in *In Re Spectrum Plus Limited (in Liquidation)* [2005] 2 AC 680 per Lord Hope at [52] and per Lord Scott at [102] in support of this submission.
31. For these reasons, Mr Lilly says that Mr Patel should be entitled to a declaration that funds received by Mr Iqbal falling within Clause 3.1 are held on trust pursuant to Clause 3.2 of the Deed. Mr Lilly also requests an account of proceeds falling within Clause 3.1 on the grounds that Mr Patel has no information from which to ascertain whether or not any amounts are due to him and that Mr Iqbal has failed to cooperate with Mr Patel and Mr Haq and with the courts.

Discussion

32. Mr Lilly framed his explanation of Clauses 3.1 and 3.2 in the context of an agreement by Mr Iqbal to restore funds to the business in order to meet the various claims of Mr Patel. For the most part, I accept his explanation.

The effect of paragraph (c) of Clause 3.1

33. This explanation is not without difficulty. One issue is the inclusion in paragraph (c) of Clause 3.1 of an obligation on Mr Iqbal to realize other assets, which do not form part of his proceeds from the business, to meet those claims. Mr Lilly's explanation is that paragraph (c) is intended to impose an obligation on Mr Iqbal to realize other assets to restore funds extracted from the business to Mr Patel and Mr Haq as soon as possible and in circumstances where Mr Iqbal may have applied funds received in other ways. However, that explanation does not address the lack of any limit or cap on the amounts that Mr Iqbal is required to treat as falling within the waterfall in Clauses 3.1.1 to 3.1.3.
34. In his evidence, Mr Patel explained the lack of any form of cap on the basis that the Deed was drafted very quickly. It had been anticipated that the provision would operate unless and until Mr Iqbal had repaid the funds that he had diverted from the joint business. At the time, Mr Patel's best estimate of the amount of his own losses was of the order of £5 million. However, Mr Iqbal had provided little information of the full extent of the sums that had been extracted from the business and so it had not been possible to set out an agreed figure. I accept Mr Patel's evidence in this regard. On that basis, I accept the suggestion made by Mr Lilly that Clauses 3.1 and 3.2 should be regarded as subject to an implied term that they operate unless and until Mr Iqbal has reinstated the full amount of funds misappropriated from the business.

The trust created by Clause 3.2

35. The other issue that I need to address is the effect of Clause 3.2. Mr Lilly says that the effect of Clause 3.2 is to create a trust of the future proceeds of the

sale of the properties identified in Schedule 1 of the Deed and other assets referred to in Clause 3.1.

36. The creation of a trust requires certainty of intention, certainty of subject matter and certainty of object. Clause 3.2 clearly evidences an intention to create a trust and the beneficiaries of the alleged trust in this case are established by Clause 3.1, but I should address two issues: the first being the timing of the creation of the alleged trust; and the second being the certainty of the subject matter (in particular in relation to paragraph (c) of Clause 3.1).
37. Mr Lilly says that Clause 3.2 creates an immediate trust of the proceeds of the sale of relevant assets in the rights to proceeds of disposal of such assets in the future. In so far as the Clause seeks to attach a trust to the future proceeds of sale of relevant assets, Mr Lilly refers by an analogy to the treatment of an agreement to assign future receivables and to various authorities, including the decision of the House of Lords in *Tailby*, in support of this submission.
38. In the passage from *Tailby* to which I was referred by Mr Lilly, Lord Macnaghten says this (at page 543):

“It has long been settled that future property, possibilities and expectancies are assignable in equity for value. The mode or form of assignment is absolutely immaterial provided the intention of the parties is clear. To effectuate the intention an assignment for value, in terms present and immediate, has always been regarded in equity as a contract binding on the conscience of the assignor and so binding the subject-matter of the contract when it comes into existence, if it is of such a nature and so described as to be capable of being ascertained and identified.”

