



Neutral Citation Number: [2024] EWHC 1412 (Comm)

Case No: LM-2022-000173

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**LONDON CIRCUIT COMMERCIAL COURT (KBD)**

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

Date: 14 June 2024

**Before:**

**HIS HONOUR JUDGE KEYSER KC**  
**sitting as a Judge of the High Court**

**Between:**

**VIMALRAI PATEL**  
**(both individually and in his capacity as executor**  
**of the estate of Mr Prakashchandra Patel)**  
**- and -**  
**MAYUR PATEL**

**Claimant**

**Defendant**

**Duncan Bagshaw (of Howard Kennedy LLP) for the Claimant**  
**John Virgo (instructed by Laytons LLP) for the Defendant**

Hearing dates: 29 and 30 April 2024

**Approved Judgment**

This judgment was handed down remotely at 10.30 a.m. on 14 June 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

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**HIS HONOUR JUDGE KEYSER KC**

## **Judge Keyser KC :**

### **Introduction**

1. As most of the persons involved in the matters with which this litigation is concerned are called Patel, I shall refer to them in this judgment by their forenames or shortened forms of their forenames. This is purely in the interests of clarity and convenience and is not intended to indicate any disrespect.
2. The claimant, Mr Vimalrai Patel (“Vimal”), is the younger son of the late Dr Prakashchandra Patel (“Prakash”), who died on 30 March 2022. The elder son is Gaurang. Vimal brings these proceedings both on his own account and as the sole executor and trustee of Prakash’s last will, dated 5 July 2016.
3. Prakash resided in Kenya, where in the 1970s he formed a company called Cosmos Limited (“Cosmos”) to carry on the business of manufacturing pharmaceutical products. In about 1985 Vimal went to work for Cosmos and he is now its managing director. Cosmos has been a successful company and made Prakash a wealthy man. He used some of that wealth to establish trusts in Jersey; I shall say more about the trusts below.
4. The defendant, Mr Mayur Patel (“Mayur”), is married to Mrs Maya Patel (“Maya”), who is the sister of Vimal and the daughter of Prakash. Mayur and Maya have two daughters, Mumta and Priyanka. Mayur is a registered pharmacist and works at a pharmacy in Dunstable that is owned by a company of which he is a member and director. Over the years, Prakash provided substantial financial support to Mayur and Maya, and between 2006 and 2018 he paid the school fees for Mumta and Priyanka.
5. In 2005 Mayur purchased a family home, called Garden Court, in Great Missenden, Buckinghamshire. The purchase was financed in part by a loan secured by mortgage. In 2013 Mayur was looking to remortgage Garden Court on more favourable terms. To that end, Prakash introduced Mayur to UBS AG (“UBS”), the bank with which both Vimal and Prakash held accounts. In order to obtain finance from UBS, Mayur asked each of them to guarantee his debt to UBS under the mortgage. They agreed to do so, and on 7 June 2013 Vimal and Prakash signed one such guarantee each. The remortgage was completed on 14 June 2013. The advance from UBS to Mayur was £810,000 together with fees. The term of the loan was five years, with repayment during the term being on an interest-only basis.
6. Repayment of Mayur’s loan from UBS fell due on 14 June 2018. Mayur was unable to repay the debt. He asked Prakash and Vimal to come to his aid. UBS called on them under their guarantees. On 29 June 2018 Prakash instructed UBS to discharge the debt by the transfer of £816,120.04 from his and Vimal’s joint account with UBS to the mortgage account. The transfer was made and Mayur’s debt was discharged.
7. In these proceedings, Vimal claims to recover the amount paid to discharge Mayur’s mortgage. He brings the claim both on his own account and on behalf of Prakash’s estate, as each was a guarantor of the entire debt and the payment was made from their joint account.

8. Mayur defends the claim principally on the grounds that the payment to discharge the mortgage was made as a gift to Maya and that the guarantor's right to be indemnified by the principal debtor is not engaged.
9. The central issue thus identified is a fairly narrow one. In the remainder of this judgment I shall not elaborate greatly on the background summarised above but shall restrict my consideration of the evidence to such of it as relates to the issue. After setting out the further relevant facts I shall state briefly the relevant law and then proceed to discuss the issue.

### **The Facts**

10. It is relevant background that Prakash settled three discretionary trusts (together, "the Trusts"), all of which were governed by the law of Jersey:
  - (i) In 1994, the Corfield Trust: the trust property was held as to income for such of Prakash, his wife and two specified charities as the trustee should in its absolute discretion decide, and as to capital for such of the issue of Prakash and their spouses as the trustee should in its absolute discretion decide.
  - (ii) In 2007, the Balata Trust: the trust property was held as to both income and capital for such of, *inter alios*, Prakash and Vimal and all the lawful children of either of them as the trustee should in its absolute discretion decide.
  - (iii) In 2007, the Peekay Trust: the trust property was held as to both income and capital for such of, *inter alios*, Prakash, his wife, his children and his grandchildren as the trustee should in its absolute discretion decide.

Therefore, Maya was a beneficiary of all three trusts and Mumta and Priyanka were beneficiaries of the Peekay Trust. The trustee of each trust was a Jersey trust company. The present trustee of the Corfield Trust and the Peekay Trust is JTC Trust Company Limited ("JTC"). The Balata Trust was terminated in December 2017.

