



Neutral Citation Number: [2020] EWHC 2805 (QB)

Case No: FJ22/19

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 October 2020

Before :

MR JUSTICE EDIS

Between :

**COBUSSEN PRINCIPAL INVESTMENT
HOLDINGS LIMITED**

Claimant

- and -

- (1) GHOUSE AKBAR**
(2) LEGACY HOLDINGS LIMITED
(3) MEHREEN AKBAR

Defendants

James Weale (instructed by **DWFM Beckman**) for the **Claimant**
William Edwards (instructed by **DWF Law**) for the **First Defendant**
Lisa Lacob (instructed by **DWF Law**) for the **Second Defendant**

Hearing dates: 28, 29 & 30 July 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down are deemed to be 21st October 2020 at 14:00.

Approved Judgment**Mr Justice Edis:**

1. This is my decision on the claimant's ("Cobussen") application to make final a charging order in relation to a valuable leasehold property in London called Apartment 2.5, 22 Trevor Square, London SW7 1EA ("the Property"). Cobussen claims that the first defendant ("Mr. Akbar") is the beneficial owner of the Property. The second defendant ("Legacy") claims that it owns the Property, as does Mr. Akbar. The third defendant ("Mrs. Akbar") is a party to these proceedings because she may have an interest in the Property or at least a right to live in it. She has played no part in the proceedings and appears only so that she can be heard on any application for costs which may follow judgment. I heard evidence and submissions on the issue before the court, namely whether Mr. Akbar has any interest in the Property which can be charged to secure payment of a judgment debt. If so, no-one has submitted that that interest might be held jointly with anyone else. Mrs. Akbar's position is as I have recorded above. The issue is whether he is solely entitled to the beneficial interest, or whether Legacy is.
2. In this judgment, page references are to the number printed on the page in the Trial Bundle, and appear as "[page number]". This is not the same as the digital page number, which is not the best way of preparing bundles. The Trial Bundle was perhaps prepared at speed because of the late disclosure of much of its contents, but it is not searchable and contains multiple copies of emails most of which are of no importance. It contains 2594 pages in the main bundle, and 418 pages in the supplemental bundle. This has added significantly to the time taken to prepare this judgment as I have reviewed the documents in their entirety in the course of its preparation.

These proceedings

3. By an application on Form N379 issued on 18th June 2019 Cobussen sought a charging order on the interest of Mr. Akbar in the Property to secure payment of a judgment debt. The judgment was given in the Eastern Caribbean Supreme Court, BVI on 24th October 2018, and was registered in the High Court of Justice, Queen's Bench Division on 20th February 2019. The debt totalled £15,792,071.94 at that date, including interest and costs. It remains unpaid, although Mr. Akbar consented to the judgment in the BVI and, apparently, has the assets to pay it if he chosen to do so. It was, effectively, common ground at the trial that he is a man of great wealth. In fact, his net worth was assessed by one of his banks in 2018 at £695,000, see [1588]. For a man of great wealth, it is fair to observe that he experiences a surprising amount of persistent difficulty in paying his debts. The judgment debt resulted from a Tomlin Order which was agreed in settlement of proceedings by Cobussen against Mr. Akbar and a company of which he was the majority shareholder, but which does not otherwise feature in this case. Cobussen had invested a large sum in this company, and alleged that its assets had been "diverted, dissipated or misapplied, while significant borrowings were assumed against overinflated asset values". Mr. Akbar chose not to resist the claim that he was personally liable for this conduct.
4. Before these proceedings began, on 15th April 2018 Bryan J made an order ("the Norwich Pharmacal Order") requiring HBL Bank UK to locate and disclose documents to Cobussen. Mr. Akbar had one or more accounts with that bank. The documents thus obtained by Cobussen included an email sent by Mr. Akbar on 4th

Approved Judgment

April 2019 which Cobussen now relies on in support of its application. It was sent in answer to an email from HBL Bank UK asking for an explanation of why Mr. Akbar had paid personally a liability of Legacy, and asking him to confirm his “ownership”. Legacy’s sole function is to hold the legal title to the Property, and, perhaps, the beneficial interest too. The email (“the HBL email”) says

“Pls note that legacy is owned by me for which we have been paying the interest etc harneys is simply the legal firm that does the yearly compliance work for legacy which I have to pay.”

5. On 21st June 2019, Jay J made an interim charging order and directed that unless an objection to its continuation were filed within 28 days a Master would consider without a hearing whether it should be made final. In the event that there was an objection, he directed that the application would be heard by a Master on 30th July 2019 and that the judgment debtor and any other person seeking to object should file and serve their objection and the grounds of it in writing not less than 7 days before the hearing.
6. His Honour Judge Freedman sitting as a High Court Judge, on 30th July 2019 made an order dealing with some third party debt orders with which I am not concerned. In relation to the Charging Order, he made an order which regularised service on Legacy and directed that Legacy and Mrs. Akbar should be joined as respondents to this aspect of the proceedings, and ordered that the interim charging order should continue until further order. He then made an order directing:-

6. Pursuant to CPR 73.10A(3)(d), there shall be a trial of the following issues in respect of the Charging Order Application (a) whether the First Respondent has a beneficial interest in the Property, and, if so, the nature and extent of such interest; (b) whether the Third Respondent has a beneficial interest and/or rights of occupation in the Property and, if so, the nature and extent of that interest and/or those rights; (c) whether a final charging order should be made or the Interim Charging Order discharged, and (d) insofar as relevant to (a), (b) and/or (c) whether the First Respondent is a or the beneficial owner of the Second Respondent (the Issues).

The pleadings and List of Disclosure Issues

7. Point of Claim were served on 9th August. Points of Defence were served by the Respondents on 23rd August 2019. A Reply to both Defences was served on 30th August 2019.
8. The Points of Claim allege that Legacy holds the legal title to the Property on a resulting trust, alternatively as nominee, in each case for Mr. Akbar. It alleges that Legacy acquired the Property on or about 14th April 2004 but that the purchase price when it did so was paid by Mr. Akbar personally, by a mechanism of which Cobussen was unaware. It is claimed that the source of the funds was the sale of a McDonald’s Franchise in Pakistan. It is common ground that a McDonalds franchise in Pakistan was sold at or about this time, realising substantial funds. It is alleged that the Property was bought for the use of Mr. Akbar and his family when they were in

Approved Judgment

London, and that when they have used it they have not paid anything to Legacy. The Points of Claim rely on the payment of the quarterly rent and service charges for the Property by Mr. Akbar personally to the grantor of the leasehold interest which is the subject of these proceedings. In the alternative, it is claimed that Mr. Akbar is the beneficial owner of Legacy, relying on the email set out above, and on the allegation that Legacy exists for no other purpose than to hold the Property, which is true.

