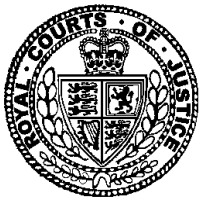

CR-2016-008560

Neutral Citation Number: **[2023] EWHC 2384 (Ch)**

Case No: CR-2016-008560

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

Date: Double-click to add Judgment date

Before :

JOANNE WICKS KC
sitting as a Deputy Judge of the High Court

- -

Between :

(1) JOANNA LEMOS
(2) MIRIAM NICHOLS
(3) KEVIN JOHN HELLARD

Claimants

- and –

(1) CHURCH BAY TRUST COMPANY LIMITED
(2) RODERICK FORREST
(3) KALLIOPI LEMOS

Defendants

- -
- -

Tony Beswetherick KC (instructed by **Gowling WLG LLP**) for the **Claimants**
Thomas Elias and Andrew Gurr (instructed by **Withers LLP**) for the **Third Defendant**

Hearing dates: 22 June – 4 July 2023

- -

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10:30am on 27th September 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

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JOANNE WICKS KC sitting as a Deputy Judge of the High Court:

Introduction

1. This is a claim under section 423 of the Insolvency Act 1986, which gives the court the power to grant relief in respect of transactions entered into for the purpose of putting assets out of the reach of, or otherwise prejudicing, creditors. It relates to transactions carried out in 1994 by Christos Pandelis Lemos and his wife, Kalliopi, relating to a Liberian company which then owned their matrimonial home, 27 and 27A Bracknell Gardens, London, NW3 7EE ("**the Property**"). Christos was made bankrupt on 11 March 2015 on his own petition, following judgment having been obtained against him in Jersey for approximately US $18 million by Joanna Lemos, his sister. In this judgment I shall generally refer to family members by their first names, without intending to be disrespectful.

2. This claim was commenced on 21 December 2016. Originally, Joanna was the only claimant, but by an order dated 10 March 2021, Mr Lemos' joint trustees in bankruptcy, then Michael Thomas Leeds and Kevin John Hellard (both of Grant Thornton UK LLP – "**Grant Thornton**"), were joined as Second and Third Claimants. Miriam Nichols of Grant Thornton was substituted for Mr Leeds as Second Claimant upon becoming a joint trustee in bankruptcy in his place.

3. The original defendants to the claim were Church Bay Trust Company Limited, a Bermudan company, and Roderick Forrest ("**the Trustees**"), who are trustees of the Kalliopi Lemos 1994 Settlement ("**the KL 1994 Trust**"). The Trustees remain First and Second Defendants but by an order made on 9 March 2017, Kalliopi, as the principal beneficiary of the KL 1994 Trust, was joined as a Third Defendant. She is now the active defendant to the claim, the Trustees taking a neutral position and not having appeared or been represented at the trial.

4. The Property is a large and valuable property in Hampstead, London. On 14 July 1981, 27 Bracknell Gardens was purchased by a Liberian corporation, Panagia Diafylatousa Corporation ("**Panagia**"), which had been incorporated shortly before. On 16 December 1992, the neighbouring property, 27A Bracknell Gardens, was purchased by Panagia from another Liberian company associated with the Lemos family, Nandina S.A. ("**Nandina**"). The two properties were combined and underwent a refurbishment project, including the creation of an art studio for Kalliopi on 27A. I shall refer to the Property as "27 Bracknell Gardens" (or 27) before 1992 and "the Property" following the acquisition of 27A.

5. A central issue in these proceedings is whether, in 1994, Christos had a beneficial interest in Panagia. The Claimants contend that he was the sole beneficial owner of the share or shares in Panagia, or at least a joint (or 50%) beneficial owner with Kalliopi. Kalliopi contends that she was the sole beneficial owner of Panagia, or at least that Christos had no beneficial interest in the corporation. One of the matters in dispute is how many shares in Panagia had been issued by 1994, but it is common ground (a) that Panagia's Articles of Incorporation authorised the issue of 500 bearer shares without par value and (b) that on 24 June 1981 the original subscriber, S.B. Goweh, assigned to Christos all his right, title and interest in Panagia resulting from his subscription to the extent of one share ("**the Transfer of Subscription**").

6. On 22 June 1994, Christos made a Declaration of Trust ("**the Declaration of Trust**"). This recited:

> "(1) By virtue of a Transfer of Subscription ("the Transfer") dated 24 June 1981 S.B. Goweh sold assigned and transferred to [Christos] all his right title and interest as individual subscriber in and to one share of the common stock of [Panagia]
>
> (2) [Christos] wishes to declare that he holds and has since 24 June 1981 held all his interest in [Panagia] as follows"

The deed continued:

> "NOW THIS DEED WITNESSES AND [Christos] HEREBY DECLARES and CONFIRMS that he has at all times since 24 June 1981 held all his right title and interest in and to the share transferred by the Transfer and in and to all (if any) other shares in the common stock of [Panagia] UPON TRUST for [Kalliopi] absolutely and has exercised and will at all times in the future exercise at her direction all powers in connection with all such stock".

7. On the same day as the Declaration of Trust, a minute of Panagia's board records that Kalliopi, as Panagia's President/Director, reported:

> "that she herself had subscribed and paid for all the 500 shares in the Corporation's Capital Stock and that the relative Bearer Share Certificate or Certificates had either been lost or had never been issued and requested that the Corporation issue a fresh Bearer Share Certificate for the whole amount of the 500 shares in the Capital Stock of the Corporation."

It was resolved to issue a fresh bearer share certificate for 500 shares. That certificate was duly issued. By a memorandum dated 18 August 1994, the then trustee of the KL 1994 Trust recorded acceptance from Christos, as nominee for Kalliopi, of the 500 shares in Panagia as an addition to the trust fund.

8. It is not in dispute that following these events ("**the 1994 Transactions**"), Christos had no legal or beneficial interest in Panagia. Upon issue of the fresh bearer share certificate and its transfer to the trustees of the KL 1994 Trust, he ceased to have any legal interest in any of the shares in Panagia. To the extent that he had any beneficial interest prior to the 1994 Transactions, it is agreed that the Declaration of Trust was effective to create him a trustee of that interest for Kalliopi.

9. It is also common ground that Christos received no consideration for the Declaration of Trust.

10. The Claimants' case is that, by making the Declaration of Trust, Christos made a gift of his interest in Panagia to Kalliopi. They say that the purpose of making that gift was to put Christos' interest in Panagia out of the reach of his future creditors.

11. Kalliopi's case is that the Declaration of Trust correctly declared that any interest Christos may have had in Panagia had been held in trust for her since 1981. She says that the purpose of the 1994 Transactions was to create clear lines of demarcation between her assets and those of Christos.

12. It is an unfortunate feature of this dispute that it has taken a long time to come to trial. As I have said, Joanna obtained a judgment against Christos in Jersey on 16 January 2015. It was a default judgment. The essence of the claim was that Joanna had given Christos money to invest on her behalf which, unbeknownst to her, he had in fact put into his own shipping business and which had been lost. On 19 December 2014, in proceedings brought by Joanna in support of the Jersey proceedings, Popplewell J granted a worldwide freezing order against Christos and an asset restraint order against the Trustees over the Property, on the basis that the Trustees arguably held the Property for the benefit of Christos and a judgment in favour of Joanna might be enforced against it. The freezing injunction and asset restraint order were subsequently continued by King J, without prejudice to the Trustees' right to apply to discharge the latter. The Trustees successfully applied to discharge the asset restraint order, Cooke J finding that there was insufficient reason to suppose that Christos had an interest in the Property. However, that decision was appealed to the Court of Appeal, with the discharge of the injunction suspended pending the appeal: *Lemos v Lemos* [2016] EWCA Civ 1181; [2017] 1 P & CR 12. The Court of Appeal agreed that there was insufficient evidence that Christos had any beneficial interest in the Property after the 1994 Transactions. However, it held that it was well arguable that Christos did have an asset in 1994 which he then disposed of and that he did so for the purpose of putting the asset beyond reach of a future creditor, so as to engage s.423. Consequently, the Court of Appeal maintained the injunction for a short period to allow these proceedings, claiming relief under s.423, to be commenced. Since these proceedings were commenced in December 2016 progress has been slowed by various contested applications and a lengthy stay for settlement discussions. The consequence is that the family members involved have lived with the stress, uncertainty and costs of litigation for some considerable time. Christos is now 76 years old and suffers from Parkinson's disease. Kalliopi and Joanna are both 71.

13. Christos was discharged from bankruptcy on 12 March 2017, his automatic discharge having been suspended by Registrar Derrett on 2 March 2016 on the basis that he had failed to co-operate with his trustees in bankruptcy.

s.423 Insolvency Act 1986

14. Section 423 relevantly provides:

> "(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…
>
> (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…
>
> (5) In relation to a transaction at an undervalue, references here…to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it…"

15. Section 436(1) provides that (unless the context requires otherwise) "transaction":

> "includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly".

16. To satisfy s.423(3), it is only necessary to establish that putting assets beyond the reach of a person who is making or may make a claim, or causing prejudice to creditors, was a purpose of the transaction. It does not have to be the sole or dominant purpose, but it is not sufficient if it is merely a by-product or consequence of the transaction: *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176 at [8] – [16]. The prohibited purpose is a question of fact to be proved, not a matter of presumption. It is a question of subjective intention: the court has to be satisfied that the person entering into the transaction actually had the relevant purpose, not that a reasonable person in their position would have had it. On the other hand, the court may infer from the evidence that such a purpose existed even if that person denies it: *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542 at [86]; *Deposit Guarantee Fund v Frick* [2022] EWHC 2221 (Ch) at [53].

17. Mr Elias and Mr Gurr, for Kalliopi, referred me to Rose J in *BAT Industries Plc v Sequana SA* [2016] EWHC 1686 (Ch) at [517], who said:

> "The first limb of the section 423 purpose – putting assets beyond the reach of a person who is making or may at some time make a claim against him – has inherent in it the assumption that following the transaction, the person does not have sufficient funds remaining with him to satisfy the actual or potential claim made against him. If a person or company has plenty of assets left with which to meet the claim, then however many additional assets are gifted to people, he or it cannot have the section 423 purpose…"

Mr Elias and Mr Gurr did not contend that Rose J meant that there is a threshold or gateway condition to s.423, which has the effect that the statutory test cannot be satisfied in a situation where, after the impugned transaction, the debtor is left with sufficient assets to meet the liability owed to the victim: *Akhmedova v Akhmedova* [2021] EWHC 545 at [103], [104]. Rather, Mr Elias and Mr Gurr submitted that Rose J's comment provided a useful guide to particular circumstances in which it may be inappropriate to draw an inference that the prohibited purpose existed. It seems to me, however, that the enquiry into the purposes for which a transaction is entered into is highly fact-specific and generalising from the facts of any other case should be avoided.

18. By s.424, an application for an order under section 423 may be made by a trustee in bankruptcy or a victim of the transaction. In this case Joanna is an alleged victim of the transaction as a judgment creditor and the Second and Third Claimants are trustees in bankruptcy.

19. Section 425 sets out various types of orders which may be made under s.423. s.425(2) and (3) provide:

> "(2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order –
>
> (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
>
> (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
>
> (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction."

20. Section 423 has recently been considered by the Court of Appeal in *Invest Bank PSC v El-Husseini* [2023] EWCA Civ 555. The court confirmed that there can be a "transaction" for the purposes of s.423 even where the asset which is alleged to have been disposed of at an undervalue was not beneficially owned by the disponor at the point of disposition: see Singh LJ at [56]-[67]. Nevertheless, in the context of the facts of this case, the question whether Christos had a beneficial interest in any of Panagia's shares is clearly highly relevant to the question whether he acted for either of the purposes set out in s.423(3) and to the question whether the court would exercise its discretion to grant any relief. It is the issue which was identified as of critical relevance to this particular case by Longmore LJ in *Lemos v Lemos*, above, at [24], which is expressly referred to by Singh LJ in *Invest Bank* at [91].

21. The parties are therefore agreed that there are three key issues for resolution, namely:

    i) whether Christos had a beneficial interest in Panagia when he made the Declaration of Trust;

    ii) whether, in making the Declaration of Trust, he acted for either of the purposes in s.423(3); and

    iii) what, if any, relief, should be granted.

Witnesses

22. I heard evidence from Joanna, Prashan Patel of Grant Thornton and Mr Leeds on behalf of the Claimants and from Kalliopi, Christos, Kalliopi's sister, Kyriakoula Magkou (known as Koula), and Murray Hallam, a retired solicitor formerly of Withers, on behalf of the Defendants.

23. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 at [15]-[22], Leggatt J drew attention to the fallibility of human memory, its tendency to be affected by the litigation process itself and the shortcomings of cross-examination which assumes that there is a clear distinction between recollection and reconstruction or that witnesses can tell whether they are remembering events or reconstructing them. In this case, the events in 1994 took place 29 years ago, with 27 Bracknell Gardens having been purchased over 40 years ago. The historic nature of the events under scrutiny is clearly significant when considering the reliability of oral evidence and I have borne that firmly in mind when evaluating the evidence.

24. Joanna gave evidence in English but with the occasional assistance of a Greek interpreter. She was a patently honest and careful witness. She gave clear, candid answers to the questions she was asked and frankly acknowledged points against her interest. In particular she acknowledged that she had no direct knowledge of the arrangements under which the Property had been acquired; she had assumed that it was jointly owned by Christos and Kalliopi because it is the matrimonial home and had assumed that it was purchased, in whole or part, with Kalliopi's dowry as that reflected her own experience and that of friends in a similar position in the Greek shipping community. Joanna became emotional when giving evidence about the loss of her investments and her feelings of betrayal by a brother she trusted: it is very much to her credit that she did not allow these emotions to colour the evidence she gave about the issues in this case.

25. Mr Leeds and Mr Patel gave evidence in a professional capacity on a specific point, namely an interview with Christos on 12 May 2015. They were courteous, professional and doing their best to assist the court.

26. Kalliopi gave her evidence in a measured way. I accept her as generally telling the truth as she recalls it, but Mr Beswetherick KC, for the Claimants, was able to demonstrate that some of the details in her witness statement were inaccurate. Her evidence is likely to be affected, not only by the distance in time of relevant events, but also by having had discussions about them with Christos and others over a long period. I have treated Kalliopi's evidence as reliable in so far as she recalls overall impressions and the general nature of relationships, but I approach her evidence on the details with caution.

27. Whilst I accept much of Christos' evidence as honestly given, his memories are also inevitably affected by reconstruction and the effects of repeated discussions with Kalliopi and others about relevant events and documents over the years since his bankruptcy. Christos was also acutely aware of the need to maintain the line that the Property and Panagia were Kalliopi's, not his, and this led him to adopt some absurd positions, such as that he could not permit his trustees in bankruptcy or a lender access to the Property without Kalliopi's consent. As a consequence, I have treated Christos' evidence with caution where it is not supported by other credible evidence.

