Neutral Citation Number: [2021] EWHC 278 (Ch)

Case Nos: BR-2012-002314
PT-2019-000173

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

The Rolls Building
Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date: 15/02/2021

Before :

ICC JUDGE MULLEN

- -

IN THE MATTER OF MOHAMMED MUNIR (A BANKRUPT)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

B E T W E E N :

(1) KEVIN ANTHONY MURPHY
(2) ADRIAN CHARLES HYDE
(as trustees in bankruptcy of Mohammed Munir) **Applicants**

- and -

(1) MR MOHAMMED MUNIR
(2) MR MOHAMMED HUSSAIN
(3) MR MOHAMMED SHAFIQ
(4) MR MOHAMMED AMIN
(5) MR MOHAMMED SALIM
(6) MRS RAZIA MUNIR
(7) MR AHMED SAEED
(8) MR BABAR AMIN CHUGHTAI **Respondents**

A N D B E T W E E N :

(1) BABAR AMIN CHUGHTAI
(2) PERVEEN MOHAMMED **Claimants**

- and -

(1) MOHAMMED MUNIR
(2) RAZIA MUNIR
(3) KEVIN MURPHY
(4) ADRIAN HYDE
(5) BUSINESS MORTGAGE FINANCE 7 PLC
(6) THE CROWN PROSECUTION SERVICE **Defendants**

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Mr Daniel Lewis and **Ms Rachael Earle** (instructed by **Moon Beever LLP**)
for the **Applicants/Third and Fourth Defendants**
Mr Adrian Davies (instructed by **Connaught Law**) for the **Eighth Respondent/Claimants**
Mr Stuart Cutting (instructed by **Moore Barlow LLP**) for the **Fifth Defendant**

Hearing dates: 24th – 27th November 2020

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Approved Judgment

This judgment was handed down by circulation to the parties' representatives. The deemed time of hand down is 10am. I direct that copies of this version as handed down may be treated as authentic.

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ICC JUDGE MULLEN

ICC Judge Mullen :

Introduction

1. On 21st February 2019 Mr Kevin Murphy and Mr Adrian Hyde, the trustees in bankruptcy of Mr Mohammed Munir, ("the Trustees") issued an application under case number BR-2012-002314 ("the Insolvency Application") in relation to the following freehold properties:

    i) 41-43 St Thomas Street, Weymouth, Dorset DT4 8EH (registered at HM Land Registry under title number DT262614) ("St Thomas Street");

    ii) 24 Station Parade, Willesden Green, London NW2 4NH (registered with title number NGL64826) ("Station Parade");

    iii) 84 and 86 Walm Lane, London NW2 4QY (registered with title number NGL553751) ("Walm Lane");

    iv) 10 Stradbroke Drive, Chigwell, Essex IG7 5QX (registered with title number EX663156) ("Stradbroke Drive"); and

    v) Parkview, The Rise, Mill Hill, London NW7 2LL (registered with title number MX408477) ("Parkview").

    Those properties were registered in the name of Mr Munir. The Trustees sought a declaration that a deed of trust, dated 4th February 2010, ("the 2010 Deed"), which purports to create a trust of those properties in favour of family members, is a sham, so that those properties had vested in them pursuant to section 306 of the Insolvency Act 1986 ("the 1986 Act"). Alternatively, they sought a declaration that any transfer of the beneficial interest in those properties pursuant to the 2010 Deed was a transaction at an undervalue within the meaning of section 339 of the 1986 Act or a transaction defrauding creditors for the purposes of section 423 of the 1986 Act. In that event, the Insolvency Application sought an order setting aside the transfer accordingly.

2. The 2010 Deed is made between Mr Munir as settlor and his wife, Mrs Razia Munir, as trustee. It recites that the settlor is the beneficial owner of the properties and that he wished to declare a trust of them. It appoints Mrs Munir as co-trustee and declares trusts for the benefit of:

    i) Mr Mohammed Hussain;

    ii) Mr Mohammed Shafiq;

    iii) Mr Mohammed Amin;

    iv) Mr Mohammed Salim; and

    v) any person who would become entitled to the whole or any part of Mr Munir's own estate upon his death,

    with a default gift to the children of the beneficiaries. The four named beneficiaries are Mr Munir's brothers. The deed is signed by Mr and Mrs Munir.

3. The Insolvency Application did not rest there, however. It also sought a declaration that an earlier deed of trust in relation to the properties (possibly with the exception of St Thomas Street – the available copy is not clear), dated 31st May 2007, ("the 2007 Deed") is similarly a sham or a transaction defrauding creditors. The 2007 Deed seems to be substantively the same as the 2010 Deed, save that Mrs Munir appears as a beneficiary in addition to Mr Munir's brothers. The only available copy has a page missing. It is again signed by Mr and Mrs Munir.

4. Finally insofar as the setting aside of trust instruments is concerned, the Insolvency Application sought a declaration that a deed of trust dated 15th July 2008 ("the 2008 Deed"), in relation to Stradbroke Drive alone, is a sham or, alternatively, a transaction defrauding creditors, together with a declaration that Stradbroke Drive is vested in the Trustees.

5. The 2008 Deed is made between Mr Munir, described as "the Legal Owner", and Mr Babar Amin Chughtai ("Mr Chughtai"), described as "the Beneficial Owner", who is one of Mr Munir's nephews. It is a little different to the other two deeds in that it recites that its purpose "is to acknowledge a bare trust between the legal owner and the beneficial owner of the trust property". It provides that:

> "The legal owner hereby acknowledges and affirms that from the date of the transfer of the legal title number EX863156 is [*sic*] to the legal owner's name he has held and continues to hold the trust property on trust and declares that the trust property is held on trust as a trustee of the property as follows
>
> 100% for the beneficial owner."

It is signed by Mr Munir in the presence of Mr Mohammed Amin Chughtai, who is Mr Chughtai's father, and Ms Perveen Mohammed, Mr Chughtai's wife.

6. The Insolvency Application thus sought a declaration that Mr Chughtai had no interest in Stradbroke Drive. To add an extra layer of complexity, it also sought a declaration that a gentleman called Mr Ahmed Saeed had no interest in the property either. The reason for this was that Mr Saeed apparently swore an affidavit in Pakistan on 30th November 2006 stating that he was the owner of Stradbroke Drive and had purchased it on 30th November 2006 for £2,500,000. Strikingly, the affidavit stated that he asked Mr Munir to act as trustee for him as he had difficulty in obtaining a mortgage. He raised funds from his own resources and family and friends and subsequently requested Mr Munir to raise a mortgage to repay them. As I shall explain, this is substantively the same account given by Mr Chughtai of the purchase of the property for him. The affidavit's account of the involvement of Mr Chughtai is as follows, set out in the unusual format in which it appears in the copy of the document that I have seen:

> "Mr Amin Chughtai represented by his son Mr Babar Amin was initially to be my partner but due to the fact
>
> That certain financial transaction we were relying upon to take place in Pakistan did not occur as a

> Consequence of which I decided to proceed with the purchase of the property without them."

Mr Chughtai and Mr Saeed are erroneously referred to as the Sixth and Seventh Respondents in the application notice but they are correctly stated to be the Seventh and Eighth Respondents in Mr Murphy's statement in support of it. It is clear that the declaration sought in the application notice relates to both of them. Solicitors acting for Mr Saeed responded to the Insolvency Application on 4th October 2019 to say that Mr Saeed did not sign the affidavit in his name in relation to Stradbroke Drive and had no link to it. They subsequently confirmed in a letter of 3rd February 2020 that he made no claim to that property. A hearsay notice was served by the Trustees giving notice of their intention to rely on the letters from Mr Saeed's solicitors.

7. More straightforwardly, in relation to the ownership of the leasehold interest in 156 High Street, Bushey WD23 3HF (registered with title number HD479373) ("156 High Street") the Trustees seek a declaration that the benefit of the lease is vested in them. Mr Munir is the registered proprietor of the lease and there are no trust instruments to suggest that the beneficial interest is vested in anyone else.

8. Orders for possession and sale were also sought, with various directions for the conduct of those sales. I should say at the outset that the Trustees are not currently seeking such orders to be made by me should I find that they have an entitlement to any of the properties referred to in the application.

9. The Insolvency Application names as respondents Mr Munir, his four brothers named in the 2007 and 2010 Deeds, Mrs Munir, Mr Saeed and Mr Chughtai. Of those, only Mr Chughtai and Mrs Munir filed evidence in answer. Mr Chughtai asserted that he became the beneficial owner of Stradbroke Drive in the circumstances that I shall describe. Mrs Munir made it clear that her only interest was in relation to Parkview, to which she claimed to be entitled pursuant to arrangements made in 2005 following her separation from Mr Munir.

10. On 26th February 2019 Mr Chughtai and Ms Mohammed issued a claim in the Property, Trusts and Probate List under claim number PT-2019-000173 ("the Claim"). They sought a declaration that Mr Munir held Stradbroke Drive on trust for Mr Chughtai, subject to the entitlement of Ms Mohammed to reside at the property with their three children until their children reached 18 or finished tertiary education, but free of any other interest, including the charge registered against the title to the property in favour of Business Mortgage Finance 7 PLC ("BMF"). BMF is the successor to Commercial First Mortgages Limited ("Commercial First"), which registered a charge dated 5th July 2007 as security for a mortgage loan. They named as defendants Mr and Mrs Munir, the Trustees, BMF and The Crown Prosecution Service. There is other relief claimed but I need not set it out for the purposes of this introduction.

11. Their case as set out in the particulars of claim is that Stradbroke Drive was purchased with monies provided by Mr Chughtai on his own behalf and with loans provided by friends and family. A mortgage was subsequently taken out to repay the friends and family who had made loans to him. The mortgage was taken out by Mr Munir as registered proprietor but he was at all times indemnified by Mr Chughtai. Mr Munir's role, at the suggestion of Mr Chughtai's father, was to act as bare trustee and he held the property on a common intention constructive trust or a resulting trust. They contend

that the 2008 Deed, far from being a sham, unintended to have effect, simply reflects the situation that obtained from the outset. Though Mr Chughtai occupied the property intermittently from the date of purchase, the particulars of claim contend that he and Ms Mohammed, alternatively Ms Mohammed alone, occupied the property at the time of the grant of the mortgage on 5th July 2007 to Commercial First so that their beneficial interests were protected as overriding interests by virtue of paragraph 2 of Schedule 3 to the Land Registration Act 2002. In other words, the charge now held by BMF does not attach to their beneficial interests. I should say that Mr Davies rightly conceded that Mr Chughtai could not argue that any interest he might have in the property was not subject to the mortgage, having, on his case, requested that it be obtained in the first place.

12. Mrs Munir was joined to the Claim because of the registration of a restriction against the title to Stradbroke Drive on 8th July 2010 referring to the 2010 Deed and naming her as a person whose consent was required to the registration of a disposition of the property in her capacity as trustee. The reasons of the joinder of the Crown Prosecution Service is explained by the evidence given in two statements by Detective Sergeant Kelly Morrison, a financial investigator appointed under the Proceeds of Crime Act 2002, dated 29th September 2017 and 6th October 2017. The parties were given permission to rely on that evidence by Deputy ICC Judge Schaffer on 16th January 2020.

13. DS Morrison explains that, on 29th October 2015, a search of a vehicle carrying two males led to the discovery of a bag containing £60,490 in cash. This led to a search of the premises of Emerald Supermarket Ltd, a company controlled by Mr Akbar Amin Chughtai, who is Mr Chughtai's brother. Mr Akbar Chughtai was present at the premises and a further £120,860 in cash was discovered in the back office.

14. Further enquiries revealed that £2,733,189 had been transferred from an account controlled by Mr Akbar Chughtai to a bank account in Dubai. Both the transferor bank account and the recipient bank account were in the names of companies believed by the police to be shams used for the purpose of money laundering. Mr Akbar Chughtai was sentenced to four years and ten months imprisonment, reduced by six months on appeal. DS Morrison stated that, while Emerald Supermarket Ltd was not thought to be a sham company at the outset it evolved into a criminal enterprise, demonstrated by a sudden and very significant increase in the monies passing through its accounts that was inconsistent with the operation of a small mini-market.

15. DS Morrison reported that tainted gifts had been made to both Mr Akbar Chughtai's father and to Mr Munir. She identified payments having been made towards the mortgage of Stradbroke Drive. She noted that £220,400 had been paid from this account to Commercial First in respect of the mortgage. These payments were asserted to be tainted gifts. The total value of the gifts to Mr Munir was asserted to be £253,850.