9. Mr. Akbar's Points of Defence allege that a relation of his, Mrs. Mumtaz, was the settlor of a Cayman Islands Trust which is called the 2003 Trust in the document. The 2003 Trust had as an asset the single issued share in Legacy "held via Buchanan Ltd. which held the Legacy shareholding from the 12th November 2003" until 2009. The 2003 Trust was wound up in 2009 and Mrs. Mumtaz directed that the share was to be transferred to "c/o Robert Mitchell, EFG Private Bank Ltd" in London. This was then acquired as an asset of the Garden Trust which was set up on the same day. It was held by EFG Nominees Ltd which held it as nominee of and trustee for EFG Trust Co, the trustee of the Garden Trust. Equiom Trustees (Jersey) Limited replaced EFG as Trustee of the Garden Trust, and the holder of the share became Equiom Nominees (No 2) Jersey Ltd. These last changes occurred in September and October 2016. It is denied that Mr. Akbar has any beneficial interest in the Property. It is alleged that Mrs. Mumtaz provided £643,000 towards the purchase price and that the balance was funded by a loan from Citibank. The pleading is not quite clear about who the borrower was in respect of that funding, but it seems likely that it was Legacy and that there was a charge on the Property and a personal guarantee from Mr. Akbar. That was certainly the way the refinancing was done in 2009, according to the Financial Statements of Legacy for 2010. The charge in favour of the bank by Legacy is confirmed in Legacy's Points of Defence, which is silent about any personal guarantee there may have been. It is denied that any part of the sale proceeds of the McDonald's Franchise funded the purchase of the Property. It is alleged that the Akbar family have used the Property since its acquisition under the terms of a Licence Agreement dated 9th November 2011 which requires that they keep the property in good repair. It is said that Mr. Akbar has lent Legacy the money to pay the rent and service charge. It is admitted that Legacy carries on no trading or other activities and denied that Mr. Akbar is its beneficial owner. It does not say who is.
10. Legacy's Defence is attested by a Statement of Truth from a director of its corporate director, an Equiom company. The name is illegible. The document confirms what Mr. Akbar says about the holding of the share in Legacy between 2003 and 2009, and about the subsequent transfers to EFG and then Equiom. The document asserts that Mrs. Mumtaz was the settlor of the Garden Trust. It says that the Equiom Directors have at all times acted independently of the Garden Trust and its beneficiaries. The words "as did the EFG Directors" then follow. Nothing which has been disclosed reveals how the Equiom Directors formed any belief about what the EFG directors had done, or why they had done it. There is a file, called the "corporate file" which has been disclosed, but the documentary history is far from complete. As to the purchase of the Property, the document says that the price of £2,398,000 was funded as to £643,000 by Mrs Mumtaz and as to the balance by a mortgage loan secured by a first legal charge over the Property executed by Legacy. This was refinanced in 2009 by a loan from EFG of £2,700,000, and refinanced again in January 2016 by a loan from Kleinworts. It says that Legacy was the borrower and had "responsibility for maintaining the mortgage loan repayments". It does not say whether that

Approved Judgment

responsibility was ever discharged, or, if so, by whom. It confirms that there was a licence agreement, but does not say what Mr. Akbar's obligations are under it. It says that Mr. Akbar has provided loans to Legacy to "assist in the payment of mortgage loan interest and service charges". It does not say how or when Legacy proposes to repay those loans.

11. The Reply says that Mrs. Mumtaz is Mr. Akbar's aunt and has limited financial means. It says she is dependent on Mr. Akbar. Various points are taken about Mr. Akbar's case which are not material to the applications before me. In summary, his case is denied. A similar approach is taken to Legacy's Defence.
12. On 2nd March 2020 I made a ruling giving reasons for making a wide ranging disclosure order. That is [2020] EWHC 476 (QB), and it is not necessary to repeat what I said here. I concluded that Mr. Akbar and Legacy, acting through the same firm of solicitors, had failed to give proper disclosure and that their solicitors had also failed in their function of ensuring that their clients did give proper disclosure. A great deal of documentation has been disclosed since that order (after a further Order of Kerr J) and there is no doubt that the stance taken by DWF on the instructions of Mr. Akbar and Legacy was highly unsatisfactory. Important documents were disclosed very late, and the documentary material is still incomplete. The principal gap is any material to show that Mrs. Mumtaz paid anything towards the purchase of the Property, or to show her taking any interest in it at all over the last 16 years. Among the recently disclosed material is internal Equiom documentation which shows that they became alive to this gap and were worried enough to make a Suspicious Activity Report about it. I will turn later to the relevance of all this when assessing the oral evidence of Mr. Akbar on which his case, and Legacy's case, depends.

An application to amend

13. At the start of the trial Cobussen made an application to amend the Points of Claim by the addition of paragraph 18A. This said

"18A. Notwithstanding that a discretionary trust known as the Garden Trust was established by a declaration of trust made by EFG Trust Company Limited ("EFG Trust Company") on 11 May 2009; that the share in Legacy was purportedly held by EFG Nominees Limited on trust for EFG Trust Company as trustee of the Garden Trust from 8 May 2009 (prior to the establishment of that trust); and that since 12 October 2016 the share has been held by Equiom Nominees No 2 (Jersey) Limited purportedly on trust for Equiom Trustees (Jersey) Limited as trustee of the Garden Trust, the parties did not intend the declaration of trust to create the legal rights and obligations which it gives the appearance of creating, or alternatively, on its true construction, the Garden Trust is no more than a bare trust for the First Respondent. In the circumstances, the First Respondent is the true beneficial owner of Legacy."

Approved Judgment

14. This was an allegation that the EFG and Equiom arrangements were, in law, shams. It was a late amendment, but the defendants can hardly complain at that, given their late disclosure. However, it seemed to me that the nature of a sham is that both sides, or all sides, to such transactions must intend that the documents misrepresent the reality. In this case, this involved a claim in relation to two separate professional trustees in 2009 and 2016. EFG are not parties to the claim and not on notice that any allegation against their professional conduct was to be made. Their only contribution has been a terse refusal to give any disclosure of anything they have which is relevant to the proceedings without giving any explanation of their unimpressive stance, see [2074]. It is conceivable, although not likely, that Equiom might have conducted its case differently had it been aware of the allegation of sham. In these circumstances it seemed to me that it would not be appropriate to permit the allegation of sham to be litigated as a separate route to relief for Cobussen, although it was open to it to explore the factual matrix out of which paragraph 18A came, in support of the other routes to relief already pleaded. The allegation of bare trust did not, in my judgment, add anything to the allegations already pleaded and certainly did not disadvantage the defendants. I therefore refused the application to add paragraph 18A but made it clear that the existing pleadings allowed full exploration of the facts impliedly identified in it. There is therefore no allegation of sham involving EFG or Equiom before me. Given that the most significant dispositions, in my judgment, are those which preceded the involvement of either this does not impede Cobussen and furthers the objective of ensuring that proceedings are no more complex than they need to be.

The evidence

15. It will be clear already that although the law in this area is complex, there is at the heart of this case a simple question of fact. Who provided the £643,000 which was paid for the Property in 2003? Mr. Akbar agrees that he guaranteed the loans advanced against the Property at its purchase and in each of the subsequent refinancing arrangements, and he has paid the interest on those loans and all other outgoings on the Property. Mrs. Mumtaz has, apart from her alleged contribution of £643,000 to the purchase price, never paid anything for the Property, she has never lived in it and she has never earned a penny out of it in rent. Mr. Akbar did not know if she had even visited it. The legal interest is now held (via Legacy) by the Garden Trust, of which she is now prevented from ever becoming a beneficiary.
16. A brief, selective but illustrative chronology of the transactions relevant to this issue is as follows:-
- i) Legacy was incorporated on 12th November 2003. On that date its only share was registered in the name of Buchanan Limited, a Cayman Island company. The evidence is silent about who owned this company. On 5th December 2003 the directors granted a limited power of attorney to Mr. Akbar, see [2231].
 - ii) In December 2003 the Cayman Islands Trust was established with Mrs Mumtaz as settlor. This is referred to in the 2009 revocation document, but otherwise is no longer available. There is no evidence that she actually settled anything by transferring assets to the trustees, apart from the US\$10 referred to in a recital to the Deed referred to at (v) below.