28. Kalliopi's sister, Koula, was a fair-minded and frank witness. She readily acknowledged her desire to support her sister, but said that would not lead her to lie to the court, which I find to be true. She claimed to recall a number of conversations with her parents whilst living with them at around the time 27 Bracknell Gardens was purchased. I accept that she can remember the overall gist of the discussions and the impressions she had about her parents' intentions for 27 Bracknell Gardens as a consequence of them, but am doubtful that she can reliably recall anything more than an overall impression.

29. Murray Hallam was a solicitor and partner at Withers at the time of the 1994 Transactions. He has no personal interest in the outcome of this litigation and I find he was a truthful and helpful witness. Again, it is unsurprising that he could not recall all the details of events: indeed, as a busy solicitor it would not have been surprising if at this distance in time he could remember nothing at all. However, I consider he had a good memory of the overall thrust and purpose of the 1994 Transactions. Mr Beswetherick's submission that Mr Hallam did not always distinguish fully between remembering something happening and deducing that it must have happened was a fair one, but did not affect the general quality of his evidence.

Documentary Evidence

30. Given the distance in time of relevant events, it is unsurprising that the documentary record is also not complete. There were three main categories of documentary evidence available to the court: (a) family correspondence and diaries; (b) solicitors' correspondence and notes relating to relevant transactions and (c) the corporate records of Panagia.

31. As to the third category, it is apparent that the minutes of meetings and other corporate documents are not complete and are inconsistent. It is clear that the directors of Panagia from time to time attached little importance to corporate decision-making. Minutes of meetings were prepared by solicitors whenever that was necessary for the purposes of a particular transaction involving Panagia; some were signed, some were not, but I very much doubt that any meeting was anything more formal than a quick discussion between family members wherever they happened to be. The minutes were not kept securely or in the same place: whilst there is in evidence a set of documents kept together in a plastic file entitled "Minute Book Certificate Book and Stock Ledger of Panagia Diafylatousa Corporation" ("**the Minute Book**"), not all of the corporate documents which have been disclosed had found their way into that file. It is very likely that when solicitors drew up some of the minutes of meetings they did not have all the relevant prior documents before them, leading to mistakes. For these reasons, although the corporate documents are obviously of potential significance, in my judgment the other contemporaneous documents are more likely to be a reliable guide to what was

intended at any particular point in time. That is the only relevance of the minutes and other documents: there is no issue for me to resolve about the validity of decisions apparently made on Panagia's behalf.

Authenticity of Documents: Procedural Issues

32. The Claimants served two notices to prove documents pursuant to CPR 32.19: a first dated 10 May 2023 requiring proof of five documents, a second dated 8 June 2023 requiring proof of a further two. The circumstances in which the various documents came into existence were addressed in Christos' and Kalliopi's witness statements.

33. During the trial, authenticity was admitted of all but two of the challenged documents. The first is a document which appears to be a photocopy of a letter in Greek dated 25 March 1982 written on notepaper headed with the address of 27 Bracknell Gardens, with a wet ink signature placed within a handwritten execution block giving the date of 29 March 1982 on the back ("**the 25 March 1982 letter**"). The 25 March 1982 letter may have been referred to in a Withers meeting note dated 18 April 1997 ("**the Withers 1997 meeting note**"). The second is a document which appears to be a handwritten letter in Greek dated 29 August 1992 ("**the 29 August 1992 letter**"). It is relevant to note that the 29 August 1992 letter was disclosed late, on 31 May 2023, only some three weeks before the commencement of the trial. In a letter dated 12 June 2023, Kalliopi's solicitors explained that a copy of it had been emailed to them by Christos, at Kalliopi's request, on 26 October 2021 but it had not been included in Extended Disclosure through an oversight.

34. During opening submissions it became apparent that there was an issue between the parties as to whether the service of the notices to prove (whether taken by themselves or with the parties' pleaded cases and/or correspondence) were sufficient to permit Mr Beswetherick to put to the Claimants' witnesses in cross-examination an allegation that any of the challenged documents had been forged. On Day 3 of the trial, I was told that the parties had reached an agreement as to handling this issue: although Mr Elias maintained his objection to any such questions being put to his witnesses, neither party asked me to make a general ruling in advance of the cross-examination (at which time the particular questions to be asked would not be known) or specific rulings on particular questions as they were put (which would disrupt the giving of evidence). Rather, it was agreed that Mr Beswetherick would put the questions he wished to, on the basis that Mr Elias would be treated as objecting to them and both parties could make submissions as to the appropriateness of the questions asked and the weight to be attached to any evidence given in response to them. This approach was in the circumstances a sensible and pragmatic one, avoiding any potential difficulty which might arise if I excluded evidence which a higher court subsequently found I should not have done.

35. In the event, for the reasons given below, I have concluded that both the 25 March 1982 letter and the 29 August 1992 letter are authentic and are not forgeries. Consequently, determination of this procedural issue does not affect the findings I make. However, as Mr Elias' objection to the line of cross-examination was fully argued, I shall set out my views on it.

36. CPR 32.19 says:

> "(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.
>
> (2) A notice to prove a document must be served-
>
> (a) by the latest date for serving witness statements; or
>
> (b) within 7 days of disclosure of the document.
>
> whichever is the later."

37. It will be noted that CPR 32.19 says nothing about setting out any grounds on which the authenticity of a document will be challenged: it is satisfied if a notice is given, as in the present case, which merely states that the party giving the notice wishes the document to be proved.

38. For Kalliopi, Mr Elias' submission was that a notice to prove is equivalent to the non-admission of a fact: it requires the party served with the notice to adduce evidence as to how the document came into existence. It permits the server of the notice to challenge that evidence, but not to make a positive allegation of forgery. He submitted that the Claimants had not squarely raised an allegation of forgery of either letter in their pleaded case or in correspondence and that it was unfair in the circumstances for Mr Beswetherick to be permitted to spring one on his witnesses in cross-examination. For the Claimants, Mr Beswetherick submitted that service of a notice to prove allowed the server to put an allegation of forgery in cross-examination; that the 25 March 1982 letter had been addressed in the pleadings and Kalliopi well understood that its authenticity was being challenged. He drew attention to the late disclosure of the 29 August 1992 letter and submitted that it would be absurd for his clients to have to seek to amend their pleadings to respond to it. By a letter dated 23 June 2023, after the trial had commenced but before Kalliopi and Christos gave evidence, Gowling WLG (UK) LLP ("**Gowlings**"), acting for the Claimants, set out their clients' position on the creation of each document.

39. In support of his submission about the effect of a notice to prove, Mr Elias drew my attention to *Redstone Mortgages Ltd v B Legal Ltd* [2014] EWHC 3398. This was a case concerning allegations of professional negligence against conveyancing solicitors, B Legal, by a purchaser of residential mortgage-backed securities, Redstone. The original lender had instructed B Legal to act for it on various mortgage transactions, including a mortgage offer made to a Mushtaq Sher. The property to be mortgaged was described in the application and offer as "38 North Road" but the registered title referred to a property known as "36 and 38 North Road". Consequently, there was doubt about whether the property to be mortgaged was the whole of the registered title, or only part of it. In B Legal's file was a memorandum dated 22 February 2006, apparently written to an employee of the lender, indicating that the seller's solicitors had said that the transaction was of only part of the registered property, advising that the lender might refer the matter to its valuer and asking for confirmation about the position. In the event, the mortgage was taken over only 38 North Road, which proved to be only part of a single dwelling, Nos. 36 and 38 having been knocked together.

40. In its Defence to the claim, B Legal relied upon the memorandum. In the Reply, Redstone did not admit whether B Legal had made any report to the lender in the form of the memorandum. Redstone served a notice to prove under CPR 32.19 but did not plead any positive case that the document was forged or lead any evidence seeking to establish that it was false. In cross-examination, however, it was suggested to B Legal's witness (who was not the apparent author of the memorandum) that the document "had been created subsequently" and inserted into the firm's file after a copy of that file had been sent to its insurers: the witness answered "certainly not". It does not appear that Counsel for B Legal objected to the questions being put.

41. Norris J said, at [57] and [58]:

> "Requiring a party to 'prove' a document means that the party relying upon the document must lead apparently credible evidence of sufficient weight that the document is what it purports to be. The question then is whether (in light of that evidence and in the absence of any evidence to the contrary effect being adduced by the party challenging the document) the party bearing the burden of proof in the action has established its case on the balance of probabilities. Redstone cannot (by a refusal to admit the authenticity of a document) transfer the overall burden of proof onto B Legal, any more than it could do so simply by refusing to admit a fact.
>
> The question is therefore whether any evidence as to the provenance of the document has been produced, and it if has then whether (although not countered by any evidence to the contrary) such evidence is on its face so unsatisfactory as to be incapable of belief. It is vital that the process of challenge is fair. Criticism of the evidence about the authenticity of the document cannot amount to a covert and unpleaded case of forgery. If a case of forgery is to be put then the challenge should be set out fairly and squarely on the pleadings (and appropriate directions can be given). If the charge is that a witness has forged a document (or has been party to the forgery of a document) and the grounds of challenge have not been set out in advance, then if the questions are not objected to the response of the witness to the charge must be assessed taking into account the element of ambush and surprise."

At [70], Norris J held that the points made by Redstone about the provenance of the memorandum did not destroy the apparent credibility of B Legal's witness so as to relieve Redstone of the burden of proving on the balance of probabilities that it was not properly advised as to the extent of the security. He continued:

> "Redstone must prove on the balance of probabilities that Beacon was not advised by B Legal: and it has not done so. The question now is: did the [memorandum] discharge B Legal's duty of care?"

42. Mr Beswetherick sought to argue that the significance of *Redstone* lies in Norris J's finding that the challenge to the authenticity of a document does not have the effect of reversing the overall burden of proof. However, in my judgment Mr Elias is right to submit that the proposition set out by Norris J goes further than that. It is clear from

[57] and [58] that he did not consider the mere service of a notice to prove to be sufficient to allow allegations of forgery to be made. He expected any such allegations to be set out squarely in advance, so that appropriate directions could be made. This is also the view taken by Grant & Mumford, Civil Fraud (1st edn, 2018), who draw from *Redstone* the proposition that:

> "mere service of a notice under r.32.19 is not sufficient if a party intends to allege deliberate forgery."

43. Norris J's approach is in my view consistent with the overriding objective that cases must be dealt with justly, which includes ensuring that the parties are on an equal footing and that witnesses can give their best evidence (CPR 1.1(2)(a)) and that cases are dealt with fairly (CPR 1.1(2)(d)). It is a principle of pleading that a party who wishes to advance a positive case as to a particular fact must set that out and must give reasons for the denial of any allegation (see Chancery Guide, para. 4.2(g)): this is to ensure that the other parties may know the case they have to meet and can address evidence to it accordingly. A challenge to the authenticity of a document involves a challenge to particular facts about that document, such as by whom it was created or signed and when. It would in my view be inconsistent with the approach taken to pleaded facts not to require a party who wishes to advance a positive case about facts relevant to authenticity to set out that case in advance, so that the opposing party can call evidence, including if appropriate expert evidence, to meet that case. That is particularly so where the positive case which is to be made is one involving an allegation of dishonesty, as an allegation of forgery does.

44. In support of his arguments to the contrary, Mr Beswetherick referred me to the Court of Appeal decision in *Eco3 Capital Limited v Ludsin Overseas Limited* [2013] EWCA Civ 413. The claim was that the claimant had been induced to invest £2m in a project by misrepresentation about crucial features of that project. A property was to be acquired by one company for £9.5 million, certain restrictions cleared, and then sold to another company for £12.25 million: this structure was referred to as the "two tier structure" and the difference between the £9.5 million and the £12.25 million as "the differential". The claimant's contention was that it did not know about the two-tier structure and the differential. The second defendant, Dr Shadrin, disclosed a document which purported to be a diary extract dated 12 August 2005 with a note of a conversation in which Dr Shadrin had told the claimant's representative about the two-tier structure and the differential. No notice to prove was served under CPR 32.19. During opening submissions, Counsel for the claimant submitted that the document was a forgery; this submission was objected to by Counsel for one of the defendants, but Counsel for Dr Shadrin did not make any objection to the questions put until closing submissions. The judge held that the 2005 diary note was either made at the time and inaccurate or was added later into the diary on blank pages and that, contrary to the note, Dr Shadrin had not disclosed the two-tier structure or the differential. On appeal, Dr Shadrin and the company he controlled contended that the judge ought to have held that the diary note was correctly dated and accurate because no notice under CPR 32.19 had been served. Jackson LJ, with whom McFarlane and Arden LJJ agreed, rejected this ground of appeal at [100]-[111]. He noted that the judge had held that there were two possible alternatives, one of which (namely that the note had been written on 12 August 2005, but was inaccurate) did not involve a challenge to authenticity. As regards the alternative contention (namely that Dr Shadrin had written the note at a later date

on two blank pages which happened to be at the right place in his diary and dated it 12 August 2005), that was an allegation of forgery. However, Counsel for Dr Shadrin had not objected to the line of cross-examination and it was too late to do so in closing submissions. At [108] Jackson LJ said:

> "If Mr Bishop intended to hold the claimant to the deemed admission, he should have objected to that line of cross-examination. If he had done so, the judge would then have had to decide whether to allow the claimant to withdraw the deemed admission. I incline to the view that the judge would have allowed withdrawal, because that would not cause prejudice to the defendants. However, there was no objection raised by Mr Bishop, so the issue did not arise."

Mr Beswetherick argued that the *Eco3* case demonstrates that it is wrong to suggest that an allegation of forgery must be pleaded. There is no suggestion in the Court of Appeal decision that it was the absence of a pleaded case of forgery which was the barrier to raising an allegation that the diary note had been forged or that the judge would have had to consider an application to amend as part of an application to withdraw the deemed admission.

45. I do not consider that *Eco3* assists on the question of the lines of cross-examination which are permitted if a notice to prove is given. No such notice had there been served, so the issue did not arise. I agree with Mr Beswetherick, however, that it is not always appropriate for an allegation of forgery to be pleaded and the approach of the Court of Appeal in *Eco3* assists him in that respect. As paragraph 4.2(e) of the Chancery Guide makes clear, the function of statements of case is to set out the factual allegations necessary to establish a cause of action, defence or point of reply, it is not to plead evidence. Many documents which might be the subject of a notice to prove will not need to be pleaded as their contents are merely evidence of a pleaded fact. Thus on the facts of the *Eco3* case, one would expect to see Dr Shadrin and his company plead the conversation allegedly recorded by the 2005 diary note, but not the diary note itself. If a party challenging the authenticity of a document wishes to make a positive case as to how the document came to be created, including any allegation that it has been forged, then if it is not appropriate to plead out the allegation, it seems to me to be incumbent on that party to set out the allegation clearly in correspondence, either at the time of serving the notice to prove or at least in sufficiently good time to ensure that the challenged party has a fair opportunity to deal with it.