16. On 5th October 2017, His Honour Judge Edwards QC, sitting in the Crown Court at Isleworth, made an order against Mr Akbar Chughtai, Mr Mohammed Chughtai, his father, Mr Munir and Emerald Supermarket Ltd under the Proceeds of Crime Act 2002. The order included equity in Stradbroke Drive up to the value of £253,850.

17. The Trustees filed a defence to the Claim that repeated their case as set out in the Insolvency Application. BMF filed a defence that required Mr Chughtai and Ms Mohammed to prove the existence of their beneficial interests. That defence set out the

mortgage application process and denied that the charge is subject to the alleged beneficial interests. In particular, it denied that Mr Chughtai and/or Ms Mohammed were in occupation of Stradbroke Drive at the time of the 2007 mortgage or that such occupation could have been discovered on a reasonably careful inspection. Neither Mrs Munir nor the CPS filed a defence. Mr Murphy's first witness statement in support of the Insolvency Application confirmed that he had been informed by the CPS that they had no objection to that application.

18. On 16th April 2019, ICC Judge Barber directed that the Claim be transferred into the Insolvency and Companies List to be managed and heard with the Insolvency Application. Directions were given to trial. On 12th April 2019, ICC Judge Burton gave permission to serve Mr Saeed out of the jurisdiction in Pakistan. As I have said, he denies any interest in the property or having sworn any affidavit to that effect. Similarly, the trustee in bankruptcy of Mr Mohammed Amin Chughtai, Mr Rishi Karia, confirmed by letter dated 26th June 2020 that neither the 2007 Deed nor the 2010 Deed were mentioned to him and that Mr Mohammed Amin Chughtai had "no recollection of signing anything". A hearsay notice was served by the Trustees in relation to that letter. Mr Karia has not sought to uphold either document.

19. The Insolvency Application as it related to Mrs Munir and Parkview was compromised and a consent order dismissing the application as against her was approved by ICC Judge Jones on 13th January 2020. Deputy ICC Judge Schaffer gave further directions on 16th January 2020 permitting the parties to rely on evidence in the Insolvency Application in the Claim, and vice versa, and also to rely on evidence filed in appeals filed by a Mr Zulfiquar Khan and Mr Munir in appeals against admission of proofs in Mr Munir's bankruptcy.

The conduct of the trial

20. The trial before me thus focused on the only defended element of the proceedings – the beneficial ownership of Stradbroke Drive and, in particular, the circumstances of its purchase, the payment of the deposit and mortgage instalments, its occupation at the time of the charge in favour of Commercial First and the various competing and inconsistent statements made as to its beneficial ownership.

21. The trial proceeded as a hybrid trial over four days. Counsel, together with an instructing solicitor, attended in person. Mr Lewis and Ms Earle appeared for the Trustees, Mr Davies appeared for Mr Chughtai and Ms Mohammed, and Mr Cutting appeared for BMF. Mr Murphy, Mr Chughtai and Ms Mohammed gave evidence in person. Mr John Barbour gave evidence remotely on behalf of BMF. There were some technical difficulties but he was able to see and hear counsel and be seen and heard satisfactorily. DS Morrison and Mrs Munir were to give evidence remotely, in Mrs Munir's case with an interpreter, but in the event their evidence was agreed. Other legal representatives and interested parties watched the proceedings remotely, rather than in the court.

22. At the outset of the trial Mr Davies applied to put in witness statements from two individuals who had written letters concerning Mr Chughtai and Ms Mohammed's occupation of Stradbroke Drive. That application was opposed and I dismissed it for reasons that I gave at the time. For the purposes of this judgment it is only necessary to record that the attempt to adduce this evidence was far too late. Directions for

evidence had been given as long ago as 16th April 2019 and provided for Mr Chughtai and Ms Mohammed to put in evidence by 16th July 2019. At a further directions hearing on 16th January 2020 there was a direction for exchange of evidence by 9th June 2020. There was no good reason for the delay in supplying the witness statements and I was not prepared to adjourn the trial as would have been necessary if the other parties were to have a proper opportunity to consider the evidence and respond to it.

The witnesses

DS Morrison and Mrs Munir

23. I have already summarised the relevant parts of DS Morrison's statements. I need only set out Mrs Munir's evidence briefly. She explains that she speaks and writes in Urdu and does not speak or write English. She met Mr Munir shortly before their marriage in London, which was carried out in accordance with their religious tradition. She says that they did not go through an "official ceremony". Her evidence is that she comes from a "very traditional background" and, once married, had no knowledge of her husband's financial affairs. From time to time, documents were placed in front of her and she was instructed to sign them, which she did "without question". She was neither told what they were nor did she ask. They were all written in a different language to her own and she assumed that it was English. Mr and Mrs Munir separated in 2005, which separation was occasioned by Mr Munir forming another relationship. They entered into a deed of separation dated 28th February 2005 under which Mr Munir relinquished his interest in Parkview.

24. Mrs Munir says of her purported trusteeship of the properties under the 2010 and 2007 Deeds and says that had she been told the effect of what she was signing she would have told Mr Munir that "he could not do what he was attempting to do." She goes on to say that "the notion that I could be become a trustee is farcical". She would be unable to discharge the office and regards her purported appointment as making "no sense whatsoever". She offers no account of Mr Munir's dealings with the properties otherwise.

25. There is no reason for me not to accept either DS Morrison's or Mrs Munir's evidence of fact. I accept their evidence as true.

Mr Kevin Murphy

26. I first heard the oral evidence of Mr Murphy on behalf of the Trustees. He was cross-examined by Mr Davies for Mr Chughtai and Ms Mohammed. As one of the Trustees, he accepted that he could give no first-hand evidence as to the purchase of any of the properties subject to the proceedings. Mr Davies focused on the documents provided by the solicitors acting on the purchase of Stradbroke Drive. As I shall explain, there are references in those documents to payments towards the purchase price being made from Mr Munir's "nephew's company". Mr Murphy accepted that Mr Chughtai is indeed one of Mr Munir's nephews and that there had been no claim to Stradbroke Drive by any other person claiming to be Mr Munir's nephew. He further accepted that he had seen no evidence of contribution to the purchase price by Mr Munir. While he thought that it was possible that some further enquiries of Wayne Leighton, the solicitors who had acted on the purchase of Stradbroke Drive, had been made, he was not able to shed any further light on the source of the purchase monies beyond the information appearing on the face of the documents. In particular, he did not know who

was behind a Dubai-registered company called "Al Shangdu", the name of which appears in manuscript on a schedule of payments towards the purchase monies and which was said by Mr Chughtai in evidence filed in possession proceedings brought by Commercial First in 2018 ("the Possession Proceedings") to have been the vehicle that he had used to pay the deposit monies to his lawyers.

27. Mr Davies explored the basis of Mr Murphy's conclusion, set out in his witness statement, that the 2008 Deed is a sham. Mr Murphy said that, as trustee in bankruptcy, he took at face value the proprietorship register maintained by HM Land Registry, which shows Mr Munir as the proprietor. He explained that he had not seen enough evidence to accept the validity of the 2008 Deed which, he said, had been produced to him five or six years after his appointment as a trustee in bankruptcy. He accepted that he did not have evidence of a connection between Mr Munir or his family and P&S Motors Limited, which is also shown in the annotations on the schedule of payments to have contributed £700,000 of the purchase monies and is named as the tenant of Stradbroke Drive for a term of one year from 1st March 2007 in an assured shorthold tenancy agreement dated 15th February 2007 ("the P&S Motors Tenancy").

28. It was put to him that the explanation for the 2008 Deed was that it reflected the reality that the purchase monies came from, or were paid on behalf of, Mr Chughtai. Mr Murphy maintained the case set out in his first witness statement that inconsistent statements about the ownership of Stradbroke Drive, the absence of any contemporaneous documents to show Mr Chughtai's involvement in the purchase, the lack of any unambiguous evidence of contribution to the purchase price by Mr Chughtai and the production of the 2008 Deed only in January 2019 led him to infer that it was a sham.

29. I accept Mr Murphy's factual evidence on behalf of the Trustees, as far as it goes. He answered questions in a fair-minded manner and I am satisfied that he was seeking to assist the court. I bear in mind that his understanding of the circumstances of the purchase is derived entirely from documents he has seen and what he has been told rather than from any first-hand knowledge. Whether the inferences he draws from the information that he received are made out on the evidence available at trial is of course a question for the court. I do not accept Mr Davies's criticism of Mr Murphy's witness statement in this regard. It is of course correct that a witness statement should contain only the evidence that a witness would be permitted to give at trial and should not contain argument, which should be reserved for submissions. Mr Murphy's statement, insofar as it contains inferences that he draws from the evidence, serves to explain his reasons for bringing the application.

Mr John Barbour

30. Mr Barbour is Head of Commercial Servicing at Target Group, which administers BMF's loan book. As at the 5th July 2007, the date of the charge, he was the head of credit management for Commercial First. He gave evidence as to the application documents completed by Mr Munir, at the time of the mortgage, as well as Commercial First's approval process. He had no direct involvement in the application. He explains by reference to the documents that Mr Munir applied for a loan to consolidate existing borrowing on the basis that Stradbroke Drive was let on an assured shorthold tenancy. It appeared that it was identified that there were "numerous" county court judgments entered against companies of which he was a director at the time. Full details of the

purchase were therefore required. Wayne Leighton, the solicitors who had acted on the purchase, provided the completion statement, which was accepted. Proof of buildings insurance was also provided, confirming cover and giving the name of the insured as Mr Munir.

31. Following inspection by valuers it was reported that a family member was in occupation at the property and a waiver was sought from him. Mr Davies drew his attention to references in internal correspondence to the applicant's "wife" being in occupation and Mr Munir's letter to Commercial First to say that the person in occupation was in fact a Mr Waseem Chughtai. It was put to Mr Barbour that these various inconsistencies should have sounded alarm bells. Mr Barbour said it was not unusual for applicants to change their minds as to their intentions for a property. Nor did he accept that the fact that Mr Munir had stated, in response to the query as to the occupation of the property, that he used it for visiting family members and was prepared to pay mortgage instalments in excess of £11,000 per month made this a rather strange transaction. He said that at the time it was perfectly usual for Commercial First to accept a self-certification that the borrower could afford to meet the mortgage instalments.

32. Mr Barbour's witness statement sets out that Mr Munir fell into arrears and explains the various communications with Mr Munir and his daughter as to this over a number of years. The first communication with Mr Chughtai that is referred to in his witness statement was a telephone conversation on 11th January 2013. The attendance note records that Mr Chughtai had said that he was aware of the mortgage account and that he stated that he had been making payments on behalf of Mr Munir. According to that note, there was discussion on that occasion of the necessary forms to be completed to permit Commercial First's staff to discuss the mortgage with him. Mr Barbour accepted that Commercial First continued to accept mortgage payments after being made aware that Mr Munir had been made bankrupt. When asked as to who he thought was making the payments at this time he replied that it was not unusual for bankrupts to continue to work and pay their mortgages.

33. Again, I am satisfied that the evidence that Mr Barbour gave was honestly given and that he was seeking to assist the court. I bear in mind the limitations on his direct knowledge of this particular mortgage application; limitations that he readily accepted.

Mr Barbar Amin Chughtai

34. I am unable to describe Mr Chughtai's evidence as similarly satisfactory. He was evasive and argumentative, frequently using questions as an opportunity to recite his account of the source of the purchase monies, as if by rote. His repeated refrain when challenged as to a lack of evidence was that he had no need to produce evidence beyond that in his statement but that further evidence of his involvement in the purchase could be produced immediately. When confronted with inconsistencies between his witness statement and his oral evidence he claimed that the "wording" of his statement was wrong. He denied having seen documents when they had been in evidence for months. He made assertions that were nowhere foreshadowed in his written evidence. In some cases these were both extraordinary and wholly incredible.

35. There were a number of instances of this but for the purposes of explaining my approach to his evidence I need only give two striking examples. First, he was taken to correspondence between Wayne Leighton and Mr Munir that referred to the fact that a

Mr Liquat Malik had already entered into a contract to purchase the property, the benefit of which was to be assigned to Mr Munir. It was put to Mr Chughtai that this peculiar feature of the transaction appeared nowhere in his account of the purchase of the property, which merely states that he saw the property, that he raised £700,000 by way of deposit, with other monies raised by family and friends, and that Mr Munir, at the suggestion of his father, was registered as proprietor and subsequently raised a mortgage, at Mr Chughtai's request, to pay back those family and friends. Mr Chughtai explained this earlier contract by saying, for the first time, that Mr Malik had paid the deposit on his behalf. This remarkable mechanism for payment of the deposit appears nowhere in his written evidence or in any account that he had previously given of the purchase.

