Neutral Citation Number: [2018] EWHC 1804 (Ch)

Case No. HC-2015-004509

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (ChD)

Date: 3 August 2018

Before:

HHJ SIMON BARKER QC

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BETWEEN

(1) MOHAMMAD SAEED

(2) YASMEEN SAEED

Cla

-and-

(1) MOHAMED IBRAHIM

(2) NAHEEDA KHAN [1]

Defe

(3) MOEEDNUDDIN IBRAHIM

(4) SADEKA IBRAHIM (5) HISAMUDDIN IBRAHIM

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Representation

Mr Aidan Briggs instructed by Miller Rosenfalck LLP appeared for the claimants

Mr Arshad Ghaffar instructed by Westbrook Law Ltd appeared for the first and third to fifth defendants

The claim against the second defendant was discontinued before trial

Hearing dates : 13-16 and 19-22 February 2018

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JUDGMENT

HHJ SIMON BARKER QC :

The parties and the witnesses

1

Mr Mohammad Saeed and Mrs Yasmeen Saeed, the claimants (respectively ‘C1’ and ‘C2’ and collectively ‘Cs’), are husband and wife, at least according to English law. They married under Islamic law on 12.5.84 and under English law on 26.7.84. Cs have four children. Their marriage became disharmonious in or about 2003. The cause of the disharmony was, or included, their eldest daughter’s choice of proposed husband; C1 was opposed to the marriage, according to his evidence because he was not consulted. C2 apparently disregarded C1’s opposition and, with her encouragement, the marriage occurred in 2005. C1 left C2 and travelled to Pakistan on 20.7.08. He remained in Pakistan for 5½ years and returned to the UK on 8.12.13. C2’s evidence was that she did

not know, or had been misled as to, C1's whereabouts. While living in Pakistan C1 divorced C2 under Islamic law on 13.11.08 and married again. There is a child of that marriage. C1 divorced that wife before leaving Pakistan.

2
Although their pleaded case, verified twice by statements of truth and further in witness statements, made reference to divorce proceedings initiated by C2 against C1 in about 2004-2005 (the year varies between pleadings and witness statements), it became clear at trial that no such proceedings were in fact commenced. That may not have been a mistake, but rather intended as a relevant circumstance in setting the background to Cs' case. The relevance of the disharmony in Cs' marriage was said to be that it provided the basis for alleged advice given by Mr Mohamed Ibrahim, the first defendant ('D1'), to C1 and for an agreement they allegedly made in June 2005 ('the 2005 agreement') which forms the platform for Cs' claims for declarations, accounts or restitution or damages.

3
In so far as there have been matrimonial proceedings between Cs it appears that, somewhat later, C2 initiated judicial separation proceedings. She obtained interim freezing and non-molestation orders on 14.9.07. However, those proceedings were discontinued by C2 on 20.11.07. Cs' position at trial was that they are now reconciled and reunited.

4
C1's background, briefly, is that he was born in Pakistan in 1957 and came to the UK with his mother and siblings, to join his father, in 1978. It is unclear what C1 did for the first decade in the UK. Whatever it was, he was able to purchase a property, 119 Plashet Grove London E6 ('119PG'), in 1983 in his sole name. C1 did not transfer the property into joint names following his marriage to C2. C1 was employed as a postman from 1988 to 2001 and he was a stallholder at Petticoat Lane market from 1988 to 2002. At some point during the 1990s C1 decided to build up a property portfolio. His first investment was 37 Lansdown Road London E12 ('37LR') which was purchased for letting in 1993. He bought and sold a shop in Barking and then a hotel in Blackpool. After retiring from the post office, C1 concentrated on being a landlord. He bought two further properties for letting in 2004 : 259 London Road Romford ('259LR') and 349 Ripple Road Barking ('349RR'). 37LR, 259LR and 349RR were all transferred into Cs' joint names on purchase.

5
As to C1 as a witness, in closing submissions Mr Aidan Briggs, counsel for Cs, submitted that C1 struggled with, or lacked precision when answering, questions about the chronology of events, and that he was very sensitive (a generous way of describing less than candid) about issues concerning his marriage to C2, but on the key issues in the case (cash, interests in and dealings with properties, and trusts) he remained close to his case and was supported by such documentary evidence as is available at trial. Mr Arshad Ghaffar, counsel for the defendants sued at trial (collectively, and excluding Mrs Naheeda Khan, 'Ds') refuted the impression C1 sought to give in his evidence that he was weak-minded in personal and business affairs and, therefore, susceptible to influence by D1. As to personal affairs Mr Ghaffar referred to C1's firm opposition to his daughter's marriage in consequence of a slight or disrespect to his position as father, to his Islamic divorce from his wife because he viewed her as unsuitable, and to his divorce in Pakistan from the woman he married there because he came to regard her as unsuitable. As to lack of business and financial acumen, Mr Ghaffar referred to C1's trade as a market stall holder, to his development of a property portfolio, to the existence of several accounts with a number of banks some in his sole name and some in joint names, and to the fact that C1's business and tax affairs were such that he engaged an accountant. Mr Ghaffar submitted that

C1’s evidence was stamped with hallmarks of unreliability including evasion, contradiction, change of position, and the giving of new evidence. Mr Ghaffar referred to 15 particular examples of unsatisfactory evidence given by C1, traversing his relationship with C2, his dealings with D1, his dealings with cash, his dealings with properties, his inconsistency, and his disclosure; each point was fairly made.

6
C2 is C1’s cousin. She came to the UK in 1984, then aged 17, to marry C1. On the same day as Cs’ wedding, C2’s younger sister, then aged 16, married C1’s younger brother Muhammad Nasir (‘MN’), one of Cs’ witnesses. In the UK C2 worked as a seamstress, earning by her own account up to £8,000 a year, and also on the stall at Petticoat Lane. C2’s main role was as mother to Cs’ four children, now aged 24 to 33 years.

7
C2’s witness statement is in English. The last paragraph states that it was read to her in Urdu. The statement does not identify the reader and there was no evidence from such person; C2 gave conflicting evidence as to who did translate to her. At trial, C2 gave her evidence in Urdu through interpreters. There was some concern on C1’s part about the initial session of interpretation. At this stage it suffices to note that Mr Briggs made clear that he would not ask that any of C2’s oral evidence be disregarded. In his closing submissions, Mr Briggs observed that C2 was a very difficult witness to follow, she had very limited education, she had led a very sheltered existence, and she plainly struggled with the process of litigation including her witness statement and oral evidence. Mr Briggs submitted that C2 was intimidated by the trial process. As to being intimidated, Mr Ghaffar observed that C2 had disregarded C1’s wishes in relation to their daughter’s marriage over the period 2003-5 and had facilitated that marriage, had initiated matrimonial proceedings against C1 in 2007, had defended possession proceedings relating to 119PG over the period 2009-2013, and had caused or achieved the transfer of 119PG to her sole name in 2014. In the matrimonial proceedings that C2 did initiate, she did not refer to any disagreement over her daughter’s marriage but attributed the disharmony between herself and C1 and C1’s attempts to “transfer away the family finances” to the discovery by C1, in 2005, in C2’s bedroom, of literature from a women’s support group about domestic violence. C2’s reference in her 2007 matrimonial proceedings evidence to “my bedroom” rather than “our bedroom” suggests the existence by then of an established rift; and, her reference in the same evidence to C1 “transfer[ing] away the family finances” and the selling of 259LR, 37LR and 349RR and remortgaging 119PG shows that she had at least some knowledge in 2007 of what C1 had been doing.

8
The claim was begun by C1 alone on 3.11.15. C2 was joined as a claimant by amendment of the claim on 21.4.16. The additional facts alleged on amendment of the Particulars of Claim (‘P/C’) were that the sale proceeds of 259LR were dealt with knowingly by C1 and D1 without the knowledge or consent of C2, that C1 remortgaged 119PG without C2’s knowledge or consent, and that D1 received the net proceeds of the remortgages knowing that C2 neither consented to nor knew of the remortgages. Beyond that, C2 effectively adopted C1’s pleading and case. On that case, C2 is the victim of fraud perpetrated by both C1 and D1, but she seeks no relief against C1 and seeks effectively the same relief as C1 against D1.

9
Mrs Naheeda Khan, the second defendant (‘D2’), was a party to the proceedings for a matter of days. The claim against D2 related to her ownership of 349RR over the period 10.6.08 to 11.5.09 (the third

in a chain of four relevant transfers of this property) and was for an account of rental income and payment of £25k odd of the net proceeds of the 11.5.09 transfer from her name allegedly retained by her. As already noted, the claim was issued on 3.11.15. It was discontinued against D2 on 10.11.15. On the preceding day, 9.11.15, D2 signed a witness statement in these proceedings. At trial, Cs called D2 as a witness. In chief, she spent some 10 minutes correcting and clarifying her witness statement. She was cross-examined by Mr Ghaffar. When cross-examined about paragraphs 6 and 7 of her statement, D2 said that the statement had been prepared for her based on information provided by someone else and that she had not prepared or given instructions for the statement herself. D2 said that she had received the witness statement about a month before she signed it. C1 or his solicitor had provided the witness statement to her for signature but D2 had not signed it. In consequence, D2 had been joined as a defendant. D2's family and C1's family had been friends for many years and D2 was upset that C1 had sued her. D2 said that her mother had intervened with C1; that C1's position had been that D2 was either with him or with D1; and, that she had signed the statement in order to bring a halt to the proceedings against her.