46. In the present case, the 25 March 1982 letter was referred to in the Court of Appeal in the case between Joanna, Christos and the Trustees (to which neither Kalliopi nor the trustees in bankruptcy were parties): see *Lemos v Lemos*, above, at [5]. In paragraph 20 of her Defence, Kalliopi pleaded the letter and the circumstances in which it was alleged to have been written and countersigned by her father. Further details were added when she amended her Defence. In response, paragraph 17 of the original Reply (filed by Joanna) denied some of the allegations and referred to the Withers 1997 meeting note. In paragraph 18 it continued:

> "In the premises, the [25 March 1997 letter] did not come to light until 1997, some 15 years after its purported creation. The Claimant has not seen the original of this letter and does not accept that it is genuine or that it was written on its purported date."

When the Reply was amended, following the joinder of the trustees in bankruptcy, a sentence was added:

> "It is not admitted that the letter was written by [Kalliopi] as alleged in paragraph 20(2)."

The Claimants' pleaded case on the circumstances in which the 25 March 1982 letter was created is therefore one of non-admission: there is no pleaded case that the letter was forged.

47. Moreover, there was correspondence about the provenance of the 25 March 1982 letter. By letter of 22 February 2023, Withers asked Gowlings whether the Claimants disputed the authenticity/provenance of the 25 March 1982 letter and, if they did, to explain precisely the basis on which they did so. By response of 8 March 2023, Gowlings stated that their clients could not at that time accept the authenticity of the March 1982 letter but required it to be made available for inspection. By letter of 16 March 2023, Withers responded offering an inspection of the document and saying, amongst other things:

> "By challenging the authenticity of the [25 March 1982 letter] you are clearly implying that the [25 March 1982 letter] has been fraudulently drafted. Once inspection of the [25 March 1982 letter] has taken place (as set out below), your clients will need to confirm their position in respect of the authenticity of the [25 March 1982 letter] (and all other handwritten documents) without delay."

48. Following the inspection, Gowlings stated in a letter of 31 March 2023 that they were not satisfied that the 25 March 1982 letter dated from as early as 1982 and referred to its "exceptionally good condition". Subject to taking instructions, Gowlings indicated that the document would need to be inspected by a forensic expert so that the paper and ink could be dated. The 25 March 1982 letter was examined by an expert, Mr Welch, on behalf of the Claimants. Having served the first notice to prove on 10 May 2023, Gowlings wrote on 23 May:

> "Thank you for providing the [25 March 1982 letter] for examination. Mr Welch has confirmed that his examinations of [the 25 March 1982 letter] were inconclusive; he has therefore not been able to provide a view as to the age of it….While our clients do not propose to rely on expert evidence at trial on this point, they remain concerned about the authenticity of [the 25 March 1982 letter], and (as you are aware), served a Notice to Prove Documents at Trial, pursuant to CPR 32.19 on 10 May 2023…Our clients' position in respect of the authenticity of the [25 March 1982 letter] remains reserved."

49. This was the state of play when the trial commenced. In my judgment the Claimants had not, either in their Amended Reply or in correspondence, done any more than required Kalliopi to prove the authenticity of the 25 March 1982 letter, i.e., in the words of Norris J in *Redstone*, to lead apparently credible evidence of sufficient weight that the document was what it purports to be. The Claimants had not raised a positive case about the creation of the document and in particular had not alleged that it had been forged by Kalliopi, Christos or anybody else. That was despite the express invitation to them in Withers' letters of 22 February 2023 and 16 March 2023 to set out their

position. Mr Beswetherick contended that Kalliopi knew full well that the document's authenticity was challenged because she had said in her first witness statement that the Claimants' allegations as regards the authenticity of documents were "extremely painful" to her and felt like a "personal attack on me and my father." But these statements acknowledging the emotional impact of the Claimants' refusal to admit the authenticity of the 25 March 1982 letter and other documents, which in the circumstances (as also recognised by Withers' letter of 16 March 2023) carried with it some unspecified implication of wrongdoing on the part of Kalliopi or Christos, are not a substitute for proper notice of an allegation of forgery with appropriate particulars. Whilst it is true that by their letter of 23 June 2023 the Claimants gave notice of the case they wished to make on the 25 March 1982 letter, I agree with Mr Elias that in the circumstances of this case, this came too late to enable the allegations to be addressed fairly at the trial. In particular, if Kalliopi had been informed earlier that it was suggested that she and Christos had been party to forging the 25 March 1982 letter, she may have wished to seek permission to call an expert witness herself to disprove that allegation or to have adduced other evidence, in particular in relation to the availability to her or Christos in 1997 of the headed notepaper on which the 25 March 1982 letter appears to have been written. Consequently, the late stage at which the allegations were raised caused prejudice to Kalliopi and, had I been asked to rule on the objection at the time, I would not have permitted Mr Beswetherick to ask questions of Kalliopi or Christos designed to show that they had been party to a forgery. Those questions having nevertheless been put, I have, in evaluating the responses given, borne in mind the fact that notice of the Claimants' allegations was first given by the letter of 23 June 2023. In any event I have concluded, for the reasons given below, that the 25 March 1982 letter was indeed created in 1982, not 1997.

50. As to the 29 August 1992 letter, this was disclosed very late and does not feature in either side's pleaded case. The first positive assertion from the Claimants came in the letter dated 23 June 2023, in which it was said that the Claimants' position was that although it was in Christos' handwriting (as it purports to be), the document had been created in connection with this litigation and backdated.

51. Given that the 29 August 1992 letter was disclosed at such a late stage, it is difficult for Kalliopi to maintain the position that she would have done anything differently had the allegations in the letter of 23 June 2023 been made earlier. For example, by the time the second notice to prove was served on 8 June 2023, the time for obtaining expert evidence to assist in dating the document had almost certainly already passed. Consequently, I do not see that the same prejudice to Kalliopi arises in respect of the 29 August 1992 letter and, had I been asked to rule on the objection at the time, I would have permitted questions to be asked of Christos and Kalliopi in line with the Claimants' case as outlined on 23 June. As it is, I have also concluded, for the reasons given below, that the 29 August 1992 letter was written on 29 August 1992 and was not created for the purpose of this litigation.

52. I will set out my reasons for finding that both letters are authentic documents below, at the appropriate stage in the chronology of my factual findings.

Family Background

53. Christos, Joanna and Kalliopi are from wealthy Greek shipping families originally from the island of Oinousses. Each family also had homes in Kefalari (Athens) and in

London. Christos is the oldest child of Captain Pandelis Lemos, known as Captain Leon, and his wife Aspasia. His siblings are Marigo, Joanna and George. Kalliopi is the eldest daughter of Captain George Yannis Nikolos and his wife Marika. Her sisters are Maria and Koula.

54. Christos and Kalliopi were married in a religious ceremony in Paris on 14 May 1972, having gone through a civil ceremony in London shortly before. Kalliopi was then 20, Christos 25. Kalliopi had been living in Kefalari; Christos was living in London and working for his father's shipping business.

55. Although their marriage was initially arranged between their parents, by the time of the wedding Captain Leon vehemently objected to it and, as a consequence, he and Aspasia cut off all ties with Christos, who was disinherited by Captain Leon and thrown out of his job in his father's business. A few years later Captain Leon also disinherited his other son, George. There was very little contact between Christos and his father from 1972 until Captain Leon's death in December 1989.

56. In contrast Kalliopi had, and Christos came to have, a close and loving relationship with her parents. Both the family correspondence and the witness evidence I heard demonstrated the warmth of regard and depth of respect Kalliopi and Christos had for Captain and Marika Nikolos. In 1975, Captain Nikolos found Christos a role in his newly-founded London company, GJ Nikolos & Co Ltd ("**GJN & Co**").

57. Captain Nikolos paid a dowry of £100,000 for Kalliopi upon marriage. This was put into a Liechtenstein entity, Establishment Chrikal (the name being a composite of the couple's first names). This was regarded at this stage as a form of joint fund for the benefit of both Christos and Kalliopi – Kalliopi described it as a "joint account". Their living expenses were initially funded from the dowry monies.

58. Having initially lived in a small rented flat in the Marble Arch area, Christos and Kalliopi moved to her parents' rented apartment at Bryanston Court when she was pregnant with their first child, Pandelis, who was born in 1973. Their daughter, Marika, was born in 1975. The rent for the apartment continued to be paid by Captain Nikolos.

59. The expectations of Kalliopi at this time and in her community were that she would be a homemaker and have primary responsibility for the care of the children, whilst Christos was employed (as I have said, in Captain Nikolos' shipping business) outside the home. As between the two of them, it was Christos who took responsibility for administering their financial affairs.

60. Kalliopi's evidence is that whilst at Bryanston Court she came to wish to have a house with a garden in Hampstead where some relatives were living; that she discussed this with her father and understood from those discussions that her father would buy the house of her choice, for her. The evidence of Kalliopi and Christos is that Captain Nikolos was proposing to buy the house for Kalliopi alone and not for them jointly, in order to give Kalliopi financial independence from Christos. I accept this evidence, which is consistent with:

    i) my findings below as to the intentions of Captain Nikolos, Christos and Kalliopi at the time Panagia was formed and 27 Bracknell Gardens was purchased; and

ii) the evidence of Koula, which I accept, that the purchase of 27 Bracknell Gardens was discussed in front of her by her parents, with whom she and her husband and children were then living in Greece, and that she understood that it was being purchased by her father for Kalliopi in order to provide her with financial security, independent of Christos.

Purchase of 27 Bracknell Gardens and Acquisition of Panagia

61. 27 Bracknell Gardens was found in the Spring of 1981. It was usual, amongst the Greek shipping community of the time, for property to be purchased by a Liberian company which would issue bearer shares, that is to say, in respect of which legal title is held by the person in possession of the share certificate. Captain Nikolos chose the name of the Liberian company to be used for this purchase, "Panagia" being the Virgin Mary and "Diafylatousa" meaning "the one who protects". Richard Wilson of Constant & Constant, who was well-known in the community, was instructed to act on the purchase.

62. The evidence includes an exchange of family letters in June 1981. There is a handwritten copy of a letter written to Christos and Kalliopi by Captain Nikolos dated 21 June 1981. The original received by them has not survived, but Captain Nikolos kept copies of some of his own correspondence and these were found in his papers in Kefalari when searches were carried out for the purposes of this litigation. The letter says:

> "My beloved, precious children, Christos and Kalliopi, along with your dearest children, Pantelis and Marika,
>
> we send you our kisses.
>
> "PANAGIA DIAFILATOUSA"
>
> I wish with all my heart that the holy grace of our Panagia Diafilatousa will always protect you under her shadow in your new house and that she grants you, in your new home, all the happiness in the world.
>
> According to our phone communication today, it seems that the owner is ready and determined to sell his house and, on your part, it seems that you are ready and determined that this is the house you like and wish to buy.
>
> Very well, we accept your desire and hope that your dream comes true and we look forward to hearing the good news from you.
>
> Establishment of the company PANAGIA DIAFILATOUSA LIBERIAN.
>
> The company is established with the purpose of taking the newly acquired house in its possession. The company [Board] shall be made-up of the following:
>
> Kalliopi Ch. Lemos Director
>
> George J Nikolos Vice Director

> Christos P. Lemos Secretary
>
> once the formalities for the incorporation of the company have been completed.
>
> The Board of Directors must keep minutes and issue resolutions.
>
> The company shares are as usual bearer shares. Additionally, it must be entered in the shares register that Kalliopi Ch. Lemos holds 98% of shares, and 2% of shares are in my name for good luck. I will safekeep the shares register in the safe at Kefalari on your behalf. Christos is very well aware of all of the above and I would like to request that everything is done perfectly, exactly as I am writing herein.
>
> As you know, we are leaving tomorrow morning for Oinoussa. I look forward to hearing from you at my birthplace on Tuesday.
>
> And upon our return, we will speak regarding the payment of the 10% deposit and the final payment for the house.
>
> Once again, your mother and I would like to wish you all the best. May the decision you made bring you happiness and good luck.
>
> That's all for today. We will speak again upon our return regarding the further plans and actions following the purchase of your house.
>
> With fatherly love and affection
>
> Kisses, your father,
>
> Georgios J. Nikolos
>
> PS Draft of wording on the shares
>
> THIS CERTIFIES THAT THE BEARER KALLIOPI CH. LEMOS hereof is the owner of ninety-eight (98)_____share of the capital stock of PANAGIA DIAFILATOUSA. The same for GEORGE J. NIKOLOS, two (2) shares."

63. The response is from Christos, dated 24 June 1981 and refers to "the good wishes from this morning's telephone call from our birthplace" (i.e. Oinousses) still ringing in his and Kalliopi's ears. In relation to the letter of 21 June, it says

> "=PANAGIA DIAFYLATOUSA CORPORATION MONROVIA=
>
> I confirm receipt of your sweet letter from the heart dated 21.6.81 as a form of guidance and an "all is well". I promise you that I shall comply to the letter with all the legal and other matters, exactly as you wish, types of draft, coupons, everything, absolutely everything.
>
> Because that is what I also intended for our house."

64. Mr Beswetherick sought to suggest that the letter of 24 June was not a response to the letter of 21 June. This was on the basis that, having been written from Kefalari on a Sunday, the letter of 21 June was unlikely to have reached London by 24 June. However, Christos' letter acknowledges receipt of a letter of 21 June; the description of its contents in the letter of 24 June is consistent with the document we have and it is improbable that Captain Nikolos retained a copy of a letter he did not send rather than one he did. I find that the documents in evidence reflect the correspondence between the family at the time.

65. Mr Beswetherick also submitted that the telephone conversation referred to in the 24 June letter must have included additional and different matters to those in the 21 June letter, because Christos' letter refers to "coupons", which do not feature in the 21 June letter. I do not doubt that the conversation covered more than the contents of the letter, but there is no evidence to suggest any radically different approach from Captain Nikolos to the purchase of 27 Bracknell Gardens in that telephone conversation than is shown by his letter of 21 June. It is possible that "coupons" was a reference to the certificate which Captain Nikolos had said should be placed on the shares: it should be borne in mind that the extracts above are in translation from the original Greek.

66. Christos attached to the letter of 24 June 1981 a telex exchange between himself and Mr Wilson of earlier that day. The telex was sent from GJN & Co but was clearly written or dictated by Christos and refers to a telephone conversation between Christos and Mr Wilson earlier on 24 June. The telex sets out the terms of the purchase which had been agreed with the sellers on a subject to contract basis. In the telex, Christos also says:

> "As mentioned to you, buyers are the 'Panagia Diafylatousa Corporation' of Monrovia, Liberia, whom you can nominate whenever you think appropriate."

67. Panagia had been incorporated the previous day, 23 June 1981, by the filing of Articles of Incorporation dated 22 June 1981 which showed the incorporator to be S.B. Goweh, who had subscribed for one share of common stock. It was that right as individual subscriber which was assigned to Christos on 24 June 1981 by the Transfer of Subscription. It reads:

> "FOR VALUE RECEIVED, I, S.B Goweh have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Mr Christos Pandelis Lemos all my right, title and interest as individual subscriber to or resulting from my respective subscription to the capital stock of PANAGIA DIAFYLATOUSA CORPORATION a corporation organised on 23rd day of June 1981 under the laws of the Republic of Liberia, to the extent of One (1) share of the Common Stock of said corporation, and I request said corporation to issue the certificate for said share of stock to and in the name of said Mr Christos Pandelis Lemos or his nominee, and I do hereby authorize, empower and direct the Treasurer or Secretary of said corporation to register this transfer on the books of said corporation effective as of this 24th day of June 1981."