36. Secondly, Mr Chughtai was taken to an email in his name sent from a Hotmail account to Mr Murphy on 13th December 2017, in which it was asserted that he had made all payments referable to the purchase and that this was:

> "duly recorded in a deed of trust drawn up in 2011 and also provided to you by my uncle".

It was put to him that the reference to a deed drawn up in 2011 was inconsistent with his case now set out in the Claim.

37. There might be any number of honest reasons for that inconsistency, including typographical error or simple misrecollection. The explanation that Mr Chughtai offered was that, though this email was written to his uncle's trustees in bankruptcy, in his name and asserting his interest in the property, it was nothing to do with him. He did not use a Hotmail account at all. He was taken to a number of other emails from the Hotmail account, all in his name and asserting his interests, all of which he denied sending. These included emails copied to his solicitors, who continue to act for him.

38. This is simply incredible. There is no conceivable reason why some unknown person should officiously correspond in Mr Chughtai's name to advance his case. None was offered. Nor is it remotely credible that he would have failed to notice numerous "forged" emails in his name exhibited to witness statements in proceedings in which he was concerned.

39. Mr Davies acknowledged that Mr Chughtai's evidence was not helpful to himself but submitted that it was true on the essential matters. It was however evident throughout his evidence that Mr Chughtai was prepared to say anything that appeared to be convenient at the time, no matter how incredible and divorced from the obvious truth, if it appeared to him to advance his case at that moment. I will come to other examples in due course but I must make clear at the outset that, having heard his evidence over the course of a day, I am not satisfied that I can rely on it. Where it is not supported by contemporaneous documentation or independent evidence, I reject it.

Ms Perveen Mohammed

40. Ms Mohammed was neither argumentative nor evasive but nonetheless was not a satisfactory witness either. It was apparent that she was defending a line to protect what she regarded as her family home. She does so in circumstances where she has been treated badly by Mr Chughtai, whom she discovered to have a second family in Dubai in 2015. It was evident that this was still very upsetting for her. There was a world of

differences in the quality of her evidence when compared to that of Mr Chughtai but there were a number of inconsistencies in it. When confronted with them she was forced to invent explanations and declined to accept what was in front of her. Again, I shall only give some striking examples at this stage in order to explain my approach to her evidence.

41. She was cross-examined as to her relationship with Mr Chughtai and, in particular, the reasons why her witness statement uses the past tense to describe their relationship in paragraphs 8 and 9 as follows:

> "8. The First Claimant and I have three children from our previous relationship. I, and all my children have been continuous occupying this Property. I can confirm that since our occupation, Mr Mohammed Munir has never resided in the Property.
>
> 9. At the time of the purchase of the Property, I and the first Claimant were in a relationship. I in fact remember in 2006 when the first Claimant came across the Property and when he contacted Knights Estate Agents to enquire about the Property."

It was put to Ms Mohammed that the use of the past tense reflected the fact that, at the time she made her statement on 30th July 2020, she and Mr Chughtai were no longer in a relationship. Ms Mohammed denied this, stating that she and Mr Chughtai had been reconciled. She attempted to explain the reference to the children from their "previous relationship" by suggesting it was a reference to children with a different partner. That is simply not what the statement says. Her witness statement explains in its opening paragraphs that Mr Chughtai was her "ex-partner". This is also the description applied to her in Mr Chughtai's statement of the same date.

42. Her oral evidence on the creation of the 2008 Deed was at odds with the account given in her witness statement. The latter states that she was informed of the entry into the deed by Mr Chughtai. In oral evidence she said that she had been present when it was signed. Indeed, her signature does appear on the document. Mr Lewis asked whether she had forgotten signing it when she made her statement. Ms Mohammed said that it was not the sort of thing that she would forget and in fact she had been a major instigator in the production of the 2008 Deed. The phrasing of her witness statement is therefore surprising. If Ms Mohammed's oral evidence is to be believed then her statement does not represent the whole truth.

43. This makes the table of payments of mortgage instalments set out in Ms Mohammed's witness statement that she said that she made on Mr Chughtai's behalf in 2015 and between 2017 and 2019 all the more troubling. They are not borne out by the bank statements or the records maintained by Commercial First. There are sums shown leaving Ms Mohammed's account and an identical sum being received by Commercial First, but there are also payments that Ms Mohammed says she made that do not feature on the schedule of payments received by Commercial First. It is not alleged that the schedule is inaccurate. Again, payments are shown on the Commercial First schedule that do not have a corresponding payment out of Ms Mohammed's account. I shall explain these in more detail below, but, again, Ms Mohammed embellished her evidence in order to explain these inconsistencies in a way that was not only

inconsistent with her written evidence but with the contemporaneous documents too. Again, I treat Ms Mohammed's evidence with caution.

Legal Principles

44. Before I turn to the evidence in more detail, I shall briefly set out the legal principles applicable to the Insolvency Application and the Claim. They are not contentious.

Sham

45. Diplock LJ explained the meaning of "sham" in *Snook v London and West Riding Investments Limited* [1967] 2 QB 786, 802:

> "… it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v. Maclure* and *Stoneleigh Finance Ltd. v. Phillips*), that for acts or documents to be a 'sham,' with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived."

46. I also bear in mind the principles in *Hitch v Stone* [2001] EWCA Civ 63 in which Arden LJ (as she then was) explained the approach to documents alleged to be shams as follows:

> "[65] First, in the case of a document, the court is not restricted to examining the four corners of the document. It may examine external evidence. This will include the parties' explanations and circumstantial evidence, such as evidence of the subsequent conduct of the parties.
>
> [66] Second, as the passage from *Snook* makes clear, the test of intention is subjective. The parties must have intended to create different rights and obligations from those appearing from (say) the relevant document, and in addition they must have intended to give a false impression of those rights and obligations to third parties.
>
> [67] Third, the fact that the act or document is uncommercial, or even artificial, does not mean that it is a sham. A distinction is to be drawn between the situation where parties make an agreement which is unfavourable to one of them, or artificial,

> and a situation where they intend some other arrangement to bind them. In the former situation, they intend the agreement to take effect according to its tenor. In the latter situation, the agreement is not to bind their relationship.
>
> [68] Fourth, the fact that parties subsequently depart from an agreement does not necessarily mean that they never intended the agreement to be effective and binding. The proper conclusion to draw may be that they agreed to vary their agreement and that they have become bound by the agreement as varied: see for example *Garnac Grain Co. Inc v HMF Faure and Fairclough Ltd*. [1966] 1 QB 650, [1965] 3 All ER 273 at 683-4 of the former report per Diplock LJ, which was cited by Mr Price.
>
> [69] Fifth, the intention must be a common intention: see *Snook's* case, above."

47. Those cases address bilateral documents, such as contracts. In the case of a trust unilaterally declared by the settlor it is the intention of the settlor alone that is decisive. In *Painter v Hutchinson* [2007] EWHC 758 (Ch) Lewison J (as he then was) said at paragraph 115:

> "Where there is a simple unilateral declaration of trust, the settlor and the trustee are one and the same person. So even if it is necessary to consider the intention of both the settlor and the trustee, in practice that amounts to the same thing as considering the intention of the settlor alone. This is perhaps a theoretical justification for the first of the two quoted statements in Lewin, but it is not necessary to over-refine it in this way. Either way, in the case of a unilateral declaration of trust, where the beneficiary has not accepted the gift, I consider that it is the intention of the settlor alone that is decisive."

48. The 2008 Deed is made by Mr Munir alone. In the case of the 2007 and 2010 Deeds, they are made between Mr Munir as settlor and Mrs Munir as trustee. They are not one and the same person. Although a common intention between the settlor and any trustee is required, it is sufficient that the trustee went along with the settlor's wishes or did not care what he or she was signing. In *Minwalla v Minwalla* [2005] 1 FLR 771 Singer J said at paragraph 53:

> "[53]… Some of the earlier cases, including in particular some observations of Diplock LJ in *Snook v London & West Riding Investments Ltd* [1967] 2 QB 786, [1967] 1 All ER 518, [1967] 2 WLR 1020 suggest that in order for the court to conclude that a document or transaction is a sham, it is necessary that all the parties to it must have a common intention that the ". . . documents are not intended to create the legal rights and obligations which they give the appearance of creating."

However, in *Midland Bank PLC v Wyatt* [1985] 1 FLR 696 at 699 DEM Young QC held, as to that principle:

> ". . . I do not understand Diplock LJ's observations regarding the requirement that all the parties to a sham must have a common interest to be a necessary requirement in respect of all sham transactions. I consider a sham transaction will still remain a sham transaction even if one of the parties to it merely went along with the shammer not either knowing or caring about what he or she was signing. Such a person would still be a party to the sham and could not rely on any principle of estoppel such as was the case in *Snook*, the Defendant there not being a party to the transaction at all."

[54] Support for that analysis can be gleaned from the judgment of Arden LJ in *Hitch v Stone* [2001] EWCA Civ 63, [2001] STC 214 in which she said at 234 "in my judgment, the law does not require that in every situation every party to the actual document should be a party to the sham". I have also read a lucid and scholarly paper on the topic of sham trusts written in 2004 by Stuart Pryke, a member of the specialist bar, in which he refers to and analyses what appear to be the most relevant authorities. In that paper he concludes:

> "In order for a trust to be found to be a sham, both of the parties to the establishment of the trust (that is to say the settlor and the trustees in the usual case) must intend not to act on the terms of the trust deed. Alternatively in the case where one party intends not to act on the terms of the trust deed, the other party must at least be prepared to go along with the intentions of the shammer neither knowing or caring about what they are signing or the transactions they are carrying out."

[55] That seems to me to by a fair analysis of the current state of the law, and I adopt it."

I too adopt that statement of the law.

Constructive and Resulting Trusts

49. Equity follows the law and the presumption is thus that the beneficial ownership of a property is the same as the legal ownership. It is for the person claiming that the beneficial ownership is different from the legal ownership to prove it. As Lady Hale put it in *Stack v Dowden* [2007] UKHL 17 at paragraph 56:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all.

> In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest."

50. In relation to a claim that a constructive trust exists, Mr Lewis and Ms Earle's skeleton argument summarised the principles for the court to consider whether a constructive trust exists set out in Lewin on Trusts (20th edition) at paragraph 10-063 –

> "(1) Does the case fall within the domestic consumer context, such that the common intention doctrine applies?
>
> (2) Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date?
>
> (3) In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?
>
> (4) Has the claimant relied to his detriment on the common intention relied upon?
>
> (5) If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?
>
> (6) If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?"

Direct financial contributions to the purchase price, contributions to an initial deposit and regular contributions towards mortgage instalments are all relevant considerations for the Court.

51. As for resulting trusts, the principles are set out at paragraph 10-02 of Lewin as follows:

> "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"

52. The presumption of resulting trust is addressed a paragraph 10-03 –

> "Where there is a gratuitous transfer containing no express or inferred provisions determining beneficial ownership, then the starting point is that there is a rebuttable presumption of resulting trust, in that the transferor did not intend to make a gift."

If Mr Chughtai provided the purchase monies for Stradbroke Drive, there is a presumption that he did not intend it to be a gift to Mr Munir and that he intended to retain the beneficial interest. No presumption of advancement arises in the case of an uncle and nephew.

Transactions at an undervalue

53. The Trustees' secondary argument in relation to the 2010 Deed is that it constitutes a transaction at an undervalue. Section 339 of the 1986 Act provides:

> "(1) Subject as follows in this section and sections 341 and 342, where an individual is made bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.
>
> (2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.
>
> (3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—
>
> > (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,
> >
> > …
> >
> > (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual."

54. The "relevant time" is defined in section 341 as follows:

> "(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given —
>
> > (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the making of the bankruptcy application as a result of which, or (as the case may be) the presentation of the bankruptcy petition on which, the individual is made bankrupt,

…

> (2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—
>
> (a) is insolvent at that time, or
>
> (b) becomes insolvent in consequence of the transaction or preference;
>
> but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).
>
> (3) For the purposes of subsection (2), an individual is insolvent if—
>
> (a) he is unable to pay his debts as they fall due, or
>
> (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities."