10
In cross-examination of D2, Mr Ghaffar also put passages in C1's witness statement concerning D2's involvement in dealings with 349RR to her. She refuted C1's evidence that she had been to the offices of Soni & Co, a firm of solicitors; that Soni & Co had been instructed by her or on her behalf; that she had met with the solicitor at Soni & Co; and, that D1 had called on her and asked her to sign documents about payment of funds when 349RR was transferred out of her name. My impression was that this evidence was truthful. It obviously contradicts written evidence given by C1.

11
D1 was born in India in 1955 and came to the UK when aged 22 years. He married when in his mid-30s and became a naturalised British citizen. He retired from work as a Railtrack employee in 2006. He bought the family home with the assistance of a mortgage and he referred to having bought other buy to let properties. Through his friendship with C1's father, Mr Abdul Rashid ('AR'), D1 met C1 in about 1990 and had met C2 on one or two occasions prior to 2005. D1 is the father of Moeenuddin Ibrahim, the third defendant ('D3'), and Hisamuddin Ibrahim, the fifth defendant ('D5').

12
When giving his oral evidence, D1 spent some time making significant corrections to and clarifications of 10 of the 49 paragraphs of his main witness statement. Mr Ghaffar submitted that in their evidence his clients, that is D1 and D3 for this purpose (D1 purported to give evidence on behalf of D5), did their best to tell the truth but, Mr Ghaffar conceded, there were aspects of their evidence which were unsatisfactory.

13
In his closing submissions, Mr Briggs referred to Painter v Hutchinson [2007] EWHC 758 (Ch) and the catalogue of unsatisfactory features of Mr Hutchinson's evidence identified by Lewison J, as he then was, at [3] : evasive and argumentative answers, tangential speeches avoiding the question, blaming legal advisers for pleading, disclosure and evidence shortcomings, self-contradiction, internal inconsistency, shifting case, new evidence, and selective disclosure. Mr Briggs submitted that D1 was an exceptionally evasive and unsatisfactory witness. Mr Briggs then gave examples covering each of the features identified by Lewison J including several occasions when D1 was unable to answer questions; other occasions when D1 launched into tangential speeches as answers; various occasions on which he blamed his solicitors for shortcomings (flaws in his witness statement, disclosure shortcomings including in relation to powers of attorney in his sons' names, and inconsistencies

between his pleaded case and his evidence). In addition, during cross-examination D1 admitted that C1 had indeed brought cash in a holdall or bag to his home, admitted the existence of documentation reflecting money transfers through AR to C1, and referred to meetings (initially one, then two, and finally three) with a lawyer about trust deeds. At one point in cross-examination, D1 referred to C1 having brought cash to him at his home “so many times” that he could not say whether or not he had done so on the occasion the subject of the question. From the outset of his oral evidence D1 appeared confident in his answers. He showed no signs of concern or embarrassment when challenged on his probity (e.g. why he failed to make income tax returns when he had annual rental income in the order of £50,000), his lack of concern about the accuracy of conveyancing documents to effect property transfers (e.g. the transfer of 37LR to D3 in October 2005), and when, as not infrequently happened, he was caught out in lies. When giving evidence about his means and access to money (two examples are the use of family members as nominee holders of accounts and the use and whereabouts of an advance inheritance of several hundred thousand pounds said to have been received from his father) D1 was persistently evasive. To describe D1 as an unimpressive witness would fall well short of the mark.

14
D3 is aged 31 years. From 2003 to 2009, save for a year out in 2007-08 due to illness, D3 was studying at a religious institution in Mumbai. At the material times, his affairs were under the control of D1 pursuant to a power of attorney dated 11.10.04. D3’s involvement in the subject matter of this litigation is with the purchase and ownership of 37LR. The relief sought against him includes 50% of the rents relating to 37LR over the period 19.10.05 to 18.6.14. D3 married in 2012. His wife, Mrs Sadeka Ibrahim, is the fourth defendant (‘D4’). D3’s evidence is that once it became clear that D4 would have a right of permanent residence in the UK he transferred 37LR from his sole name to their joint names; that was on or about 18.6.14. Cs claim against D3 and D4 jointly 50% of the rents relating to 37LR as from 18.6.14 and a declaration that they hold 37LR on trust for Cs in equal shares or for C1. D3’s actual involvement in the events the subject of this case is marginal at most. D1 regards D3 as a dutiful son and, for his part, D3 conceded in cross-examination that if D1 had asked him to do something such as hold property for a third party he would have done as requested. That accords with my view of D3 as a dutiful son who would do D1’s bidding, would not do or say anything which he thought might be adverse to D1 or his interests, and would not question D1’s instructions. D4 did not make a witness statement in this case and was not a witness at the trial. Moreover, the Defence, Re-Amended Defence, and Reply to Requests for Information have been signed only by D1 on behalf of Ds and the Amended defence was signed by a solicitor. It is unclear whether D4 knows anything at all about this case or her involvement as a defendant.

15
D5 personally has not participated in this litigation. It is unclear whether he knows anything at all about the events the subject of this litigation or the litigation. Cs’ claim against D5 that in 2007 C1 and D1 agreed that D5 was a suitable person to receive monies from C1 and purchase a property, in the event 3 Victoria Road, Barking, (‘3VR’) and hold that property on trust for C1. It is further alleged that, following the sale of 3VR in 2011, D5 held, and holds, the sale proceeds for Cs in equal shares or for C1. D5, alternatively D1, is also alleged to hold £100,500 of the proceeds of the transfer by D2 of 349RR on 11.5.09 on trust for Cs equally or for C1. D1’s written evidence purported to explain D5’s failure to participate in this litigation. D1 said that D5’s involvement had been peripheral and that he (D1) could “adequately deal with his situation”. Pausing there, that phrase neatly encapsulates D1’s attitude to Cs’ claim - a situation to be dealt with. Returning to D5, he has been in prison since the latter part 2009 and is serving life imprisonment, with a term of 28 years, for murder following

conviction after a trial in 2010. D5 was the ringleader of a gang of four who were intent on a so called “honour” punishment or killing of his sister and her lover. The gang petrol-bombed the wrong house and an entirely unconnected couple were murdered. D1’s evidence was that he had maintained little contact with D5 and it had not been practical for him to discuss Cs’ claims with D5. D1 holds a power of attorney for D5 dated 14.4.09. D1 withheld that power of attorney from disclosure until the week before the trial. At trial there was evidence of D1 operating a bank account in D5’s name for his own (D1’s) purposes. These facts, and more which will be referred to later in this judgment, support a finding that D1 has at all material times and for all material purposes used D5’s identity for his own purposes. It follows from this that the actions relevant to this litigation attributed to D5 were in fact and are to be viewed as the actions of D1, with D5 being at most a bare trustee or nominee for D1.

16
There were three further witnesses for Cs. MN, C1’s brother, was called to corroborate the relationship between C1 and D1, the trust reposed by C1 in D1, and the depositing of large amounts of cash by C1 with D1 at the latter’s home. For a period of time MN was also the owner, by the second transfer, of 349RR. MN’s witness statement and a number of documents by him are in English. MN preferred to give his evidence through an interpreter, but he has a reasonable command of English when going at his own pace. He appeared not to have understood the nuances of language in his written evidence. In addition, during his oral evidence, MN had to be reminded of the fact that he was on oath. Mr Briggs conceded that MN struggled as a witness and was unable to give a clear and consistent account when giving oral evidence. The notable exception was as to a meeting between C1, D1 and a Mr Sohail Ibrahim in September 2005 when C1 exchanged cash of £50k from Mr Ibrahim for a cheque and then passed the £50k cash to D1, an event which D1 acknowledged and accepted as true during the trial.

17
Mr Javed Qamar (‘JQ’) is a long-standing friend of C1 and, to some extent, a funder of C1 in this case. In closing submissions, Mr Briggs accepted that JQ’s evidence was partisan. I disregard his evidence.

18
The final witness for Cs was Mr Salim Patel (‘SP’). Before the trial he had equivocated between the two sides. He was the final transferee of 349RR challenged by Cs. He put himself forward as a shrewd businessman but appeared not to understand the difference between a loan and an investment (having been persuaded by D1, after an investment of £250k in Dubai for D1 and/or D1’s family went badly wrong, that £150k of the investment would be treated as a loan from D1 which SP then repaid by utilising the money raised by mortgaging 349RR to pay D1). This provides a further insight into D1’s attitude to other peoples’ and his own assets and money.