Approved Judgment

- iii) On 14th April 2004, the 999 year lease of the Property was acquired by Legacy. £1,755,000 of the price was funded by a loan from Citibank secured by mortgage with a personal guarantee from Mr. Akbar. The balance was provided by a means which is disputed.
- iv) Between 2007-2010 transactions giving rise to the dispute which resulted in the Tomlin Order in favour of Cobussen occurred. In other words, the establishment of the trust and the acquisition of the Property were not done in order to avoid making payments to Cobussen.
- v) In 2009 the Revocation of the 2003 Trust involving Cititrust took place, and a new trust was settled involving EFG. This also was before the dispute arose. The termination of the 2003 Trust appears in documents at various places in the Bundle, but versions of the documents apparently signed by Mrs. Mumtaz are at [511]-[514] and [1814]-[1818]. EFG granted a facility to Legacy Holdings by letter of 8 May 2009 of £2,700,000 secured by mortgage against the Property. Mr. Akbar gave an unlimited personal guarantee of the debt. This increased the borrowing against the Property by nearly £1m. The facility letter is at [430]. The new trust was called the Garden Trust and there is a declaration of trust dated 11 May 2009 at [467]. EFG Trust Company Limited was the original trustee. It was a discretionary trust and the beneficiaries were Mr. and Mrs. Akbar and their two children. On 16th November 2009 [517] Legacy resolved that the borrowing would increase to £2,940,000 and that on completion £200,000 would be used in part repayment of the shareholder's loan with the Garden Trust, and that any further payments to or from the Garden Trust would be treated as additions to or repayments of the existing loan, which was unsecured and interest free.
- vi) On 20th December 2010 Legacy noted [518] that the EFG facility was increased to £3,300,000 and resolved to approve it. The meeting also noted

“IT WAS FURTHER NOTED that the purpose of the increase is to assist the Company with clearing a temporary excess on its account with EFG Private Bank (CI) Limited and to assist Mr. Ghouse Akbar, **the shareholder of the Company**, with investment opportunities and to cover interest on the loan.”
[emphasis added].
- vii) On 9th November 2011 the corporate directors of Legacy, ie EFG, resolved to grant a licence [531] to Mr. Akbar to occupy the Property indefinitely and without payment of rent. This formalised the position which had prevailed since its acquisition. The Licence Fee was a Peppercorn. Mr. Akbar was required to keep the Property in good repair and to indemnify Legacy against any claims, demands, proceedings, damages and costs which may arise in connection with the occupation and use of the Property during the Licence period. There is no available documentation which sets out the reasons why the directors of Legacy decided that this arrangement was in its best interests. That could only be so if the best interests of Legacy and those of Mr. Akbar were very closely aligned indeed. One way in which such alignment might arise would be that Legacy existed simply to do Mr. Akbar's bidding, and its directors knew that. That Mr. Akbar at least understood that this was the

Approved Judgment

position is confirmed by the HBL email. It is also confirmed by the fact that he enjoyed the benefit of all the refinancing arrangements which were all completed in accordance with his instructions.

viii) By an amended facility letter dated 9 August 2012 EFG extended the facility to Legacy “by £800,000 to £3,900,000” which was to reduce to £3,576,000 on 30 April 2013. The Bank continued to rely on the existing unlimited guarantee by Mr. Akbar.

ix) On 24 July 2014 [666] Mr. Akbar emailed EFG (the Trustee Company and the corporate director of Legacy were both EFG companies) saying

“Michael

As you may be aware, I am trying to refinance the mortgage.
Pls email me the following info so I can fwd to the other bank.

Regards

Ghouse

Trust Details

Name, details of settlor, beneficiaries and trustees.

Breakdown of assets & liabilities held within trust (if not just property alone)”

x) Negotiations took place between a mortgage broker, Mr. Akbar and SG Hambro which resulted in a facility letter of 20 August 2015 in which a facility was granted to Legacy of £4,537,500 [780] backed by a mortgage of the Property and a personal guarantee from Mr. Akbar. As far as the evidence relates no capital was ever repaid, and plainly by this time the Property had been used as a source of very substantial borrowed money. It is a surprising fact that the defendants’ evidence does not say what happened to any of this borrowed money, or who controlled it. The SG Hambros refinancing was completed while EFG still supplied the trustee of the Garden Trust and the corporate director of Legacy, and then the contemplated transfer of the structure to Equiom took place. These arrangements were discussed at a meeting between EFG and Equiom on 13th January 2016, the note of which is at [1229]. This gave an account of the move from Cititrust (Singapore) to EFG in 2009 as having been due to a breakdown of a relationship between Mr. Akbar’s aunt and Cititrust. The note records that difficulties in obtaining payment of their fees had caused the relationship between EFG and Mr. Akbar to sour and they no longer wished to retain the business. These problems had extended to securing funds to reduce the loan as agreed in the facility letter of 9 August 2012, (as to which, see (viii) above).

xi) On 12 October 2016 one Equiom company became director of Legacy and the Equiom Nominees company held the share, which is an asset of the trust of which the Equiom trustee company is trustee. The transfer between EFG and

Approved Judgment

Equiom was managed by Harneys, see their “Transfer In” documents at [790]. Passports and proof of residence were supplied to Harneys by both Mr. Akbar and Mrs. Mumtaz. This appears to have been in answer to a request in the form, at [793], for “evidence of the identity of each of the ultimate beneficial owners”, which is defined at [795]. The documents are silent as to the exact reason why these identification documents were supplied for both Mr. Akbar and Mrs. Mumtaz. Although compliance issues should, no doubt, have been resolved in 2016, they were not. As will become apparent Equiom failed to resolve them properly in 2016 and had to spend time and effort trying to do so between 2018 and 2020, including during the currency of these proceedings.

- xii) On 22nd February 2016 Equiom Solutions Limited supplied advice on the structure and its tax efficiency in the light of proposed changes in UK law, see [1252]. This resulted in the exclusion of Mrs. Mumtaz as a beneficiary of the Garden Trust in order to shelter the Property from Inheritance Tax on her death. This change was effected on the instructions of Mr. Akbar, see [1334] and [1342]. Although the resolution of the trustees records receipt of a letter from Mrs. Mumtaz asking for her exclusion, there is no copy of it in the documents.
- xiii) On 21 March 2019 Harneys emailed [1593] Laura Brown of Equiom chasing information which they had been seeking for some time. It said
- “Further to our telephone conversation yesterday, kindly confirm that you are liaising with your client of record regarding the nature of the business of the company [Legacy] and details of the source of wealth of the ultimate beneficial owner(s), and the source of funds flowing through the company and you anticipate having the information by Friday.”
- xiv) On 1 April 2019 [1600] Equiom sought information about Mrs. Mumtaz’s source of wealth from Mr. Akbar as “part of our due diligence requirements”. This email also chased very substantial sums in fees and expenses due from Legacy and the Garden Trust. No contact was ever made with Mrs. Mumtaz and information was received by email which did not satisfy Equiom, see [1725]. On 25 July 2019 Equiom made an internal Suspicious Activity Report [1751]. This is an interesting date because DWF were instructed by Mr. Akbar in these proceedings on 23rd July and on 26th July 2019 Mr. Isaacs made a statement [1859] in which he said that he taken urgent steps to ensure that the directors of Legacy were aware of the proceedings and was waiting for an answer from them. The precise connection between these events was not explored in evidence, but they are obviously connected. I criticised Mr. Isaacs’ statement in my disclosure ruling. In it at paragraph 21 Mr. Isaacs said *“It is therefore clear that there is no basis whatever for concluding that there is a division between the legal and beneficial ownership of the Property. In short, Mr. Akbar has no beneficial interest in the Property.”* It has now emerged that at the time when he said this there was no documentary evidence known to him which showed that Mrs. Mumtaz had paid the £643,000 or that she had the means to do so. Equiom were so concerned about this that they made a SAR, internally. Mrs. Mumtaz’s witness statement was much later, being dated 21 January 2020, and is an extremely unsatisfactory document. I