39. I am satisfied that this principle can apply to the obligation under Clause 3.2 of the Deed for Mr Iqbal to hold proceeds of disposal of assets within Clause 3.1 for those entitled under that clause (which include Mr Patel and Mr Haq). In particular, the obligation should be regarded as being “for value”. Notwithstanding the form of the agreement as a Deed, the overall effect of the

Deed is that Mr Iqbal agrees to assign to Mr Patel or hold for Mr Patel's benefit certain rights to receivables and other assets to which he is or would otherwise have become entitled in satisfaction the claims that might have been brought against him to return funds to the business and his business partners. That, to my mind, is valuable consideration sufficient to meet the requirements of the principle set out by Lord Macnaghten in *Tailby*.

40. I have considered the implications of Clause 4 in this context. Clause 4 is intended to preserve Mr Patel's rights to pursue Mr Iqbal in respect of losses to the business arising from Mr Iqbal's actions. In my view, it does not detract from the conclusion that the agreement of Mr Iqbal to create a trust over the future receivables from relevant assets is "for value". It cannot be the case that Clause 4 would operate to enable Mr Patel to pursue Mr Iqbal in respect of losses which have addressed by the Deed provided that Mr Iqbal abided by its terms.
41. The other issue that I should address is the requirement for certainty in the subject matter of the trust. This issue presents no difficulty in relation paragraphs (a) and (b) of Clause 3.1. Paragraph (c) of Clause 3.1 is potentially very broad in its scope, but that does not render it uncertain. I am satisfied that the provision is sufficiently certain in its terms to create a valid trust. The Clause refers to "funds" (i.e. liquid assets) which Mr Iqbal "is able to raise" (i.e. from future sales, disposals, or financings) from other assets.
42. I therefore propose to grant the declaration, which Mr Lilly requests. In order to address the issues that I have identified above concerning the limit on the extent of the obligations under Clause 3.1 to amounts misappropriated from the business, the declaration will be subject to a limitation that it should apply to claims under Clause 3.1 until Mr Patel has received the amount of £5 million (which remains the best current estimate of the losses accruing to Mr Patel). I shall also grant Mr Patel's claim for an account from Mr Iqbal of funds falling within Clause 3.1 (subject to an appropriate de minimis for the disposal of assets) and stay the claim generally with liberty to restore so that any further claims can be considered if further losses emerge.

Clause 3.3: shares in Hope

Mr Patel's submissions

43. Mr Lilly says that in breach of Clause 3.3 of the Deed, Mr Iqbal did not transfer his 25% interest in Hope on 15 January 2019 to Mr Patel. He says that Mr Patel was entitled to an order for specific performance of that obligation and so Mr Patel acquired a beneficial interest in those shares on that date. Mr Patel seeks a declaration to that effect together with an order for delivery of the shares to Mr Patel and an account of Mr Iqbal's dealings with the shares since 15 January 2019.

Discussion

44. I agree with Mr Lilly that the agreement to transfer shares in Hope, which is encapsulated in Clause 3.3 of the Deed, is specifically enforceable.
45. A valid contract for the sale of shares in a private unquoted company in respect of which there is no readily available market is, in principle, specifically enforceable (see, for example, *Mills v Sportsdirect.com Retail Limited* [2010] EWHC 1072 (Ch) per Lewison J at [75]). Hope is a private company and there is no available market in its shares. The agreement in this case is “for value” for the reasons that I have given.
46. The agreement was specifically enforceable from 25 January 2019 onwards being the date for the transfer specified by the Deed. With effect from that date, Mr Patel was entitled, without more, to a transfer of Mr Iqbal's interest in the shares. Mr Patel became entitled to a beneficial interest in the shares on that date.
47. The evidence that is available to me suggests that the shares in *Hope*, of which Mr Iqbal is the registered shareholder, are held by Mr Iqbal on behalf of Mr Iqbal and Mr Haq jointly. Mr Haq confirmed in the hearing that he will consent to an order being granted which requires a transfer of the shares into the name of Mr Patel alone.