11. On 7 June 2013 Prakash and Vimal executed the guarantees, in materially identical terms, for Mayur's mortgage debt to UBS. Each of them agreed: to guarantee that "all money and liabilities owing to [UBS] under [the mortgage] will be paid and satisfied when due"; to "pay [UBS] any amount that [UBS claims] under the Guarantee immediately on [UBS's] demand"; to "make good any losses or expenses which [UBS] may incur if [Mayur] fails to pay any money owed to [UBS], or fails to meet any other liabilities to [UBS], under [the mortgage]"; and to "make good any losses or expenses which [UBS] may reasonably incur if [UBS] take[s] steps to enforce [the Guarantee] or if [UBS] tr[ies] to do so." The guarantees provided that they were to be governed by the laws of England and Wales.
12. In 2016 Prakash wanted to reach an agreement that would facilitate the distribution of the funds held by the Trusts. This would require Maya to execute deeds of disclaimer in relation to all three of the Trusts and Mayur and Mumta and Priyanka to execute deeds of disclaimer in relation to the Peekay and/or Corfield Trusts, for the purpose of bringing to an end their respective rights as beneficiaries under the Trusts. Maya would also be required to execute a deed of indemnity in order to protect the trustee against any claims relating to the exclusion of Mumta and Priyanka from the Peekay Trust.

(The details of what was required and of the wider arrangements of which it formed a part are not important for these proceedings.) Maya made clear that her agreement to these requirements and thereby to foregoing the prospect of benefits that she and her daughters might receive under the discretionary trusts would come only at a price, namely a promise by Prakash and Vimal of defined future benefits. (Again, the detailed circumstances are not of direct relevance to this case, though they are in issue in proceedings in Jersey, which I shall mention below.)

13. Accordingly, on 27 December 2016 Prakash and Vimal signed and produced to Maya a letter (“the Letter of Assurance”) in the following terms:

“Dear Maya

As discussed myself and Vimal will make provisions that both Mumta Mayur Patel and Priyanka Mayur Patel, of the above address [Garden Court], get US\$ 1 million each. It has always been my wish that my grandchildren would have no difficulty in financing their education should their parents are unable to do so. That is way the Peekay Trust was set up. It was my wish that the funds would also be used for other purposes such as:

- Philanthropy
- Health
- Purchase of house or suitable dwelling and business.

Should any of the grand children have used the funds their share would have been deducted from the amount that they would have been due. The balance remaining would be than due to them.

I am also making a provision of GBP 500,000.00 towards the mortgage of your above addressed house [Garden Court].

Both myself and Vimal will ensure that these monies mentioned above will be given before 31st of December 2019.

I am also getting Vimal to sign below as our commitment to the above.”

14. Having received the Letter of Assurance, Maya, Mumta and Priyanka executed the required disclaimers and Maya executed the required deed of indemnity. Mayur also signed a disclaimer.
15. By 2018 Prakash was getting rather “fed up” (Vimal’s words) of what he perceived to be Mayur’s and Maya’s sponging (my word) off him. He felt that he had paid for Maya to have a good education, with a view to enabling her to support herself and her family, and that he had also given her a great deal of financial assistance. (Vimal estimated that, quite apart from the payment with which this case is concerned, Prakash gave Maya more than £2m from his own personal money.) So, on 17 April 2018, having received an invoice for Priyanka’s education at Cheltenham Ladies’ College, Prakash sent a letter to Maya by email, complaining of her ingratitude for the financial support he had given to her and to her daughters and of her lack of respect towards other

members of the family, in particular Vimal. He said that he had paid school fees for Mumta up to the time she went to university and was still paying for Priyanka, even though it had been the responsibility of Maya and Mayur, not his, and he had never promised to do so. He said that, in view of his age and poor health, he had left his affairs to be looked after by Vimal. “I am requesting him to pay the fees this time. Please let Vimal know how long Priyanka will be in school.”

16. On 14 May 2018 UBS wrote to Mayur, reminding him that his current mortgage facility would expire on 14 June 2018 and observing that he had not contacted them to make arrangements to repay the mortgage facility. An attached redemption statement showed that the estimated total amount due on 14 June 2018 was £815,130.91.

17. On 18 May 2018 Mayur forwarded UBS’s letter to Prakash. He wrote:

“I have received this email, with the attachment from UBS.

Please advise, when i could/can talk to you in person, regarding the matter concerning Garden Court (home). UBS will be calling me back, next week. So, we need to come a conclusion?

Thank you.”

18. On 21 May 2018 Mayur forwarded to Prakash a mortgage application form that he had received from UBS for use in the event that he wanted to renew the mortgage rather than redeem it. Mayur asked if he could call Prakash that day.

19. On 5 June 2018 Mr Georgiou, of UBS, sent a text message to Mayur: “Please call me when you get this, as we need to resolve the upcoming mortgage expiry which is due on 14 June. Is there a repayment plan in place?” Mayur replied: “Still awaiting to talk to Prakash Patel. I am busy with patients. Please ask Anug [sic] to ring Mr Prakash Patel as well, please. I have been trying everyday to get in touch and talk to him. I will try again, tonight. If he is avoiding me, then he will talk to Anuj.” On the following morning, Mr Georgiou sent an email to Mayur, enquiring whether he had spoken to Prakash and asking him to answer a number of questions so that, if there were no repayment plan in place and he sought to renew, USB’s credit team could assess affordability. Mayur immediately emailed Prakash:

“I have been trying over the last 3 weeks to get in touch with you.