68. There are a number of other documents in evidence also dated 24 June 1981 but, for reasons which I will explain, a question has been raised as to whether some of these documents were prepared subsequently and backdated. These are:

i) An unsigned document ("**the Assignee of Incorporation document**") headed "MINUTES of first meeting of Assignee of Incorporation and Subscriber to stock of PANAGIA DIAFYLATOUSA CORPORATION held on 24th June 1981 at 1500 hours". This describes Kalliopi as being present as "Assignee of Incorporation and Subscriber to Stock" and records her stating that the purpose of the meeting was to elect the first directors of the company; that the Certificate of Incorporation had been issued on 23 June 1981 and such certificate presented to the Monthly and Probate Court "…and that the appropriate license tax had been paid into the Bureau of Revenues". According to this document, Kalliopi then appointed herself, Captain Nikolos and Christos as directors. The Assignee of Incorporation document was not found in the Minute Book.

ii) An unsigned document headed "MINUTES of first meeting of the Board of Directors of PANAGIA DIAFYLATOUSA CORPORATION held at on 24th June 1981 at 1530 hours." This describes Kalliopi, Captain Nikolos and Christos as present. Kalliopi is chosen as Chairman of the meeting, Christos as secretary and the purpose of the meeting is given as being "to elect officers for the Company, adoption of By-laws, Corporate Seal and Stock Certificates of the Company." Kalliopi is elected as "President-Director", Captain Nikolos as "Vice-President – Director" and Christos as "Secretary-Treasurer-Director". Similarly to the Assignee of Incorporation Document, this document has Kalliopi stating that the Certificate of Incorporation had been issued on 23 June 1981 and presented to the Monthly and Probate Court "…and that the appropriate licence tax had been paid into the Bureau of Revenues." It records the following motions:

a) to adopt by-laws, which the Secretary was "ordered to spread at length upon the minutes";

b) to adopt a company seal, there being a space for an imprint;

c) to adopt a form of stock certificate, a specimen of which the Secretary was ordered to annex to the minutes.

Although the document is not signed, there are manuscript initials inserted in the relevant places directing Christos ("C.P.L"), Kalliopi ("K.C.L") and Captain Nikolos ("G.J.N.") where to sign. I infer from this that these were draft minutes prepared by Constant & Constant for signing by the relevant family members. This draft was not found in the Minute Book.

iii) A document headed "WAIVER OF NOTICE OF MEETING OF DIRECTORS", purporting to waive notice of a meeting to take place on 24 June 1981 at 3.30pm. This is signed by Kalliopi and Christos, but there is a blank where the location of the meeting should be inserted and there is also a blank for a third signature. This was placed in the Minute Book.

iv) Minutes of a meeting in the form of the draft referred to in (ii) above ("**the 24 June 1981 minutes"**), signed by Christos and Kalliopi, but not Captain Nikolos, which was also placed in the Minute Book. The blanks in the draft for the location of the meeting and the imprint of the official seal have not been completed and the document does not annex the by-laws or specimen stock certificate referred to.

69. There are also four documents dated 26 June 1981:

i) A pro-forma minute for a meeting of directors, addressed to Williams & Glyn's Bank Limited, resolving to open a bank account in the name of Panagia. The meeting is said to have been held at Athens. The minute gives signing authority for the bank account to Kalliopi, Captain Nikolos and Marika. It is signed by Kalliopi and Captain Nikolos.

ii) Draft minutes of a meeting of directors, indicating that Kalliopi, Captain Nikolos and Christos are present, again with initials showing where signatures should be placed, which I again infer were produced by Constant & Constant. The draft minutes record a resolution to purchase 27 Bracknell Gardens at a price of £392,085 and to leave the sum of £92,085 outstanding on a mortgage to the vendors.

iii) A waiver of notice for a meeting on 26 June 1981 at 3pm in similar form to that for 24 June, signed by Kalliopi and Christos but again with the location of the meeting left blank and the third signing space – shown by the initials "G.J.L." as intended for Captain Nikolos – also left blank.

iv) Minutes of a meeting in the form of the draft minutes referred to at (2) above ("**the 26 June 1981 minutes**"), signed by Kalliopi and Christos, on which the location of the meeting is left blank. These made their way into the Minute Book.

70. Contracts for purchase of 27 Bracknell Gardens were exchanged on 29 or 30 June 1981 (the contract is dated 29 June but the deposit of £39,208 was not paid until 30 June). This was met from the sum of US $80,000 (£40,921.66) provided by GEMA Corporation, an entity controlled by Captain Nikolos (the name, like Chrikal, being a composite of "George" and "Marika"). I note that contracts were exchanged in a very short time, only 5 or 6 days after Christos' telex to Mr Wilson setting out the terms agreed with the sellers.

71. On 2 July 1981, Mr Wilson wrote to Christos at GJN & Co enclosing a copy of the draft mortgage to the vendors and confirming that there was nothing "unusual or prejudicial to your Company".

72. On 9 July 1981, Mr Wilson wrote to Captain Nikolos at GJN & Co saying:

> "As requested I attach the Company Books containing the seal and the Share Certificates. The Certificate of Incorporation and Bye-laws are coming by Courier from the Agents. I will also forward the Legal Charge for sealing and signature by Mrs Lemos and yourself as soon as it has been finalised.

> May I suggest that I attend at your offices at 10:30 a.m. on Tuesday 14 July to collect from you a Banker's draft for £268,567.20 made payable to "CONSTANT & CONSTANT" in respect of the balance of the purchase money, the apportionments, the Stamp Duty and Land Registry fees. You will note that the deduction of £92,085 has been included."

I infer that by 9 July, Mr Wilson understood that it was Captain Nikolos, rather than Christos and Kalliopi, who was directing the transaction and providing the money for the purchase, which is why this and subsequent letters were written to him.

73. The following day, 10 July 1981, Mr Wilson wrote again to Captain Nikolos (the letter being delivered by hand):

> "Further to my letter of 9 July I now enclose for incorporation in the Company's Books the Articles of Association and By-Laws together with the Minutes which have been prepared in respect of the First Meeting, appointment of Officers, and purchase of the property.
>
> At our meeting on Tuesday 14 July I should be grateful if you would also have available a cheque for US $1,100 payable to "KROLIN INC." in respect of the purchase of this Liberian Company."

He explained that he and the vendors' solicitors were still arguing about the final wording of the legal charge to secure the part of the purchase price to be left outstanding.

74. On 13 July 1981, Mr Wilson wrote to Captain Nikolos enclosing the legal charge for sealing by Panagia and signing by Kalliopi and himself and a board resolution for signature by Kalliopi. It is not clear which board resolution is being referred to.

75. Mr Wilson's letter of 10 July raises two questions. The first is whether his reference to "minutes which have been prepared in respect of the First Meeting, appointment of Officers, and purchase of the Company" was a reference to the draft minutes of the meetings on 24 and 26 June 1981 which he was sending for signature (in which case the signed versions were backdated), or to the signed versions, which he was sending to Captain Nikolos for safe keeping. The second is whether the minutes which had been prepared by Constant & Constant included the Assignee of Incorporation document.

76. There are grounds for thinking that the documents enclosed with Mr Wilson's letter were draft minutes. This is because his letter of 9 July makes clear that he had not then received the by-laws from the company agents, which were purportedly presented at the meeting on 24 June. On the other hand, it is unlikely that Constant & Constant would have allowed Panagia to proceed to an exchange of contracts without the appointment of directors and a resolution to purchase 27 Bracknell Gardens, not least because that would have raised doubts about Constant & Constant's own authority to act for the company. Consequently, I find on a balance of probabilities that the 24 and 26 June 1981 minutes were signed on the dates they bear and that the letter of 10 July 1981 was sending the signed minutes to Captain Nikolos for safekeeping, consistently with the indication in his letter of 21 June that he would keep company documents in his safe at Kefalari. The gap for the company seal; the absence of by-laws and specimen stock certificate in the 24 June minutes are all indicative of them being signed in a rush

without all the relevant documentation having been prepared or received from Liberia. The lack of Captain Nikolos' signature on the documents is explained by the fact that he was at the time in Greece, as the 21 June and 24 June letters show.

77. On the second question, I find on the balance of probabilities that the Assignee of Incorporation document was prepared by the Liberian corporate agents rather than Constant & Constant. This is on the grounds that:

i) Constant & Constant are unlikely to have prepared two sets of minutes, each apparently for a "first" meeting;

ii) there is an apparent duplication in the business of the two meetings, first as regards the reference to the Certificate of Incorporation having been presented to the Monthly and Probate Court and secondly as regards the appointment or election of directors;

iii) the language used in the Assignee of Incorporation document is not the fluent legal English which is to be found in the other minutes drafted by Constant & Constant and in Mr Wilson's letters; and

iv) "license tax" is spelt in the American way in the Assignee of Incorporation document but in the English way, "licence tax", in the 24 June 1981 minutes.

I find that it was decided that the Assignee of Incorporation document as prepared by the agents was insufficient and, rather than being signed and inserted into the Minute Book, it was discarded and the 24 July 1981 minutes, as prepared by Constant & Constant, were signed and put into the Minute Book instead.

78. The purchase of 27 Bracknell Gardens was completed on 14 July 1981, subject to the charge to the sellers for £92,085. The balance of the purchase price, £268,567.20, plus the US $1,100 cost of incorporating Panagia, were met by Captain Nikolos from GEMA Corporation.

79. There are three sets of Panagia minutes dated shortly after the purchase, on 16, 17 and 19 July 1981, none of which were placed in the Minute Book.

80. The 16 July minutes, supported by a waiver of notice, describe Captain Nikolos as "President-Director", Kalliopi as "Vice-President – Director" and Marika as "Secretary/Treasurer-Director". They record a resolution that the value of the non-par value stock of the company consisting of 500 shares be fixed at US $1 per share.

81. The 17 July minutes, which describe Captain Nikolos, Kalliopi and Marika as having the same offices, record the same resolution and continue:

> "The Chairman then advised that applications had been received for the issue of Bearer Shares of the capital stock of the Company as follows:-
>
> MRS KALLIOPI CHRISTOS LEMOS 450 Shares.
>
> CAPTAIN GEORGE JOHN NIKOLOS 25 Shares.
>
> MRS MARIKA G. NIKOLOS 25 Shares.

> After discussion and upon motion, made, seconded and unanimously carried, IT WAS RESOLVED that the aforesaid application for shares be and are hereby accepted and that upon payment of the full value thereof in cash, Bearer Share Certificates be issued to the applicants in respect of the respective Shares applied for."

82. The 19 July minutes record Kalliopi present as "President-Director", Captain George as "Vice-President-Director" and Christos as "Secretary-Treasurer-Director". They further record the submission of the resignations of all three from these offices and the nomination and election of Marika as a director. By the close of the meeting, the officers and directors of the company are Captain George as President-Director, Kalliopi as Vice-President-Director and Marika as Secretary/Treasurer-Director.

83. It will be seen that the three sets of minutes make no sense if read in the order in which they are dated and I find that they were prepared on the basis that those dated 19 July were to be signed first (pursuant to which Christos resigned as director, to be replaced by Marika), with those dated 16 July (authorisation of issue of 500 shares) and 17 July (resolution to issue 450 shares to Kalliopi, 25 to Captain Nikolos and 25 to Marika) following thereafter.

84. I will explore below whether any shares were actually issued pursuant to the resolution in the minutes dated 17 July.

85. As I have found above, some or all Panagia's corporate documents were sent by Mr Wilson to Captain Nikolos to be kept in the safe at Kefalari. In December 1981 these were followed by the Land Certificate (referred to as "Title of Absolute Ownership No. NGL27397") and the building insurance contract for 27 Bracknell Gardens, which were sent by Christos to Captain Nikolos under cover of a letter dated 29 December 1981 "to safekeep along with the other items in the SAFE at Kefalari".

86. Kalliopi's evidence is that following the purchase of 27 Bracknell Gardens some work was carried out, which involved opening up the staircase and adding another floor, and that this was paid for by her father. I accept this evidence, which is corroborated by a letter from Captain Nikolos dated 28 December 1981 authorising the withdrawal from a deposit account and payment to Panagia of £30,000 "to settle the repairs" and by the 25 March 1982 letter, to which I now turn.

25 March 1982 Letter

87. The front page of the document is a photocopy of a handwritten letter addressed to Captain and Marika Nikolos. The writing is Kalliopi's and it is signed by both Kalliopi and Christos. The letter appears to have been written on headed and edged notepaper bearing the address of 27 Bracknell Gardens. As translated, the text says:

> "Our dear, beloved and cherished father and our dear and cherished mother, you have our warmest embraces.
>
> THE HOUSE AT 27 BRACKNELL GARDENS, HAMPSTEAD, LONDON, NW3

> Regarding this magnificent house, along with its land plot situated at 27 BRACKNELL GARDENS, NW3, which you donated to your daughter Kalliopi, we, i.e. your daughter Kalliopi (owner), her husband Christos and your grandchildren Pantelis and Marika, wish to once again thank you from the bottom of our hearts for offering us such a regal home to accommodate our family.
>
> Furthermore, we wish to confirm the following details, as contained in the documentary evidence of the registered owning company PANAGIA DIAFLYLATOUSA CORPORATION LIBERIA, which you are keeping for us in your house in Kefalari, as well as the following information:
>
> 1) You paid in full the price for the purchase of this house amounting to £392,085 (three hundred ninety-two thousand and eighty-five British pounds), of which £300,000 (three hundred thousand) were paid upon receiving the house keys on 14 July 1981, while £92,085 (ninety-two thousand and eighty-five) are payable on 14 July 1982, which amount you have already paid to PANAGIA DIAFLYLATOUSA CORPORATION.
>
> 2) You also paid the additional amount of £80,000 (eighty thousand pounds) for converting the space under the roof (to an interior room) and to install a second staircase in accordance with the plans which we saw in September 1981.
>
> With our endless love, affection and gratitude for the great gesture of parents to their child, we embrace you and co-sign this letter."

88. On the back of the document, written in black ink, is a signature block:

> "I certify the text overleaf
>
> …….
>
> GEORGIOS I. NIKOLOS
>
> 29.03.1982"

Along the row of dots is a signature of Captain Nikolos in blue ink.

89. Kalliopi's evidence in her witness statement was that she recalls writing the original handwritten letter at 27 Bracknell Gardens. She wanted to thank her parents for buying her the house which she had dreamed of and searched for years to find. However, before she had done so, her father asked her to put down some of the specific facts and numbers about the sale, including the reference to her as "(owner)". She says she recalls handing the letter to Captain Nikolos, which he then took away. A couple of days later, Captain Nikolos was at 27 and handed Kalliopi a photocopy of her letter: she recalls this taking place in the bedroom where Captain Nikolos usually stayed and which had a desk. He signed the photocopied letter in front of Kalliopi, looked her in the eyes and told her to

keep the letter as she was "going to need it". Orally, her evidence included the following (Day 3 page 150):

> "Q. You're saying you specifically remember this conversation.
>
> A. I remember the conversation. I remember the details that he wanted me to put down and -- because this was not how I would have wanted to write the letter. I wanted to put more of my feelings in it but he wanted me to write this letter.
>
> Q. Now, you used the word "dictate" earlier. You're not saying that he dictated the letter to you, are you?
>
> A. He didn't stand in front of me telling me this, but he told me that he wanted me to put the price. He wanted me to say how it was paid. He wanted me to say that I was the owner and also, you know, all these details he wanted me to put in the letter."