48. I will therefore grant the declaration which Mr Lilly requests.

Clause 3.4 payment of £400,000 by Verdi Construction

49. Under Clause 3.4, Mr Iqbal undertakes to procure that Verdi Construction pay the sum of £400,000 to Mr Patel on demand. Mr Patel issued a demand for these funds on 23 May 2019.

50. There has been a clear breach of this obligation to procure the payment by Verdi Construction. I will therefore make an order for payment of damages in the sum of £400,000 in favour of Mr Patel together with interest from 23 May 2019.

Clause 3.5: The Verdi Companies

51. Clause 3.5 of the Deed requires Mr Iqbal to execute a declaration of trust in favour of Mr Patel “over his 66% beneficial interest in Verdi Investments Limited..., Verdi Construction... and any other associated companies or Special Purpose Vehicle (*sic*) that were formed between February 2014 and November 2018, which hold other properties in which Mr Iqbal holds a beneficial interest”. Clause 3.5 then requires any monies received from any such entities to be held by Mr Iqbal for the persons entitled under Clause 3.1 until such time as a declaration of trust is executed.

52. Mr Iqbal has not executed any declaration of trust pursuant to Clause 3.5.

Mr Patel's submissions

53. Mr Lilly says that the obligation under the Deed to execute the declarations of trust was immediate. The fact that any monies received from those companies was to be held on trust for Mr Patel pending the formal execution of a declaration of trust shows that the parties' intention was that Mr Iqbal would hold any interest that he had in the companies for and on behalf of Mr Patel with effect from 17 December 2018. As at 17 December 2018, there was nothing further which Mr Patel needed to do in order to secure that interest.
54. Mr Lilly submitted that Clause 3.5 was intended to address Mr Iqbal's diversion of funds derived from the joint business with Mr Patel through the Verdi Companies in the form of inflated fees for construction work. The precise ownership structure of the Verdi Companies was not known at the time at which the Deed was executed. The terms "associated companies" and "Special Purpose Vehicle" were not specifically defined, but they needed to be understood in that context.
55. The term "associated companies" was intended to extend to all companies, which were in some way connected with the business of Verdi Construction, and which were ultimately controlled by the same group of individuals (namely Mr Iqbal, Mr Haq and a Mr Avnish Patel ("Avnish Patel")) whether or not those companies could be treated as members of a group for company law purposes.
56. The reference in Clause 3.5 to "Special Purpose Vehicle" should be regarded as a reference to the vehicles, which had been established by Mr Iqbal to acquire further interests in properties from funds diverted through the Verdi Companies. The evidence showed that Mr Iqbal and Avnish Patel accepted that this had occurred and that Mr Iqbal's interest in those companies were often held by Mr Avnish Patel on behalf of Mr Iqbal.
57. Mr Lilly therefore submitted that Mr Patel was entitled to a declaration that Mr Iqbal's interests in all such companies, Verdi Construction and Verdi Investments were held on behalf of Mr Patel since 17 December 2018. He also submitted that Mr Patel was entitled to orders for delivery up of shares in

those companies and an account of Mr Iqbal's dealings with such interests since 17 December 2018.

Discussion

The ownership of the Verdi Companies

58. Clause 3.5 refers to a 66% beneficial interest, which Mr Iqbal is said to have in the shares in various companies: two of which are named, Verdi Construction and Verdi Investments Limited (“Verdi Investments”); the others are referred to as either “associated companies” or “Special Purpose Vehicle[s]”.
59. The precise ownership of the companies is not clear from the evidence. I have seen no documentary evidence setting out the structure. It is clear that the beneficial ownership of the shares in these companies often bears little relationship to the registered shareholdings.
60. As regards the beneficial ownership of the shares, the only evidence before me is that of Mr Patel and Mr Haq.
61. Mr Haq in his evidence refers to the beneficial ownership of shares in all of the companies – Verdi Investments, Verdi Construction, other companies connected with the Verdi Construction business and the companies that owned properties, which were acquired with funds diverted from the joint business – being held in equal shares beneficially between himself, Mr Iqbal and Avnish Patel. The one exception to which he referred was a company called Jason Verdi Kitchen Design Limited. Mr Haq says that the shares in this company were owned beneficially by Mr Haq, Mr Iqbal, Avnish Patel and an individual known as Jason Verdi in equal shares (i.e. 25% each).
62. Mr Patel's evidence relies upon statements, which were made to him by Avnish Patel in the course of Mr Patel's investigations relating to the misappropriation of funds from the joint business. It is not entirely consistent with Mr Haq's account. As Mr Haq was speaking to matters within his direct knowledge and understanding, I have treated his account as the more