**WE NEED TO TALK ABOUT UBS MORTGAGE ... PAYING OF / OR EXTENSION (RENEWAL)**

Please, advise. ...

**PS. I WILL TRY, AGAIN TO CALL YOU LATER TODAY.”**

However, that afternoon Mayur replied to Mr Georgiou: “Still no reply from Mr Patel. Did Anuj call him? I will try to answer as much as I can and reply by tomorrow.”

20. Early on 7 June Mayur sent to Mr Georgiou answers to his several questions, but he was silent about speaking to Prakash. The disclosure in these proceedings does not

show any documented conversations between UBS and Vimal and Prakash, but Vimal's evidence, which I accept, was that a week or so before the mortgage debt fell due for repayment he and his father received a telephone call from UBS, to the effect that Mayur had made no arrangements for repayment of the mortgage and had asked the bank to approach Vimal and Prakash instead. That is consistent with Mayur's communications with UBS.

21. On 14 June 2018 the mortgage facility with UBS expired. Mayur had not paid the debt or obtained an extension of the facility.
22. By this time Mayur had received no written response from Prakash. However, Prakash did eventually speak to Mayur and Maya by telephone, though probably after 14 June. Vimal's evidence was that Prakash told him he had asked them why they had not used the sum of £300,000, which they had obtained in litigation in 2014, in part payment of the mortgage and they had replied that the money had been invested for Mumta's and Priyanka's education and could not be liquidated; they had made no proposal for discharge of the mortgage.
23. That conversation is referred to in the letter dated 18 June 2018 that Prakash sent to Mayur and Maya by email on 21 June 2018:

“Dear Maya

I am very disappointed that Mayur and yourself had not made any provisions regarding the mortgage with UBS for your house. Even though there were number of reminders to Mayur from UBS. As you are aware that the terms of the mortgage expired on the 14<sup>th</sup> June 2018. In my earlier letter of 27<sup>th</sup> December 2016, I had mentioned that myself and Vimal would make a provision for GBP 500,000 towards the mortgage of your above addressed house before 31<sup>st</sup> December 2019. During my last call, Mayur had mentioned that the balance amount towards the mortgage, that you have is tied up in some investment and you are unable to liquidate and pay towards the mortgage.

Therefore, myself and Vimal have decided to pay off the full mortgage (GBP 810,000) and any other costs, which is more than the GBP 500,000 I had offered. The additional amount, which is the mortgage and any additional costs minus the GBP 500,000, will be deducted from the amount that I would make provisions for both your daughters, Mumta Mayur Patel and Priyanka Mayur Patel.

It is important that you understand that default on the payment of the mortgage would adversely affect Mayur's credibility with UBS and other associated banks in the future.

I again, would like to state my disappointment towards your and Mayur's attitude. As mentioned numerous times before, I have done a lot for you and it is not my responsibility, once you are an adult and married to support financially yourself, Mayur,

Mumta and Priyanka. Mumta and Priyanka are primarily yours and Mayur's responsibility.”

24. Vimal's evidence, given in his witness statement and clarified during cross-examination, was to the effect that he and Prakash decided to discharge the mortgage because they did not want to be seen to default on their guarantees and were unwilling to leave Mayur and Maya to face the risk of losing their home. They decided to make the payment from their joint account with UBS, and Vimal asked UBS to provide a redemption statement.
25. On 29 June 2018 Ms Shauna McGee of UBS sent an email in the following terms to Prakash and Vimal:

“Please find attached the final redemption statement for the mortgage held with us by Mr Mayur Patel. I am supplying this information to you in your capacity as guarantors.

This provides the repayment amount due today. Please note that interest is applied daily so if funds are not received for value 29.06.2018 the repayment amount will increase by the relevant interest accrued.”

The redemption statement showed the amount due on 29 June 2018 as £816,120.04. Vimal acknowledged receipt of the email and confirmed to Ms McGee that they were sending the letter to authorise payment that same day. He then emailed Mr Prateek Nayyar and Mr Jonathan Marlborough, the managers of the joint account with UBS Wealth Management, as follows:

“As per the below email from Shauna, kindly find attached a letter from my father, Prakash Patel, authorising the settlement of Mayur Patel's mortgage from the account of Mr Prakash Patel &/or Vimalrai Patel.

Also attached is the Redemption Statement as of 29th June 2018.

I trust this is in order.

Kindly let me know once the transfer is done.”

The letter from Prakash was headed “REF: Transfer of Funds for Mortgage Settlement” and addressed to Mr Nayyar and Mr Marlborough and was in the following terms:

“We would appreciate if you could transfer the sum of GB£ 816,120.04 (eight hundred sixteen thousand one hundred and twenty pounds and four pence only, covering the principle [sic] and interest amount calculated to 29<sup>th</sup> June 2018) from my account, Mr Prakashchandra Patel & Mr Vimalrai Patel account No. 3925341000 to settle the mortgage on Garden Court ... as per the attached redemption statement for 29<sup>th</sup> June 2018. The amount is a gift to my daughter, Mrs Maya Patel, and her two daughters (Miss Mumta Patel and Miss Priyanka Patel) residing

at Garden Court. As per below details: [the relevant account details were set out].