19
There is one further person who played a role, at least nominally, in the property transactions. Another son of D1, Fakhruddin Ibrahim (‘FI’), who was the first transferee of 349RR. Notwithstanding D1’s evidence that C1 selected FI as transferee of 349RR, it is unclear how FI came to be chosen as the first transferee, not least because D1’s evidence is that he regarded this son as unreliable and made that clear to C1. It does appear that C1 had it in mind that a mortgage should be raised in connection with this transfer which, for reasons explained later, made FI an unusual choice. FI was not a witness. As with D3 and D5, D1 also held a power of attorney executed by FI. For all relevant purposes, as between D1 and FI, FI appears to have been no more than a name utilised by D1 with C1’s agreement, and possibly encouragement.

20
As this introduction to the main parties and the witnesses indicates, it is not only the passage of time and the usual problems concerning the reliability of witnesses involved in commercial litigation (as to this I have in mind the judgment of Leggatt J, as he then was, in Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) at [15]-[22]) that threaten the reliability of the evidence in this case, but also the actual unreliability of almost everyone who gave oral evidence (the exception being D2, but she had almost no actual involvement or relevant knowledge). A further factor complicating the fact finding and decision making process is the relative paucity of critical or materially enlightening contemporaneous documentation.

Cs' claims against Ds

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Mr Briggs and Mr Ghaffar have identified 58 issues under eight heads : (1) the alleged 2005 agreement, (2) the alleged transferred sums, (3) 37LR, (4) 349RR, (5) the alleged 2007 agreement, (6) demand for the transferred sums, (7) the defence of illegality, and (8) limitation.

The alleged 2005 agreement

22
The issues raised under this head are : (i) did C1 and D1 make an oral agreement as alleged at paragraph 6 of the P/C ('the 2005 agreement')? (ii) if so, were the terms of the 2005 agreement as alleged at paragraphs 6-7 of the P/C and, if not, what were they?

23
The terms of the 2005 agreement alleged at paragraph 6 of the P/C are (a) C1 would realise a number of his and C2's property assets and transfer the proceeds to D1; (b) C1 would also transfer any available liquid funds to D1; (c) D1 would hold those funds on trust for C1; (d) D1 would use those funds to purchase two of Cs' properties in the names of D1's children and those properties would then be held on trust for C1; (e) D1 would hold any income arising on trust for C1; and, (f) upon his return, C1 could call for the return of any sums or property at four to six weeks' notice. Paragraph 7 of the P/C adds nothing about the terms of the 2005 agreement but, by reference to a schedule, alleges that D1 received £594,800 from C1 during the period 1.7.05 to 26.7.07 of which £79,400 was returned on the sale of 37LR and £50,901.21 on a sale of 349RR leaving £419,499.79 due by D1 to C1.

24
In the original P/C, C1 based his claim, except that in relation to 3VR, on the 2005 agreement. In his evidence the 2005 agreement was said to have been made over the course of a number of discussions during June 2005. In the original P/C, the triggering event was said to have been that in about 2005 C1 decided to return to Pakistan for a number of years for family reasons. That would explain (f). However, it was factually incorrect. On the evidence, C1 may have paid a short visit to Pakistan in 2006, did visit Pakistan from 7.10.07 to 17.11.07, and then went to Pakistan on 20.7.08 where he continued to live until 8.12.13. When joining C2 as co-claimant, the triggering event was revised, on amendment of the P/C, to C2 commencing divorce proceedings against C1 in or about 2004. As noted above, that was also factually incorrect. The amendment to the pleading cast (f) somewhat adrift, nevertheless it remains an allegedly express term of the 2005 agreement. In C1's oral evidence, the triggering event was said to have been Cs' daughter's departure to Pakistan in May or June 2005 to marry against C1's wishes. This called into question the precise period over which any discussions between C1 and D1 took place and seemed inconsistent with Cs' pleaded case verified by statements of truth by each of C1 and C2 on amendment and again on reamendment. However, it does not follow

from C1’s various shifting explanations that the 2005 agreement was not made at some point in mid-2005.

25
It was a significant feature of C1’s, and therefore Cs’, evidence and case that D1 is a man of standing at the mosque which they both attend and that D1 has a reputation for providing good advice or assistance to those wishing to make benefits and similar applications, and has experience in advising men how to place their own and jointly owned assets out of their spouse’s reach. Be that as it may, and at least to an extent D1 did not seek to disassociate himself from such a reputation, C1’s purpose in making this allegation was to establish D1 as a man of relevant practical experience who then took charge of C1’s interests and devised a scheme which became the 2005 agreement.

26
In his closing submissions about the 2005 agreement, Mr Ghaffar drew attention to the looseness of the alleged oral agreement, the want of compliance with the ordinary elements of a contract (offer and acceptance), and the vagueness of the terms as to properties. Mr Ghaffar also, entirely fairly, observed that the proposition that the 2005 agreement was the result of a plan by D1 did not feature in Cs P/C but is entirely evidential and based on an assertion that D1 has ‘form’ for such schemes. Mr Ghaffar also observed in his closing submissions that Mr Briggs focussed only on the terms relating to monies. Overall, Cs had failed to establish the existence of the 2005 agreement.

27
For my part, I am not persuaded that it is more likely than not that D1 devised or dictated a plan which he then impressed on C1. Having paid careful attention to both C1 and D1 as witnesses, I reject as highly unlikely C1’s suggestion that D1 somehow held sway over C1 to such an extent that C1 then dealt with money and property in ways that he did not understand or otherwise, that is but for D1’s influence, would not have done. Devious and unreliable though D1 undoubtedly is, C1 is neither naïve nor weak minded.

28
Irrespective of the true triggering event(s), I do accept that there were discussions between C1 and D1 about putting C1’s and Cs’ assets beyond C2’s reach in or shortly after June 2005. I have no doubt that, in the course or as a result of those discussions, D1 agreed to assist C1 in the execution of such a plan, including by holding assets to C1’s order, and, if and as necessary, finding and involving nominees as barriers between C2 on the one hand and C1 and D1 on the other. Having listened carefully to the evidence, I am satisfied on the balance of probabilities that C1 described the nature of his sole and jointly owned assets, that is bank accounts and properties, to D1. I am also satisfied on the balance of probabilities that there was a common intention and understanding based on discussions and a consensus, and in that sense an agreement or accord, that C1 would remortgage 119PG, withdraw cash from his sole and joint accounts at various banks, and either pass the money to D1 to be held by D1 for C1 or pay the money into one or more bank accounts using D1’s address and under D1’s control. As to the properties, I am satisfied that there was an in-principle agreement to defraud C2 of her interests by selling or transferring jointly owned properties. However, as to whether the in-principle agreement was to be achieved by sale or transfer to a pre-selected nomineee, my view is that there was no comprehensive, nor even a settled, scheme at the outset, i.e. in June 2005, as to the identity of any nominee rather C1 and D1 agreed that a solution was to be found on a property by property basis. Thus, on the evidence before me, I am satisfied, and find, that the 2005 agreement covered (a), (b) and (c). It is far from clear, and in my view unlikely on the evidence, that (f) – which implicitly requires a common understanding that C1 would himself leave the jurisdiction as part of the

2005 agreement – was actually agreed in June 2005. As to (d) and (e), I am not in a position to find that there was an initial agreement to involve D1's sons (D3, FI and D5), rather than as a development during the implementation of the 2005 agreement, but subject to that I find that (d) and (e) were agreed and further that C1 and D1 agreed to work together to place C2's interests in jointly owned properties beyond her reach, probably making a detailed plan as to the ostensible title of each property and the underlying trust when dealing with that property.

The alleged transferred sums

29
There are five issues under this head : (i) did C1 transfer to D1 the sums as set out in the most recent revised schedule? (ii) did D1 know that the alleged transferred sums were in part the proceeds of sale of properties owned jointly by Cs? (iii) did D1 know that the alleged transferred sums were in part from Cs' joint bank accounts? (iv) did D1 know that the alleged transferred sums were transferred to D1 without C2's knowledge or consent and in breach of trust? (v) did D1 or C1, and if so which, forge C2's signature on the remortgage documentation for 119PG on or about 26.6.07?

30
C1's and Cs' case as to which sums were transferred when, and what happened to them, has varied over time. The latest version of Cs' schedule of transferred sums, in the form of a running account for the period 1.7.05 to 7.7.08, was produced by Mr Briggs during his closing submissions. The net sum claimed from D1 as cash due to Cs or C1 is now £54,940. The account balance at 26.7.07 had been revised downwards from £419,499.79 in the P/C to £267,800, a reduction of £152k. Neither this account nor the pleaded schedule attempted to include rental income on properties claimed to be held on trust. Mr Briggs estimated such rents at £50k for the period before C1 left for Pakistan and approximately £250k for the period 20.7.08 to 8.12.13, i.e. while C1 was in Pakistan. As to these sums, during the trial I was not referred to evidence on which to form even a provisional view. The most recent running account continued after 26.7.07 by giving credit for £62,860 in relation to the transfer of 3VR on 31.10.07 as a sum contributed by D5 (D1) and for £150k on 7.7.08 as a sum relating to 349RR described on Mr Briggs' schedule as "to [D2]" (as to which no claim is made in this action) but in fact, as appears from documents in the core bundle, transferred by D1 to an account for C1 in Pakistan. Mr Briggs submitted that Cs' claim would increase by £142,860 if the payment of £80k towards the transfer of 37LR to D3 on 18.10.05 and the payment of £62,860 towards the transfer of 3VR to D5 on 31.10.07 had not been funded from Cs' monies held by D1.