She said that she had chosen 25 March as the date to write the letter because it was the Feast of the Annunciation, a happy day.

90. It was put to Kalliopi in cross-examination that the form of Captain Nikolos' signature which appears on the 25 March 1982 letter was different from those which can be seen elsewhere in the bundle. Kalliopi explained that her father signed his name in three different ways. Further documents were then produced showing signatures of Captain Nikolos in the form used on the 25 March 1982 letter. The Claimants did not in closing contend that the signature was not that of Captain Nikolos.

91. Neither Kalliopi nor Christos' witness statement explained that the black ink signature block on the back of the 25 March 1982 letter was in Christos' handwriting. Orally, Kalliopi gave conflicting evidence about the order in which the signature block and the signature were added to the letter. Initially **[Day 3 pages 149-150]**, she described the signature block being written first, then her father signing:

> "Then he took it away and two days later, he came back and gave me a photocopy of that letter to which he intended to put his signature at the back. He -- Christos wrote behind this Greek that said that I -- I confirm everything that it is written on the other side, and my father put this signature there himself. And then he looked at me, handing me the copy, and he told me -- looked at me in the eye, handing me the copy of this letter and told me, "Keep this because you will need it".

92. Subsequently **[Day 3 pages 160-163]**, she suggested that the order was reversed, with Captain Nikolos signing first, then Christos adding the certification:

> "Q. You don't mention Christos being there when this happened, do you, in your witness statement?
>
> A. Christos was there as well. There is -- there was a desk in his bedroom upstairs and he took the letter out. He showed it to me and looked at me and he said, "This is for you". He put it

> down. He countersigned it and then Christos put this -- you know, his usual thing; that he did this block, you know, there --…
>
> Q. In front of you, he signs it on the back, the photocopy that is. He doesn't sign the original. And then I think you said a moment ago that Christos wrote afterwards the text that's in black ink.
>
> A. Yes, Christos wrote -- after the signature of my father wrote these things --…
>
> Q. So I just want to get this right. You're saying your father just put a blank signature on it and then after that, Christos added in "I certify the text overleaf". Your father didn't write that?
>
> A. No, I said -- I said that my father put the signature down and then Christos put that "I confirm what is written overleaf" and -- and my father continued to explain to me what he meant by this, giving me this letter."

93. There were also some inconsistencies in Christos' evidence. In his witness statement he said that he remembered Kalliopi writing the letter, him signing it and Captain Nikolos signing the reverse. In oral evidence, however, he could not recall seeing Captain Nikolos sign the back of the photocopy. His evidence was that Captain Nikolos had signed first, and that he had added the black text afterwards. It was put to Christos that he had a piece of paper with Captain Nikolos' signature on it; that he got Kalliopi to write a letter and photocopied it on to the back of the signed paper and added the signature block himself around the signature. Christos vehemently denied that accusation, saying that it was "like a sacrilege" to say that about the 25 March 1982 letter and the occasion from which it arose.

94. Christos was the subject of an Inland Revenue investigation which began in 1994 and was not finally resolved until 2001, when Christos paid £750,000 in settlement of potential tax liabilities. Withers were instructed in relation to this investigation, and liaised with Christos' accountants, Moore Stephens. The Withers 1997 meeting note was produced in this context. It records:

> "A letter had come to light written by [Christos] on behalf of the family thanking Captain Nikolos for his generosity in relation to Panagia in 1982 which letter had been signed by Captain Nikolos. The letter was not quite clear as to the nature of the bounty but that was possibly an advantage."

It had been common ground that this was a reference to the 25 March 1982 letter until Kalliopi and Christos gave oral evidence, at which point both of them cast doubt on that proposition, on the grounds that the 25 March 1982 letter had been written by Kalliopi rather than Christos. I find that the Withers meeting note was indeed referring to the 25 March 1982 letter. The question as to whether it had been written by Christos or Kalliopi would not have been important in 1997 and it had been signed by Christos. The description of the letter in the meeting note is consistent with its contents.

Moreover, it is unusual to have a thank you letter signed by the person to whom it is addressed and it is consequently improbable that there was more than one such letter which was from Christos/Kalliopi and was also signed by Captain Nikolos. In light of the reference to the 25 March 1982 letter in the Withers meeting note from 1997, it was put to Christos (though not Kalliopi) by Mr Beswetherick that the 25 March 1982 letter had been created in 1997 in the manner described above, for the purpose of the Inland Revenue investigation. This was strongly denied.

95. I find that the 25 March 1982 letter is authentic, having been created in 1982. The original letter was written by Kalliopi on 25 March 1982, with the contents substantially directed by her father, who wished to ensure that there was a record of the fact that he had paid for 27 Bracknell Gardens as a gift for Kalliopi, in case of future dispute (which might not necessarily have been a dispute about whether 27 Bracknell Gardens or Panagia were owned by Christos: Captain Nikolos could equally well have anticipated some dispute as to whether they were owned by him). I accept Kalliopi's evidence that she did not really understand why Captain Nikolos thought this was important and she would have preferred to write a more traditional thank you letter. It was signed by her and Christos. Captain Nikolos took the letter away and photocopied it so that Kalliopi could have a copy whilst he retained the original. On 29 March 1982 and probably following a discussion about how to ensure that the copy letter would be seen to carry Captain Nikolos' seal of approval, Christos (at Captain Nikolos' direction) wrote the words of the signature block before Captain Nikolos signed on the dotted line. It is clear, looking at the original document, that the black text was written first and the signature placed over it. In my judgment, the suggestion that Captain Nikolos had signed the back of the photocopy first was a misrecollection on the part of Kalliopi, repeated by Christos after hearing Kalliopi give this evidence.

96. The Claimants argued that the evidence given as to the production and retention of the 25 March 1982 letter was implausible; that it is not credible that Kalliopi was instructed by Captain Nikolos to write the letter as asserted, including to put the word "owner" in parentheses after her name, or that he looked her in the eyes and said words to the effect of "keep it, you will need it". They argue that if Captain Nikolos had believed that there was a genuine need for a written record of the manner in which 27 Bracknell Gardens or Panagia was owned, that would have been obtained at the time of acquisition and produced by a lawyer, or at least by Captain Nikolos himself; moreover, if he had wanted such a document, it would have been accurate as to the ownership of 27 Bracknell Gardens by Panagia rather than any family member, and he would have signed the original rather than a copy. With respect to the document itself, it is submitted to be incredibly good condition for a document said to be 41 years old; the signature on the back is at an odd angle and in a strange place; the evidence about the placing of Captain Nikolos' signature lacks logic and the evidence that the document was considered "sacred" is hard to reconcile with other evidence.

97. As to the inherent probabilities, in my judgment it is plausible that Captain Nikolos would have wanted a document created which would record his gift to Kalliopi and have a status and meaning between family members. Other evidence, such as his habit of keeping copies of letters he had sent, the instructions given in his letter of 21 June 1981 and the fact that he chose to keep documents in his safe at Kefalari, shows him to be a careful and experienced businessman who understood the importance of recordkeeping. He was also a deeply religious man to whom it was very important that

he had done his duty to his family and community. Given the relationships within the family, I do not find it at all surprising that he would not have considered it necessary to instruct lawyers to draw up a record of the gift: this was probably a document which was primarily to ensure that other family members would honour his intentions and wishes (including after his death), rather than one expected to feature in litigation with third parties. It is also unsurprising that a lay person would have described Kalliopi as the "owner" of 27 Bracknell Gardens, rather than as the beneficial owner of the shares in Panagia: the legal distinction between the two forms of holding would not have been viewed as important in practice.

98. On the other hand, it is implausible that Christos and Kalliopi would have manufactured the document in 1997. By then, as I explain below, Christos had access to significant wealth as a consequence of settling litigation about Captain Leon's estate. The Inland Revenue investigation had been rumbling on for some time but in my view it would have been seen as no more than an annoyance; something which needed to be sorted out but would be dealt with by his lawyers and accountants in a way which would hopefully minimise Christos' liabilities. The consequences for Christos were not so serious as to make it likely that he would contemplate something as drastic as forgery. In a note dated 31 January 1997, Mr Hallam had recorded his view of Christos' then state of mind, saying:

> "Generally, Moore Stephens' view is that there are so many areas of vulnerability that it is better to do a deal of probably anything up to a million on the basis of no further investigation as to the past. Chris, while professing that he cannot pay such a large sum, does seem to be sanguine at the moment as to the way negotiations are going."

Further, it is clear from the Withers' 1997 meeting note that Mr Hallam found the letter to be ambiguous on the points of relevance to the tax investigation: it would be an odd thing for Christos and Kalliopi to forge a letter which did not clearly assist his case. Indeed, it appears from a draft letter attached to the Withers 1997 meeting note and other documents that the Revenue had originally been told that Kalliopi regarded herself as holding the shares in Panagia for Captain Nikolos: the reference in the 25 March 1982 letter to Kalliopi as "(owner)" was in conflict with that and likely to raise more questions, rather than satisfying the Revenue. I also find that Christos' evidence that he would have viewed forging a document purporting to be from Captain Nikolos as almost sacrilegious to be more than mere hyperbole: Captain Nikolos was the head of this family and was held in deep reverence. To have manufactured a document apparently signed by him would have been seen by Christos and Kalliopi as a deeply dishonourable thing to do.

99. Turning to the document itself:

i) The original letter was written on headed notepaper which Kalliopi was using at the time: there is in evidence another letter written by her on the same type of paper, dated 3 May 1982;

ii) The good condition of the photocopy is explicable by the fact it was kept safely by Kalliopi and seen by her as important;

iii) Signing a photocopy was an understandable way of ensuring that both Kalliopi and Captain Nikolos retained a copy, with Kalliopi's copy duly authenticated by Captain Nikolos signing the certification added by Christos.

iv) The thesis as to how the document was created put by Mr Beswetherick to Christos is highly implausible. There is no evidence to suggest that Captain Nikolos was in the habit of signing blank pieces of paper and leaving them with Christos and Kalliopi, nor was any motivation for such behaviour suggested. Moreover, as I have found, the execution block was added before, not after, Captain Nikolos' signature on the document. Nor does it seem likely that if Christos and Kalliopi had decided to manufacture the document, they would have gone to the lengths of photocopying a letter onto the back of the signed document – why not simply write the original letter onto the back of the signed piece of paper?

100. The 25 March 1982 letter is clearly an important piece of evidence. It describes 27 Bracknell Gardens as having been "donated" by Captain Nikolos to Kalliopi, and records the monies paid by him.

Redemption of Mortgage

101. On 14 July 1982 the sum of £92,085 which was outstanding from the purchase price of 27 Bracknell Gardens and secured by the legal charge was paid by Panagia to the sellers. The 25 March 1982 letter records this sum as already having been paid to Panagia by Captain Nikolos, and I find that this instalment was funded by him.

Trofos Distributions and Litigation

102. During his lifetime Captain Leon had set up a Cayman discretionary trust, the Trofos Foundation, which, by the time of his death in December 1989, was worth some US $180 million. Christos and Kalliopi were discretionary beneficiaries and from about 1990, after his father's death, Christos began to receive annual payments of US $1 million from the Foundation. He, his children (Pandelis and Marika) and his brother George also commenced proceedings against the Trofos Foundation in Greece, relating to the effect of Greece's forced heirship laws on the Foundation, and against the Foundation's trustees in the Cayman Islands. Withers acted for Christos in the litigation. The litigation was protracted and expensive; Captain Nikolos lent some US $3.3 million to Christos to fund the costs of the litigation.

Purchase of 27A Bracknell Gardens

103. 27A Bracknell Gardens was the former coach house to 27 Bracknell Gardens. In the late 1980s, Christos and Kalliopi came to be concerned about the prospect of 27A being developed in a way which would overlook 27. They were advised that the best way to prevent this would be to buy 27A. Nandina, whose name - "Heavenly Bamboo" in Japanese – was chosen by Kalliopi, was incorporated on 30 June 1989 for this purpose and had exchanged contracts for the purchase by 5 July 1989. The evidence is not clear as to who the shareholders or directors of Nandina were and Christos' evidence was that he had only a limited authority to sign payment instructions from Nandina, but it is clear that, in the context of the purchase of 27A, Nandina was effectively controlled by Christos.

104. Nandina bought 27A in about July 1989 for the price of £425,000, which was provided from Establishment Chrikal. £200,000 of that sum appears to have been provided to Establishment Chrikal by way of a bridging loan from Kapital Finanz (Ubersee) A.G. Christos' evidence was that Captain Nikolos had a bank account with Kapital Finanz, a Panamanian company. I note, however, that in a letter to the Inland Revenue dated 26 January 1996 (in the context of the investigation into Christos' tax affairs), Moore Stephens described Kapital Finanz as

> "a vehicle administered by Bank Hoffman used as a pool for certain funds provided by [Captain Nikolos] principally, but also [Christos'] brother, George, and to a much lesser extent other members and friends of the Lemos and Nikolos families".

105. In his witness statement, Christos gave two reasons why 27A was purchased through Nandina rather than Panagia. The first was that Panagia had no funds available to it at the time, but Establishment Chrikal did, which it could use via Nandina. The second was that Nandina was used to avoid revealing to the vendors that the purchaser owned the neighbouring property, which would have driven up the price. The first reason makes no sense, since Establishment Chrikal could have funded Panagia to purchase 27A rather than funding Nandina. I do not accept that rationale. I find that Nandina was incorporated and used as a vehicle for the initial purchase of 27A in order to prevent the vendors being aware that the interest came from neighbours.

106. Panagia purchased 27A Bracknell Gardens from Nandina on 16 December 1992 for the price which Nandina had paid, namely £425,000. The Panagia board minute dated 7 September 1992 by which it resolved to purchase 27A shows Kalliopi as President/Director, Captain Nikolos as Vice President/Director and Christos as Secretary/Treasurer/Director, that is to say, it ignores the substitution of Marika for Christos as director effected by the meeting which is recorded by the minutes dated 19 July 1981. I infer that this was because the minutes dated 19 July 1981 had not made their way into the Minute Book, so the person drawing up the 1992 minutes assumed that the position was as shown in the 26 June 1981 minutes, which were the last minutes in the Minute Book at that time.

107. The purchase price appears to have been funded by a payment from Establishment Chrikal, which was paid into Panagia's bank account on 7 December 1992 and paid out to Ince & Co, who acted on the purchase, on 9 December. However, on 23 October 1992 Panagia also received £200,000 from Captain Nikolos, the payment being made under the reference "PADI27+A", which suggests it was intended for the property purchase or the renovation works which were planned to take place across the two properties.