Kindly, acknowledge receipt and confirm once the transfer is done.”

26. UBS Wealth Management complied with the instruction to transfer the funds and Mayur’s liability under the mortgage was discharged.
27. On the same day, 29 June 2018, Prakash sent an email to Maya: “I have given the instructions to UBS to settle the mortgage payment on your house. See the attached letter I have written to you.” The letter was in the following terms:

“Dear Maya

Further to my letter to you dated 18<sup>th</sup> June 2018. I again would like to mention my disappointment, that Mayur and yourself had not made any provisions regarding the mortgage with UBS for your house.

Therefore, myself and Vimal have decided and given instructions to UBS today, to pay off the full mortgage amount GBP 816,120.04 (eight hundred sixteen thousand one hundred twenty pounds and four pence). Which is the principle [sic] mortgage amount, the interest and security release fee amount. This total amount is more than the GBP 500,000 (five hundred thousand) I had offered. The additional amount, which is the mortgage and any additional costs minus the GBP 500,000, will be deducted from the amount that myself and Vimal would try to make provisions for both your daughters, Mumta Mayur Patel and Priyanka Mayur Patel.

The title deed is in the name of Mayur. You can decide whether you want it in your name or jointly with Mayur.

As mentioned numerous times before, I have done a lot for you, Mayur, Mumta and Priyanka. It is not my responsibility, once you are an adult and married to support financially yourself, Mayur, Mumta and Priyanka. Mumta and Priyanka are primarily yours and Mayur’s [sic] responsibility.”

28. Vimal’s evidence concerning the discharge of the mortgage was in my view clear and easy to understand. With respect to UBS, the payment was simply a matter of business obligation, because Vimal and Prakash were bound by their guarantees. With respect to Mayur and Maya, he and his father were treating the £816,120 as an advance payment of what they had committed to pay in the Letter of Assurance. Accordingly, they were not expecting to receive any literal repayment of the sum. The tenor of his evidence was that this was all that his father had meant by the use of the word “gift” in his payment instruction to the bank, which Prakash had written and Vimal had read in haste and without any regard to strict legal concepts of gift. Vimal was a straightforward and



honest witness and I accept his evidence; indeed, on this point it simply accords with Prakash's explanation to Maya.

29. That really concludes the narrative so far as concerns the transaction with which this case is concerned. However, subsequent events have been raised in evidence and I shall deal with them here.
30. On 8 April 2019 Maya sent to Prakash the latest invoice for Priyanka's school fees, saying that Priyanka would be expelled if the invoice was not paid by 23 April ("Is this your wish?", she asked) and remarking that the fees from the previous term were still outstanding. Prakash gave a short response on 12 April 2019:

"As I had mentioned to you, that all your children should be your responsibility to educate and look after them.

You should have money to pay for whatever they require including school fees.

In the past I did go on doing it, as a goodwill, just to help you but now you should have sufficient money to look after them. This should not be taken as your right."

After a telephone conversation with Mayur on 17 April 2019, Prakash sent a much longer reply; I shall set out much but not all of it:

"Mayur maintained that I had paid for my other grandchildren education and why not Priyanka.

I had replied earlier that Gaurang & Vimals children were paid for by them.

And once again I write to you: I have paid for the education of my children Gaurang, Vimal and Maya. The adequate education is meant to make them earn sufficient to look after themselves and their children.

...

When then Mumta and Priyanka were put for private preschool school so that they can get in good public school for their primary and secondary education, I was told that the charges for these school are very high and at that time you could not pay. No time, was I told Mayur was prepared to pay – if that was so, I would have been pleased and let you pay.

I started paying for them in preschool, primary and now secondary school. I was sent the invoices of the schools to be paid without any explanation and when I queried about the extra charges for other classes, there was never any explanation.

Peekay Trust – I told you and explained that I would like to wind up Peekay Trust before the end of the year and whatever was

there to withdraw and do whatever I want to do. However, this did not happen since I required indemnity of all beneficiaries before the trust is dissolved.

So I could not wind up the trust. I had to pay Minerva's fees for year 2019 and also for the lawyer they had to engage to reply to your lawyers by this, putting me in more expenses.

I had sent you the papers to be signed by Mumta which is still not yet done and you pretended not to understand and do not trust me and wrote to me on what Trusts are for etc. Please send back signed or not signed. Alakh, Harshal, Anuja and myself have already signed the papers. I was told that you did not understand why signature was required; I had explained to you the same and your lawyers' claims that you did not understand. You could have asked me if there was any misunderstanding. But in spite of the explanation, both of you did not allow Mumta to sign the papers. I asked you to send back the papers with signature or without signatures.

...

Still, I do not understand why you cannot pay Priyanka's fees. Especially, as you do not have to pay for mortgage anymore, after I payed [sic] off the mortgage of your house.

I wanted to clear everything before I go and to have peace of mind but I have to face and have to engage lawyers."

31. On 3 May 2019 Jersey lawyers acting on behalf of Mayur, Maya, Mumta and Priyanka wrote to lawyers acting on behalf of the trustee of the Trusts. The letter included the following passages:

"To be clear, my clients (including Maya, a former beneficiary of the Balata Trust ... ), seek an explanation as to the circumstances which led to the requests (including in particular the requests made in late 2016) by your client that they waive their respective interests in the Trusts. That has not been forthcoming, despite repeated requests. ...