authoritative. However, one consistent theme in Mr Patel's evidence is that Avnish Patel was holding his interest in any shares in these companies on behalf of Mr Iqbal. This is consistent with the reference in Clause 3.5 to a "66% beneficial interest" being held by Mr Iqbal, at least in Verdi Construction and Verdi Investments.

63. There are various references in the evidence before me to Verdi Construction being a "wholly owned subsidiary" of Verdi Investments. This is a reference to Verdi Investments being the registered holder of shares in Verdi Construction. I have ignored these references in my consideration of the beneficial ownership of shares in Verdi Construction; it is entirely consistent with the manner in which the protagonists have dealt with each for the beneficial ownership of their interests in the relevant vehicles not being represented by the registered share ownership of the various companies.
64. I have accepted Mr Lilly's explanation of the reference to the "associated companies" as being a reference to companies which are owned or controlled directly or indirectly by the group of individuals being Mr Iqbal, Mr Haq, Avnish Patel and Jason Verdi and which were connected with the business of Verdi Construction irrespective of whether those companies formed a group for company law purposes or whether the precise shareholdings in each of the companies was the same.
65. I have also accepted Mr Lilly's explanation of the meaning of "Special Purpose Vehicle" in Clause 3.5 as a reference to other companies through which funds derived from the business of Verdi Construction were invested in other real estate projects from which Mr Patel was excluded and which were owned by the same group of individuals. To my mind, it is implicit in the wording that this term must be a reference to companies other than those listed in Schedule 1 to the Deed, the proceeds from which are addressed by the provisions of Clause 3.1 and Clause 3.2 of the Deed.

When did the trust created by Clause 3.5 take effect?

66. Mr Lilly says that the effect of Clause 3.5 is that Mr Iqbal declares himself as a trustee of his interests in the relevant companies on behalf of Mr Patel and

that that trust took effect from the time of the execution of the Deed on 17 December 2018.

67. I accept the basic premise that an unconditional agreement to declare a trust over specific property for value can create a valid trust. But this is only to the extent that the courts would grant specific performance of the transfer of the property in question (*Central Trust and Safe Deposit Company v Snider* [1916] 1 AC 266).
68. As I have discussed, in my view, the covenants given by Mr Iqbal in the Deed are, notwithstanding its form as a deed, given “for value” in the settlement of the relevant claims that might otherwise have been brought against Mr Iqbal.
69. As I have also discussed above, the transfer of an interest in shares in a private company for which there is no readily available market is in principle capable of being specifically enforceable. The transfers of shares in Verdi Construction and Verdi Investments would fall within this category. However, Mr Patel has not identified any of the other companies that fall within the definitions in Clause 3.5. Whilst I accept that the concepts of the terms “associated companies” and “Special Purpose Vehicles” may be sufficiently defined to be the subject of a valid trust and whilst it may be likely that the companies which fall within these categories would also be private companies, the shares in which are not readily marketable, there can be no guarantee that this would be the case. For this reason, I will restrict any declaration to the shares in Verdi Construction and Verdi Investments.

The object of the trust created by Clause 3.5

70. Mr Lilly referred to the second sentence in Clause 3.5, which provides for Mr Iqbal to hold proceeds derived from his interests in the various companies referred to in this clause on trust until the execution of the relevant declaration of trust, as supporting his submission that the intention of the parties was that Mr Patel should become the immediate beneficial owner of Mr Iqbal’s interests in the various companies as at 17 December 2018.