Approved Judgment

shall find that the italicised passage quoted above is, in fact false. It ought not to have been included in the witness statement without a clear identification of the fact that it had no proper foundation in the materials available to the maker, except the bare assertion which Mr. Akbar had presumably made to this effect.

- xv) On 15th August 2019 Equiom [1776] demanded payment of its outstanding fees from Mr. Akbar and threatened to cease acting unless he co-operated fully with them. This resulted in a series of payments. The issue was not fully resolved by 4 December 2019, see [1799]. In April 2020 there was continuing, and surprising, uncertainty between Equiom and Kleinwort Hambros as to the ultimate beneficial ownership of the company, see [1810]-[1813]. This makes an unprepossessing contrast with the absolute certainty which the Defendants were asserting in these proceedings at that time while documents of this kind were being wrongly withheld. The Bank said

“We have been advised that Ghouse Akbar is currently in the attached self-cert as CP of Legacy Holdings Limited, which is what is on our internal system also [sic].

“CRS is reported at an individual level, as you can’t have a controlling person that is an entity.

“Is a new self-cert required? The S/C also states that Ismatun Mumtaz is a CP but she is not on our internal system?”

The oral evidence

17. Mrs. Moussaoui made witness statements but was not called to give evidence. Effectively she simply produced documents which had been obtained by disclosure and, in some cases, from third parties. She gave a history of the proceedings and made some comments. I have not taken her evidence into account, although it is a convenient place to find documents and procedural information.
18. Mr. Sohail Sultan is the ultimate beneficial owner of Cobussen. His interest in it is held by a structure involving the Royal Bank of Canada the details of which do not matter. I think the detail was elicited in order to show that it is not uncommon to find valuable assets held in structures which involve trusts, and companies with corporate directors. I do not find that proposition helpful in ascertaining the true nature of the beneficial interest in the Property. He gave an account of the dispute between Cobussen and Mr. Akbar which resulted in the Tomlin Order. He says in paragraph 4 of his witness statement dated 29 July 2019 at [275.1]:-

“I specifically recall that he told me that he had recently bought the property at Trevor Square using the sale proceeds that he had made from selling his McDonalds franchise. He told me that he purchased the property for £2.5 million.”

19. He also described at paragraph 5 a conversation as follows from 2009-2018:-

“5.During this time I became aware from conversations with the Second Defendant that he needed to raise funds in

Approved Judgment

order to refinance some of his debts which arose in relation to his business interest in Princely Jets and Crown Travel Services. I was informed by the Second Defendant's financial controller that the Second Defendant has received a significant amount of money from a company called "Legacy" in the Cayman Islands which would be used for this purpose. I now know "Legacy" to be a reference to Legacy Holdings Limited (**Legacy**). I understand that this money was in fact the product of a loan made via EFG private bank Ltd who also managed Legacy Holdings Limited on the Second Defendants behalf.

6. EFG also managed our joint business interests in the First Defendant. As a result of the matters that arose from that dispute, (which related to the Second Defendants dishonesty), in late 2015 EFG served Notice on the First Defendant resigning as the First Respondent's directors and managers. I believe that EFG also ended its business relationship with both the Second Defendant at the same time.

7. In 2018 as part of my discussions with the Second Respondent he informed me that in January 2016 he had refinanced the Trevor Square property increasing the finance on the property to circa £3.8 million. This was a higher amount than the original loan from EFG. He used the funds to repay the EFG loan which he had previously taken out to meet his business needs and used the balance of the funds to meet his further business and personal expenses.”

20. This evidence of Mr. Sultan was challenged. I accept it. What he says about the way in which Mr. Akbar spoke about the property is very consistent with the way in which he spoke to others about it in emails which I shall summarise below. This means that Mr. Akbar was not being entirely frank when he said in 2005 that he had bought the Property with the proceeds of sale of the McDonalds franchise. Most of the purchase price was borrowed. No doubt he wished to give the impression of greater wealth than he actually had when speaking to a person with whom he was interested in developing a business relationship. The later conversations about refinancing are broadly consistent with what happened, in that funds were raised from EFG via Legacy in 2009, and again in 2015. The dates and amounts may be somewhat out of line with the documents, but the broad thrust is correct. At the time when the witness statement was made the documents showing this were not available to Mr. Sultan, and this supports his evidence that he did learn details about the Property from Mr. Akbar in conversations. It seems to me that the evidence that Legacy applied the proceeds of the initial EFG loan to refinance some of Mr. Akbar's own business debts is of importance. I have recorded resolutions of the directors at 16(v) and (vi) above which are consistent with Legacy making its borrowing available for Mr. Akbar's personal use. Similarly, the evidence that Mr. Akbar applied funds from the SG Hambros loan to his own purposes is also of importance. As I have said, the defendant's evidence is silent about what the borrowed monies were used for, although this statement was served in July 2019. One thing is clear: they were not used for the purposes of Legacy, which had no purpose except to hold the leasehold interest in the Property.

Approved Judgment

Further, I am confident that if Mrs. Mumtaz had ever received any of this money I would have been supplied with evidence to that effect.

21. In cross-examination Mr Sultan said that Mrs. Mumtaz's tax affairs were revealed by a private enquiry agent in Pakistan instructed by Pakistani counsel acting on behalf of Cobussen and confirmed that she had not filed any tax return and therefore had no wealth. When he gave evidence Mr. Akbar said that she does not pay tax because her wealth is in her husband's name. There has been some criticism of the source of Cobussen's evidence on this issue in these proceedings, but
- i) No evidence has been adduced that anything unlawful was done in Pakistan by or on behalf of Cobussen.
 - ii) No evidence has been adduced that Mrs. Mumtaz ever did pay any tax in Pakistan. The assertion that she did not was contained in paragraph 54.1 of Mrs. Moussaoui's second witness statement dated 12 November 2019. It was responded to by Mr. Isaacs in a witness statement, but never contradicted by anyone who knows the truth.
 - iii) Mrs. Mumtaz herself deals with her tax affairs in paragraph 4 of her witness statement of 21 January 2020. I shall deal with this statement in a little more detail below. It was served in opposition to the disclosure application, but she was not relied upon as a witness. She does not deny the accuracy of the tax records referred to in the cross-examination of Mr. Sultan.
 - iv) In those circumstances I can and do accept the hearsay evidence of Mr. Sohail Sultan as to what his enquiry agent discovered.
 - v) Further, on 30 March 2017 a document came into existence which reads rather oddly in the light of Equiom's later concerns about her source of wealth. It is a form apparently signed by Mrs. Mumtaz in which she answers a request for her domicile and tax reference number from Equiom with the words "Non-taxpayer – retired – no income", see [1339].
 - vi) In these circumstances it is impossible to accept Mr. Akbar's assertions about the wealth of Mrs. Mumtaz.
22. There is no direct documentary evidence of the payment by Mrs. Mumtaz of the £643,000. She was not a witness, although she did make a witness statement in the disclosure proceedings. That statement refuses to provide any information about her personal wealth, but asserts that she is a rich woman. She gives an account of how the Property was purchased by her with the assistance (undefined) of Mr. Akbar for her daughter. She appears to agree that neither she nor her daughter ever used it, and says that she allowed Mr. Akbar and his family to live there. She does not explain how or why her asset is now owned by a company which is an asset of a trust whose beneficiaries are Mr. Akbar and his immediate family, not including her. She does not say what she got in return for her £643,000 or whether she would like it back. She expressly refused to provide any detail. Importantly, she does not say that she bought the Property as a gift to Mr. Akbar. It was bought as her asset, for her daughter's use. That plan (if it was ever the truth) must have changed very quickly, because neither she nor her daughter has ever lived there. She had, though, intended to benefit her