My clients have been kept at considerable distance from the Trusts and consequently have known little about the Trusts. They now believe that a dispute of some sort caused the Trustee to consider varying the class of beneficiaries in order to settle the dispute. They have no further information about this dispute or circumstances surrounding the settlement of the same. When your client contacted them - Maya, in particular - in relation to the waiver of interest in around December 2016, it knew that my clients had no knowledge of the circumstances and not only provided no information about the alleged need to sign the waiver provided, but actively discouraged Maya from seeking

legal advice and instead told that she need have no regard to the clause in the waiver document stating that she had obtained said legal advice.”

32. Then, on 27 May 2019, Prakash sent an email to Maya and Mumta (it was also addressed to Mayur):

“I am told by the trustees of Peekay Trust that your lawyer has claimed that you don’t understand why they want to dissolve the trust and also claimed that the dissolution of the previous trusts you did not understand and signed them under duress.

Let me explain once again to you that all the trusts were created by me and the trustees have acted according to my instructions and the wrong doing you or your lawyers feel they are my doing.

I have tried to give education and I believed you have good understanding and you don’t trust me whatever reason, though with my understanding I have tried to explain my actions.

And in any case I may have to employ further, lawyers and undergo the court cases. I am told this will be long drawn out and expensive procedure and trust funds most of them will be used.

Though my health is not good but still I have to face, so I will do it in my life time and not to leave it to Vimal who has a more difficult task of making Cosmos more effective and maintaining the house and me which are expensive. Both require care and patience.

Please let me know what you want to do.

Also I will appreciate if you can let me know how much I have paid for Mumta and Priyanka’s education, mortgage of the house (i.e. Missenden and Datchet) and also for Herrington Chemist and also Castle Chemists. Also whatever was given to you when you wanted to go away from us when I distributed whatever I had also which also included Mumta’s education of £150,000. Please let me know what you want and try to remove my attachments and go peacefully.

I always believe that one should have confidence to look after oneself and your family and the other whom you can help and always give and try not to take and if circumstances require taking obligations then try to pay as early as possible. This is what I thought my ‘Sanskar’ –culture.

If you know anywhere I did not do that, please let me know. ...”

33. In January 2020 Maya, Mayur, Mumta and Priyanka (“the plaintiffs”) commenced proceedings in Jersey against JTC as the trustee of the Trusts, alleging *inter alia* that the disclaimers and indemnity they had executed in respect of the Trusts were void and of no effect by virtue of the absence of their informed consent in executing them, or alternatively by virtue of having been given by mistake, and that the trustee had committed breaches of trust.
34. In July 2020 JTC brought a third-party claim against Prakash, Vimal and others, seeking an indemnity against any liability it might have to the plaintiffs.
35. On 30 March 2022 Prakash died. Vimal is the sole executor and trustee of Prakash’s will, though he has not yet taken a grant of probate in Kenya.
36. On 13 July 2022 solicitors acting for Prakash’s estate and for Vimal wrote to Mayur, demanding payment of £1,092,400.49 in respect of the discharge of the mortgage facility on 29 June 2018 and interest and costs.
37. On 19 July 2022 Jersey Advocates acting for Mayur replied in the following terms, which succinctly identify the dispute between the parties:

“We are Jersey Advocates acting for Mayur, Maya, Mumta and Priyanka Patel in relation to wide ranging dispute between them, the Trustee of various Family Trusts, Vimal Patel, Prakashchandra Patel and others.

You say you are instructed by the estate of Prakashchandra Patel. Can you please produce to us a copy of the Grant of Probate which enables you to write on behalf of the Estate. Who is the Executor of the Estate?

Attached to this letter is the Letter of Assurance. Our clients were promised a sum greater than the sum referred to in your letter and they are now taking action in Jersey in respect of same as well as other matters.

We note from page 48 of the enclosures that when payment of the £816,120.04 was made Mr Patel described it as a gift to ‘Mrs Maya Patel and her two daughters (Miss Mumta Patel and Miss Priyanka Patel) residing at Garden Court’. If it was a gift as set out in that letter it cannot be reclaimed from Mayur.

Your letter before action is ill founded both in law and fact for a number of reasons.

As there are proceedings on the foot in Jersey which encompass at least the Letter of Assurance, a further action in England (in which your clients cannot possibly succeed) would lead to a multiplicity of proceedings in separate jurisdictions dealing with the same subject matter. The action proposed is therefore an abuse of process.

Your letter is designed to bully our clients in to accepting by way of settlement less than is due under the Letter of Assurance as such it should not have been written.

I would be grateful for your confirmation that the letter before action will be withdrawn, and for a copy of the relevant Grant of Probate.”