31
As to Mr Briggs' latest version of an account from 1.7.05 to 7.7.08, at trial there was documentation, including bank statements, to support all but one of the cash and cheque withdrawals by C1 from bank accounts in his name or in Cs' joint names (the unsupported sum was £95k on 1.9.05). The timing and other documents, including completion statements, contracts and transfers, and solicitors' correspondence, add support to the chronology. As to the £95k said to have been drawn from a NatWest account on 1.9.05, in response to questioning directly on that alleged cash transfer from C1 to D1, D1 said "I do not know which account he withdrawn what, I have not been told, but he was bringing the money and I can say that". This answer also evidences the passing of cash from C1 into D1's possession. There is also evidence that supports D1's participation by receiving funds from C1 and utilising them in orchestrated property transactions. This evidence includes D1's eventual acceptance that cash was delivered to him in a bag by C1 on another occasion (in the end D1 accepted that this occurred on four or five occasions), D1's acknowledgment that he received cash in the sum of £50k and a cheque in the sum of £52,500 in September 2005, and some manuscript notes of cash

movements made by D1, the annotations to which are cryptic but unquestionably include references to payment of the legal expenses of both D2 and SP when D2 transferred 349RR to SP in May 2009.

32
In his closing submissions Mr Ghaffar conceded that there can be no doubt that substantial sums were deposited with D1 from time to time but there is no, or insufficient, evidence of particular sums on particular days and there is no evidence of what became of those sums and, thus, nothing to gainsay D1's assertion that he does not hold any monies for Cs. As to this last point, it is not irrelevant that in order to attempt to establish transfers to C1 while in Pakistan D1 disclosed a transfer advice of an instruction to transfer £25,000 to Pakistan at an account used by C1. It transpired from other documentation that this transaction was reversed. D1 then had to retract his evidence as to the transfer. Moreover, Mr Briggs cross-examined D1 on particular receipts and disbursements of money including in March/April 2008 receipts totalling £110k and the disbursement of £70k ostensibly to D5 (for whom D1 held a power of attorney), and the receipt of £180k following the sale of 3VR and its withdrawal in cash over the ensuing month, D1's evidence in answer was that these transactions all happened a long time ago and he could not remember "all this sort of things".

33
As to the remortgage of 119PG in July 2007, in his witness statement D1 said "at the material time I did not know about [C1] remortgaging the matrimonial home and I did not receive any equity release". This was a lie and D1 was caught out by Mr Briggs in cross-examination. The building society's valuer had noted, as a contact detail to arrange a visit, the mobile telephone number 07737920089. D1 denied that that was his number. Mr Briggs then showed him a document relating to furniture for 37LR and D1 had to admit that the number was connected to him. He was then shown the valuer's record of telephoning that number and arranging the valuation visit. After a long pause D1 eventually did not dispute that he had been involved in meeting the valuer at 119PG while C1 kept C2 away. Eventually, he said that he could not recall being involved in the remortgaging of 119PG or the procuring of a signature as C2's signature. As to the latter denial, the solicitor who witnessed C2's signature on the consent to mortgage form was a solicitor with whom D1, not C1, had had previous dealings.

34
Mr Briggs' submissions on these issues were that there was more than sufficient evidence to support a finding on the balance of probabilities that D1 received monies knowing that they were proceeds of the sale or transfer of properties jointly owned by Cs and the remortgaging of Cs' matrimonial home, and that the running account was a reliable record of D1's and C1's dealings with those monies. D1 may not have known that a particular transfer came from a bank account in Cs' joint names rather than in C1's sole name, but he knew that certain proceeds which belonged jointly to Cs were to be passed to him and that C2 was unaware at the time of all such dealings. He also knew that monies not derived from Cs' joint property, including in particular the remortgaging of 119PG, were also to be put out of C2's reach by transfer to him. As to the forging of C2's signature, Mr Briggs acknowledged that it could not be established on the evidence that D1 was the forger, but he submitted that it was unquestionably the case that D1 was actively involved in the scheme which included procuring a forged signature for C2.

35
As already noted, Mr Ghaffar made limited concessions. He submitted that there was no evidence that D1 knew that such sums as had been deposited with him were proceeds of the sale of joint properties or that C2 had any interest in any such sums. Mr Ghaffar made the same submission in relation to the

remortgaging of 119PG. Mr Ghaffar submitted that while D1 may have been or was aware that C1 wanted to hide monies from C2 it did not follow that D1 knew C2 had any interest in those monies. Mr Ghaffar further submitted that there is insufficient evidence to justify a finding as to D1 being involved in the forging of C2's signature in relation to the remortgaging of 119PG.

36
I am in a position to, and do, find that D1 did receive very substantial sums in cash, totalling several hundred thousand pounds, and a cheque in the sum of £52,500 from C1 as part of a joint scheme to convert C2's interests in jointly owned properties into cash and put them out of her reach, and further to put C1's solely owned assets beyond C2's reach including by remortgaging 119PG and passing the funds to D1 to be held to C1's order. In all of this, D1 and C1 acted together and pursuant to a mutually agreed plan, the 2005 agreement, which they developed and implemented as necessary or convenient to achieve the objective of leaving C2 without assets or recourse to C1. On the evidence at trial, the latest version of the transferred sums, showing a balance of £54,940 at 7.7.08 ignoring rents, is supported by documents and admissions sufficient to justify a finding on the balance of probabilities.

37
One aspect or joint development of the 2005 agreement implemented by C1 and D1 was to procure the forging of C2's signature consenting to the remortgaging of 119PG. D1's involvement in the remortgaging of 119PG, both with the valuer and with the forging of C2's signature, suffices for a finding that D1 knew that all dealings with jointly owned property (including bank accounts) of Cs were without her knowledge or informed consent as to what was being done.

38
As to D1 knowing that he received monies in breach of trust, there is documentary evidence that D1 was familiar with the concept of a trust and that he was experienced at holding monies under someone else's name and dealing with those monies. The essence of the scheme agreed to with C1 was that C2's beneficial interests in properties and access to joint bank accounts should be put beyond her reach so that C1 could appropriate her beneficial interests to his own use. That suffices for a finding that D1 knew that dealings with C2's beneficial interests in property were in breach of trust.

37 Lansdown Road

39
There are 11 issues relating to this property : (i) was C2's signature on the contract and transfer deed dated 18-19.10.05 forged, and, if so, by whom? (ii) did D1 use the alleged transfer sums to pay the purchase price for 37LR? (iii) prior to the transaction did D3 know that the funds for the purchase came from Cs or C1? (iv) when was the draft trust deed relating to 37LR created? (v) did D1 draft that trust deed? (vi) did the draft trust deed accurately record the intentions of the parties named in it? (vii) did the circumstances of the transfer impose on D3 a resulting or common intention constructive trust in favour of C1? (viii) prior to the sale to D3, did D3 know that the property was transferred without C2's consent? (ix) did the transfer on 18.6.14 by D3 to D3 and D4 jointly impose on them a trust of land in favour of Cs, or at least C1? (x) does D3 hold any rental income from the property up to 18.6.14 on trust for Cs? (xi) do D3 and D4 hold any rental income from 37LR as from 18.6.14 on trust for Cs?

40
Both C1 and D1 got into difficulties during cross-examination on the issues relating to 37LR.

41
C1 stumbled over the forging of C2's signature and eventually said that it was done by D1 when the solicitor appointed for Cs stepped out of the room by arrangement with D1. Ordinarily this would seem inherently improbable. However, Mr Briggs pointed to evidence to dispel the inherent improbability including that Cs' solicitor was recommended by D1 and he had had previous dealings with her, that the solicitor has been disciplined by the SRA following four admitted charges of mishandling client funds in 2007, one charge relating to £600,000, and that the conveyancing documentation is riddled with inaccuracies and errors (including as to Cs' own address, whether the property was tenanted and would be tenanted or with vacant possession at completion, and the spelling of C2's forename) such that no solicitor paying even cursory attention to the transaction would have let pass. In addition, at one point during his cross-examination on these issues D1 referred to the solicitor as his own solicitor in the transaction.

42
What the evidence, including D1's oral evidence, came to was that D1 was not interested in the legal process leading to the transfer of 37LR. For example, on D1's authority his solicitors transferred the completion monies for simultaneous exchange of contracts and completion of the transfer before Cs' solicitors had provided answers to requisitions on title. Mr Briggs cross-examined D1 about the low purchase price, £80k. D1 said that there was a side agreement for a cash payment and that the price was £172k. On price and rent, Mr Briggs tackled D1 head on and asked : "The purchase price was irrelevant because it was [C1's] money you were using?" and "The details of the tenants were irrelevant because you were going to be receiving the rents for [C1]?" D1's answer to both these questions was "Yes".

43
D3 stated that he was told about the transaction and was pleased about it. When cross-examined about the rental income and his failure to make tax returns he stated that he was a steward and, therefore, did not need to, in other words the rental income was not his beneficially. Given D3's answer in relation to rent, I do not accept that D3 believed himself to be the outright or true legal and beneficial owner. I have no doubt that if D1 had told him that 37LR was to be sold and the proceeds applied on some other scheme of D1's D3 would have had nothing to say against that and would have stood by as D1 used the power of attorney.