Approved Judgment

daughter by acquiring a property for her use. She does not mention the fact that she abandoned any interest in it, still less explain why she did that. She does not explain what happened when the Garden Trust was set up in 2009. She is sometimes referred to as the settlor of that trust, but she does not say this. There is no evidence that she is medically unfit to give evidence by videolink from Pakistan, which is how Mr. Akbar gave evidence. Her only contribution to this trial, therefore, has been a wholly inadequate witness statement. This is a bizarre state of affairs which only has one rational explanation: nothing she could say would help Mr. Akbar's case. This is not a case where I am drawing an inference merely from the failure to call a witness. It is a case where I know at least some of what she would have said from a statement which is verified by a statement of truth. The inference rests not only on her absence, but also on the completely inadequate content of her statement. I will set out paragraphs 4 and 5, on a fair reading of which she was asserting that she still owned the Property.

“4. I have been asked to say something on the background to the Trveor Square purchase. I decided to purchase that when my daughter was intending to move to London. I contacted Ghouse about it as I knew he was familiar with the city and could help me locate a property. I cannot recall details, but I recall Ghouse helping me with the arrangements too. Citibank, who provided a mortgage for the purchase, advised me on a helped implement a tax efficient structure for it. I do not go into detail here. I understand that the company which holds the property have provide what documents they have. They should show how the arrangements changed from time to time.

“5. Due to my ill health, I was unable to use Trevor Square as planned and in any event my daughter eventually moved to Chicago USA. It made sense for me to allow Ghouse and his family to use Trevor Square so long as he took care of the administrative costs and tasks associated with it. I understand that has been happening.”

23. That is an assertion that what “has been happening” is that Mr. Akbar is using the Property because she has allowed it, on terms that he pays the costs. She does not explain how or why he has been helping himself to large capital sums borrowed against it. That activity is entirely inconsistent with the arrangement she describes.
24. There are some documents about Mrs. Mumtaz's means. At [425] is a document from Citigroup Private Bank Singapore dated 31 January 2005. This appears to have been supplied to Equiom in answer to their enquiries about her source of wealth in 2018-2020. It relates to a portfolio and shows that her direct liabilities exceeded the assets of the portfolio by \$434,519.24. I do not know what this means, and no-one has explained it. On its face it is not evidence of wealth, and certainly not evidence of the kind of wealth which enables a person to write off any interest in a property in London to which she had contributed £643,000 and which had, by then, increased in value. At [429] is another document from Citibank dated 3rd May 2005. At this time the value of the portfolio is stated as \$4,362,041.11. The value of any “direct liabilities” as set out in the earlier document is not stated. At [520] is a bank statement dated 4th January 2010 which is an extremely suspicious document. It is for an account in Mrs. Mumtaz's name at EFG Private Bank, Channel Islands. It is “sheet 1” and shows an incoming transfer of \$520,000 on 13th May 2009 from Shantaris Limited Cititrust. According to the 2009 Deed of Termination Receipt

Approved Judgment

Discharge and Indemnity a share in Shantaris Limited was an asset of the 2003 Trust which was then being terminated, see [514]. A fee for its liquidation had to be paid at that time. Otherwise, the evidence about this company is silent. On 14 May 2009 there was an outgoing transfer in the same sum to “EFG London [account details given] Ghouse Akbar”. A further similar back to back transaction in a smaller sum appears on 8th and 11th June between the same parties. Further funds from Shantaris are received on 16th June, leaving a credit balance at that date of \$2,147.65. The statement period ends on 31st December 2009 and no further transactions between June and December are recorded. This credit balance reappears in the documents at [779] in an email from EFG Bank dated 22 July 2015, 6 years later. It is to Mr. Akbar. It reads:-

“Dear Ghouse

As you are aware your aunt still has an account with us which has not been used for many years. At the moment it still has a balance of \$2,147.65. I assume it is no longer required? If that is the case then can you please ask your aunt to send instructions as to where we should send the balance to so that the account can be closed. Alternatively we can issue a cheque with the balance which she can deposit elsewhere. Please advise.

Thanks”

25. I do not believe that the documents reveal what happened to that fairly small sum of money, but the way in which the bank sought instructions from its apparent client Mrs. Mumtaz is very revealing, in my judgment. That bank account was held in the name of Mrs. Mumtaz, but the address on the statement was that of the Property. She did not live there. The account was used only to receive funds from Shantaris and to pay them out at once to Mr. Akbar. Although he was asked about it in evidence, Mr. Akbar did not offer an explanation for these transactions. They appear to have the sole purpose of concealing the source of funds by giving the false appearance that they came from his aunt. What appears to have happened is that an asset of the 2003 Trust was converted by the use of this account into money available to Mr. Akbar. Mr. Akbar did not obtain and disclose any documents from EFG as to how and by whom that account was set up, nor any Know Your Client documents for the account holder. No records of any conversations between banker and client were produced, and I have recorded EFG’s refusal to assist above. This unsatisfactory state of the evidence means that there is nothing to rebut the appearance of the use of the aunt’s name to disguise the reality of these transactions, and I find that this was the purpose of this bank account. That bears upon the truthfulness of Mr. Akbar’s case in these proceedings which is to assert that his aunt provided funds which were then used for his benefit in buying the Property.
26. Whatever may be the safe conclusion from the contribution of Mrs. Mumtaz to these proceedings, plainly the evidence of Mr. Akbar is of central importance. His third witness statement is dated 19 June 2020 and contains a sentence which is central to his case at the end of paragraph 21:-

Approved Judgment

“I still see [the Property] as my aunt’s investment and have never sought to use the property as my own.”

27. I reject that statement. It is a lie. It is completely inconsistent with the documents. The legal title to the Property is owned by Legacy, whose only issued share is trust property of the Garden Trust. Mrs. Mumtaz is excluded from being a beneficiary of that trust by reason of a decision of the trustees on 4th April 2017, see [1342]. The emails now available after the disclosure order are very clear. Nobody ever thought it worth trying to communicate with Mrs. Mumtaz at any point, whatever was being done with the Property. Moreover, when cross-examined Mr. Akbar said that Mrs. Mumtaz and his father had had extensive dealings with each other over the years and he suggested that she may have decided to settle the Property on him as a *quid pro quo* or as a favour to his father. He said that everything in the family is owned collectively and this would not be odd. It might or might not be odd, but it is entirely inconsistent with paragraph 21 of his witness statement. Both statements cannot be true. On the balance of probability neither of them is.