108. The original source of the monies paid by Establishment Chrikal to enable Nandina, then Panagia, to fund the purchase of 27A Bracknell Gardens is obscure. Kalliopi's evidence was that, to the best of her recollection, the monies to purchase 27A on both occasions came from Captain Nikolos, but she could not remember the specifics. Christos also said that none of the money came from him, and he recalled it coming from Captain Nikolos. He claimed that by 1992, Establishment Chrikal was not just holding Kalliopi and Christos' joint funds, but also funds from Captain Nikolos. I am not satisfied, on the balance of probabilities, that the money for the purchase came exclusively from funds provided by Captain Nikolos. By this time, Christos was

receiving substantial annual sums from the Trofos Foundation and the evidence suggests a strong degree of intermingling of family finances, via different accounts and companies. It seems to me that the possibility that some or all of the purchase monies for 27A Bracknell Gardens originated from Christos or joint funds cannot be excluded. However, not long after Panagia purchased 27A Bracknell Gardens, the purchase monies were reimbursed to Establishment Chrikal via a loan, as I explain below.

29 August 1992 Letter

109. First, however, I need to consider the 29 August 1992 letter, authenticity of which is in issue. This was apparently given or sent by Christos to Captain and Marika Nikolos shortly before Panagia's board resolved to buy 27A from Nandina.

110. The letter is in Christos' handwriting and is addressed to Captain and Marika Nikolos in Kefalari. It reads:

> "To our dearly beloved, adored and respected parents
>
> Following the emotional visit to the "Chart Room" I can hereby confirm to you that I am in receipt of the official documents which you handed over to me for the Liberian company "PANAGIA DIAFLYATOUSA CORPORATION", the main asset of which is Kalliopi's house at 27 BRACKNELL GARDENS, HAMPSTEAD, LONDON NW3. The papers include:
>
> 1. COMPANY KIT with memo & articles of association, minutes and seals.
>
> 2. Share certificates: 450 belonging to Kalliopi, 25 belonging to you Father, and 25 belonging to you Mother, giving a total = 500.
>
> 3. LAND CERTIFICATE
>
> 4. Banking correspondence
>
> 5. Other general correspondence
>
> I will keep these "like the apple of my eye" and I shall use them as and when necessary for the legal procedures involves for the REDECORATION and REDEVELOPMENT of the above house, for executing the agreement and for contracting the loan, as appropriate.
>
> After eleven years of a flourishing life in this palace, I must reiterate our infinite gratitude to you, as well as our deep love.
>
> I respectfully kiss your hand,
>
> CHRISTOS P. LEMOS."

111. Kalliopi's evidence was that she had found the letter in her father's belongings in Kefalari in the Autumn of 2021, when searching for documents relevant to the litigation. She said that she had asked Christos to send a copy to Withers but, as

indicated above, it had been overlooked and was disclosed only on 1 June 2023. Christos confirmed that the letter was in his handwriting. He had no specific recollection as to where he was when he wrote it or of being given the documents referred to in it. It was put to him that he had created the letter for the purposes of this litigation, which he denied. He was cross-examined on the basis that if he had indeed received Panagia's share certificates, as the 29 August 1992 letter seems to show, he would, having promised to keep them "like the apple of my eye", have taken particularly good care of them and yet neither he nor Withers have them.

112. Mr Beswetherick's submissions as to why the 29 August 1992 letter was a recent creation were that the contents of the document were self-serving, it being said that there is no sensible reason why in a letter in 1992 Christos would have said that Kalliopi owned 27 Bracknell Gardens, in which they had by that time been living for 11 years; that Christos' evidence was rehearsed; that Kalliopi's evidence as to the finding of the letter was inconsistent with previous searches having taken place; that there is no good reason why an inconsequential piece of correspondence would have been preserved for so long and (like the 25 March 1982 letter), the 29 August 1992 letter is in too good a condition for its apparent age: it has not apparently been folded, despite having been sent to Kefalari from London.

113. I find that the 29 August 1992 letter is authentic and was written by Christos on the date it bears. None of the grounds on which its authenticity were challenged are convincing. As to the lack of fold marks on the letter, there is no evidence that the letter was sent from London: the documents referred to are described as being handed, not sent to, Christos and it could well be that this letter was handed to Captain Nikolos personally as a form of receipt when the documents were given to Christos. In any event, that point is in my judgment nowhere near strong enough to justify a finding of dishonesty. It is entirely of a piece with Captain Nikolos' other actions that he should have kept this receipt, having allowed important documents out of his safekeeping, and there is nothing in the point that it was not found in the original searches.

114. The timing of the letter fits with the prospective purchase of 27A by Panagia and the subsequent raising of a loan from Royal Bank of Scotland, which I refer to below. It makes sense that, as Panagia was about to enter into significant legal transactions, Christos should request Panagia's documents from Captain Nikolos' safekeeping.

115. As regards the contents of the letter, the description of 27 Bracknell Gardens as "Kalliopi's house" is consistent with other evidence. It cannot be described as "self-serving" merely because it supports Kalliopi's, rather than the Claimants', case. The letter also contains elements which are highly unlikely to have been included in a recently-created document: in particular, a reference to the Land Certificate for 27 Bracknell Gardens. It was clear that Christos only had a vague idea what a Land Certificate was and I do not consider he would have had sufficient understanding about title registration and conveyancing in the 1990s to have thought to have added this to a manufactured list.

116. As to the contention that the letter is inconsistent with the loss of the share certificates referred to in it, there is a letter from Withers to Christos dated 28 June 1993 acknowledging receipt of "the minutes and by-laws and seal for the Corporation, together with the Corporation's articles of the incorporation and various other original documents in the folder of Corporation documents". The "original documents" referred

to may well have included the share certificates. In any event, by the time of the 1994 Transactions, they had been lost.

117. The evidential value of the 29 August 1992 letter is two-fold. First, there is the description of 27 Bracknell Gardens as "Kalliopi's house", rather than "our house" or "my house", which is evidence as to the intended beneficial ownership of Panagia's shares. Second, there is the reference to 500 shares: 450 belonging to Kalliopi, and 25 each to Captain Nikolos and Marika. The obvious inference to draw from this is that 500 shares were issued in accordance with the resolutions dated 16 and 17 July 1981, that these had been sent or taken to Greece for safekeeping and were handed to Christos in August 1992 for the purpose of raising finance for the redevelopment project.

118. On the second point, however, the Claimants contend that it is not open to Kalliopi to make such a case and not open to the Court to draw those inferences, on the grounds that such a finding would involve a departure from Kalliopi's pleaded case.

119. In my judgment, the question of how many shares in Panagia were issued, and to whom, was put squarely in issue on the pleadings. Paragraphs 8 and 15 of the Re-Amended Particulars of Claim aver (a) that there was only one share which had been issued (by March 1993) and (b) that it was owned by Christos. Both elements of that averment are denied by paragraphs 1, 25 and 29 of the Amended Defence. Moreover, the Claimants themselves put in issue in paragraphs 26A.2 and 26A.3 of their Amended Reply the question as to whether the resolutions apparently recorded in the minutes dated 16 and 17 July 1981 had been made.

120. Furthermore, the question as to what happened to any share certificates following issue was also squarely raised by the pleadings. In paragraph 25(7) of the Amended Defence, Kalliopi averred that the share certificates sent to Captain Nikolos in July 1981 were not given or otherwise transferred to Christos at any time. This averment was expressly denied by paragraph 20 of the Amended Reply. The repetition of the same point at paragraph 29(1B) of the Amended Defence is caught by the general joinder of issue in paragraph 35 of the Amended Reply. If the Claimants had chosen to admit these averments, the court might not have been able to go behind those admissions, but they did not: they left them open to be the subject of disclosure and of proof at trial. In light of the disclosure of the 29 August 1992 letter, Mr Elias and Mr Gurr made clear in their skeleton argument that they no longer sought to prove those averments, which in my view it was open to them to do.

121. Stepping back from the detail of the statements of case, I am in no doubt that the proper inferences to be drawn from the 29 August 1992 letter are within the broad scope of the issues which the Claimants came to court prepared to address and with which they have had a fair opportunity to deal. Mr Beswetherick argued that if a case had been made earlier that there was a new share issue and a new narrative relating to the physical transfer and ownership of the share certificates, that would have had a material bearing on preparations for trial and his clients would have wished to explore a number of further issues. What, it seems to me, he is really complaining about is not that the 29 August 1992 letter raised issues which had not been pleaded, but that it was disclosed so late. That late disclosure was in breach of the directions orders made in this case, by which Extended Disclosure was required to be given by 31 January 2023. By paragraph 12.5 of Practice Direction 57AD, a party may not rely on any document which he fails to disclose at the time required for Extended Disclosure without the permission of the

court or the agreement of the other parties. However, the Claimants' pragmatic decision not to require Kalliopi to make an application for permission reflects a tacit acknowledgment that, if one had been made, permission would have been given, given the relevance of the letter to the issues in dispute and the ability of the Claimants properly to prepare for the trial despite the late disclosure. In those circumstances, Mr Beswetherick's clients cannot, it seems to me, achieve the same result (the effective exclusion of the letter from evidence) by taking a pleading point.

122. On the basis of the minutes dated 16 and 17 July 1981 and the 29 August 1992 letter, I find that in July 1981, 500 bearer shares in Panagia were issued: 450 to Kalliopi, 25 to Captain Nikolos and 25 to Marika Nikolos. The share certificates were sent to Captain Nikolos by Mr Wilson's letter of 9 July 1981 in anticipation of the minutes prepared for 16, 17 and 19 July 1981 being signed. They were kept in the safe in Kefalari and given to Christos in 1992, receipt being acknowledged by the 29 August 1992 letter. The share certificates may have been sent by Christos to Withers, but in any event by the time of the 1994 Transactions they could not be found.

Renovations of Property; RBS Loan

123. I now turn back to the chronology of events, following the purchase of 27A firstly by Nandina, and then by Panagia. At about the same time as Panagia acquired it, Christos and Kalliopi set about a large-scale refurbishment project across both properties and the creation of a Japanese-style pavilion, to be used as Kalliopi's art studio, on 27A. For this purpose a loan was taken out by Panagia with Royal Bank of Scotland ("**RBS**"), the successor to Williams & Glyn's, with whom Panagia had always banked. The evidence includes not only the facility letter but also internal memoranda of RBS in relation to the original grant of the loan and its subsequent extension and correspondence with Christos regarding its drawdown.

124. The key elements of the loan, as shown by the facility letter dated 5 March 1993, were:

i) RBS agreed to make available to Panagia 60% of the value of the post-renovated Property, not to exceed a maximum of £1,726,800 (or US dollar equivalent);

ii) The loan was to be drawn down in tranches against architect's certificates;

iii) Repayment was to be by 30 instalments over a 15 year term, each of £57,560 (or US dollar equivalent), payable at 6-monthly intervals, with options to prepay. The first instalment was payable six months after full utilisation of the loan. Interest would be debited to a current account in the name of Panagia quarterly in arrears; and

iv) The security for the loan included a first legal charge over the Property and Christos' personal guarantee in the sum of £1,726,800.

125. Although the loan is described in the facility letter as being for the purpose of renovation and modernisation of the Property, it is apparent from a schedule of payments attached to a letter to RBS from Christos dated 21 June 1993 that it was used in part to repay, presumably to Establishment Chrikal, the £425,000 purchase price of 27A, plus the stamp duty paid on the purchase.

126. Savills advised RBS that the value of the Property following the works would be £2.75 million.

127. RBS' notes dated 17 February 1993 indicate that RBS was told that the primary source of repayment of the loan would be the Trofos Foundation, in relation to which a settlement was anticipated and from which Christos was then receiving an annual disbursement of US $1 million, more than enough to cover the loan commitment. Drawdown in fact commenced in June 1993 and the first instalment of capital was paid by Panagia on 30 March 1994.

128. Christos and Kalliopi both sought to distance Christos from the RBS lending by suggesting that he was only put forward as a personal guarantor because Captain Nikolos was, by this time, elderly and unwell and, in contrast, Christos had an income and was a suitable guarantor given the 15-year term of the loan. Christos claimed that Captain Nikolos agreed informally to indemnify him if the guarantee was ever called on. I am very doubtful that any serious consideration was given to Captain Nikolos providing the guarantee and am not satisfied that he offered any indemnity to Christos. In my judgment at this time Christos was receiving substantial regular payments from the Trofos Foundation, and had expectation of a large settlement payment as a consequence of the litigation. The Property was his and his family's home and they would all benefit from the refurbishment project. I find he was content to offer his personal guarantee in order to get the project done.

129. Later, as I shall describe below, repayments of the RBS loan were made from funds held for Kalliopi and Pandelis and Marika. The position is less clear in relation to the initial capital instalment paid in March 1994 and the loan interest falling due before the 1994 Transactions. Kalliopi's evidence was that she made the initial capital repayment "from her own funds in Panagia's bank account". Panagia's bank accounts do not reveal the source of the monies and I am not satisfied that Kalliopi can recall that source at this distance in time. Given that RBS was told that Christos would be meeting loan repayments from his disbursements from the Trofos Foundation, I find that he was the source of the repayment monies. This was also the conclusion of the Inland Revenue, whose 2001 settlement report records:

> "The principal source of income up to 1994 for CP Lemos were distributions received from his father's Trust. This had been used to fund the purchase of his personal property and the improvement expenditure and were clearly taxable. The monies used to fund this expenditure had been channelled through a bank account for Panagia Corporation…"

Furthermore, the Withers 1997 Meeting Note records that:

> "On the repayment of the loan CPL indicated that the capital payments were refunded by Kalliopi's fund derived from the Trofos Trust but the interest liability was covered by himself though the money was channelled through Chrikal and it was therefore not obvious as to its source, indeed it came from a general pool of family funds in Kapital Finanz."

The reference to capital payments being "refunded by Kalliopi's fund derived from the Trofos Trust" is a reference to later events which I describe below, but on the basis of

this evidence, I find that interest payments on the RBS loan were financed by Christos, or from joint funds to which he contributed, for the period prior to the 1994 Transactions.

130. The Panagia documents authorising entry into the RBS loan can only be described as perplexing.

131. First, there is a waiver of notice of a special meeting of directors dated 23 March 1993. This purports to be signed by all the directors of Panagia: it is in fact signed by Kalliopi, Christos and "pp" Marika. I infer that Marika was signing on Captain Nikolos' behalf (Captain Nikolos died about a month later, on 28 April 1993). As with the minutes dated 7 September 1992, this ignored the substitution of Christos as director by Marika effected in July 1981. Whilst that earlier mistake is explained by the fact that the July 1981 minutes had not made their way into the Minute Book, it is less easy to explain the repetition of the mistake in March 1993. This is because RBS' notes of 17 February 1993 record the directors of Panagia as Kalliopi, Marika and Captain Nikolos, so it appears that the substitution had been recalled at that time, only a month or so earlier.

132. Second, there are minutes of the special meeting of directors dated 23 March 1993 and signed by Christos as secretary of the meeting. These record the three directors – Kalliopi, Captain Nikolos and Christos – resolving to enter into the loan agreement.