Section 435(2) of the 1986 Act provides that a person is an "associate" of an individual if that person is a "relative" of the individual and that includes a brother, sister, niece or nephew.

Transactions defrauding creditors

55. The final way in which the Trustees' case is put in relation to all three deeds is that they amount to transactions defrauding creditors. This is provided for by section 423 of the 1986 Act as follows:

> "(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if–
>
> (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
>
> ..
>
> (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

> (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for–
>
> (a) restoring the position to what it would have been if the transaction had not been entered into, and
>
> (b) protecting the interests of persons who are victims of the transaction.
>
> (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose –
>
> (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
>
> (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make."

Overriding interests

56. If I am satisfied that Mr Chughtai or Ms Mohammed have an interest in Stradbroke Drive, the question is whether that interest binds BMF. The registration of a charge has the effect of postponing to the charge a prior interest the priority of which is not protected at the time of registration, unless it falls within the limited exceptions provided for by section 30 of the LRA 2002. These include those unregistered interests set out in Schedule 3 of the LRA 2002. Paragraph 2 of this schedule includes the following:

> "An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for –
>
> (c) an interest—
>
> (i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and
>
> (ii) of which the person to whom the disposition is made does not have actual knowledge at that time…"

The evidence

57. I shall deal with the evidence thematically under the headings below. I will then turn to my conclusions.

Mr Munir's financial difficulties and bankruptcy

58. I should start by explaining Mr Munir's financial position as it provides necessary context to the execution of the deeds and is relevant to the question of whether the deeds, to the extent that any of them were intended to have effect, constitute transactions

at an undervalue or transactions defrauding creditors. The evidence is in the form of a number of letters to Mr Munir and an account of Mr Munir's financial circumstances set out in the witness statement of Mr Khan.

59. Turning to the correspondence, on 9th May 2007, Wragge & Co, solicitors acting for the Bank of Scotland, wrote to Mr Munir requiring payment within 14 days of a debt of £100,000 due under a guarantee in respect of a company named Cyclone Investments Limited and further requiring payment within 14 days of a debt of £180,000 due under a guarantee in respect of his brother, Mr Mohammed Amin Chughtai, trading as Chicken Cottage.

60. Wayne Leighton wrote to Mr Munir on 3rd September 2008, to complain of unpaid fees of £12,856.25 due from him. They noted that they could not "continue to afford to offer credit at this level without receipt of payment".

61. By 16th January 2009, Wayne Leighton were acting for Mr Munir in respect of the proposed purchase of the lease of High Road and noted:

> "Bearing in mind that you still owe some £20,000 odd to the Owner of the Wine Bar and their threat to issue a bankruptcy petition against you, are you sure you wish to purchase this property in your personal name?"

This shows that, by this point, Mr Munir was aware that he faced the possibility of bankruptcy and might wish to insulate assets from his creditors in the event of a petition.

62. Further personal guarantees came into play in that same year. On 3rd February 2009, Mr Munir was notified by Allied Irish Bank that he was liable under a personal guarantee in respect of his company, Bluebird Holdings Limited, in the sum of £1 million. Bluebird Holding Limited's property was sold by receivers on 24th July 2009 crystallising a shortfall of £684,736 that was due from Mr Munir.

63. On 17th March 2009, judgment in default was entered against Mr Munir for the sum of £109,300 in the Birmingham District Registry of the High Court. Mr Munir had failed to respond to the claim brought by the Bank of Scotland.

64. On 11th January 2010, Wragge & Co wrote again to Mr Munir on behalf of the Bank of Scotland demanding payment under a number of guarantees being:

    i) personal guarantees for Julie Grebby, amounting to £266,961.64;

    ii) personal guarantee for "Phone City", amounting to £53,348.62;

    iii) personal guarantees provided for Mohmmed Salim, amounting to £74,603.19; and

    iv) the personal guarantee provided for Mr Amin Chughtai, trading as Chicken Cottage, which I have mentioned above, now in the sum of £191,839.52.

65. It is apparent from the correspondence that I have just recited that Mr Munir was under financial pressure from creditors whom he had not paid over a number of years. In

particular, the guarantee in respect of Mr Mohammed Amin Chughtai had remained unpaid between April 2007 and January 2010.

66. Mr Munir made individual voluntary arrangement proposals to his creditors on 21st September 2011. These were approved on 19th October 2011. The supervisor presented a bankruptcy petition on 5th April 2012. The petition was opposed but Mr Munir was adjudged bankrupt on 29th May 2013. The Trustees were appointed on 7th August 2013.

67. There were subsequent applications appealing the Trustees' decision on proofs of debt. Mr Khan submitted one such proof in the sum of £1,500,000. This was rejected by the Trustees and Mr Khan made an application under rule 14.8 of the Insolvency Rules 2016. According to evidence lodged by Mr Khan in those proceedings, dated 13th September 2017, Mr Munir's financial difficulties were such that he required a loan of £500,000 in 2006 in order to pay contractors, and a little over £1 million was advanced to him in January 2007 in order to enable him to pay lawyers and other creditors. I understand that those proceedings were compromised. It was not suggested that it was not correct that Mr Munir was experiencing cash flow difficulties as far back as 2006.

68. Mr Lewis drew my attention to the fact that, in this application, documents, apparently produced by Mr Munir, were examined by a forensic document examiner who found "very strong evidence" that pieces of correspondence were forgeries. There had been no judicial determination that the documents were in fact forgeries and, if so, who forged them.

69. It is convenient to note that at this point that Mr Munir similarly made an application to challenge the admission of HM Revenue and Custom's proof of debt, which was subsequently agreed in the sum of £1,797,902.31. Mr Munir played an active part in the challenges to these proofs of debt but has chosen not to take any part in these proceedings.

70. I should finally mention the Possession Proceedings. These were brought by Commercial First against Mr Munir in relation to Stradbroke Drive, culminating in a possession order dated 23rd April 2018. On 15th May 2018 Mr Chughtai made an application to be joined to those proceedings. This was accompanied by his witness statement in support, dated 9th May 2018 and a draft defence to the proceedings setting out his claim to an interest in the property. Though the defence is in draft it bears a statement of truth signed by Mr Chughtai's solicitor on his behalf. He made a further statement in those proceedings on 6th July 2018. The application was dismissed but the possession order has been suspended.

The purchase of Stradbroke Drive

71. The particulars of claim provide relatively limited information as to the circumstances of the purchase of Stradbroke Drive. Mr Chughtai's account of the purchase is more fully set out in his first statement, made in answer to the Insolvency Application, and repeated in his second statement, made in support of the Claim. I set out the account given in the second statement as it includes slightly more detail as to the way in which it is said the deposit was raised:

> "5. I first saw the property located at No 10 Stradbroke Drive… in 2006 as I was driving through the area. The following day, it subsequently came to my attention that the Property was on the

market by Knights Estate Agents. A board was put out by Knights and I contacted the Estate Agents to enquire about the Property.

6. I was able to speak to an agent namely Michael of Knights. I registered my details as a buyer with the Estate Agents and I dealt with all the necessities until the Property was purchased.

7. I was able to raise a deposit of £700,000 towards the purchase of the Property. It was subsequently become known to me that I could not get a mortgage loan. Subsequently I requested that the family members and friends raise the funds to purchase the Property.

8. My family members and friends were able raise the required funds. Due to my young age of 23 at the relevant time, my father found it more suitable for Mr Mohammed Munir (1st Respondent in these proceedings), who is my uncle to be registered as a proprietor of the Property. My father is the eldest sibling of the family and he looks after all the affairs of the family in Pakistan and he thought it would be suitable if he was registered as proprietor of the Property. To this end, the Property was registered on the 1st Respondent's name on trust for me…

9. In 2007, Mr Mohammed Munir (the Defendant) agreed a mortgage plan over Stradbroke House… with Commercial First Mortgages Limited.

10. I confirm that I provided the total purchase costs including stamp duty legal fees and disbursements from my own resources and from the money I borrowed from my family and friends to complete the acquisition.

11. As soon as the Property was purchased, requested Mr Munir to raise a mortgage against the Property to enable me to repay those personal loans I had initially obtained to assist me in the purchase. Upon the Property being re-mortgaged, the funds borrowed from the family members and friends were returned to them (except £700,000 which was raised by myself).

12. I was able to raise £700,000 by my own resources. I am a broker and I receive commission from the potential buyers for the properties that I represent to them. For instance, in September 2006, I entered into an agreement with Ampritral Singh Walia who agreed to pay me a commission of 7% of the total purchase price the property that I represented to him. As a result of this agreement, I received a commission of AED 1,796,760 (equivalent to approximately GBP 261,747 at the relevant time). I enclose herewith the agreement signed between myself and Ampritral Singh Walia, as well as an agreement signed between myself and Preetpal Singh Walia…

> 13. I can confirm that, since the purchase of the Property, at all times I have arranged for the monthly mortgage payments to be met through my own resources. I was paying directly or indirectly towards the monthly mortgage payments until 2011. I was making the monthly payments by cash since 2009 until January 2018."

72. Although Mr Chughtai refers to the estate agent as "Michael of Knights" he corrected the name of the agency to "Knightons" in his oral evidence. There is no evidence from anyone at Knightons and not a single piece of contemporaneous correspondence relating to the transaction between Mr Chughtai and the agent.

73. Nor does Mr Chughtai mention in his written evidence an unusual feature of the transaction which emerges from consideration of the correspondence between Wayne Leighton and Mr Munir. On 15th August 2006 Wayne Leighton wrote to Mr Munir to note that that Mr Munir was stepping into the shoes of a Mr Liquat Malik, who had exchanged contracts to purchase the property with a completion date of 1st September 2006. Mr Malik appears to have been a business associate of Mr Munir. Wayne Leighton's letter explained that an initial deposit of £70,000 had been paid by Mr Malik in July 2006 and it appeared that a further deposit of £180,000 had been paid subsequently. Wayne Leighton advised that the balance of the purchase price in the sum of £2,250,000 was payable on 1st September 2006. They enclosed with the letter a deed of assignment of Mr Malik's interest in the contract of sale. I have not seen the deed of assignment.

74. Mr Lewis put to Mr Chughtai the absence of any reference in his witness statements to a prior sale to a third party or to Mr Munir taking an assignment of the benefit of the contract of sale. Mr Chughtai said that Mr Malik had paid the deposit on his behalf. He had come to see the property with Mr Chughtai and owed money to Mr Chughtai from business he did with him. This feature of the transaction is, however, nowhere mentioned in any account of the purchase of the property previously given nor was Mr Malik's involvement mentioned. As can be seen from the account that I have quoted at length above, Mr Chughtai simply explains that he saw the property was for sale and was able to raise £700,000 himself, with the remainder of the monies coming from friends and family, whom he repaid from a subsequent mortgage loan. There is no suggestion that Mr Malik paid the deposit or that he did so by entering into a contract of sale which was subsequently assigned to Mr Munir. To the contrary, even in his oral evidence, Mr Chughtai maintained that he had met the owner and negotiated directly with her. There was no suggestion in the evidence that the property might have already been sold. Mr Chughtai said that he hadn't seen the need to adduce evidence from Mr Malik as to his involvement in the transaction as there was "no issue" between them. There is thus no explanation at all, still less a rational one, for this convoluted and improbable way of causing the deposit monies to be paid, which appears to have led to late completion and incurred additional interest of £10,248.

75. Mr Chughtai's explanation until that point had been that he had paid the £700,000 deposit, which he had raised from his occupation as a property broker. By way of example, in both his first and second statement he said that he raised about £261,747 as a property broker by way of commission for the introduction of a property to Ampitral Singh Walia. He exhibited the agreement as to this, which records that the monies were received on 10th October 2006, after completion of the sale. This was put to him by Mr

Cutting for BMF and Mr Chughtai said that, in fact, that the monies were paid by Al Shangdu on the basis that the monies from Mr Walia would shortly fall due and he subsequently repaid them. This is contrary to the account given in the Possession Proceedings, which is simply that the deposit monies were paid to Al Shangdu and used to pay lawyers. There is no suggestion of advance payment in the expectation of monies falling due. The agreement with Preetpal Singh Walia states that AED 3,360,000.00 was paid to Mr Chughtai on 5th May 2008. This latter agreement was not mentioned in Mr Chughtai's first statement in these proceedings.

76. There are no bank statements showing receipt of these sums by Mr Chughtai or showing that they were used to pay the deposit. Nor does Mr Chughtai give any explanation as to why Mr Malik might have paid the deposit on his behalf or of the monies that he says he raised being channelled through him.