38. In September 2023 the plaintiffs amended their claim in the Jersey proceedings by joining Prakash’s estate and Vimal as defendants and alleging against them misrepresentation, fraud, unlawful means conspiracy, undue influence and duress in relation to the execution of the disclaimers and the indemnity in December 2016. In the alternative to a declaration that the disclaimers and indemnity were of no effect and should be set aside, they claimed orders that Prakash’s estate and Vimal make the payments specified in the Letter of Assurance (there said to be a “Collateral Agreement”) and payments for Priyanka’s education under what was described as a “Further Agreement”. The amended pleading averred that, “insofar as Maya, Mayur and Mumta executed the Disclaimers and Indemnity, they were invited to do so in consideration of promises by Mr Patel and Vimal as recorded in the Letter of Assurance (‘the Collateral Agreement’): paragraph 57. It is worth noting that the initial application to amend, which was dismissed in July 2022, was made on the basis that an order for payments under the Collateral Agreement (Letter of Assurance) would be *additional* to the setting aside of the disclaimers and indemnity. That application was refused. The subsequent application for permission to amend, which was largely successful, was made on the basis that the claim to enforce the Letter of Assurance would be in the *alternative* to the setting aside of the disclaimers and indemnity. This is reflected in the amended pleading; the case put there is that the Letter of Assurance was the consideration for the execution of the disclaimers and indemnity. The relief sought by Mayur, Maya, Mumta and Priyanka in the prayer in the amended pleading is:

- “(1) A declaration that the Disclaimers, Indemnity and Deeds of Exclusion are of no effect in respect of the Plaintiffs and should be set aside;
- (2) Damages (including equitable compensation) for breach of trust by and against the First Defendant;
- (3) Such consequential relief by way of orders for reconstitution of those Trusts and/or the payment of equitable compensation or damages as such accounts and inquiries shall disclose;
- (4) Alternatively, an order that Mr Patel [i.e. Prakash] and/or Vimal make the payments specified under the Collateral Agreement [i.e. the Letter of Assurance] and the Further Agreement or pay damages equivalent thereto;

...”<sup>1</sup>

39. By his Answer dated 29 December 2023 in the Jersey proceedings, Vimal, on his own behalf and on behalf of Prakash’s estate, denies the plaintiffs’ claims against him. He avers: that the obligations in the Letter of Assurance “are revocable in the event that the Plaintiffs breach the contract which the Letter of Assurance formed a part of” (paragraph 12.1); that he and Prakash’s estate are “excused from paying any sums said to be due pursuant to the Letter of Assurance (as varied [that is, by the discharge of the mortgage and the letter of 18 June 2018]) because the Plaintiffs are, by these proceedings, in breach of the contract [of] which the Letter of Assurance formed part”; and that, in the circumstances, “until such time as the Plaintiffs’ substantive claims have been determined by the Royal Court, it would be unjust for the Second and Third Parties to make any further payments pursuant to the Letter of Assurance (as varied) when the validity of the same is in issue by the Plaintiffs’ own proceedings” (paragraph 12.8). Vimal also counterclaims, on behalf of himself and Prakash’s estate, for repayment of the sum of £816,120 in the event that the disclaimers and indemnity are avoided:

“15.3 In the event that the Disclaimers and Indemnity are set aside / avoided on any of the bases advanced by the Plaintiffs in their AOJ [Amended Order of Justice] (including whether, for the avoidance of doubt, on the basis of the alleged conduct of any of the Defendants) the Second and Third Defendants claim for damages in the amount of GBP816,120.04 (the Assurance Payment) being the sums paid pursuant to the Letter of Assurance (as varied).

15.4 It is averred that the Second and Third Defendants are entitled to repayment of the Assurance Payment on the basis that it was part of the consideration paid to the First and Second Plaintiffs in exchange for their execution of the Disclaimers and Indemnity.”

40. The plaintiffs’ Reply to Vimal’s Answer and Answer to his Counterclaim is dated 12 February 2024. Two points may be noted. First, concerning the Letter of Assurance the Reply says this:

“18.1 [I]t is no part of Mr Patel’s [that is, Prakash’s] and Vimal’s case in the English proceedings [that is, this case] that the Letter of Assurance was provided as consideration for the execution of the Disclaimers and Indemnity.

18.2.1. There was and is no term contained in the Letter of Assurance that allows Mr Patel and Vimal to withhold

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<sup>1</sup> I note that paragraph 59 of the Amended Order of Justice alleges that on 18 June 2018 Prakash “varied” the Collateral Agreement by agreeing to discharge the full mortgage debt instead of only the £500,000 originally promised. This appears to be an interpretation of the letter quoted at paragraph 23 above. The consideration for the variation does not appear to be identified in the pleading.

payment and no such term can be implied, and any such withholding of payment is itself a breach of contract.

18.2.2 There was and is no term contained in the Letter of Assurance that prohibits the Plaintiffs from challenging the validity of the Disclaimers and Indemnity. Such a term cannot be implied. Accordingly, there can be no breach of the Letter of Assurance if the Plaintiffs take steps to challenge or invalidate the Disclaimers and Indemnity.”

Second, the Answer to the Counterclaim says this:

“23. Paragraph 15.1 to paragraph 15.4 allege that the Maya and Mayur shall be liable to repay the sum of £816,120.04 to Mr Patel and Vimal if the Disclaimers and Indemnity are set aside or avoided.

24. Maya and Mayur deny that they are liable to repay the sum of £816,102.04 if the Disclaimers and Indemnity are set aside or avoided or at all and aver that the mortgage repayment in the sum of £816,120.04 was a gift, as described in the letter to the bank by the Second Defendant dated 29 June 2018.”