44
Mr Briggs started his closing submissions in relation to 37LR with the proposition that there is a binary question, whether the sale to D3 was a bona fide transaction or a sham. On the evidence before me, the sale to D3 in October 2005 was unquestionably a sham transaction. Even if D1 had not admitted that monies from C1 were used to pay the price, the evidence as to the state of the running account of the sums transferred demonstrated that D1 had more than sufficient funds from C1, including from the sale of 259LR, to pay the agreed price of £80k. It is unnecessary to draw an inference that C1's or Cs' monies were used because D1 admitted as much. D3's involvement was not genuine, he was a stooge or bare nominee for D1.

45
As to the forging of C2's signature, it was an essential element of C1's and D1's joint plan to effect the transfer of 37LR. The conclusion I reach is that between them C1 and D1 procured the forging of C2's signature. However, whether it was one or other of them or, as Mr Ghaffar submitted, C1's sister posing as C2, cannot be determined on the available evidence with a sufficient degree of confidence to make a finding of fact.

46
As to D3’s knowledge, at the material time he was studying in Mumbai. I doubt that he had any contemporaneous knowledge of the transaction at all, and I do not accept his evidence to the contrary. At the time D3 did not know that the purchase monies used were those held by D1 for Cs or C1. Had there been any discussion between D1 and D3, the likelihood is that D1 would have lied and pretended that he used his own money. Given his age at the time and being a dutiful son, D3 would have believed D1. However, D1 would have lied to D3, who came to the transaction as a bare nominee under a power of attorney used by D1. Viewed another way, regarding D1 as an agent for D3, D3 would be fixed with D1’s knowledge which would supplant D3’s ignorance or erroneous belief based on D1’s lies.

47
The draft trust deed referred to at (iv) was prepared for execution in, or supposedly in, December 2005. Each of C1 and D1 assert that the other was responsible for its preparation. Its terms include that D3 holds 37LR on trust for C1, that D3 will transfer the legal title to C1 upon request, and that rents will be accounted for to C1 or as he directs. The deed remained a draft. It reflects, at least in broad terms, the common intention of C1 and D1. There is very little evidence beyond the words of C1 and D1 on which to base a finding as to when it was created or who was responsible for its creation. I do not think that identifying the author will make any difference to the outcome of the issues concerning 37LR and I am not in a position to make an evidence based finding. That said, it is as likely as not that D1 was responsible for its creation.

48
As to whether the circumstances of the transfer impose on D3 a resulting trust or a common intention constructive trust in favour of C1, Mr Ghaffar drew attention to the fact that Mr Briggs did not address this issue expressly in his closing submissions. That is so, but it was encompassed within his submission on the rhetorically posed binary question that the transaction in 2005 was a sham. Mr Ghaffar submitted that there was no shared knowledge or common intention and so the essential elements of such a trust are not met. My view is that D3 was intended throughout to be a bare trustee. At the relevant time the person whose knowledge and intention in relation to D3 matters is D1. He acted as D3 using D3’s power of attorney in his favour. D1’s agreement with C1, and therefore his intention for these purposes, was that he was trustee for C1. I have also found that D3 understood that he was a trustee, or steward as he put it, once he did come to know about the transfer into his name. It is common ground that D3 had no idea that 37LR had been, or might have been, transferred without C2’s consent; nevertheless, having furnished D1 with a power of attorney (which he had not avoided upon reaching his majority and which he was content for D1 to use at will) and D1 having used it to effect the transfer, D3 is fixed with D1’s knowledge.

49
As a footnote to this point, in the sense that no identified issue was formulated by Mr Briggs and Mr Ghaffar, Mr Briggs drew attention in his closing submissions to Ahmed v Kendrick (1988) 56P&CR 120 as authority for the proposition that the consequence of forging a legal co-owner’s signature on a transfer is that neither the legal estate nor the non-forger’s beneficial interest pass to the transferee, rather the beneficial interests are severed and the non-forger’s interest is retained.

50
As to the later transfer by D3 into the joint names of himself and D4, Mr Ghaffar accepted that if D3 was a trustee as claimed by Cs, D4 would be bound by that trust as a volunteer.

51
As to rental income. D3 admitted that there had been rental income, which D3 said was £1,200pcm until 37LR was divided into two flats and then £800-850pcm per flat, that he had not maintained any records because the rent had been paid in cash, and that he had spent the rent to keep the property to his standards. In principle, D3 and, as from 18.6.14, D3 and D4 are accountable as trustees for such rent as they received. However, there is also evidence that D1 was the recipient of the rental income and D3's admission may have been no more than a lie to bolster his claim to title.

52
Drawing the strands together and reaching a conclusion on the 37LR issues, in my judgment, the transaction was a sham and the involvement of D3 an artifice to mask the fact that the true beneficial interests belonged to Cs. The joint beneficial interests of Cs were severed to beneficial tenancies in common, at the latest, by the fraudulent transfer in October 2005. Thus, either directly or through D1 as an intermediate trustee (D3 holding on trust for D1), 37LR was held by D3 on trust for Cs until 18.6.14 and has, since then been held on trust by D3 and D4 for Cs. Both D1 and D3, for himself and for himself and D4, have admitted receiving rental income and, at least in principle, are liable to account for such.

349 Ripple Road

53
There are 14 issues relating to this property : (i) did D1 or C1, and if so which, forge C2's signature on the transfer of 349RR on 7.12.05? (ii) did D1 use the transferred sums to pay the purchase price for 349RR on the transfer to FI on 7.12.05? (iii) when was the draft trust deed relating to 349RR created? (iv) did D1 draft that trust deed? (v) did the draft trust deed accurately record the intentions of the parties named in it? (vi) were the transferred sums used to pay the purchase price when the property was transferred to MN on 31.10.06? (vii) were the net sale proceeds from that transfer ultimately returned to D1? (viii) were the transferred sums used to pay the purchase price when the property was transferred to D2 on 10.6.08? (ix) were the net sale proceeds from that transfer ultimately returned to D1? (x) were the transferred sums used to pay the purchase price when the property was transferred to SP on 1.5.09? (xi) does D1 hold the sale proceeds of the transfer to SP on express trust for C1 pursuant to the 2005 agreement? (xii) when he received those proceeds did D1 know that they were paid out in breach of trust? (xiii) did D1 prepare the trust deed dated 15.5.09 executed by SP? (xiv) did D1 collect rent in relation to 349RR and, if so, for what period?

54
In his witness statement D1 said that he had no involvement in the transaction before November 2005 at which time C1 contacted him and asked if he could transfer the property to FI. However, the sellers' information about 349RR passing between the solicitors was completed in September 2005. Moreover, the arrangements for effecting the sale of 349RR were commenced before the transfer of 37LR was completed. The relevance is that the same solicitor was engaged to act for Cs as was acting in the sale of 37LR and the same solicitor was engaged to act for the transferee. When confronted with the timings and arrangements for effecting the transfer of 349RR during cross-examination, D1 agreed that his written evidence "must be wrong".

55
Estate agents' particulars were produced for the marketing of 349RR which included as a note in relation to the terms of the leases of a ground floor shop and upper floor flat "Mr Ibrahim to confirm the above". The estate agents' particulars are undated. C1 gave contradictory evidence as to whether

it was before or after the transfer to FI. D1 denied that he knew about this and asserted that C1 must have given his name to the estate agents without his authority. That makes no sense. The likely explanation is that C1 and D1 agreed to attempt to sell 349RR on the open market; if it was before the transfer to FI, the explanation for D1 being the contact point was that, as with the valuer for the remortgaging of 119PG, the risk of C2 coming to know of the transaction had to be minimised; alternatively, if it was after 349RR had been transferred out of Cs' joint names, D1 would be the logical contact point as FI's attorney and in substance, albeit not in name on the title, exercising the rights and powers of the legal owner.

56
As to the first transfer and C2's signature, C1 provided further information, verified by a statement of truth in January 2016, that C2 did sign the transfer but did so in the belief that C1 was obtaining a loan secured against this property and her signature was required for that purpose. In cross-examination, C1 said that that reply to a request for information was incorrect and that "There were a lot of transactions that were going on and I have definitely got mixed up with that". The problem is that C1, like D1, was inclined to say what suited him at the time and was not concerned about lying even when verifying what he said with a statement of truth or answering questions on oath. On the transfer, C2's signature was, or purported to be, witnessed by her solicitor. Ordinarily, a solicitor would ensure that the client knew the nature and effect of the document to be signed. The solicitor was not a witness at trial and, as it was the same solicitor who acted on the transfer of 37LR, I cannot confidently assume that any explanation was given to C2 or that the signature of, or purporting to be of, C2 was duly witnessed. I am in no better position to make a finding as to the forging of C2's signature for this transaction than for the transfer of 37LR. However, as with the transfer of 37LR, the forging of C2's signature or, at best, the procuring of her signature on a deliberately misrepresented basis, was essential to the development and implementation of the 2005 agreement. My conclusion is that between them C1 and D1 procured the forging of C2's signature or deceived C2 into providing her signature on a false basis.