77. The available contemporaneous documentation does not shed much light on the source of the purchase monies. Wayne Leighton's files include a completion statement, dated 19th September 2006, setting out under the heading "From You On Account" payments totalling £1,999,458 made between 7th August 2006 and 15th September 2006. The notes on Wayne Leighton's client ledgers have the note "From: 'Your nephew's company'" against five of these payments, totalling £959,970. It also shows £372,459.37 being received from the Lancashire Mortgage Corporation. There is no mention of this mortgage loan in Mr Chughtai's account given in evidence or elsewhere. His statement is clear that the monies, other than the £700,000 raised by himself, were raised by friends and family and subsequently repaid by obtaining a mortgage.

78. A summary of these payments has been annotated in manuscript with the payment from Mr Munir's "nephew's company" being made from Al Shangdu. It is not clear who annotated this document. Mr Chughtai said that Al Shangdu was "not my company" and was "not in my name". Payments of £700,000 towards the purchase price are annotated with the words "P&S Motors". Others simply say "Bankers Draft".

79. Mr Chughtai is one of Mr Munir's nephews but there is nothing to tie him to the payments from Mr Munir's "nephew's company". Mr Chughtai is only one of Mr Munir's nephews and, as I have explained when summarising DS Morrison's evidence, there is evidence of receipt of monies towards the mortgage from a company associated with Mr Chughtai's brother. Indeed, there is nothing to link Mr Chughtai to any of the payments. There is no evidence to show the origin of them. There is no evidence from Mr Malik, Al Shangdu or P&S Motors. There are no statements from any of the "friends and family" to confirm that they made payments to Mr Chughtai referable to acquisition of the property for Mr Chughtai's benefit. Mr Chughtai said that he remained on good terms with them all and could get statements from them "instantly". If that were true there is no satisfactory explanation as to why he did not.

80. Mr Munir completed a return for the purposes of Stamp Duty Land Tax on completion of sale. Question 55 on the form is "Is the purchaser acting as trustee?" and gives the options of "Yes" and "No". A cross is entered next to "No". The form concludes with the following declaration:

> "The purchaser(s) must sign this return…

> If you give false information you may face financial penalties and prosecution.
>
> The information I have given on this return is correct to the best of my knowledge and belief."

Mr Chughtai said that this was simply not the truth, stating that Mr Munir had changed his mind. There is, however, no credible reason why Mr Munir should have resiled from the alleged agreement before the transaction had even been completed by registration and exposed himself to the risk of prosecution by giving misleading information.

81. Ms Mohammed was unable to offer first-hand evidence as to the purchase of the property. She accepted that she was not involved in the purchase and was relying upon what Mr Chughtai told her as to the reasons that the property was to be bought in Mr Munir's name. She did however say that she had been present when Mr Chughtai's father told him that he should secure his interest by an agreement in writing. As such she could not offer any first-hand evidence as to the origin of the purchase monies, or indeed the alleged repayment of contributors to the purchase price, to which I shall now turn.

Payments from the April 2007 mortgage loan

82. Lancashire Mortgage Corporation made a further mortgage loan of £198,589 in April 2007, which loan was secured on the property. The charge is dated 19th April 2007 and was registered on 25th April 2007. Mr Munir gave instructions to Wayne Leighton to make payments to various persons. On 23rd April 2007 for example he directed that £135,000 was to be paid to a Mr Khuram Butt. Wayne Leighton informed him that they could not make international payments to third parties and the payment was instead sent to the Bank of Scotland account of Zanish Properties Ltd, of which Mr Munir was at that time a director. Wayne Leighton confirmed to Mr Munir on 24th April 2007 that they had also carried out his instructions of payment of £63,000 to Top Investments Limited.

83. Mr Chughtai said that these payments were made on his behalf of his friends and family who had contributed to the purchase and that he caused the monies to be sent as he was directed by them. He explained, for the first time in evidence in these proceedings, that Top Investments Limited was part of his "working circle". It had arranged some of the banker's drafts referred to in the completion statement. Again, Mr Lewis put it to Mr Chughtai that he had not mentioned the involvement of Mr Butt or Top Investments Limited previously. Mr Chughtai again said that he didn't need to mention them. It is notable that Mr Chughtai not only failed to explain these payments in his evidence but did not refer to this mortgage loan as a separate loan from that obtained from Commercial First in July 2007. He simply refers to the obtaining of a single mortgage used to repay friends and family. Plainly this loan would have been insufficient to do so by itself.

Occupation of Stradbroke Drive

84. Mr Chughtai's claim form gives his current address as an apartment in Dubai. He similarly gave his address as the Dubai apartment in his statements in the Possession Proceedings dated 14th May 2018 and 6th July 2018. He explained that he had started

working in Dubai in 2004 and had been spending more time there since 2010. His witness statement explains that he lived at the property from 2006 and 2010 but it became intermittent after that. It was pointed out to him by Mr Lewis that the address on the 2008 Deed gives his address as "6 Dicey Avenue, London." Mr Chughtai said that this was because that was the address on his driving licence and he thought it best to use it.

85. His oral evidence was that from 2010 he tended to spend three months in Dubai and one month in London, though the effect of the COVID-19 pandemic meant that he was spending more time in England and, when in England, he stayed at the property. He was co-habiting with his second family from 2015 to 2018, at least when in Dubai. He said that, as of last year, his intention was to spend more time in the UK, at least partly for business reasons. Ms Mohammed's evidence was similarly that she had moved into the property soon after its purchase although there were delays in moving some furniture.

86. The contemporaneous evidence of occupation of the property following the purchase is scanty. The first document in time is the P&S Motors Tenancy. Mr Munir purported to grant a tenancy of the property to P&S Motors for a term of one year from 7th March 2007 at a rent of £182,000. There is no reference to Mr Chughtai or his family in this document and Mr Chughtai readily accepted that this document was a sham and that it "does not exist". He said that P&S Motors was never in possession of the property, whether pursuant to the tenancy agreement or otherwise. There is no evidence to suggest that it was.

87. The only reason for the creation of this document that presents itself is that it was intended to support Mr Munir's application for a mortgage to Commercial First in 2007. The application is dated 19th June 2007 and was made using the services of a mortgage broker, Select Finance Ltd trading as Commercial Mortgages 4U. It stated that the purpose of the mortgage was "consolidation". As to occupation of the property the application asked:

> "Do you or a related person (spouse, common law partner, parent, sibling, child, grandchild, grandparent) dwell or intend to dwell at part of the property being included as security?"

The answer given to this question was "no". Mr Chughtai is undoubtedly a related person, albeit not within the categories given. There is limited weight that I can give to this statement in isolation.

88. The financial status section of the form gave various options for Mr Munir to provide evidence of his ability to meet the mortgage instalments. Of the various methods of doing so printed on the form, "Rental Income" was ticked. Again, I note that Mr Munir also had other rental income generating properties. This answer again might be taken to be a reference to that rental income. Section 8 of the form however asks for details rental or letting income. The answer to this question is "See AST". It is clear that the P&S Motors Tenancy was offered in support of the application. The occupancy declaration section of the form confirmed that that there was no one over the age of 17 occupying the property, other than tenants, and that the premises were solely for business use. The form bore a statement signed by Mr Munir that the replies to the questions were true and complete in every respect.

89. That was the basis on which the Commercial First mortgage proceeded. A valuation was obtained by Wolton Chartered Surveyors (Ilford), dated 25th June 2007, which confirmed that the property was not tenanted but neither was it vacant. Another report was obtained from Allied Surveyors on 29th June 2007, which similarly confirmed that the property was not tenanted but was not vacant. Mr Karl Griggs of Select Finance4U emailed Mr Mark Copson, a risk assessor at Commercial First on 3rd July 2007 and said:

> "It has come to light from the valuer that the property is not rented out but a family member resides. Please replace on com3 with accountant back up and waiver witnessed by a solicitor."

90. As a result of this, the underwriters on the same day directed that the mortgage offer should be changed to a regulated mortgage and "treated as owner-occupied". The underwriters further directed that the mortgage offer should include "a condition for evidence of the applicant's wife residing in the form or a utility bill or bank statement". The notes to the underwriter's form further state "Karl advised that applicant's wife is to reside and therefore not let to a third party." The application was passed to its sister company, Commercial First Mortgages Limited, which dealt with regulated mortgages. A mortgage offer letter was issued on the same day. It set out various conditions precedent to the loan including that there should be "evidence of the applicants [*sic*] wife residing at the security in the form of utility bill/bank statement etc" and that there should be "Independent Legal advice for Mr Munirs [*sic*] wife who resides at the security".

91. By a letter dated 3rd July 2007 Mr Munir wrote to Commercial First and said:

> "With reference to my mortgage application I can confirm that the only person currently residing in the above premises is Mr Wassem Ahmed Chughtai and this is a family member staying at the premises while visiting the country.
>
> I use this property for family members as and when they visit the UK. I also confirm that this property mortgage and utility bills are in my name as it is solely my property."

Mr Waseem Chughtai signed a deed of waiver that was accompanied by a certificate from Hitesh Patel, a solicitor at Harrow Law Practice, confirming that Mr Waseem Chughtai had received legal advice as to the nature and effect of the document.

92. The evidence of both Mr Chughtai and Ms Mohammed is that Mr Waseem Chughtai not a family member but an employee of a family member and was visiting the UK and living during his stay in the basement of the property. He simply shares the Chughtai surname.

93. Whether or not Mr Waseem Chughtai is a relative or an employee, there is little force in the submission that the reference to a "family member" by Mr Griggs and Mr Munir's "wife" in later documents must indicate that Ms Mohammed was observed to be in occupation. That is not what the evidence shows that Mr Griggs advised. Mr Griggs simply refers to "a family member" according to the available evidence. He does not mention a wife. It may be that Mr Griggs misunderstood Mr Waseem Chughtai's relationship to Mr Munir's family but there is nothing to show what led the underwriters

to refer to Mr Munir's wife. It might simply be that this was an assumption. I can see no reason why Mr Munir would not have explained that Mr Chughtai and Ms Mohammed were also resident, if that were so. Mr Chughtai's evidence is that he had asked Mr Munir to arrange this mortgage. There is no reason why Mr Munir would need to conceal their occupation from either Mr Chughtai or the mortgagee.

94. There is no other contemporaneous documentation to show that Mr Chughtai or Ms Mohammed were living in the property at the time. The reason for this is explained in Mr Chughtai's witness statement in support of his application to be joined to the Possession Proceedings. He states that the decision was taken not to register any utilities in his name or the name of Ms Mohammed until 2010. There are indeed no utility bills, insurance documents or any other contemporaneous documents to connect Mr Chughtai or Ms Mohammed to the property prior to 31st October 2012, when Thames Water raised a bill for the period 8th May 2012 to 29th October 2012. I accept of course that documents from over 13 years ago might be difficult to find but I find it difficult to accept that not a single example of a document addressed to Mr Chughtai or Ms Mohammed at Stradbroke Drive prior to 2012, or giving that as their address, can be located or obtained.

95. To the contrary there are a number of documents that one would expect to bear the address of the property but do not. Ms Mohammed was shown her bank statements with both Santander and Barclays banks, which give her address as 2 Travers Close as late as 2015. This was the address of Ms Mohammed's mother. It is surprising that Ms Mohammed should not in some nine years of living at Stradbroke Drive have updated her address details. Ms Mohammed's explanation was that she did not need to do so. She visited her mother very frequently and thus could have collected post addressed to her there easily. This explanation is inconsistent with Mr Chughtai's evidence in the Possession Proceedings that his mother-in-law, who was disabled, had lived at the property since 2010. Ms Mohammed explained that her mother did not live at the property but, as her health declined, she spent an increasing amount of time at Stradbroke Drive, sometimes for months at a time. Her youngest brother and sister continued to live at 2 Travers Close.

96. More striking are the birth certificates for Mr Chughtai and Ms Mohammed's children who were born after the date of purchase. That for their son, Amaani, records his birth in 2012 and gives Ms Mohammed's "usual address" as "2 Travers Close, Walthamstow E17". The informant of the birth is said to be Ms Mohammed herself. Stradbroke Drive does not feature on the certificate at all, though it contains the required confirmation that the particulars are true. That address also features as Ms Mohammed's "usual address" on the birth certificate of their daughter, Alayna, in 2014, although the usual address of the informant, again Ms Mohammed, is given later in the form as Stradbroke Drive. I find it difficult to accept that in 2012, nearly six years after it is said that Ms Mohammed moved into the property as the family home, she should have made no reference to it in reporting the birth of her child.