A focussed further review of the documents

28. I will now embark on a review of the abundant documentation which will be a summary, but will explain why I have come to the conclusion that this Property has in fact been used exclusively by Mr. Akbar since its acquisition as both a residence for himself and his family in London, and also an investment from which he can withdraw borrowed funds as its value rises for his own use. I have cited two directors’ resolutions above showing how these funds were dealt with by Legacy which support this conclusion. There are others. Mr. Akbar accepts that he did all the directing of events with EFG and SG Hambros, but says that this was because his aunt authorised him to do this because she was not coping and he was acting for the family abroad. He did this from about 2000. He says that she does not use emails and only ever deals with documents in hard copy and they transact business between themselves face to face, or on the telephone.
29. On 5 December 2003 the then directors of Legacy were authorised to issue a limited power of attorney to Mr. Akbar, see [368]. Mr. Akbar in his evidence said that he had had a power of attorney in respect of the 2003 Trust as well. On 6 August 2004 Citigroup said in an email to Mr. Akbar:-
- “...if the property is not rented but occupied by client or client’s family, we would need to have a property waiver letter signed by the clients. Therefore, I have attached the said property waiver letter for your execution. Once you signed [sic] the said letter, please kindly fax it back to me.”
30. The property waiver letter assures the directors of Legacy, then Cititrust, that the Property will be occupied by Mr. Akbar’s family who will be responsible for costs and will indemnify Legacy against any liabilities arising in connection with the property. Mr. Akbar confirmed in evidence that it was only he and his immediate family who had ever lived in the Property and as far as he knew neither Mrs. Mumtaz nor her daughter had ever visited it. Why did Citigroup regard him as “the client”? When asked about this Mr. Akbar said that he had never had a bank account at Citibank Singapore. This was designed to show that the funds must have come from

Approved Judgment

his aunt, because she did have an account there. It was not, however, an answer to the question. Mr. Akbar is not a stupid man and speaks excellent English. He did not answer the question because he had no answer to give.

31. Not much is known about the original trust, TR11174. What is known is that in 2004 Cititrust (Cayman) as trustee were given instructions by Mr. Akbar as “Third Party Power Holder of the above trust” to purchase the Property, see [420]. They did as they were told, and on 28 April 2004 sent a completion statement by email to Mr. Akbar. This record the monies received and paid out in the purchase transaction. £643,000 was shown as having been received “FROM CLIENT” on 8 April 2004. No primary document evidencing the source of that money has been produced. Citigroup regarded Mr. Akbar as “the client”, see paragraph 30 above.
32. There is something of a gap in the documentation between the acquisition of the Property in 2004 and the refinance and transfer of the share in Legacy to EFG Trustees and the appointment of EFG as its director. Mrs. Mumtaz is a missing person in 2009 just as she had been in 2004. She appears to have executed the Deed of Termination for the 2003 Trust as its settlor, but makes no other significant appearance in setting up the new arrangement or benefiting from it. I have referred above to the evidence of Mr. Sultan about the use to which the funds were put. She was also the named account holder on the bank account at paragraph 24 above but that was used only to channel funds to Mr. Akbar from something called Shantaris Limited. This is evidence of his use of her name for his own purposes. As I record above, EFG have failed to provide disclosure of materials in their possession such as their Know Your Client documents and records of conversations which must have occurred between them and Mr. Akbar and, perhaps, Mrs. Mumtaz. I have found above that the only purpose of this account was to create an appearance that funds came from Mrs. Mumtaz when they actually came from Shantaris. She was just a name.
33. Very substantial sums are recorded in the financial statements of Garden Trust as loans payable to Legacy and in much smaller sums to Mr. Akbar. In 2010 these came to \$807,316, in 2011 \$806,407 [535], in 2012 \$829,223, in 2013 \$842,222 [631], and in 2014 \$822,581. Equiom has allowed Legacy to be late in filing its financial statements. A draft version appears at [1425]. These show total loans receivable by Legacy from entities associated with Mr. Akbar, including the Garden trust, of \$1,024,251, see [1430]. Equiom as director of Legacy has not sought repayment of these loans which are unsecured and interest free. Equiom has no documents in relation to them. Ms. Brown of Equiom, whose evidence I deal with in a little detail at paragraph 36ff, told me that she did not know what had happened to £3m of the SG Hambros loan.
34. In January 2013 tax changes in the 2012 Finance Bill caused EFG to offer some advice about the structure which held the property to Mr. Akbar. Not to Mrs. Mumtaz. That advice is at [562] Mr. Akbar replied at [564] saying

“It seems that option 1 from Michael’s email re legacy is the best option. Please let me know if you agree and if so what is the cost (one time and recurring), time and documents required.

Approved Judgment

However, we can have a call on Wednesday as I am not totally clear on the structure.”

35. This is part of a pattern. The email at 16(ix) above is another part of the same pattern. The pattern is of discussions of this kind being entirely premised on the shared assumption that Mr. Akbar could do what he wanted with the structure, and thus the Property. The pattern is also of Mr. Akbar being quite frequently “not totally clear on the structure”. The reason why he is not totally clear in the structure, I find, is that it was a means by which he could hold the Property for his own benefit in an opaque way. He was not bothered about the details of the structure because they had no reality. They were devices. Other documents supporting this approach can be identified.
- i) 25 March 2013 [566] Mr. Akbar to EFG
- “Kevin, pls advise me re the plan for legacy. Are we going to move it to the trust? Also do we need a valuation by April 6th” [this was in the context of a repayment of part of the loan being required by 30 April 2013 as explained above].
- ii) 3 February 2014 EFG to Mr. Akbar [648], in the context of obtaining comparables to value the Property
- “Ghouse
- I have sent you a link showing all sales on Trevor Square since they were first marketed.....
- What this will not show, however, is where a company owning a flat has been sold if that has happened. E.g. if you sold Legacy rather than the flat itself it will not appear on the land registry.”
- iii) When Mr. Akbar approached mortgage brokers (MCIFA) in 2014 some of the correspondence is revealing.
- a) 19 June 2014 from Mr. Akbar [654]:-
- “I wanted to look at the possibility of re-financing a flat.”
- b) 11 July 2014 from Mr. Akbar [656]
- “Flat is owned by a trust settled by my aunt with me as the beneficiary until she passes away.”
- c) 11 August 2014 [814] the mortgage application form to SG Hambros is filled in entirely on the basis of Mr. Akbar being the mortgagor and wanting to have access to a lump sum. Mrs. Mumtaz is not mentioned. This may be because of the nature of the form itself, but in my judgment it accurately reflects the substance of the position, although not the form. MCIFA knew that there was a trust involved but it was Mr. Akbar’s

Approved Judgment

personal financial position which mattered. The use of the wrong form did not apparently seem to matter to anyone until EFG pointed it out on 3 March 2015 at [940].