How that squares with Mayur’s evidence to me will be considered below.<sup>2</sup>

### **The Statements of Case**

41. In the present proceedings, the particulars of claim advance the claim on alternative bases:

- 1) Indemnity: that, having given the guarantees at Mayur’s request and having discharged their obligations under the guarantees by paying the moneys required to redeem the mortgage, Vimal and Prakash’s estate are entitled to be indemnified by Mayur as principal debtor.
- 2) Subrogation: that they are entitled to be subrogated to UBS’s rights against Mayur under the mortgage, including *inter alia* the right to repayment of the mortgage debt and the right to possession and sale of Garden Court.
- 3) Restitution: that, in circumstances where Vimal and Prakash gave the guarantees at Mayur’s request and were compelled to pay the moneys due under the mortgage, Mayur has been unjustly enriched at their expense and is required to make restitution of the moneys paid for his benefit.

42. The defence admits the relevant factual averments in the particulars of claim. However, it denies that Mayur has any obligation to reimburse Vimal and Prakash’s estate for the

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<sup>2</sup> The issues and statements of case in the Jersey proceedings are quite involved and I have sought only to provide a simplified survey of them and to identify the points of most relevance to the present case.

payment to discharge the mortgage, because the payment was a gift to Maya. The contention appears from the following extracts:

- “15.1. The Repayment was an express gift to Maya, Mumta and Priyanka. In instructing UBS to make the payment from the joint account of Mr Patel and Vimal, Mr Patel confirmed to the Bank that: ‘The amount is a gift to my daughter, Mrs Maya Patel, and her two daughters (Miss Mumta Patel and Miss Priyanka Patel) residing at [the Property]’. The Repayment gift was then applied to discharge the Mortgage.
- 15.2. By a letter of even date with instruction to UBS referred to above, Mr Patel informed Maya: ‘I ... would like to mention my disappointment that [Mayur] and yourself had not made any provisions regarding the mortgage with UBS for your house. Therefore, myself and Vimal have decided and given instructions to UBS today, to pay off the full mortgage amount ... This total amount is more than the GBP 500,000 ... I had offered. The additional amount ... will be deducted from the amount that myself and Vimal would try to make provision for both your daughters, Mumta ... and Priyanka ... The title deed is in the name of Mayur. You can decide whether you want it in your name or jointly with Mayur’.
- 15.3. Mr Patel was entitled to instruct payment from the account held jointly with Vimal and having instructed the Repayment to be made as a gift thereafter retained no cause of action to recover the said payment; paragraph 5 hereof above is repeated.
- 15.4. Vimal is not entitled to complain in these proceedings about Mr Patel’s decision to instruct and make the Repayment as a gift from their joint account and has no cause of action to recover the same from MP (or at all).”
- ...
- 16.3.1. By letter dated 27 December 2016, Mr Patel confirmed to Maya: ‘As discussed, myself and Vimal will make provision that both Mumta ... and Priyanka ... get US\$ 1 million each ... I am also making a provision of GBP 500,000 towards the mortgage of [the Property]. Both myself and Vimal will ensure that these monies ... will be given before 31<sup>st</sup> December 2019.’
- 16.3.2. Accordingly, the Repayment was no more than the fulfilment of the above promised gift to Maya and Mr Patel’s grandchildren.



...

21. Paragraph 21 is denied. Subrogation requires an intention to keep the security alive in respect of the debt when it is discharged. There was no intention to keep the security alive in the circumstances adumbrated above. The Repayment was a gift.”
43. The reply denied that the payment to discharge the mortgage was a gift. In the alternative, it said that any gift was to Maya, not to Mayur, and that the claimants were entitled to relief against Mayur.

### **Relationship with the Jersey Proceedings**

44. In his detailed judgment dated 13 January 2023 in respect of the plaintiffs’ second application to amend their pleadings in the Jersey proceedings, Advocate Matthew John Thompson, Master of the Royal Court, said at paragraph 120:

“120. I wish to add that I was satisfied that it remains proper to grant permission to serve Mr Patel and Vimal out of the jurisdiction as set out in the July [2022] judgment at paragraphs 132 and 133. This was a position that was clear at the hearing itself leading to the July judgment. The fact that Vimal on his own behalf and as executor of Mr Patel’s estate subsequent to the July judgment has started proceedings in England in relation to matters that appears to be covered by the Letter of Assurance is not a basis to cede jurisdiction to the English Court. The issues raised in those proceedings overlap with issues already before me and which Advocate Evans [for Vimal] had not challenged should not be heard before me. The English proceedings therefore appear to be tactical in nature and, while it is a matter for the English Court, I am concerned they are an abuse of process designed to open up an overlapping dispute in two jurisdictions. The issues raised by this case insofar as permitted by this decision require resolution in a single court. I am satisfied that court is Jersey as the court first seized of the overall dispute between the plaintiffs and Mr Patel and Vimal (and the defendant as trustee).”

45. Mayur made no application for the present proceedings to be stayed or struck out as an abuse of the process of the court.
46. What actually happened was that, when shortly before trial Vimal sought to include the pleadings in the Jersey proceedings in the trial bundle, Mr Virgo on behalf of Mayur objected at the commencement of the trial on the grounds that this would result in an abuse of process by the trial of issues that are unpleaded in the current proceedings (in particular, the contention that the Letter of Assurance was given in consideration of the disclaimers regarding the trusts) but that are before the Royal Court of Jersey. I rejected that objection, essentially because I could see no good reason why I should not know

what Mayur and Vimal were saying in the Jersey proceedings and because the question of what was being said by the parties in the Jersey proceedings was distinct from the identification of the issues in the present proceedings. Nothing has caused me to alter my view that it was both convenient and right that I should see what was being said in the Jersey proceedings. Indeed, I have come to the view that there would have been some danger in proceeding in ignorance of what was happening in Jersey.