97. The only contemporaneous documents showing the presence of the family in Stradbroke Drive are photographs of a birthday party at the property for Mr Chughtai and Ms Mohammed's first child in June 2007. That tells me little about the ownership of the property or its occupation at the time. It was on any footing a property registered in the name of Mr Chughtai's paternal uncle. It is entirely possible that the property would be used for a party for Mr Munir's grand-niece.

98. There are a number of statements from Mr Chughtai's relatives asserting that Mr Chughtai and Ms Mohammed moved into the property in 2006 and contending that is was owned solely by Mr Chughtai. These were exhibited to his written evidence. There are 15 statements from close family members, including three of Mr Munir's brothers who are respondents to the Insolvency Application. None of the makers of these statements were called to give evidence and no hearsay notices were served. There are also 11 letters either from Ms Mohammed's relatives or friends of the family that are directed to the period of occupation of the property. These were exhibited to her statement.

99. Mr Cutting helpfully took me through the provisions of the Civil Evidence Act 1995 in his written submissions as to how I should approach these documents. Section 4 of the Act provides as follows –

> "(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> (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."

100. With regard to the statements from Mr Munir's brothers, Mohammed Hussain Chughtai, Mohammed Salim Chughtai and Mohammed Shafiq Chughtai, they are parties to the proceedings and there is simply no reason given why they have not given CPR-compliant trial witness statements and attended for cross-examination. This is a case in which one party, Mr Saeed, has denied signing an affidavit as to the ownership of Stradbroke Drive and the trustee in bankruptcy another, Mr Mohammed Amin Chughtai, has stated that he has no recollection of signing any documents. There are contradictory documents and documents, such as the P&S Motors Tenancy, that are alleged to be a fiction. A proper assessment of the credibility of witnesses and

documents is essential. The statements are brief and formulaic and made in 2019, long after the events that fall for consideration. Far from representing the witness's own words these appear to derive from a single precedent and the witnesses have not offered themselves for cross-examination. I am satisfied that I should not place any weight on these documents.

101. The same is true for the other witness statements. All of the makers of them are resident in the UK. There is no reason why they could not have been called for cross-examination. These too are formulaic and the same sentences or paragraphs are repeated. They plainly do not represent the witnesses' own words and the other parties have been denied the opportunity to cross-examine them. I am similarly satisfied that I should place no weight on these documents.

102. The letters do not contain anything other than bare assertion either, without explanation as to how the writers come to remember that Mr Chughtai and Ms Mohammed moved into the property in 2006 or to have any knowledge of the circumstances of the purchase. There are some which might be regarded as more independent than those from family members or close friends. For example, a Mr Khan of Punjab Catering Limited, who as far as I am aware has no connection to Mr Chughtai or Ms Mohammed other than as a provider of catering services, has provided a letter dated 27th May 2019 stating that he had provided catering for all parties held at the "home address" for the last 12 years. He confirms that he has provided these services at Stradbroke Drive since 2007. As I have noted, however, the fact that a party, or series of parties, were held at a property since 2007 tells me little about the ownership or occupation of the property at the time and occasional visits by a caterer on those occasions are of very limited help.

103. If Mr Chughtai and Ms Mohammed had wished to rely upon the evidence of friends and neighbours they should have served proper evidence from them as required by the procedural directions so that the other parties could have the opportunity to consider that evidence. I can give little weight to these brief and unverified documents. I accept that they are consistent with the contemporaneous documentation, which shows that Mr Chughtai and Ms Mohammed have lived at Stradbroke Drive for a good number of years. They do not go anywhere near to satisfying me that that Mr Chughtai or Ms Mohammed have been in occupation since 2006.

104. I should finally mention a statement made on Ms Mohammed's behalf as to her occupation of the property. As I have mentioned above, Ms Mohammed's relationship with Mr Chughtai was placed under serious strain in 2015 when she discovered that he had another family in Dubai. In that year she instructed a firm of solicitors, Taylors Legal, to write to the Trustees to set out her position on the property. They wrote on 15th October 2015 as follows:

> "We act on behalf of our above mentioned client who lives at the property address indicated above.
>
> Upon obtaining the office copy entries of the said property, we note that a restriction has been placed upon the Register by yourselves. We also note that the property is owned by Mr Mohammed Munir who is the uncle of our client's Islamic husband. Our client resides in the property, together with her five children and has lived there since around 2010. We are

> extremely concerned to note the property forms part of the bankrupt estate, and in dealing with her relationship breakdown we are endeavouring to ascertain the position in regards to the property."

105. It will be immediately apparent that this is inconsistent with the account now given. It avers that Ms Mohammed has lived at the property since about 2010, not 2006. I also note that the letter states that the property is "owned" by Mr Munir. If Ms Mohammed had, as she now says, known that Mr Chughtai had selected and purchased the property, been told that it has been registered in the name of Mr Munir on trust and, as she said in evidence, had a "big hand" in the creation of the 2008 Deed, one might have thought that the question of the ownership of the property might have been called into question or at least put more neutrally than the apparent acceptance that it was "owned" by Mr Munir.

106. Ms Mohammed said that it was probably that she didn't read this letter properly. It is unlikely that the reference to 2010, if it were an error, would be overlooked in a short letter such as this. It is striking that it is consistent with Mr Chughtai's statement that the utilities were not registered in his or Ms Mohammed's name until 2010 and the absence of any documents confirming residence before that date.

Payment of the mortgage instalments

107. Mr Chughtai's account of the payment of the mortgage instalments has been inconsistent. Mr Chughtai's draft defence in the Possession Proceedings, which, as I have said, bears a statement of truth, states:

> "Without exception, [Mr Chughtai] has paid every mortgage instalment from the very commencement of the mortgage in 2007. The means by which this was done involved [Mr Chughtai] paying funds to Mr Scadeva's chosen party each month. Upon receipt of these funds the equivalent sum would be released by the latter to [Mr Chughtai] in cash which would then be deposited with [Commercial First] as mortgage instalments"

108. Mr Chughtai was taken to this paragraph and asked to confirm the statement the words "without exception". He confirmed that this was indeed "very true" and that Commercial First's preferred method of payment was indeed cash. When confronted with Commercial First's list of receipts on the mortgage account, which show the fourth to seventh payments having been made by a direct debit from an account in the name of Mr Munir, he said that it was true that he, Mr Chughtai, had paid every mortgage instalment but they had not all been in cash.

109. Mr Lewis took Mr Chughtai to his first witness statement in these proceedings in which he said:

> "I can confirm that, since the purchase of the Property, at all times I have arranged for the monthly mortgage payments to be met through my own resources. I was paying directly or indirectly towards the monthly mortgage payments until 2011. I

> was making the monthly mortgage payments by cash since 2009 until 2019."

110. That wording also made its way into Mr Chughtai's second statement and appeared in Mr Chughtai's evidence in the Possession Proceedings. When shown the numerous payments recorded on Commercial First's schedule of receipts as having come from "Mr M Munir Business Account" during this period, Mr Chughtai again said that the wording of his statement was wrong. The payments were not all in cash but what was true was that he made all the payments and controlled Mr Munir's business account. Again, this was a statement made for the first time in the witness box.

111. Aside from the payments from Mr Munir's business account there are numerous bank transfers recorded with the references "Akbar Chughtai", "Emerald Properties" or "Emerald Supermarkets". Mr Chughtai was taken to DS Morrison's statement on the alleged tainted gifts made towards the mortgage. He stated that the monies transferred by his brother were referable to payment for Mr Chughtai's share in a plot of land in Pakistan. Again, this was stated for the first time in the witness box and there is no evidence, that I have seen, to support this at all.

112. There is nothing to tie him to any of the payments. There are no statements to show monies leaving his account that might correspond to payments received by Commercial First, nor that he controls Mr Munir's account. It cannot have come as any surprise to Mr Chughtai that bank statements were required. In March 2020 the solicitors acting for the Trustees wrote to note the absence of any evidence to show contributions to the mortgage. They noted that the evidence was straightforward to obtain and that the court would expect to see it. Despite this having been flagged as a defect in Mr Chughtai's case, he took no steps to rectify it.

113. Ms Mohammed exhibited a list of payments that she said that she made on behalf of Mr Chughtai in 2015 and between 2017 and 2019. Ms Mohammed provided an incomplete set of banks statements in support of this list. Mr Lewis took her to a number of occasions when a payment, said to be a payment out to Commercial First by cheque, does not correspond to a receipt shown in Commercial First's own records. Ms Mohammed said that this was because, if there were insufficient monies in the account, Mr Chughtai would tell her to send a cheque and would then cause the payment to be paid when cash became available. She would then cancel the cheque. This is the reverse of the account given in her witness statement in which she stated that cash would be paid into her account and she would then issue a cheque. That explanation is again not borne out by the documents. For example, Ms Mohammed claims that she made a payment of £9,000 on 2nd June 2015. There was undoubtedly more than enough money in her account to allow that to be paid. A cheque for £9,000 is paid out on 9th June 2015 and yet no such payment is shown as received by Commercial First. A payment of £14,000 is shown as having been paid to Mr Munir on 2nd July 2018. Ms Mohammed thought that this was a payment connected with the mortgage.

Statements as to ownership of the properties

Mr Munir

114. I have already referred to Mr Munir's Stamp Duty Land Tax return, in which he stated that he did not hold Stradbroke Drive on trust and to the details of his application for the mortgage from Commercial First. On 25th November 2008 he made an application

for a bridging loan from Midland Provincial Finance. He offered Parkview and a property at Evelyn Road, London as security. The application form required him to list any other properties owned by him. He listed Stradbroke Drive alone. Although the property was not offered as security the rubric to that section of the form states:

> "These will not act as security but demonstrates the customer's worth and will support the application".

The value of the property is given as £3 million. The answer to this question is of course entirely misleading if Mr Munir held the property on the trusts set out in either the 2007 Deed or the 2008 Deed.

115. Mr Barbour's evidence is that payment of the mortgage was erratic between 2009 and 2011 and visits were made to Mr Munir's residential address, which was not of course Stradbroke Drive. The documents make no reference to Mr Chughtai or Ms Mohammed having an interest. A report of a visit on 12th March 2009 notes:

> "Mr Munir has said the sale should complete by the end of the month, however, if it has not then he will clear the arrears in full by month end."

The note goes on:

> "I did not see inside the property but from the outside it looks fabulous.
>
> The property is a large resi house on a very expensive road in Chigwell (otherwise known as Footballer's Row)"

116. Mr Davies drew Mr Barbour's attention to the fact that this was a visit to Mr Munir's correspondence address, not Stradbroke Drive, which Mr Barbour accepted. The note gives no clue as to who was in occupation, though it is clear that the visiting agent had looked at the exterior of the property. It does however suggest that Mr Munir was proposing to sell the property.

117. The reference to the "sale" is further explained on the note as follows:

> "The sale on the property is due to complete this month. If it does not Mr Munir will clear the arrears in full by the end of March.
>
> The property is a large resi house on a very sought after road in Chigwell
>
> Mr Munir is a property developer. He has properties abroad and in the UK, business is slow for Mr Munir which is why he is selling some of his properties off, Stradbroke House being one of them. I visited Mr Munir at his work address…"

118. Another visit on 26th August 2009 is noted in Commercial First's records. Again it is difficult to read but it records that Commercial First had been unable to contact Mr Munir by telephone and goes on:

> "I met with Mr Munir's daughter at the correspondence address [unreadable] have been unable to contact Mr Munir by phone. She informed me that he is away but should be returning sometime this weekend. I left a card and asked for him to call me on his return.
>
> I do not know whether the property is still on the market or is let. I will discuss this with Mr Munir when he calls."

These statements are at least consistent with beneficial ownership of Stradbroke Drive being vested in Mr Munir. There is no suggestion at this stage that Mr Munir regarded himself as trustee of the property.

119. Mr Munir's treatment of the property and the other properties in his IVA proposal dated 21st September 2011 is as follows. He stated that he had a 50% interest in Stradbroke Drive, with the other 50% being held by his wife. He also claimed to have a 50% interest in Station Parade, Walm Lane and St Thomas Street, with the remaining 50% being held by his brothers "under the terms of a trust deed", which is not identified. This account of the beneficial interests is inconsistent with the terms of any of the trust deeds.