- d) 11 February 2015, Mr. Akbar to EFG [702]:-
- “Please clarify. Does garden own legacy. So I would need to send them legacy docs also?”
- e) 4th September 2014 MCIFA to Mr. Akbar [827]-[831] is an email exchange about the proposed remortgage which shows Mr. Akbar doing the negotiation without reference to anyone else.
- f) It was not until 28 January 2015 at [877] that MCIFA were made aware of the contention that Mrs. Mumtaz was the sole settlor of the trust and they then asked for KYC documents for her.
- iv) It is clear that the move from EFG to Equiom was entirely steered by Mr. Akbar, see as an example his email of 9 February 2015 at [887] where he introduces the proposal by saying “As a start there is a trust which is run by efg offshore which includes a London apt only. The financing is with efg and we are changing this to soc gen. as a result I would like to move this to your firm.” There is very extensive correspondence about this which includes efforts to obtain documents about Mrs. Mumtaz and her source of wealth which I have summarised above. The email at [1122] is another example, which refers to the “transfer in of your structure from EFG to Equiom”.
- v) On 18th August 2016 [1278] Mr. Akbar instructed an employee to tell “brian” that Legacy was funded with £1,676,000 from IU Mumtaz, who is a non US person and added
- “But pls check old citi sin files today before confirming this to him.”
- The most significant thing about this is that there were old Citibank Singapore files available to Mr. Akbar in August 2016 from which he could check on the transaction. Where are they now?
- vi) On 14 February 2017 Mr. Akbar emailed Equiom [1346] about the fees being charged in respect of the Garden Trust and the Park Trust saying
- “Pls check re garden and park trust. I think one of them is not used. I forget which one own legacy but the other one is dormant to pls recheck the invoice.”
- vii) On 24th November 2017 Mr. Akbar wrote to Equiom asking for information which was needed by a bank, namely “Beneficiaries and their percentage for legacy”, [1418]. Equiom replied that it was a discretionary trust and no beneficiary was entitled to a set percentage.
- viii) On 15 January 2018 Equiom wrote to Mr. Akbar [1445] about paying the interest on the SG Hambros loan and saying “Whilst we understand that you are looking to wind up this structure...”.

Approved Judgment

ix) On 13th March 2018 the Tomlin Order giving rise to the judgment debt in this case was made.

x) On 17 April 2018 Mr. Akbar emailed Equiom as follows [1484]

“Can I get a copy of the Trust agreement as my tax team needs to understand the type of Trust and who are the Trustees and beneficiaries.

“How was it funded and how much money was put in the trust and who funded it?”

These are interesting questions to which, according to his evidence, Mr. Akbar has always known the answers. I quite see that this is in part a request for the Trust document to be provided to his advisers, but it is also a request for information about who funded the Garden Trust and with what. That is certainly how Equiom understood it and their reply tells Mr. Akbar about his aunt being the settlor and so on. Mr. Akbar’s vagueness about the details can only be because the facts in the Equiom response had never actually never happened. 6 days later Mr. Akbar was able to explain to Habib Bank why he was paying the outgoings of a company and a trust out of his own bank account. He said [1486], with my emphasis added

“Garden trust owns legacy holdings which owns **my flat.**”

xi) In the Summer of 2018 Mr. Akbar’s US accountants were trying to sort out some tax consequences in that jurisdiction. They were trying to obtain proof of the payment of funds into the Trust by his aunt in 2004. By an email of 25th September 2018 [1535] he told them that she had provided “approx. gbp 720k” and said he would “reconfirm by tomm”. I have not found any further email. An error of £77,000 is a little surprising. On its own it might not mean much, but it adds to the lack of reality of that alleged transaction. The accountants had been chasing the information for some time, and it appears from an email set out above that there were “old citi sin” files which could be used to check. I have referred to the Equiom efforts to find out similar information above, which started in December 2018.

Laura Brown

36. It is now convenient to turn to the evidence of Laura Brown, a very experienced provider of corporate services who joined Equiom in 2017. She was cross examined about her witness statement in answer to the disclosure process and Mr. Weale suggested to her that it was fundamentally dishonest. This was principally because it says at paragraph 14 at [1943] “Equiom does not possess copies of any correspondence prior to October 2016”, which is not, as it has turned out, true. She says that this was the only misleading part of her statement and denies that it was dishonest. She identifies in that statement the search terms which had been used and says that she did not believe that anything relevant had been missed, although the outcome of the disclosure order was clearly to establish that she was wrong about this. She says that they employed a disclosure agent and some one million emails were reviewed at that later stage. She agreed that the EFG documents supplied to them when they handed over responsibility for Legacy and the Garden Trust lacked some

Approved Judgment

things she would expect to see. There was no proof of the source of funds for the purchase of the Property, no letter of wishes from the Settlor and no correspondence at all. The internal records of EFG's dealings with Mr. Akbar (and perhaps Mrs. Mumtaz) remain with them. She said that was concerned that Equiom was in breach of Anti Money Laundering Regulations because they had not been satisfied with the source of wealth of Mrs. Mumtaz and said that they had made the Suspicious Activity Report (SAR) for this reason and told the regulators. She said that she had not disclosed any of this material in answer to the first disclosure order, but said that she would not have been acting properly if she had disclosed it. SARs are supposed to remain confidential to avoid tipping off their subjects. That might perhaps be an explanation for non-disclosure, but does not address what happened in this case which was late disclosure. She was not able to explain why the SAR was made as late as July 2019 when all the material in it had been known to Equiom since, at the latest, a point in 2018 when it was decided to treat Mr. Akbar as a Politically Exposed Person, see [1555] for an internal Equiom email highlighting the problem which is dated 18 December 2018. The documents concerning the absence of necessary documents concerning the source of wealth of Mrs. Mumtaz continued into 2019, but the SAR was not created until late July. She said that Equiom have recently received some information which had satisfied them about Mrs. Mumtaz's source of funds, some material which suggested that she had had an interest in Premier Aviation.

37. Although Equiom has pronounced itself satisfied now with Mrs. Mumtaz's source of wealth, I cannot myself be so satisfied. I have reviewed what I know about her means above, and the material is deeply unsatisfactory. Whether Equiom is acting appropriately in being satisfied with whatever it has seen is a matter between it and its Regulator. I have seen nothing which could satisfy me that she had the funds to make the payment of £643,000 or that this money came from any funds she may have had. I do not find that Ms. Brown's first disclosure witness statement was dishonest, although I regret its inaccuracy and this inaccuracy gives me little confidence in Ms. Brown's evidence more generally. One concern Equiom had was never allayed at all. They were concerned about the lack of tax advice when the structure was set up. I think that this was because they wanted to see that there was a genuine reason for setting up this structure, as opposed to its being a paper trail to hide the reality. There was no tax advice. In the end, the qualms they felt were laid to rest by some means I have not been able to identify.
38. In relation to a document at [1271] dated 8 June 2016 Ms. Brown said that she had not been aware of it. It is an email from SG Hambros (at that time Societe Generale and at other points in the documents Kleinwort Hambros) asking for Mr. Akbar to sign a tax declaration form as "UBO [ultimate beneficial owner] of Legacy". This document was signed and returned by Mr. Akbar on the same day, see [1272]. It is clear evidence that Mr. Akbar regarded himself as the ultimate beneficial owner of Legacy. This means that the HBL email obtained at the start of these proceedings, see paragraph 3 above, is not an isolated document.

Factual conclusion

39. I reject the evidence of Mr. Akbar on all relevant matters. I reject the witness statement of Mrs. Mumtaz for the reasons given above. The various claims in the documents about her role in the transactions are inconsistent or self-serving. That means that I have no evidence that Mrs. Mumtaz paid £643,000 of the purchase price

Approved Judgment

of the Property. I find the suggestion that she did wholly implausible and reject it. Mr. Akbar's statement identified above that he regarded it as an investment by her is quite incredible for the reasons given above.