57
As to the monies used to for the sale to FI, C1 sought to maintain that the full £170k price was funded from the transferred sums. This was plainly wrong, as C1 had to concede in cross-examination. £100k was funded by a mortgage to FI from NatWest. There was evidence that FI would not have been able to raise a mortgage by reference to his income and standing. On D1's account, FI had been in trouble since the age of about 14 years, had served at least two prison sentences (one for three years, another for eight years), and was unemployed. It seems likely on the evidence that C1 introduced FI to a manager at NatWest and assisted in securing a mortgage loan. The balance of the agreed price was £70k. £70k was withdrawn in cash from Cs' joint account at Barclays on 28.10.05 and features in the running account of the transferred sums. Further sums were added to the running account over November 2005 so that by 2.12.05, the date of the agreement and transfer, the balance on the running account of the transferred sums exceeded £350k. In closing submissions, Mr Ghaffar submitted that there was no evidence as to the source of the £70k. I agree that there is no audit trail from the transferred sums, but C1's and D1's intention in relation to the transferred sums was that there should not be any audit trail. In any event, Mr Ghaffar overlooked D1's written evidence that C1 funded the balance of the purchase monies. I am satisfied that the price for the transfer of 349RR to FI was funded as to £70k from the transferred funds, that is from funds belonging to Cs.

58

As to the draft trust deed, both Mr Briggs and Mr Ghaffar submitted that the finding on this issue should follow the finding in relation to the draft trust deed for 37LR. I am not in a position to make a finding as to when the document was created or whether D1 or C1 was the author. As to the intentions of FI in the context of the draft trust deed, there was no evidence at all from FI. As with D3 and the transfer of 37LR, FI had no genuine role to play in the transaction and the fact that he was not a witness does not assist D1. The intentions in relation to 349RR were the same as with 37LR.

59
As to the transfer from FI to MN in October 2006, this transfer was recorded as being for no money or monetary value, thus the issues about use of the transferred funds and ultimate return of net proceeds do not arise. The Land Registry office copy recording MN's proprietorship as from 31.10.06 states that the price paid in December 2005 was £170k. The charges register makes no reference to the NatWest loan of £100k which must have been repaid on or before the transfer. On Mr Briggs' running account it was repaid out of the transferred sums at the time of the transfer to MN. Two pieces of evidence in relation to this transfer are of note. First, the client reference of the solicitor acting for MN was "Ibrahim", not "Nasir" or even "Saeed". Secondly, in his witness statement D1 stated that he arranged for FI to sign the transfer to MN. After being sworn, one of D1's numerous corrections to his witness statement before cross-examination was to state that in fact he signed the transfer using his power of attorney for FI; this change was prompted by disclosure of D1's signature on the transfer in the week before trial.

60
Moving on to the transfer to D2 on 10.6.08, issue (viii), and the questions of whether the transferred sums were used to pay the purchase price and whether the net proceeds of sale were ultimately returned to D1, it became common ground that at least £150k of the £240k purchase consideration was derived from the transferred funds. This was accepted by D1 during cross-examination when he also referred to having received the transferred funds mostly in 2005. This contradicted a passage in his written evidence that he might have received £150k in July 2008 from or on behalf of C1 and passed it on to MN. On being asked which of the two conflicting statements was true, D1 said that his written evidence was incorrect. This serves to corroborate the receipt of £95k on 1.9.05 and thus to support the running account of transferred sums promulgated by Mr Briggs during his closing submissions.

61
In his oral evidence D1 said that MN provided the balance of £94k, notwithstanding that he was, ostensibly, the vendor to D2. The short point is that D1 did not provide that element of the transaction price. MN does not appear to have made a claim to that money. The conclusion to be drawn is that directly or indirectly C1 funded that transaction.

62
Although it was Cs' pleaded case that the transaction consideration was ultimately returned to D1 on trust, C1 accepted during the trial that £150k was transferred to him in Pakistan. Credit is given for that in Mr Briggs' final version of the running account for the transferred sums.

63
At the time of the transfer of 349RR from D2 to SP in May 2009, C1 was in Pakistan. I am satisfied that D1 made all the arrangements, including arranging for the solicitors to represent D2 and SP in the transaction. SP raised £150k on a mortgage from NatWest. The agreed price was £230k. D1's own pleading was that SP paid the price himself, possibly with the assistance of a mortgage. In his witness

statement, D1 originally said that he (D1) had taken out the mortgage and agreed to be responsible for its repayment but, at the start of his oral evidence, D1 corrected this evidence and accepted that it had been SP. There is no evidence to support a finding that D1 provided the funds. There is evidence of a significant balance in D1's possession on the running account of transferred sums and of rent received by D1 in respect of 349RR at the rate of £12k yearly for the ground floor bakery and £7.2k yearly for the upper floor flat. On the evidence before me, the most likely source of the £90k balance of transaction price was the transferred funds and accumulated rents from 349RR and possibly 37LR.

64
It was D1's written evidence that he received £103,500 of the net transaction price, D5 received £100,500 and D2 received £25,139.50. D2 denied receiving that sum or any part of the proceeds. Certainly £103,500 was paid into a bank account in the names of D1 and his wife. In cross-examination D1 agreed that C1 was in Pakistan and said that he needed to change the whole paragraph in his written evidence dealing with the proceeds of this transfer. D1 acknowledged that all the money was paid to him and said that while the transaction was going on C1 had agreed that D1 would have all the proceeds. D1 said he received the £150k mortgage loan from NatWest to SP and claimed to be entitled to that sum as repayment of a loan due from SP. Given D1's evidence, it seems highly likely that D1 appropriated to himself all the proceeds on this transaction. As between D1 and C1 there was no factual basis on which D1 could have believed himself beneficially entitled to any of the sums passing in this transaction, including the £150k element of the purchase price raised by mortgage loan.

65
There is a trust deed, executed by SP, under which SP declared himself trustee for C1. SP referred to the mortgage in the trust deed and accepted personal liability. That was the product of D1's self-dealing. It is improbable that this trust deed was the result of C1's instructions but likely that it was the result of D1's instructions.

66
As to collection of the rents, D1 stated that he collected the rents from July 2008 when C1 went abroad. There is evidence that D1 was dealing with an insurance broker about 349RR before C1 went to Pakistan and authorised collection of the premium. The evidence does not support a finding that C1 or MN, his brother and the registered proprietor of 349RR until the transfer to D2, was managing the property and I accept that D2 did not manage 349RR. I do not accept that D1 would have funded insurance premiums from his own account. I therefore conclude that he was managing 349RR and collecting rents before C1 left for Pakistan. As to the precise start date of the period, I am not able to reach a conclusion on the evidence.

The 2007 agreement

67
Cs allege that in about October 2007 C1 and D1 made a further oral agreement ('the 2007 agreement') which had three express terms : D1 would purchase another property in the name of D5 using the transferred sums; D1 would manage the property and collect a reasonable rent; and, D1 and C1 would share the rental income. Cs allege an implied term that the property would not be charged save for C1's benefit and that the proceeds of such mortgage would be held on the same trusts as the transferred sums. Cs allege that 3VR was bought in D5's name on 6.11.07 using the transferred sums pursuant to the 2007 agreement.

68

On Cs' case, 3VR became the property the subject of this alleged agreement. The vendor's transfer of 3VR is dated 6.11.07. It records a purchase price of £225k. The vendor was a company connected with SP. D5 was named as the purchaser and became the transferee. The completion statement referred to a mortgage of £165k. The running account prepared by Mr Briggs made provision for payment of the balance of the price plus the purchase transaction costs. D1's case was that there was no 2007 agreement and Cs and their money had nothing to do with the purchase of 3VR.

69
D5 did not make a witness statement. D1, in his witness statement, described D5's involvement in events as "peripheral" and said that he (D1) believed that he could "adequately deal with [D5's] situation in this witness statement". However, as already noted, D1 did not mention the power of attorney dated 14.4.09 in respect of D5 in his witness statement and only disclosed this document in the week before the trial. Even before the execution of the power of attorney, D1 either undertook transactions in D5's name, including operating a bank account, or arranged for D5 to do D1's bidding by holding and dealing with large sums of money. This emerged from cross-examination about large transfers through a bank account in D5's name in 2008 and again in January 2009. There were long pauses by D1 before answering Mr Briggs' questions and, in the end, D1, having no credible answer and being unable to deflect Mr Briggs' questioning, said that he was unsure why he had given D5 money. I regard that a lie. When asked generally about the use by D1 of bank accounts in the names of other family members, D1 said that that was how it worked in his family and he accepted as true Mr Briggs' suggestion that in order to have a complete picture of what money he (D1) had, or had under his control, at any time it would be necessary to have access to the bank accounts of at least his family members.