120. On 10th November 2016, Mr Munir wrote to Unique Debt Solutions with regard to the restrictions that they proposed to register against the title to the property following the approval of the IVA. He said:

> "I have been advised to confirm to you I am no longer the owner of the properties but they are all now held in trust under Trust Deeds set up in February 2010; well before my financial problems commenced.
>
> I have attached a copy of the Trust Deed which was used to set up Trusts on each property and the relevant entry from the Land Registry."

There is no reference to the 2007 or 2008 Deeds.

121. On 16th November 2011 Mr Munir wrote to Commercial First with reference to Stradbroke Drive and said:

> "I am currently the registered owner of the above property and I set up together with my family a trust in February 2010 and the Trust has entered an appropriate restriction against the property. I enclose a copy from the Land Register to confirm the position.
>
> I have been advise [*sic*] to request from you a written concern [*sic*] to add Mrs Munir of Park View… as joint registered proprietor and that we hold the property as trustees for the trust."

Again, there is no reference to the 2008 Deed.

122. I note that a deed dated 4th February 2010 is indeed referred to in restrictions registered against the titles to the properties in July 2010. Strangely, it refers to a requirement for

a certificate to be provided that "the provisions of Section 3.6 of the Deed" have been complied with. The 2010 Deed does not contain a section 3.6. I do not know what this refers to.

123. On 14th June 2012, after presentation of the bankruptcy petition, Mr Munir, using the name Mr M Munir Chughtai, wrote to HM Inspector of Taxes, enclosing asset and liability statements for 31st March 2007 and 31st March 2012. The 2012 statement is written on an HM Revenue and Customs form, also dated 14th June 2012, and annexes a single page list of Mr Munir's properties. This sets out the forced sale values of the Station Parade, Walm Lane, and St Thomas Street properties and only notes that Stradbroke Drive is held as "trustee". Mr Munir was still treating Station Parade, Walm Lane and St Thomas as properties in which he had an interest, while disavowing a beneficial interest in Stradbroke Drive. He continued, however, to disclose very substantial rental income in his tax returns in the years for the years 2010, 2011 and 2012, being £186,620, £202,740 and £202,740 respectively.

124. In September 2012 the request to add Mrs Munir as a proprietor of Stradbroke Drive was repeated by solicitors acting on Mr Munir's behalf but this did not take place. The application form enclosed with the letter describes Mrs Munir as the "occupier" of Stradbroke Drive, the address of which is given as her home address. Effect was not given to that request.

125. It was the discovery of the alleged terms of the 2010 Deed that led to the presentation of the bankruptcy petition by the supervisor of the IVA in April 2012. In Mr Munir's witness statement, dated 5th October 2012, in opposition to the making of a bankruptcy order, he records that he acted as trustee of a commercial and residential property portfolio for himself and his brothers and his explanation of the 2010 deed was as follows:

> "In 2005 we decided to go our separate ways. Over the next few years we sold a number of the supermarkets and distributed the funds upon an equitable basis. In the end there were four supermarkets left and each of my brothers took one of the remaining supermarkets I did not take a supermarket and it was therefore agreed that my interest in the properties that I was holding on trust for my brothers should increase from 20% to 50% and a Trust Deed was entered into dated 4 February 2010."

The 2010 Deed of course does not suggest that Mr Munir owned 20% of the Properties nor does it provide for his interest to increase to 50%. It describes him as the beneficial owner of the properties and declares a trust for his brothers and those entitled to his estate on his death.

126. The statement also refers specifically to Stradbroke Drive and says that he agreed to acquire the property on behalf of one of his brother's sons, who paid the deposit and paid the monthly instalments. As to the inclusion of this property in the 2010 Deed he said:

> "Rather than incur further legal costs and have a separate trust deed relating to this property I and my brothers decided to

> include this property in the trust deed even though I am holding this property on trust solely for my nephew."

This sentence makes no sense at all. What it does illustrate though is that Mr Munir, on his own evidence, was prepared to enter into documents that he says did not reflect reality. It is again also notable that he makes no reference to this property having already been dealt with in the 2008 Deed.

127. On 29th May 2013 Mr Munir was made bankrupt. The judgment of Mr Chief Registrar Baister explains Mr Munir's evidence that he had made a member of the supervisor's staff aware of the terms of the 2010 Deed. The Chief Registrar described this contention as "difficult to accept" as it was hard to see how the proposal could have been put to creditors in the form that it was if that had been the case. He said "it simply makes no sense" and noted that Mr Munir's account of the ownership of the beneficial interest in the properties that I have set out above was inconsistent with his contention that he had no interest in the properties at all.

128. Mr Munir maintained that he held Stradbroke Drive on trust for Mr Chughtai in the confiscation proceedings in the Crown Court in 2017. He also maintained this position in correspondence with Commercial First in 2018.

Mr Chughtai

129. Mr Chughtai was taken to the 2007 Deed. He said that he had not seen the deed before and was looking at it for the first time in the witness box. He said that he did not know what Mr Munir was thinking in executing that deed but noted that Mr Munir had fallen into financial difficulty at the time. He was not able to offer any further information about it.

130. He accepted that the 2008 Deed in relation to Stradbroke Drive was "very, very important". He was taken however to an email written, in his name, to Mr Murphy on 13th December 2017 in which it was said that Stradbroke Drive did not form part of Mr Munir's estate by reason of having been held on trust for Mr Chughtai since purchase. It was stated that Mr Chughtai had paid the deposit and serviced the mortgage since it was purchased. He stated:

> 'This is also duly recorded in a deed of trust drawn up on 2011 and also provided to you by my uncle".

The email said that Mr Chughtai wanted to regularise the position and register the property in his own name. It was put to him that he had made no reference to the 2008 Deed and had given a different date for it altogether. As I noted at the outset of my judgment Mr Chughtai's remarkable response was to deny that this email was written by him at all. Although it is written in the first person and bears his name at the end, he maintained that the email could not have been written by him because it emanated from a Hotmail account and he had never used such an account. He offered no explanation as to who might have written this and a number of other emails from the same account, which includes part of his name, all of which are written in the first person, bear his name and focus entirely on the promotion of his own interests. Some of these are copied to the solicitors acting for him at trial.

131. I should say immediately that I reject his evidence on this and I am satisfied that these emails were written by Mr Chughtai or on his instruction. There is no reason why anyone else would have written them. There is no reason why Mr Chughtai's contention about these emails could not have been raised prior to trial. In my judgment, Mr Chughtai's contention about these emails was a lie in an attempt to explain the apparently inconsistency between the case advanced now and the case advanced in this email.

132. Equally striking is Mr Chughtai's draft defence and evidence in the Possession Proceedings. The draft defence asserts that Mr Chughtai had, to the knowledge of Commercial First, paid all of the mortgage instalments in cash and that the beneficial interest in the property was held by reason of a resulting or constructive trust. There is no mention of an express agreement that the property be held on trust or any mention of the 2008 Deed, or any deed. Mr Chughtai said that that he didn't know why the deed was not mentioned as he told his then solicitors about it. Again, I should say at once that I reject this evidence. It is inconceivable that an express deed of trust would have been drawn to the attention of Mr Chughtai's solicitors but not mentioned at all, barring an extraordinary lapse on the part of Mr Chughtai's then lawyers, as to which there is no evidence at all.

133. Mr Chughtai's two statements in the Possession Proceedings make no reference to any deed of trust either. Mr Chughtai's response on this occasion was to say that the parties were aware of the 2008 Deed at this time but that he "didn't want to use it at this stage". There is simply no reason why the 2008 Deed should have been withheld in circumstances where it would have served to fortify Mr Chughtai's case. There is no possible tactical advantage to be derived from withholding it. Indeed, his statement dated 6th July 2018 was made after Mr Chughtai had received an email from Mr Latham, a partner at Moon Beever, dated 21st May 2012, asking for "evidence of the trust". Again, Mr Chughtai denied receiving this email on the basis that it had been sent to the Hotmail account. As I have said, I am satisfied that this account is used by Mr Chughtai. I am therefore satisfied that he did receive it.

134. The 2008 Deed was finally referred to in an email dated 18th December 2018. Again this email emanates from the Hotmail account. There is no reason why anyone else would have written an email to Mr Latham in Mr Chughtai's name, referring to the 2008 Deed and inviting the trustees to enter into negotiations for the transfer of the property to him.

Other parties

135. On 14th November 2013, Edwin Coe LLP, a firm of solicitors, wrote to the Trustees on behalf of the named beneficiaries under the 2010 Deed. It contended that the 2010 Deed superseded previous deeds in favour of them. It stated that the entire beneficial interest in the properties was vested in them. Mr Chughtai said that he did not think that his father or uncles would have instructed Edwin Coe. If Mr Chughtai is to be believed, his father had signed the 2008 Deed as a witness. There is no evidence from any of the parties named by Edwin Coe to suggest that they did not instruct that firm.

136. I note finally that in 2017 Mr Munir's daughter apparently told an agent of Commercial First that the property had been bought for Mr Munir's nephew who lived at the

property. I do not know if this is the same daughter who discussed the property with Commercial First's representatives in 2009.

Conclusions

137. I should start with some general observations. I have not heard from Mr Munir. Despite his active participation in applications in his bankruptcy relating to the admission of proofs he has chosen not to participate in these proceedings and neither party has called him. Evidently neither party thought he would be a satisfactory witness.

138. While I note the forensic document examiner's report as to the authenticity of documents in earlier applications in this bankruptcy, there has been no finding that those documents were in fact forged and, if so, by whom. It is, however, apparent that Mr Munir has repeatedly made inconsistent statements about the ownership of the properties registered in his name and produced inconsistent documents. The three deeds that I have to consider cannot all have been intended to have effect. They cannot co-exist with each other. As I have noted above, Mr Munir in his evidence prior to the making of the bankruptcy order appears to have accepted at least in relation to the 2010 Deed that it was not intended to have effect in relation to Stradbroke Drive. On the face of it the P&S Motors Tenancy was completely fictitious in that the valuers of Stradbroke Drive discovered that the property was not tenanted. Mr Chughtai readily accepted that the creation of a false tenancy agreement was the sort of thing that Mr Munir would do. Mr Munir's treatment of the properties has been so inconsistent that I must be cautious about his own statements as to the ownership of the properties.

139. I also bear in mind the observations of Arden LJ in *Re Mumtaz Properties* [2011] EWCA Civ 610 at paragraph 14:

> "In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence."

140. I shall deal with Stradbroke Drive first. I start from the position that Mr Munir is both legal and beneficial owner and that Mr Chughtai and Ms Mohammed must prove that the beneficial interest is held differently from the legal interest. There is no better way to do that than to produce an express declaration of trust by the legal owner. Mr Chughtai and Ms Mohammed rely on the 2008 Deed. It is for the Trustees to show that the 2008 Deed is a sham. The two issues cannot be divorced from each other, however. The 2008 Deed purports to be confirmatory of a trust that has existed since the purchase of the property and therefore I must consider the acquisition of it.

141. As to that, I am satisfied that Mr Chughtai's account of the purchase of Stradbroke Drive is untrue. As I have said, his evidence was both internally inconsistent and inconsistent with the contemporaneous documents in relation to the purchase. There

nothing to show any connection with the purchase of property at all. Mr Chughtai's repeated replies to Mr Lewis that it would be easy to obtain statements from the friends and family who lent him money to confirm his account does not assist him. Indeed, the reverse is true, as identified by Arden LJ in *Mumtaz*. There is not a bank statement, text or email, nor witness evidence from anyone concerned in the provision of the deposit monies or the alleged loans to support his case. Mr Chughtai's account of the purchase failed to mention Mr Malik's involvement, the initial mortgage from the Lancashire Mortgage Corporation or the subsequent April 2007 mortgage from that company. In my judgment this amply demonstrates that he simply did not know the circumstances of the purchase.

142. Nor is there evidence of repayment of the unnamed persons said to have provided monies towards the purchase. There is only evidence of Mr Munir directing some relatively modest payments to parties who have no evidenced connection to Mr Chughtai, apart from the evidence that he gave for the first time in the witness box. I am satisfied that Mr Chughtai had no involvement in the purchase of the property either by way of provision of purchase monies or involvement in the mechanics of transfer. If he had, it would have been straightforward to prove, as he himself appeared to acknowledge.