133. Third, there is a waiver of notice of a special meeting of shareholders. This starts:

> "We, the undersigned, being the Shareholders, either in person or by proxy…"

It is signed by Kalliopi and Christos.

134. Fourth, there are minutes of a special meeting of shareholders on 23 March 1993 approving, ratifying and adopting the resolution passed at the board meeting. These declare:

> "Present at the meeting by proxy were the holders of all the issued and outstanding shares of the Company with a right to vote, namely:
>
> Mrs Kalliopi C. Lemos
>
> Mr Christos P. Lemos…"

They are signed by Christos twice, once as "secretary of the meeting" and a second time as "shareholder proxy".

135. The fifth document is a certificate dated 12 July 1993 and signed by Christos annexing and certifying the articles and by-laws of Panagia and the minutes of the board and shareholder meetings. It certifies that Kalliopi, Captain Nikolos (until his death) and Christos were the duly appointed, qualified and acting directors and officers of the company.

136. Putting aside the confusion over who the directors of Panagia were in 1993, the significance of the 1993 corporate documents lies in the fact that Christos is described as a shareholder, along with Kalliopi. In his evidence, Christos denied being a

shareholder of Panagia and suggested he may have signed as a proxy; in re-examination he suggested he would have been signing as proxy for Kalliopi. That could perhaps explain the minutes of the shareholder meeting, the language in which is somewhat ambiguous, however, it cannot explain the waiver of the shareholder's meeting, which is signed by Kalliopi personally.

137. There seem to me to be two possible explanations: either that, because Christos held the bearer shares issued to Captain and Marika Nikolos after receiving them back from the safe in Kefalari, he was treated as the bearer of them and therefore in law a shareholder to the extent of 50 shares, or that the drafter of the documents was aware of the Transfer of Subscription document and assumed that Christos had in fact been issued with one share in consequence of it. A third explanation, namely that the documents were drafted so as to mislead RBS into thinking that Christos was a significant shareholder in Panagia, was not put to the witnesses and in the circumstances it would not be fair to reach this conclusion.

138. In the Annual Reports for CPL Estates Limited and CP Lemos Group Limited for the year ended 31 December 1993, Panagia is described as "a company which is controlled by [Christos]". Christos' evidence is that this was "not entirely accurate", although he did have a form of control as a director. I find this explanation unconvincing.

Trofos Litigation Settlement and 1994 Transactions

139. A settlement was achieved in the Trofos litigation in March 1994 on terms that about US $12.9 million would be appointed to trusts for Christos' benefit. The Trofos Foundation had non-domiciled settlor status and the structure of the settlement reflected a desire to maintain this for tax reasons. Thus on 10 March 1994, the Trofos Foundation appointed the settlement monies to the CP Lemos Appointed Fund ("**CPL Appointed Fund**"), held by Global Fiduciary (Canada) Inc and two others as trustees, of which Christos was the primary beneficiary.

140. On 15 March 1994, the trustees of the CPL Appointed Fund appointed US $4 million to the Kalliopi Lemos Appointed Fund ("**KL Appointed Fund**"), held by the same trustees, of which Kalliopi was the primary beneficiary. The appointment was made pursuant to a deed of covenant executed by Christos on 31 August 1993 and was intended to reflect (a) repayment of the monies lent to him by Captain Nikolos to fund the costs of the Trofos litigation (adjustments then being made between Kalliopi and her sisters in respect of Captain Nikolos' estate) and (b) a sum to compensate her for the loss of her beneficial interest in the Trofos Foundation. There is no suggestion that the payment into the KL Appointed Fund could be the subject of challenge or that, following the creation of the KL Appointed Fund, Christos had any interest in it.

141. On 17 March 1994, the KL 1994 Settlement (which was separate from the KL Appointed Fund) was settled by Kalliopi. The KL Appointed Fund then loaned US $1 million to the KL 1994 Settlement, in two tranches of US $500,000 in April and June 1994, which was paid to Panagia. Most of the second of these tranches was used on 14 June 1994 to enable Panagia to pre-pay RBS the sum of £345,360 in respect of the loan instalments due between September 1994 and March 1997. Prior to that repayment, on 5 April 1994, the RBS loan had stood at £1,669,240.

142. As I have described above, on 22 June 1994 the 1994 Transactions were effected.

143. The uncertainty as to who the shareholder or shareholders of Panagia then were is manifested by the tension between the Declaration of Trust and the minutes of the Panagia board meeting of the same date, presumably drafted by Withers at the same time. The first treats Christos as having had transferred to him the right to one share, whereas the second asserts that all 500 shares had been subscribed and paid for by Kalliopi. The minutes also record a resolution that Kalliopi and Christos "are to remain to serve as Directors of the Corporation and as President and Secretary/Treasurer respectively", once again ignoring the substitution of Christos by Marika as director effected in July 1981.

Events following the 1994 Transactions

144. The Inland Revenue's investigation into Christos' tax affairs was just beginning at the time of the 1994 Transactions. An initial letter appears to have been sent out to Christos' accountants, Moore Stephens in April 1994, and on 22 June 1994 – the same date as the 1994 Transactions – Moore Stephens held a preliminary meeting with a representative of the Inland Revenue at which certain questions were raised. Withers' notes and the Inland Revenue's final settlement report from 2001 show both Christos' advisers and the Inland Revenue trying to grapple with many of the same questions about Panagia's corporate decision-making, the identity of its directors from time to time and the source of funding of improvements to the Property as I have had to.

145. It is not contended that, following the 1994 Transactions, the RBS loan was serviced by Christos. Another pre-payment of capital instalments, in the sum of £345,360, was made by Panagia from Kalliopi's funds in October 1996. The RBS lending was restructured in 1998 and increased to £1.2m; it was again restructured and increased to £1.4m in 1999. The lending was repaid in tranches in 2001-2 by way of loans from a trust for the children, the Panmar Trust, which was formalised into a loan agreement, with the Panmar Trust taking a charge over the Property, in 2005.

146. The position as to the directorships in Panagia continued to be confused. In 1996, Christos and Kalliopi purported to resign as directors, but they acted as directors in resolving that Panagia should enter into the restructured RBS loan in December 1999. They appear to have resigned again in 2001. Finally, in 2006 the First Defendant, the then trustee of the KL 1994 Trust (and sole shareholder in Panagia) dismissed all existing directors of the company and nominated professional directors.

147. On 28 March 2013 the directors of Panagia resolved to transfer the Property to the First Defendant as trustee of the KL 1994 Trust and Panagia was dissolved. Despite the dissolution of the company, a transfer of the Property was executed on 20 December 2013 and the First Defendant was registered as proprietor of the Property on 23 January 2014.

148. In August 2014:

i) The Second Defendant was appointed as a trustee of the KL 1994 Trust;

ii) The Trustees borrowed £7.5 million from EFG Private Bank Limited ("**EFG**"). This was provided in two separate loans, one of £4 million referred to as the "mortgage loan", and one of £3.5 million referred to as the "portfolio loan". These were both secured by way of charge on the Property;

iii) Of the monies borrowed, £2.5 million was paid to the Panmar Trust in discharge of its loan.

iv) The remaining £5 million was invested into a portfolio of investments managed by EFG.

149. The investment portfolio was liquidated by EFG in 2022 when loan-to-value covenants were breached and its proceeds were used to repay most of the portfolio loan.

150. I was told by Mr Elias and Mr Gurr that the Property is currently valued at about £8.25 million. It remains subject to EFG's charge. In May 2023, when Kalliopi made her first witness statement, there was about £1,000 outstanding on the portfolio loan and approximately £3.7 million on the mortgage loan.

Beneficial Interest

Intentions regarding the beneficial ownership of Panagia's shares

151. In my judgment, the evidence and my findings of fact set out above establish that when Panagia was acquired, it was the intention of Captain Nikolos, known to, and acknowledged by, both Christos and Kalliopi, that the beneficial owner of the shares in Panagia would be Kalliopi, and Kalliopi alone. I say that for the following reasons:

i) Captain Nikolos provided all the money for the setting up of Panagia; the acquisition of 27 Bracknell Gardens (including redemption of the sellers' charge) and the work to it carried out in 1982/1983. It is improbable in those circumstances that the intention was that Christos alone would be the sole beneficial owner of Panagia.

ii) Koula's evidence corroborates that of Kalliopi and Christos, that the Property was intended for Kalliopi, to provide her with financial independence from Christos.

iii) The inference to be drawn from the exchange of letters between Captain Nikolos and Christos in June 1981 is that Kalliopi was intended by Captain Nikolos to be the sole beneficial owner of Panagia, to the exclusion of Christos, and that intention was known to, understood and acknowledged by Christos in his letter of 24 June. Although Captain Nikolos' letter of 21 June 1981 specifically directed that Panagia should issue bearer shares, he also suggested a form of draft wording to be endorsed on them. As a matter of law, adding that wording would have been incompatible with the shares being bearer shares and therefore owned in law by the person who had legal possession of them from time to time. Nevertheless, it is clear from his letter that Captain Nikolos intended that, whoever in fact physically held the shares, the beneficial owner of Panagia would be Kalliopi. In my judgment, the proposal that Captain Nikolos himself hold 2% of the shareholding did not mean that he intended to have a 2% beneficial ownership himself: as he said in his letter, that nominal shareholding was to be in his name "for good luck". In any event, there was no intention that Christos should own any of the shares.

iv) Although the Transfer of Subscription entitled Christos to call for one share in Panagia, when the shares came to be issued in July 1981, none were issued to Christos. As I have found above, the 500 shares were issued to Kalliopi, Captain Nikolos and Marika. The inference I draw is that the family, and indeed Constant & Constant when preparing the July 1981 company minutes, treated Christos as having acquired his rights under the Transfer of Subscription on behalf of Kalliopi, which is why no share was ever issued to him: his right to one share was subsumed in the issue of 450 shares to Kalliopi.

v) The issue of 50 shares to Kalliopi's parents in July 1981 was clearly a change from the position intended a few weeks earlier, at which point Captain Nikolos was only expected to have a 2% shareholding "for good luck". Nevertheless, on the balance of probabilities I find that Captain and Marika Nikolos intended to hold their shares for the benefit of Kalliopi. This is on the basis that whilst other evidence refers to the Property being Kalliopi's, there is nothing to suggest any beneficial interest in the Property or Panagia being held by Captain or Marika Nikolos. Indeed, the 29 August 1992 letter records the house as Kalliopi's at the same time as it records 50 shares as belonging to her parents. Moreover, the 22 June 1994 minute, signed as part of the 1994 Transactions, has Kalliopi claiming that she had subscribed and paid for all 500 shares, which, whilst incorrect, is consistent with a belief at that time that the whole company belonged to Kalliopi rather than any shares being beneficially owned by her parents. 50 shares - 10% of the total - is still a relatively nominal amount. Having 10% of the shareholding was a symbolic gesture of protection of their daughter and perhaps also intended to enable Captain and Marika Nikolos to have a degree of input into Panagia's decision-making, for her benefit.

vi) Only Kalliopi, Captain Nikolos and Marika were authorised signatories for Panagia's bank account, not Christos.

vii) Panagia's documents, including those relating to title to the Property, were sent to Captain Nikolos in Greece, at his direction, for safekeeping. That would be surprising if he intended a gift to Christos alone or even to Christos and Kalliopi together. It is suggestive of the retention of some control by Captain Nikolos over Panagia's actions, for the benefit of his daughter.

viii) The 25 March 1982 letter and the 29 August 1992 letter treat the Property as belonging to Kalliopi. This was the practical effect of her beneficial ownership of the shareholding in Panagia, and the family members did not draw any distinction between ownership of the Property and ownership of the shareholding in their correspondence.

ix) Captain Nikolos also treats the Property as belonging to Kalliopi in certain records, akin to diary entries, that he made. Captain Nikolos recorded thoughts and events, relating both to family matters and to his business dealings, in various notebooks. In two places in those notebooks he wrote similar (but not identical) entries which explained that although the vessel M/V Yannis Nikolos had not met his hopes and expectations, he had tried to fulfil his obligations, particularly towards his adored three children. In that context he recorded gifts he had made to his children, as well as charitable donations and activities, saying:

> " To my dear son-in-law Yannis and to Maria I donated about 20 acres of land in Pounta of Fokia, which I inherited from my father and purchased from third parties, and on which my son-in-law Yannis built a wonderful mansion.
>
> For my Kalliopi, I purchased a luxurious house of her choice in London, for which I paid the final amount of GBP £500,000
>
> And I assisted my beloved Koula with the amount of $150,000 to purchase a house in London of her choice."

It is notable that Captain Nikolos here distinguishes between a gift to Yannis and Maria jointly and his gifts to Kalliopi and Koula alone. He also distinguishes between purchasing a house for Kalliopi, and assisting Koula with the purchase of a house, to which Koula explained her husband also contributed. On the other hand, it is right to note that the amount paid by Captain Nikolos for Kalliopi's house is given as £500,000 in the entry above but $500,000 in the other notebook (neither entry casts any light on the question whether and what Captain Nikolos paid for 27A Bracknell Gardens, since it is not clear whether they were written before or after this purchase).

152. Arguing to the contrary, Mr Beswetherick places considerable weight on the Transfer of Subscription. Since Captain Nikolos was directing how the Property should be purchased, he argues, he must have directed that the initial share be taken by Christos, and there would be no point in doing so unless he intended Panagia to be owned by Christos.

153. In my judgment this seeks to place more weight on the Transfer of Subscription than it can properly bear. It ignores all the other evidence contemporaneous with the Transfer of Subscription, including Christos' letter of 24 July 1981, which is of exactly the same date, and which records Christos' own intentions as being the same as those expressed in Captain Nikolos' letter of 21 July 1981.

154. The submission that the Transfer of Subscription evidences Christos' intended beneficial ownership is also neutralised by the Assignee of Subscription document. At more or less the same time as the Liberian corporate agents were informed that Christos would take the Transfer of Subscription, they must have also been informed that Kalliopi was to be an assignee of those rights, hence why the Assignee of Subscription document was prepared, giving Kalliopi that description and treating her as the person with the sole right to appoint directors. I have found that the Assignee of Subscription document was not adopted as a minute of the company, but it nevertheless provides evidence of the family's intentions at the time.

155. As I have said, it is inherently implausible that Captain Nikolos, who was providing all the funds to purchase 27 Bracknell Gardens, would have intended that Panagia should belong to Christos alone. It is therefore inherently unlikely that the Transfer of Subscription document tells the whole story about the family's intentions as to ownership of Panagia. It is much more likely that the Transfer of Subscription was taken in Christos' name because, as the contemporaneous evidence shows, he was the one organising the purchase of 27 Bracknell Gardens, dealing with the sellers and with Constant & Constant initially. That he should undertake that administrative role is

unsurprising, given his responsibility within his and Kalliopi's marriage for dealing with their financial affairs.