70
As to the purchase and sale of 3VR, in his witness statement D1 referred to approaching SP and agreeing as the price the same price that SP's company had paid, £225k. He referred to D5 concluding a probationary period as an employee of Railtrack (Railtrack had been D1's employer, D5 worked for London Underground) and obtaining a mortgage offer of £165k. D1 also said that D5 told him that he (D5) would pay the balance and that D5 did pay the balance of the purchase price. In cross-examination, D1 said that his written evidence was a mistake and that D1 had paid the balance. D1 said that 3VR was intended as a home for D5. As from December 2009 D5 was in custody. There was no evidence to demonstrate that D5 lived at 3VR and made it his home. In his witness statement D1 said that the mortgage was serviced by rental income, an implicit admission the 3VR was not D5's home. At the commencement of his oral evidence, D1 withdrew this and said that his brother and his daughter had loaned the money raised on a mortgage and the £165k mortgage loan was repaid before the charge could be registered.

71
Turning to the sale of 3VR, this occurred on 1.4.11 when 3VR was sold to Tahir Daud for £180k. In his written evidence D1 said that the sale paid off the mortgage and "the small balance came to me for putting up the equity". During cross-examination about what this passage in his witness statement meant, D1 said "I cannot remember all these things". At one point, Mr Briggs put to D1 that his written evidence on this topic was made up and gave D1 an opportunity to restate his evidence; D1 remained silent. D1 was unable to provide straightforward or consistent answers to cross-examination about 3VR and the proceeds of sale and whether it was he or D5 who received and was entitled to the proceeds. D1's answers were also punctuated by long pauses. Mr Briggs then demonstrated by reference to bank statements that the solicitors acting in the transaction had remitted £180k to D1

and that over the period 6.4.11 to 19.5.11 D1 had withdrawn £197k in cash in sums varying between £500 and £44k. Mr Briggs questioned D1 about payments into bank accounts. In the course of that questioning, D1 revealed for the first time that he had a joint bank account with D3; self-evidently no disclosure had been given of this account.

72
Mr Briggs and Mr Ghaffar formulated 11 issues in relation to the 2007 agreement : (i) was there an agreement as alleged by Cs? (ii) were the terms as alleged by Cs? (iii) was 3VR purchased pursuant to the 2007 agreement? (iv) were the transferred sums used to pay the purchase price? (v) did D5 hold 3VR and any rental income on resulting or common intention constructive trust for C1? (vi) prior to the purchase did D5 know whether the monies used for the purchase were the proceeds of a breach of trust? (vii) if so, does D5 hold the proceeds of the sale on 1.4.11 on resulting or common intention constructive trust for Cs or C1 and is he liable to account for the same? (viii) is D1 liable to account for 50% of the net rental income of 3VR? (ix) alternatively, is D1 in breach of contract for failing to collect a reasonable rent? (x) if so, are damages payable in the amount of £20.5k as claimed by Cs? (xi) alternatively, did D1 hold any rental income received from 3VR on trust for Cs or one of them?

73
Mr Briggs approached these issues compendiously. The thrust of his submissions was that D1's evidence about and relating to 3VR was riddled with lies and inaccuracies and was the uncaring product of a person having no inclination to address the truth. Mr Briggs submitted that, notwithstanding his imprisonment, D5 could have participated in the trial and should have done if he had had a genuine interest in 3VR. Mr Briggs submitted that the 2007 agreement, with its rental sharing term, provided sufficient incentive for D1 to participate actively. The sale proceeds in fact went to D1, not D5, and the overwhelming likelihood is that D1 arranged the letting and collected the rental income. As a fiduciary and trustee, it would be for D1 to account and, in so doing, demonstrate any voids or proper deductions.

74
Mr Ghaffar referred first to the fact that D5 received an in principle mortgage offer of £165k in June 2007 which was some months before the 2007 agreement. Mr Ghaffar submitted that there was no corroborative documentation about either the 2007 agreement or the purchase of 3VR pursuant to that agreement. Mr Ghaffar submitted that even on Cs' case they do not contend that the transferred sums were used to fund the entirety of the purchase price. As to rental income, Mr Ghaffar submitted that the sharing of rents must depend on whether the alleged 2007 agreement is accepted or rejected. As to failure to collect any rents, Mr Ghaffar submitted that there is no evidence at all about D1 failing to collect a reasonable rent or about the amount of a reasonable rent. Finally, the issue of whether D1 held any rent on trust for Cs would also depend on the view taken as to the 2007 agreement.

75
D5's in principle mortgage offer in June 2007 certainly pre-dated the alleged 2007 agreement. It was some months before the documentation of the 3VR purchase in D5's name. The only evidence tying the transaction to May or June 2007 was D1's much corrected, and even then untruthful, written evidence. D1's evidence about 3VR and the 2007 agreement was poor, even by D1's unimpressive standards. However, that does not of itself mean that Cs' case is correct.

76
I think it likely that D1, working with D5, had it in mind to buy a property in D5's name. Having cleared the mortgage facility in principle D1 had to or chose to look to the transferred sums, that is

Cs' monies, for the equity contribution and transaction costs. C1 had not left for Pakistan on a long term basis and C1 and D1 were in regular contact. I think it likely that they did make the 2007 agreement. Double dealing, even involving his children, would be water off a duck's back to D1. The reason why C1 would receive 50% of the net rents, despite making only a 27% capital contribution, was that the expected mortgage would be serviced out of rental income. That accords with D1's written evidence, albeit that the evidence was withdrawn in cross-examination. I therefore accept that there was an oral agreement in the terms alleged as express terms of the 2007 agreement. The implied terms are another matter altogether; there is neither a legal basis for their implication nor evidence to support their operation. I also think it probable that the reason for the failure to specify a property as a term of the 2007 agreement was that the agreement developed into an agreement about 3VR once 3VR had been identified as the property to be bought. The upshot of that was that the capital was held as to 73% for D1 and 27% for Cs and net rental income was to be shared 50:50 between D1 and Cs. The proceeds of sale went to D1 and so he has held 27% of the net proceeds of sale, that is a sum in the order of £48k, on trust for Cs since April 2011. As to the rents, in principle Cs are entitled to an account of rents from D1 over the period of D5's ostensible ownership of 3VR and to receive 50% of the net rents. On the evidence referred to at trial, I am not in a position to make any specific findings as to actual rent or a reasonable rent or damages.

Demand for the transferred sums

77
There are four issues under this topic : (i) did C1 demand the return of the alleged transferred sums and any properties held on trust for him on or about 8.12.13? (ii) what, if any, sums remain outstanding from D1? (iii) to the extent that sums remain outstanding, has D1 either had and received the sums beneficially owned by Cs, or been unjustly enriched at Cs' expense? (iv) what interest is payable on the sums due?

78
Mr Briggs submitted that D1's hand written money in / money out account and his letters written in 2014 are self-serving; that at every turn D1 was unable to answer questions about money; and, that D1's own attempts at defending Cs' claims, particularly in his written evidence, were exposed as hopelessly flawed and showed astonishing disregard and contempt for the truth.

79
Mr Ghaffar submitted that neither C1 nor D1 addressed the issue of demand for the transferred sums in their written evidence. Mr Ghaffar further submitted that the pleaded case on demand for the transferred sums had been undermined by the very material amendments downwards to the claimed transferred sums. Mr Ghaffar added that there was no reason to reject D1's manuscript account and no evidential basis to find that any balance was owing. Accordingly, the question of interest did not arise. In the alternative, and by reference to a chronology of money movements set out in his skeleton argument, Mr Ghaffar submitted that the maximum amount left in D1's hands was £15,800.

80
C1 returned from Pakistan on 8.12.13. D1 met him at the airport and gave him £1k in cash. D1 gave C1 a further £6k in cash in January 2014. C1 also acknowledged receipt of £35k used towards the repurchase of 119PG after the possession order made on 16.4.09. This was not abundant generosity on D1's part. These payments implicitly acknowledged significant indebtedness to C1. Setting these sums against the running account of the transferred sums would still leave a balance of £12,940 due to Cs.

81
As to whether C1 demanded the return of the balance of the transferred sums and properties held on trust, D1's letters written in 2014 served to confirm that by July 2014 C1 and D1 had fallen out about the transferred sums and property transactions. It is an inescapable inference that by then C1 had demanded that D1 settle up what was due, including the cash given to D1 comprising the transferred sums.

82
On my findings D3 and D4 are trustees for Cs of 37LR and D1 is trustee of the balance of the transferred sums, the monies he received from SP in respect of the sale and mortgaging of 349RR, and 27% the net proceeds of 3VR. D1 has appropriated those monies to his own use as if he was beneficially entitled to the same.

83
Interest is best addressed at the hearing consequential on judgment.

Defence of illegality

84
The issue is whether the Court should refuse to enforce Cs' claims by reason of the illegal purpose of the 2005 agreement and/or the 2007 agreement, or by reason of C1's illegal acts.

85
Mr Ghaffar and Mr Briggs based their submissions on the decision of the Supreme Court in Patel v Mirza [2016] UKSC 42. In that case, Mr Patel had given Mr Mirza £620k to bet on the movement in the price of RBS shares with the benefit of insider information. Mr Mirza did not receive insider information and no bet was placed. Mr Mirza retained the £620k. Mr Mirza argued that illegality barred the claim. The Supreme Court unanimously dismissed Mr Mirza's appeal and ordered restitution of the £620k. The lead judgment is the speech of Lord Toulson, with whom Lady Hale, Lord Kerr, Lord Wilson and Lord Hodge agreed. Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption concurred in the result but gave different reasons.