71. The difficulty with that construction is that the two sentences are potentially inconsistent.
72. The first sentence, as I have just described suggests that Mr Iqbal's interests in shares in the various companies are to be held immediately (i.e. with effect from 17 December 2018) for the sole benefit of Mr Patel. It would be consistent with that approach for all of the proceeds realized from Mr Iqbal's interests on or after 17 December 2018 to be held solely for Mr Patel's benefit.
73. The second sentence, however, does not support that approach. It provides for the proceeds from these companies to be held on behalf of the persons entitled under Clause 3.1 pending the execution of any declaration of trust. The persons entitled under Clause 3.1 include Mr Patel, Mr Haq and once the priority claims in favour of Mr Patel and Mr Haq have been satisfied, Mr Iqbal himself.
74. The second sentence is, therefore, time limited. It only applies until the declarations of trust required by the first sentence have been executed. The result is that, if full effect is given to both sentences in Clause 3.5, there will be a shift in the beneficial entitlement to the proceeds from these companies at the time of the declaration of trust. The timing of that shift would be in the hands of Mr Iqbal.
75. It seems unlikely that that could have been the intention of the parties. However, the alternative constructions of Clause 3.5 are not without their own difficulties.
76. One alternative is to treat the first sentence as subject to the second so that Mr Patel holds any interest that he acquires both before and after the formal declaration of trust subject to the trusts specified by Clause 3.1 and Clause 3.2. This alternative is, at first sight, attractive in that it would bring the Clause 3.5 within the wider mechanism in Clauses 3.1 and 3.2 for the restoration of funds extracted from the joint business. However, it is contrary to the wording of the first sentence, which requires Mr Iqbal to declare himself a trustee in favour of Mr Patel alone. It also fails to reflect the fact that Mr Haq already holds an interest in the companies that are referred to in Clause 3.5, and so this

approach would direct the proceeds from the companies into a payment mechanism from which Mr Haq would derive additional benefit.

77. I have therefore rejected this alternative. In my view, Clause 3.1 and Clause 3.5 are intended to be separate mechanisms: Clause 3.1 deals with assets that are known to be held for the joint business, in which Mr Patel and Mr Haq have an interest; Clause 3.5 deals with funds that have been diverted through the Verdi Companies in which Mr Patel had no interest prior to the execution of the Deed.
78. The final alternative is to ignore the reference to Clause 3.1 in the second sentence of Clause 3.5 to the extent that it could result in any of the proceeds becoming held by a person other than Mr Patel. Once again this interpretation appears to be contrary to the words of the provision. However, I prefer this interpretation. There are clear shortcomings in all of the approaches, but I cannot derive from the wording of the Deed any evident intention of the parties for the assets within Clause 3.5 to fall within the same mechanism as those in Clause 3.1. Furthermore, in my view, the Deed contemplates that the declaration of trust would be executed relatively quickly after the execution of the Deed. Against that background, it is likely that, even if Clause 3.1 were to apply to any cash proceeds, those proceeds would be held on behalf of Mr Patel given that the waterfall in Clause 3.1 would have attributed the first £950,0000 of proceeds to Mr Patel in any event.
79. For these reasons, I will grant a declaration that Mr Iqbal's interests in the share capital of Verdi Construction and Verdi Investments (up to a 66% (i.e. 2/3rd interest)) have been beneficially owned by Mr Patel from 17 December 2018. For the reasons that I have given, I will not make an order in relation to other companies that may fall within the provisions of Clause 3.5. However, I shall also stay the claim generally with liberty to restore so that any further claims can be considered. I will also grant Mr Patel's claim for an account from Mr Iqbal of funds falling within Clause 3.5 (subject to an appropriate de minimis exclusion for the disposal of assets).

Order for delivery

80. I will also grant the order, which Mr Lilly requests, for delivery to Mr Patel of the property held in trust for him pursuant to the declarations that I have agreed to make.

Conclusion

81. I will therefore grant the various declaration and orders which Mr Lilly has requested subject to the limits that I have outlined in this decision.
82. I will invite counsel to draw up an order to give effect to my decision.