156. The Claimants also place reliance on the reference to Panagia as "your company" in Mr Wilson's letter to Christos of 2 July 1981. However, this is likely to have reflected an initial confusion on the part of Mr Wilson about the person who was directing the transaction and who was proposed to be the owner of Panagia: Mr Wilson must subsequently have been put straight, since his letters later that month were written to Captain Nikolos, and he clearly understood that Captain Nikolos was providing the monies for the purchase.

157. The Claimants do not plead a case that the beneficial ownership of Panagia changed at any later date, for example upon acquisition of 27A Bracknell Gardens. Nevertheless, later events and communications are clearly capable of casting light on the intentions of the family members at the time the company was first acquired and 27 Bracknell Gardens was bought. The Claimants rely in particular on the following:

    i) The 1993 shareholder waiver and minutes;

    ii) The funding of the purchase of 27A Bracknell Gardens and the renovation project, including the provision by Christos of a personal guarantee;

    iii) the description of Panagia as being "controlled by" Christos in the Annual Reports of CPL Estates Limited and CP Lemos Group Plc; and

    iv) Notes and correspondence prepared by Moore Stephens and Withers in the context of the tax investigation.

158. I have addressed the 1993 shareholder waiver and minutes in paragraph 137 above. They are capable of being explained, as I have found. In any event, these documents, if accurate about Christos' shareholding, would reflect only the legal ownership of the shares. They would not cast any light on the beneficial ownership.

159. As regards the funding of 27A Bracknell Gardens and the renovation project, I have found (a) that it is not possible to exclude the possibility that Christos assisted with the initial funding of the purchase by Nandina and/or by Panagia from Nandina and (b) that after the RBS loan was made (and the initial funding repaid to Establishment Chrikal) but before the 1994 Transactions, he met interest payments and the first capital payment on the loan. In my judgment these facts and the provision of Christos' personal guarantee to RBS do not, in all the circumstances, cast doubt on the proposition that Panagia was intended to be beneficially owned by Kalliopi. It is clear, as I have said above, that by 1992-1993 the family finances were intermingled. Christos was living in the Property and benefitted from its expansion and renovation. In my judgment, the fact that he contributed to costs associated with Kalliopi's asset was exactly the kind of blurred line between Christos and Kalliopi's assets which the 1994 Transactions were intended to clarify.

160. No convincing explanation has been offered as to why Panagia was described as "controlled by" Christos in the Annual Reports of CPL Estates Limited and CP Lemos Group Plc. However, this evidence is not in my judgment strong enough to cast doubt on the clear evidence of Captain Nikolos', Christos' and Kalliopi's intentions as shown

by evidence more contemporaneous with the acquisition of Panagia. There is a thread throughout the evidence of a cavalier attitude to assertions as to which family member was involved in which company and in which capacity, and the notes in these Annual Reports are more of the same.

161. The notes and correspondence relating to the tax investigation show Withers and Moore Stephens attempting to grapple with the question of who owned the Property and the shares in Panagia from time to time (legally or beneficially) for the purpose of explaining this to the Inland Revenue. The Claimants submit that the lack of clarity is inconsistent with the current assertion that it was always known that Panagia was held beneficially for Kalliopi. There is considerable force in this submission. If Panagia was always viewed as Kalliopi's, one might have expected that to have been clearly conveyed to Withers and Moore Stephens and by them to the Inland Revenue. However, by the time these notes and letters came to be written (from 1997), the acquisition of Panagia and 27 Bracknell Gardens was historic and matters had become confused by inadequate recordkeeping and the mingling of family finances. Christos, Withers and Moore Stephens did not have available to them all the documents which have been disclosed in these proceedings and from which I am in a better position to piece together the history. In my judgment the documents which are contemporaneous with the initial purchase, particularly the family and solicitor correspondence, are better evidence than the much later records associated with the tax investigation.

Legal Position

162. On the basis of my factual findings, at the date of the Declaration of Trust, Christos did not hold any shares in Panagia. He had had a right to a single share for a short period of time between the Transfer of Subscription on 24 June 1981 and the issue of the 500 shares to Kalliopi, Captain Nikolos and Maria in July 1981. He subsequently took custody of the share certificates from Captain Nikolos, as evidenced by the 29 August 1992 letter, and consequently, the shares being bearer shares, acquired legal title by virtue of his possession of the certificates. However, by the time of the 1994 Transactions the share certificates had been lost.

163. It was not seriously in dispute that if the facts were as I have found them to be, Christos held any interest he may have had in Panagia as trustee for Kalliopi. There was some discussion at trial as to whether the trust should be characterised as an express, constructive or resulting trust and whether Christos' intentions were relevant, or only those of Captain Nikolos. In my judgment, Christos is properly to be characterised as having acquired the right to a subscriber share under the Transfer of Subscription as an express trustee for Kalliopi. He made a declaration of trust, albeit an informal one, in her favour during the discussions which took place when the purchase of 27 Bracknell Gardens was being planned and in his letter of 24 June 1981. Hence, when he took the benefit of the Transfer of Subscription, he did so expressly as trustee. There are no formal requirements for the creation of an express trust of an interest like that acquired by Christos under the Transfer of Subscription. Moreover, the "three certainties" were satisfied (see Lewin on Trusts 20th edn para 5-003; *High Commissioner for Pakistan v Prince Muffakham Jah* [2020] Ch 421 at [244]): Christos, as settlor, had a sufficiently certain intention to create a trust; the subject-matter of the trust, namely the interest acquired under the Transfer of Subscription, was sufficiently certain and the beneficiary of the trust, namely Kalliopi, was also sufficiently certain.

164. Equally, by acknowledging in the 29 August 1992 letter that the 500 shares which had been handed to him belonged to Kalliopi, Captain and Marika Nikolos, Christos declared himself to be holding the share certificates only as trustee; at that time, too, the three certainties of an express trust were satisfied. As I have found above, Captain Nikolos and Marika themselves intended their interest in their parcel of 25 shares each to be held on trust for Kalliopi.

165. I therefore conclude that, for the periods prior to the 1994 Transactions when Christos held any interest in any shares in Panagia, that interest was held on trust for Kalliopi. The Declaration of Trust was accurate, in so far as it declared that Christos had held his interest under the Transfer of Subscription and any other shares in Panagia for Kalliopi.

166. I agree with Mr Beswetherick that, following *Invest Bank PSC v El-Husseini*, above, that does not prevent s.423(1)(a) being satisfied: for the purposes of the statutory provision the Declaration of Trust was a "transaction" with Kalliopi "on terms that provide for [Christos] to receive no consideration". However, on the facts of this case, as I have indicated above, the absence of any pre-existing beneficial interest in Christos makes it highly unlikely that the Declaration of Trust was for either of the purposes referred to in s.423(3), which is the issue to which I now turn.

Purpose

167. Mr Elias and Mr Gurr went so far as to submit that, in the absence of a pleading that the Declaration of Trust was a sham, it was not open to the Claimants to allege that Christos did not honestly believe the statements in it and that it must necessarily follow that Christos' subjective purpose was not a prohibited purpose under s.423. I agree with Mr Beswetherick, however, that this is to misapply the concept of a sham.

168. A sham was famously described by Diplock LJ in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802 as:

> "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."

See also Arden LJ in *Stone (Inspector of Taxes) v Hitch* [2001] EWCA Civ 63 at [66]:

> "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."

A unilateral declaration of trust may be a sham, where the person making it does not intend in fact to divest themselves of their interest in the relevant asset but makes the declaration for the purpose of inducing third parties to believe that they do: *Painter v Hutchinson* [2007] EWHC 758. But there is a distinction to be drawn between the operative parts of a deed like a declaration of trust, which would have, if valid, effect to change the legal position going forward, and recitals and other statements of past fact. The concept of a sham, which is concerned with the apparent creation of rights

and obligations in the operative part of a deed or agreement, does not apply in the same way to a statement of past fact. As Briggs LJ said in *Sibir Energy Ltd v Tatik Inc* [2014] EWCA Civ 831 at [61]:

> "An agreement is not a sham…merely because it deliberately misdescribes history".

It was therefore not necessary for the Claimants to plead that those elements of the Declaration of Trust which stated that Christos had held his interest in Panagia on trust for Kalliopi since 1981 were a sham, in order to be able to contend that they were a deliberate misdescription of history, which had been clearly pleaded.

169. Mr Elias and Mr Gurr referred me to a decision of ICC Judge Mullen, *Re Munir* [2021] EWHC 278, in which a declaration which purported to acknowledge and affirm that from the date on which a particular property had been acquired, the legal owner had held it on trust for another was held to be a sham: see [5], [140] – [153]. However, in that case no submissions appear to have been addressed to the issue of whether the operative parts of the declaration were to be treated differently from the statements of past fact and *Sibir,* above, was not cited. Moreover, since the allegation of sham in that case involved investigating whether or not the legal owner had indeed held the property on trust, the nature of the factual enquiry was the same, whether conceptualised as an allegation of sham or an allegation of deliberate misdescription of history.

170. However, in any event I find on the evidence that when Christos executed the Declaration of Trust he believed it to be true: neither he nor Kalliopi could remember how many shares in Panagia had been issued or to whom but they both correctly believed that whatever shares had been issued had always been held by or for Kalliopi. That belief is reflected in the terms in which the Declaration of Trust and the Panagia minute signed on the same day were drafted by Withers on their instructions.

171. Mr Beswetherick argued (on the basis of his clients' case that Christos held a beneficial interest in Panagia in 1994) that the 1994 Transactions were executed for the purpose of putting assets beyond the reach of, or otherwise to prejudice, potential future creditors. In this context he contended that in March 1994 Christos:

i) believed that he was a shareholder in Panagia, as shown by the March 1993 minutes;

ii) was about to engage in an expansion of his personal business activities into a risky sphere, by expanding his shipping business;

iii) knew that he would have to give personal guarantees and take on personal risk in this regard;

iv) knew that the Settlement Sum from the Trofos litigation had been put into trust and so was not under his control; and

v) was the subject of a tax investigation.

Mr Beswetherick also referred to Withers' note of 31 January 1997, written in the context of the tax investigation. This says:

> "On Bracknell Gardens, there is of course no IHT benefit keeping the trust going which I think we pointed out initially because Kalliopi was deemed domiciled when the settlement was made. It was, however, made as a general protection against claims in the future, although she herself has not personally incurred any debts. Chris I think was concerned as to security and claims against him…" (emphasis added).

172. Contrary to Mr Beswetherick's submissions, and in light of my finding on the beneficial ownership issue, I accept the evidence of Christos and Mr Hallam that the purpose of the 1994 Transactions, including the Declaration of Trust, was to segregate Christos and Kalliopi's assets. It was an aspect of putting their financial affairs properly in order following the settlement of the Trofos litigation and receipt of the Settlement Sum. It is in my view highly plausible that Christos and Kalliopi would have wanted to clear up the previously clouded arrangements at just this point in time. The monies paid out of the Trofos Trust were being segregated into different trusts of which Christos and Kalliopi were each a primary beneficiary. Captain Nikolos had relatively recently died and the financial arrangements under which he had lent Christos money to fund the Trofos litigation, and Kalliopi's inheritance from his estate, needed to be sorted out. A large part of the motivation, as Withers' note records, was no doubt to ensure that Kalliopi's own assets were protected from future claims against Christos; that is quite different from seeking to put Christos' assets out of reach of his future creditors. Mr Hallam explained that putting Panagia into a trust for Kalliopi had no tax benefits but was seen as the appropriate way of protecting Kalliopi's interests for the future. As to the suggestion that the 1994 Transactions were motivated by the tax investigation, the first letter was not sent by the Inland Revenue until 11 April 1994, whereas the KL 1994 Trust had been settled on 17 March 1994 in obvious anticipation of what took place in June. There is no evidence to suggest that Christos had any awareness of the potential for a tax investigation before receiving that first letter.

12 May 2015 meeting

173. I should deal briefly with the evidence which was given by Christos, Mr Leeds and Mr Patel about a meeting which they had on 12 May 2015, relatively soon after Christos was made bankrupt and some months after the asset restraint order and freezing injunction had been made. When a note was drawn up of the meeting, there was a dispute as to something which Christos had said, and the Claimants rely on Mr Leeds' and Mr Patel's version in support of their case on the purpose issue.

174. The meeting was an initial interview, conducted by Mr Leeds as one of the trustees in bankruptcy and attended by two of his colleagues at Grant Thornton, Mr Patel and Ilya Aleksandrovich. Prior to the interview, Christos had been asked to fill in a questionnaire. Mr Patel and Mr Aleksandrovich took handwritten notes during the meeting and a typed note was subsequently prepared from these. The typed version was sent to Christos for comment and approval but a form of words could not be agreed and ultimately Mr Leeds signed one version and Christos another.

175. The contested passage in Mr Leeds' version says:

> "MTL asked whether KL was the ultimate beneficiary of the trust that ultimately owns the property and assets within the property.

> CPL explained that the structure was set up to protect KL and the Bracknell property from a predicament such as his bankruptcy. This kept the Bracknell house outside of his personal and business risks. CPL advised that we ask KL's trust for information, not him."

176. The passage in Christos' version says:

> "MTL asked whether KL was the ultimate beneficiary of the trust that ultimately owns the property and assets within the property.
>
> CPL explained that the structure was set up because KL wished to seggregate [sic] her own assets including the Bracknell property. The way she was advised of doing this was to put them in trust. This kept the Bracknell house outside of his personal ownership. CPL advised that we ask KL's trust for information, not him."

177. Mr Leeds and Mr Patel stood by Mr Leeds' version of the note as reflecting what Christos had said in the meeting. I accept that that is how they both recall it. It was a matter of importance to them as an apparent admission that assets had been put out of the reach of creditors. However, in light of the findings I have made on the evidence as a whole, I accept that the meaning which Christos sought to convey in the meeting was more fairly reflected in his version of the typed note.

178. Christos' version is also more consistent with the handwritten notes actually made during the meeting. The relevant passage in Mr Patel's handwritten notes reads:

> "CL → wife is beneficiary of trust → [writing deleted] He lives there as her spouse
>
> CL → Bracknell was always her and ownership structure created to protect her from C.Lemos liabilities/risks in business."

The same passage in Mr Aleksandrovich's notes reads:

> "ML: So Kalliopi is a beneficiary of the trust that ultimately owns the property & assets within the property
>
> CL: The structure was set up to protect her from his predicament
>
> → keeping outside of his interests; [writing deleted] not subject to husband's risks."

These notes, and in particular the reference to "Bracknell was always her" indicate that Christos was trying to explain that the Property had always been Kalliopi's and that the trust structure had been created to ensure segregation of her assets from his and therefore from liabilities he might incur or business risks which he might undertake.

179. I therefore conclude that the Declaration of Trust was not made for the purpose of putting assets beyond the reach of a person who was making or might at some point make a claim against Christos or of otherwise prejudicing the interests of such a person in relation to such a claim.

Conclusion

180. In light of my finding that the Declaration of Trust was not made for either of the purposes referred to in s.423(3), the section does not apply to it.

181. In the circumstances, I do not need to consider the relief which I would have granted if the section had applied and do not consider it would be helpful for me to do so.

182. I shall therefore dismiss the Claimants' claim.