47. However, having had the opportunity to read and consider the pleadings in the Jersey proceedings, I confess to finding some difficulty in the current situation, not because I am driven beyond the pleaded issues but because the overlap identified by the Master of the Royal Court seems to me to be clear. I shall address this difficulty below.

### **Discussion**

48. Whatever the procedural problems, I regard the substantive position in the case as straightforward.
49. Prakash and Vimal guaranteed Mayur's debt to UBS at Mayur's request and discharged that debt in accordance with their guarantees. Accordingly they are *prima facie* entitled to an indemnity from Mayur as principal debtor. That is the primary way in which the present claim is advanced.
50. The pleaded defence to the claim is that the payment to UBS was a gift to Maya, such as to exclude the right to an indemnity. I have no hesitation in rejecting that defence. It is obviously a misrepresentation of the facts and places more weight on the use of the word "gift" in Prakash's payment instruction to UBS than it can bear.
51. Prakash explained his position regarding recoupment of the payment both in the email that he sent to Mayur and Maya on 21 June 2018 (paragraph 23 above), which was before the payment, and in the letter he sent to Maya on 29 June 2018 (paragraph 27 above), which was after he had given the payment instruction. One would have thought that that position was clear enough. The payment was not a gift to Maya in the sense of a gratuitous present, independent of any other legal or moral obligation. It was indeed going to be recouped. But the recoupment was not expected to be by receiving a payment of money. Rather, the money paid to UBS was being treated as (a) as to £500,000 discharge of the payment that had been promised to Maya in respect of the mortgage in the Letter of Assurance and (b), as to the balance, in partial substitution for the moneys that Maya had been promised would be paid to Mumta and Priyanka (so that, in effect, Maya and Mayur would be left to make up the balance of any further provision to their children, having themselves received the equivalent money through the discharge of the mortgage).<sup>3</sup>
52. There was no question of the discharge of the mortgage being *in addition to* the moneys promised in the Letter of Assurance. Mayur understands that perfectly well, as he accepted in his evidence to me. He said that the Letter of Assurance was given in return for the agreement to sign the disclaimer and indemnities. He also accepted that, if the Letter of Assurance remains in force, the payment made to discharge the mortgage will stand as part payment of the obligations in the Letter of Assurance. That acceptance

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<sup>3</sup> This sufficiently indicates my view of the interpretation advanced in paragraph 59 of the Amended Order of Justice, referred to in the footnote to paragraph 38 above.

was given without any attempt at evasion and is clearly correct. When it was put to him that the case he was advancing in the Jersey proceedings was that Prakash and Vimal were obliged to pay the full \$1m to each child in addition to the full amount paid to discharge the mortgage, he said that he had not understood that he was advancing such a case.

53. The position, accordingly, is that Prakash and Vimal did not make a gift and did not give up their right to an indemnity, but they intended to receive their indemnity through treating the payment under the guarantees as partial performance of the obligations in the Letter of Assurance.
54. Mr Virgo's skeleton argument for this trial seems to object that an analysis along these lines must rest on the basis of a case that Vimal has not pleaded. It does not: it rests on rejection of Mayur's contention that the payment to UBS was a gift. As a matter of fact, everyone in this dispute accepts that the Letter of Assurance created not only moral but also legal obligations. The wrinkles are essentially twofold: first, Mayur and Maya are seeking in Jersey enforcement of the Letter of Assurance *in the alternative to* their primary claim to set aside the disclaimers and indemnity for which it was the consideration, on the basis that the disclaimers and indemnity and the Letter of Assurance must stand or fall together (though their case seems in this regard doubtfully consistent: compare the Answer to the Counterclaim with the Amended Order of Justice); second, Vimal (who properly accepts the premise that the disclaimers and indemnity and the Letter of Assurance stand or fall together) alleges in Jersey that Mayur and Maya are, in effect, in repudiatory breach of the Letter of Assurance.
55. The issues raised by those wrinkles do not fall for determination by me. They are matters for the Royal Court of Jersey.
56. However, I am left with the question of what to do while the Jersey proceedings are ongoing. If the disclaimers are set aside, the obligations in the Letter of Assurance must fall; in those circumstances, the right to be indemnified by Mayur as principal debtor will mean that Vimal is entitled to recover judgment for the amount claimed. If the disclaimers are not set aside, then *prima facie* the obligations in the Letter of Assurance will remain in force; in that event, Prakash and Vimal will be treated as having already been indemnified, because the payment to UBS will stand as partial payment of the obligations in the Letter of Assurance. (There may be other possible twists to these simple alternatives, but these are enough to be going on with.)
57. In these circumstances, having reached my conclusions that the payment to UBS was not by way of gift and that the right to indemnity survives in principle, I consider it best to adjourn consideration of the appropriate terms of the order, including the precise nature of any relief, until after the determination of the Jersey proceedings. This course, which seems to me to be sensible for the reasons indicated, has the added benefit of obviating the risk that a judgment in this litigation will adversely affect Mayur's and Maya's ability to pursue the Jersey proceedings.