143. I am similarly satisfied that the account given by Mr Chughtai and Ms Mohammed as to the occupation of the property is untrue. In my judgment, neither Mr Chughtai nor Ms Mohammed were resident in the property in 2006 or 2007. The only person observed to be in the property in 2007 was a "family member", subsequently identified as Mr Waseem Chughtai. It is probable that if the valuer reported that a woman, assumed to be Mr Munir's wife, was in the property, that would have been reported by Mr Griggs to the underwriters in terms.

144. It is not in dispute that Mr Waseem Chughtai was present at the property at the property. Even taking into account Mr Munir's willingness to give inconsistent accounts of the ownership of the property there is no reason why he should have lied about the occupation of the property at that time. If Mr Chughtai's evidence that he asked Mr Munir to obtain the mortgage is correct there is simply no reason why he should not have referred to their occupation. I accept that his spontaneous explanation reflected the truth that Mr Waseem Chughtai was the only person in occupation at the time.

145. There is, with the exception of the pictures from a single birthday party, no contemporaneous evidence to connect Mr Chughtai and Ms Mohammed with the property prior to 2010. The fact that the birthday party was undoubtedly held at the property in 2007 is explicable by the fact that this was a family property that was available for the purpose. Again, I am struck by the absence of any contemporaneous documentation to link them to the property. More tellingly, I am struck by the occasions when Stradbroke Drive is not mentioned as the family home. Ms Mohammed gave her usual address as 2 Travers Close on the birth certificate of her child in 2012. The 2008 Deed, assuming it was created in 2008, gives Mr Chughtai's address as 6 Dicey Avenue. In my judgment they began living at the property in 2010 at the earliest and probably around 2012. 2010 is the earliest date that they say that they registered utilities in their name and that is the date that was evidently given by Ms Mohammed to her lawyers in 2015. I reject Mr Chughtai and Ms Mohammed's evidence that they were living there in 2007.

146. I am similarly satisfied that Mr Chughtai and Ms Mohammed's contention that they met all the mortgage payments from the outset is untrue. Mr Chughtai's evidence on this too has been inconsistent, is contrary to the contemporaneous documentation and is entirely unsupported by evidence that would similarly have been easy to obtain. By contrast there are numerous payments from Mr Munir's account and from other sources. There is simply no evidence that this was an account controlled by Mr Chughtai and I reject this contention. I do not accept that Ms Mohammed's account of payments facilitated by her is true. As I have explained, it is inconsistent with the documentation and she was forced to embellish her evidence to attempt to address the inconsistency.

147. I accept that they appear to have made some payments either directly towards the mortgage or to Mr Munir. All of the credibly evidenced payments are however after Mr Munir's bankruptcy. The mortgage had to be paid. I am satisfied that Mr Chughtai and Ms Mohammed were living at the property at the time of Mr Munir's bankruptcy. Such payments are explicable on the basis that the property was by that point unquestionably the family home which it is understandable Mr Chughtai and Ms Mohammed would wish to preserve to avoid repossession by the mortgagee following Mr Munir's bankruptcy.

148. Mr Munir's treatment of Stradbroke Drive in the years following the purchase is consistent with beneficial ownership of the property. He confirmed that he was not a trustee in the stamp duty land tax return on completion of the purchase, and claimed to own the property again in 2008. He continued to give the impression that he owned the property when proposing that it be sold to pay mortgage arrears in 2009. There is no suggestion of any agreement that Mr Chughtai or Ms Mohammed should have a beneficial interest in the property in any of the contemporaneous documentation. There is no reason why he should, at that stage, have concealed an interest held by Mr Chughtai or occupation of the property by Mr Chughtai or Ms Mohammed.

149. The position began to change in the beginning of 2010, when Mr Munir was under financial pressure and had already been warned of the threat of bankruptcy and the possibility of insulating property by holding it in another name. It is plain that a restriction to protect a trust deed dated 4th February 2010 was registered against the title of the properties in 2010, although it is by no means clear that this is the 2010 Deed and the terms of trusts entered into in 2010 have been inconsistently described. In his IVA proposals in 2011 Mr Munir claimed that he and Mrs Munir were joint owners of Stradbroke Drive and that he had a 50% share in the other properties. By 2012 he informed HM Revenue and Customs that he held Stradbroke Drive on trust and sought to advance this case in his evidence in the bankruptcy proceedings, though he made no mention of the 2008 Deed. The shift in the treatment of the ownership of the property coincided with Mr Munir's worsening financial position. That is not, in my judgment, pure coincidence but an attempt to protect the property from the consequences of his bankruptcy. Shortly thereafter, in 2013, Mr Chughtai contacted Commercial First to say that he was paying the mortgage on Mr Munir's behalf. The reality is that, pre-bankruptcy, leaving aside the 2008 Deed, there is no contemporaneous evidence or statements consistent with Mr Chughtai having an interest in the property. It is only after presentation of the bankruptcy petition that such an interest is raised and the 2008 Deed was not mentioned until Mr Chughtai referred to it in an email to the Trustees' solicitors dated 18th December 2018.

150. In summary therefore, I am not satisfied that Mr Chughtai made any contribution to the purchase price of Stradbroke Drive. I reject his evidence that it was agreed that that the property would be purchased for him or he directed Mr Munir to arrange a mortgage or that he indemnified him for the instalments throughout its term. I similarly reject Ms Mohammed's evidence, which is derived from what she was told by Mr Chughtai as to this. There is no basis on which a resulting trust of the property could arise. Similarly I reject the argument that there was a constructive trust prior to the execution of the 2008 Deed. There was no agreement that Mr Chughtai would have an interest in the property, he made no contribution to it and neither he nor Ms Mohammed were to live there at the time of the purchase.

151. I am further satisfied that the 2008 Deed is a sham. Insofar as it purports to record an existing trust, it records something that did not exist in any event. Nor, in my judgment, was it intended to have effect at all, assuming it was created prior to the making of the bankruptcy order. It was not referred to by Mr Munir when discussing the beneficial ownership of Stradbroke Drive prior to the making of the bankruptcy order or by Mr Chughtai in the Possession Proceedings. Such an important document would not have been overlooked if it was intended to have effect. I am satisfied that it was referred to or produced because it either was not executed until after the Possession Proceedings or, if it was executed on or around the date it bears, it was understood to be a "rainy day" trust instrument, not intended to have effect but to be available to give a false impression of the ownership of Stradbroke Drive if required at the appropriate moment. Had it been a genuine document, it is abundantly clear that Mr Chughtai would have produced it in the Possession Proceedings and referred to it, rather than a deed "executed in 2011", in correspondence. Similarly, his father is unlikely to have given instructions to solicitors in reliance on the 2010 Deed if he believed that the 2008 Deed, which he apparently witnessed, had effect. Nor would Ms Mohammed's witness statement have been phrased in such a way as to suggest that she had been informed of the 2008 Deed, rather than having both signed it and been instrumental in its creation.

152. I bear in mind of course that it is Mr Munir's intention that is determinative in the case of a unilateral instrument, but the attitude towards the deed of those most affected by it sheds light on that question. If a beneficiary does not refer to it in circumstances where he might be expected to rely upon it and a witness to it instructs solicitors to advance a case that it wholly inconsistent with it, that is good evidence as to what they understood Mr Munir's intention to be. Leaving that aside however, it is clear that Mr Munir regarded the property as his and the suggestion that it was held on trust for a member or members of his family arose only after his financial difficulties had become acute. Nonetheless, he failed to refer to the 2008 Deed even when it was consistent with the case on ownership of Stradbroke Drive that he was advancing. I am satisfied that someone – Mr Munir, Mr Mohammed Amin Chughtai, Mr Chughtai or Ms Mohammed, all of whom are said to have been involved in the creation of the 2008 Deed, would have remembered its existence between 2012 and 2018 if it was both in existence and intended to have effect. They did not.

153. Mr Chughtai and Ms Mohammed have failed to discharge the burden of showing that they have a beneficial interest in the property arising by reason of a resulting or constructive trust. On the contrary, I am satisfied that they do not have such an interest and that the 2008 Deed is a sham. I therefore turn to the Insolvency Application as it relates to the remaining properties. This part of the application is undefended but I must

be satisfied that the 2010 and 2007 Deeds are shams or otherwise ineffective. I am so satisfied.

154. In relation to the 2007 Deed, no one has contended that it was intended to have effect. It has never been relied upon according to the evidence that I have seen. As I have noted it is incomplete in that it does not appear to refer to St Thomas Street and has a page missing. A property questionnaire completed in relation to Walm Lane, signed by Mr Munir on 2nd July 2007, states that he is not aware of any deed of gift or transfer at an undervalue relating to the property within the last five years. This is entirely inconsistent with a declaration of trust intended to have effect having been made just over a month previously. The 2010 Deed is inconsistent with the 2007 Deed in that it purports to dispose of the beneficial interests which, were the 2007 Deed intended to have effect, had already been settled on trust. As to the 2010 Deed, as I have noted, Mr Munir's own evidence in the bankruptcy was that it did not reflect the true position in respect of the Stradbroke Drive. That speaks volumes as to his approach to the creation of these deeds.

155. His 2011 IVA proposals are entirely inconsistent with any of the Deeds. Those proposals state that he has a 50% beneficial interest in the properties. He continued to declare substantial rental income, and Station Parade, Walm Lane and St Thomas Street were listed as his assets in his statement of assets and liabilities submitted to HMRC on 14th June 2012. The evidence is consistent with the deeds not having been intended to have effect at all. I take into account of course the possibility that Mr Munir may have intended one of the deeds to have effect and then resiled from it. I can discount that possibility. It is evident that Mr Munir has created a range of inconsistent documents over the years, none of which have been acted upon.

156. Finally I should consider Mrs Munir's position. Mrs Munir's evidence is that the notion of her acting as trustee as "farcical". I accept that she is unable to read English and that she signed what was put in front of her without regard to what it was. It is most unlikely that she would have signed a document declaring herself to be a trustee of properties, including her home at Parkview, for the benefit of her husband and his brothers after the deed of separation by which Mr Munir had renounced his interest in that property had she known what it was.

157. I am satisfied therefore that those two deeds are shams. The properties are registered in the name of Mr Munir and, leaving aside the deeds, it has never been suggested that the beneficial interest was vested in anyone other than him. St Thomas Street, Walm Lane and Station Parade are thus vested in the Trustees, as is Stradbroke Drive.

158. If I am wrong that the three deeds are shams, I must consider the Trustees' alternative arguments. The position is as follows:

    i) In relation to the 2010 Deed it was undoubtedly a transaction at an undervalue for the purposes of section 339 of the 1986 Act. It purports to transfer the beneficial interest in the properties to Mr Munir's "associates" within the meaning of 435(2) of the 1986 Act for no consideration and his insolvency at the time of the transaction is presumed. No one has attempted to rebut that presumption but is abundantly clear that he had been under financial pressure for some years and in January 2010 was being pursued for a debt arising from a personal guarantee that had first been demanded in 2007. The transaction took

place within the relevant time for the purposes of section 341. Were I not satisfied that the that the 2010 Deed is a sham I would set it aside as a transaction at an undervalue.

ii) In the alternative in relation to the 2010 Deed, and if I am wrong that the 2007 and 2008 Deeds are shams, each of them represents a transaction at an undervalue. Given the financial demands on Mr Munir from 2006 that I have set out above, the only inference is that these deeds were entered into in order to insulate the properties from claims of creditors. No other explanation has been advanced. I would set them aside as transactions defrauding creditors within the meaning of section 423 of the 1986 Act.

159. In respect of 156 High Street I will declare that the lease is vested in Mr Munir's trustees in bankruptcy. There is no claim to the contrary. Equity does not act in vain but it is tolerably clear that in this bankruptcy there is substantial scope for claims to a beneficial interest to materialise. It is important, at least as between the parties to the Insolvency Application to settle the question of the beneficial ownership of the lease.

Disposition

160. On the Insolvency Application I will make declarations that –

i) The 2007 Deed, 2008 Deed and 2010 Deeds are shams not intended to have effect.

ii) Alternatively, the 2010 Deed is a transaction at an undervalue and should be set aside.

iii) Alternatively, the 2007 Deed, 2008 Deed and 2010 Deeds are transactions defrauding creditors and should be set aside.

iv) Neither Mr Chughtai, Ms Mohammed nor Mr Saeed have an interest in Stradbroke Drive.

v) Stradbroke Drive, St Thomas Street, Walm Lane, Station Parade and 156 High Street are vested in the Trustees as trustees in bankruptcy for Mr Munir.

It follows that the Claim fails and is dismissed.