40. The evidence which I do accept is that he has lived in it, mortgaged it without reference to anyone else, pocketed the money raised by doing so, and claimed to Habib Bank and to Societe Generale that he is the ultimate beneficial owner of Legacy. I do not think that the structure was established to save tax for Mrs. Mumtaz, who pays no tax in Pakistan and who would not have been liable for UK tax if she had left her money in Singapore. It may have been designed to have some tax benefit for its ultimate beneficial owner, Mr. Akbar, but the motivation for its setting up has been hidden from the court. I cannot judge whether that was a real reason for its establishment. It may possibly have been a means of acquiring a valuable asset while sheltering it from creditors, including creditors like Cobussen whom he was to encounter long after the purchase. I am not able to make a finding as to his reason for setting up the structure as he did, and pretending that the deposit came from his aunt because he has chosen to lie to the court to hide the truth. As I have explained above, Equiom tried to discover what tax advantages it may have had but failed. As has been pointed out by counsel for Mr. Akbar, the transactions with Cobussen did not start until after the structure had been established, and they could not have been the reason for it.
41. It follows from my finding that Mrs. Mumtaz did not fund the purchase that the only other possible source of that money was Mr. Akbar. He has not identified any other benefactor who may have helped him. I therefore find that Mr. Akbar supplied the funds for the purchase because if anyone else had done so they would inevitably have sought some interest in the Property, and would probably now be before the court claiming that interest. The truth is that he has been in sole control of it throughout which generates a strong inference that he paid for it, in the absence of any credible evidence to the contrary. I find that he supplied part of the purchase price, and guaranteed the mortgage of the rest and that he has arranged for the payment of all outgoings through Legacy. Legacy has no means of repaying these sums and their appearance in its books as "loans" is wholly unreal.
42. It also follows from my finding that Mrs. Mumtaz never acquired any beneficial interest in the Property. She did not acquire the legal title either, since that was conveyed to Legacy a company in which she was never a shareholder. It appears from the 2009 deed of Termination Receipt Release Discharge and Indemnity at [510] that the assets of the 2003 Trust were the shareholdings in Legacy and Shantaris, see [514]. It must have been Buchanan Limited, as shareholder in 2003/04, which caused its share in Legacy to be vested in the Trust but who caused that to happen is not clear from the documents. The case advanced by Mr. Akbar is that Mrs. Mumtaz in some way caused this to happen, and caused the share to be vested in EFG as original trustee of the Garden Trust in 2009, but I have rejected that case. This supports my finding that the true purpose of the creation of the structure by which the Property was held is unknown.
43. I also find that on the evidence in this case EFG, and later Equiom, accepted Mr. Akbar's instructions and acted on them which meant that he was not only the ultimate beneficial owner of Legacy but also in sole effective control of it. Whatever may have been the purpose of this structure and whatever the individuals employed by

Approved Judgment

EFG and later Equiom may have thought or believed, this was the reality. In theory they could have refused to do as they were told. In practice they never did. I heard nothing from anyone at EFG, and they refused to assist with disclosure as I have said. I heard from Ms. Brown at Equiom and found her evidence to be unsatisfactory for the reasons given above. The purpose of this arrangement was to enable Mr. Akbar to enjoy his property behind a screen whose purpose is not clear.

The Law

44. I do not find it necessary or desirable to set out the law at any length. I have been helpfully supplied with a list of legal materials running to 49 items, extending over 1,821 pages. Of those, the judgment of Lord Sumption JSC at paragraphs [43], [47], and especially [52] in *Prest v. Prestodel Resources Ltd* [2013] 2 AC 415 is of particular significance.

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

45. That was specifically said in the matrimonial context, but contains a statement of principle, which is that the issue before me will be resolved by a careful analysis of the facts, which I have attempted above. I am asked to make declarations that Mr. Akbar is the ultimate beneficial owner of Legacy, and/or that the legal title to the Property is held by Legacy on a resulting or as nominee for Mr. Akbar.
46. In resolving these issues, I have found the way in which Mr. Robin Dicker QC, sitting as a Deputy High Court Judge dealt with very similar issues in *NRC Holding Limited v. Anatoly Danilititskiy and others* [2017] EWHC 1431 (Ch) particularly helpful. The passage of his judgment dealing with the position in that case at the date of the acquisition of the property at [37]-[50] sets out the position very clearly. I gratefully

Approved Judgment

adopt his approach, without setting it all out here. In particular, his treatment of the decision of the Court of Appeal in *Arab Investment Syndicate v. Hiseman* (unreported, 15 February 1994 per Hoffman LJ) at his paragraph [48] is entirely apt in this case. Mr. Hiseman had given evidence, which the court accepted, that his purpose in setting up a trust structure to own a property was to avoid his creditors. He was subject to a prosecution for deception at the time, and feared that civil liability might attach as a result of the transactions which were the basis of the prosecution. This was inconsistent with a retention of the beneficial interest by him or his wife and none could therefore be found. Mr. Danilititskiy did not give evidence and there was no basis on which a finding could be made that the common intention of the parties was inconsistent with his retaining the beneficial ownership of the property. That is the same here because although Mr. Akbar did give evidence about the way in which the Property was acquired, I have rejected all of it.

47. At his paragraph [39] Mr. Dicker lists the factors which led him to make a finding that the beneficial interest in the property which he was dealing with was held on a resulting trust

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

1. Opal Stem had only recently been incorporated and was incorporated for the purposes of holding title to the Property. It appears to have had no other assets, no operations and no bank account.
2. The acquisition of the Property was arranged by and occurred on the instructions of Mr Danilititskiy.
3. Mr Danilititskiy paid the purchase price of the Property out of his own resources. There is no evidence that the monies were advanced by Mr Danilititskiy to Opal Stem by way of loan or capital subscription.
4. Whilst the Property may not, it appears, ever have been the main matrimonial home, it was purchased as a home for the family for them to use whilst they were staying in London.
5. There is no evidence that any rent was in fact paid by Mr Danilititskiy for use of the Property and no evidence that the terms on which he was permitted to use it were otherwise than, in practice, gratuitous.”

48. All of these factors are of equal weight in the present case.
49. I have found that the intention of Mr. Akbar when he funded the purchase of the Property by contributing the deposit and guaranteeing and making Legacy’s payments under the mortgages was that he, and no-one else, should be the ultimate beneficial owner of the Property and of the share in the company, Legacy, into which the legal title was conveyed for reasons which he has never explained. In those circumstances,

Approved Judgment

I hold that there is a presumption, not rebutted, that Legacy holds the beneficial interest subject to a resulting trust in Mr. Akbar's favour. Further, he, and not Mrs. Mumtaz, was the settlor and ultimate beneficial owner of the Garden Trust and of the share in Legacy which it holds.

50. I think it unnecessary to set out the parties' rival submissions on the law. In the end, the issue is one of fact.

Conclusion

51. For these reasons I grant the declarations sought by Cobussen and order that the interim charging order is made final.
52. My previous experience of this case suggests that it is not likely that there will be an agreed Order consequent upon this finding. Should that turn out to be right, the parties must submit a draft order which includes their rival positions and written submissions. I will then consider whether to deal with any issues on the papers to hold a hearing.