86
The courts of this jurisdiction have long applied the principle or maxim ex turpi causa non oritur actio. The maxim was expressed, almost 250 years ago, by Lord Mansfield CJ in Holman v Johnson (1775) 1 Cowp 341 at 343 "No court will lend its aid to a man who founds his cause of action upon an illegal act".

87
In Patel, Lord Toulson, at [99], referred to two broad policy reasons underpinning the maxim or illegality principle. First, a person should not be allowed to profit from his own wrongdoing. Secondly, the law should be coherent and not self-defeating, condoning illegality by giving with the left hand what it takes away with the right hand.

88
As to the first policy reason, and citing an observation of Lord Goff in Attorney-General v Guardian Newspapers Ltd (No 2) [1990]1 AC 109 at 286, Lord Toulson, at [99]-[101] and [120], drew attention to its generality and the scope for misguided focus on whether the claimant is "getting something" out of the wrongdoing rather than on the question of whether allowing recovery for something which was illegal would produce inconsistency and disharmony in the law, and so cause damage to the integrity

of the legal system. This raised the further question of what is meant by “inconsistency” or “disharmony”. Relevant considerations in addressing harm to the integrity of the legal system are (a) the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) conversely, any other relevant public law policies which may be rendered ineffective or less effective by denial of the claim, and (c) whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. When considering (c) and whether refusal of relief would be disproportionate, Lord Toulson, at [107], was against a prescriptive approach because of the infinite possible variety of cases. Potentially relevant factors to the decision in Patel identified by Lord Toulson included “the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was a marked disparity between the parties’ respective culpability”.

89
Ultimately, the question was whether consideration of the policy factors and of the nature and circumstances of the illegality should result, given the public interest in preserving the integrity of the justice system, in denial of the relief claimed. Thus, the focus was on whether relief should be granted rather than on whether the contract was tainted by illegality.

90
Addressing the specific issue in Patel, namely a claim for return of money paid pursuant to a contract to carry out an illegal activity and the illegal activity not occurring for reasons beyond the control of the contracting parties, Lord Neuberger, at [146], said that the general rule should be that the claimant is entitled to the return of the money he paid. That result is consistent with the law that was laid down in Holman; is supported by modern authorities; accords with policy; and, renders the outcome of cases in the difficult area of contracts involving illegality relatively clear and certain.

91
Mr Briggs referred to the passages in the speeches of Lord Toulson and Lord Neuberger outlined above. As to the integrity of the legal system, (a) the underlying purpose served would be the protection of C2’s interests, preventing forged documents being acted on, and unscrambling or undoing sham transactions; (b) there were no other public policies on which denial of the claim may have an impact; and, (c) granting relief would not be disproportionate but would restore, or go some way to restoring, the status quo ante, conversely denial of the claim would have a punitive effect on Cs and provide a windfall to D1. On this latter point Mr Briggs contended that C1 has admitted his wrongdoing and repented.

92
For my part, I regard any repenting by C1 as, on his part, no more than a by-product consequential upon and required as part of Cs’ claim. In my view, the conduct of C1 was serious, central to the contract, and intentional; but so too, in equal measure was that of D1.

93
Mr Ghaffar submitted that C1 was engaged on a course of illegal activity for almost a decade, 2005 to 2014. Throughout this period he perpetrated a fraud on C2. In addition, C1 perpetrated a mortgage fraud, by causing the mortgage lender to lose £190k as a result of having to obtain possession of 119PG and then selling it back at a substantially discounted price, with the result that the mortgagee’s security against what was and is Cs’ home has been substantially reduced.

94

Mr Ghaffar submitted that a wide view should be taken of (a) the underlying purpose of the policy, and that it is to discourage dishonesty and fraud, in the context of this case to discourage fraud by one co-owner against another. As to (b), Mr Ghaffar submitted that it must be contrary to public policy to permit, or in effect condone, lies, forgery and active deceit. As to (c) proportionality, Mr Ghaffar submitted that granting relief will enable C1 to benefit from his own wrongdoing; the conduct was very serious, centred on dishonesty, and C1 was highly culpable, markedly more so than D1; D1 had been the passive recipient and bag carrier to C1's mastermind and orchestrator. C1 was instrumental in realising funds, transferring properties and directing D1 as to the use of funds. The 2005 agreement and the 2007 agreement were at the core of C1's illegal scheme. Finally, sight should not be lost of the fact that C1 set about a prolonged campaign of theft from his wife, C2. That conduct should not be condoned and it is notable that C2 has chosen not to sue C1 but to join with him against D1.

95
I have a different view of D1's involvement from that described by Mr Ghaffar in his submissions. I do not regard D1 as a passive participant dragged, out of misguided association with C1 and misplaced loyalty to AR, as an accomplice into a scheme solely or principally of C1's making. I regard D1 as no less complicit than C1 in agreements and arrangements designed to cheat C2 of her property interests and no less culpable than C1. Unlike the contract in Patel, the 2005 agreement and the 2007 agreement were acted upon. As things stand, a proportion of the fruits of that illegal activity remains in D1's hands or under his control. To leave matters as they presently are would offend both policies underpinning the illegality principle and condone and produce an unjust outcome. That is not to overlook or condone or diminish C1's culpable involvement.

Limitation ~ C1's claims

96
Limitation defences were raised by Ds in relation to the joint claims of Cs and, in so far as they are separate, the individual claims of C1 and C2. For the purpose of identifying issues the parties distinguished between C1 and C2. The limitation issues relating to claims advanced by C1 are : (i) when did C1's claims to recover the transferred sums and/or rent arise? (ii) are C1's claims against D1, D3 and/or D5 claims against a trustee to recover trust property, or trust property converted to the trustee's use, within s.21 Limitation Act 1980? (iii) did D1 deliberately conceal the distribution of the sale proceeds of 349RR by instructing solicitors to send no correspondence to D2's address? (iv) did D1 deliberately conceal his receipt of £150k by (a) telling C1 that SP wished to take out a loan against 349RR and (b) drafting the trust deed executed by SP on 15.5.09 which described SP as the beneficial recipient of the loan? (v) alternatively, did D1's procurement of the distribution of the sales proceeds of 349RR on the sale to SP, and the receipt by him of those proceeds, amount to the deliberate commission of a breach of duty in circumstances in which it was unlikely to be discovered by C1 for some time within the meaning of s.32(2) Limitation Act 1980? (vi) if so, has C1 shown that he could not, with reasonable diligence, have discovered those matters before 3.11.09?

97
As to (i), Mr Briggs submitted and Mr Ghaffar accepted that Cs or C1's claim did not arise until there had been a demand for the transferred sums or rent. On the facts this did not occur until after C1 returned from Pakistan on 8.12.13. The claim form was issued on 3.11.15.

98

As to (ii), Mr Briggs submitted that all claims against D1, D3 and D5 were based on express trusts with the result that, pursuant to s.21 Limitation Act 1980, there is no period of limitation because Cs' and C1's claims as beneficiaries are (a) based on fraud or fraudulent breaches of trust to which D1, D3 and D5 were parties or privy or (b) to recover from D1, D3 and D5 trust property or the proceeds of trust property in their respective possession as trustee, or previously received by them and converted to their own use. Mr Briggs referred to Williams v Central Bank of Nigeria [2014] UKSC 10 and acknowledged that s.21 does not apply where a constructive trust is imposed as a remedy, but does apply to a de facto trustee, that is someone who has assumed fiduciary obligations in relation to trust property but without formal appointment. This category of trustee includes a trustee of a trust implied from the common intention to be inferred from the conduct of the parties, but never formally created as such. Thus, s.21 does not apply where the claim is based on knowing receipt. As to the position of the trustee of a resulting trust, Mr Briggs referred to the opinion of the editors of Lewin on Trusts, 19th Edn at 44-007 footnote 20, to the effect that such persons were intended to be caught by s.21.

99
Mr Ghaffar submitted that the only possible trustee of an express trust is D1, and that D3, D4 and D5 are mere accessories and cannot be liable as trustees.

100
Be that as it may, on my findings, D3 had no actual involvement in the sham transaction for the acquisition of 37LR. D1 appropriated D3's name to his own use through use of the power of attorney for his own benefit not D3's. Accordingly, neither D3 nor D4 have a beneficial interest in 37LR, rather they hold it on a bare or resulting trust.

101
As to D5, the issue appears to me to be academic because 3VR has been sold and the proceeds were paid to D1. At that time, D5 was already in prison. Although he may well have made use of his power of attorney for D5, D1 was at all times acting on his own account. There is no evidence that D5 enjoyed any beneficial interest or had any benefit through occupation and use or rental income from 3VR. Again, D1 was the recipient pursuant to the 2007 agreement. As to the sale proceeds of 349RR and £100,500 being paid to D5, in fact all the proceeds were paid to and appropriated by D1. D5's involvement, even if he did execute the transfer to himself, was no more than as bare nominee for D1. D1 in turn was trustee for C1 or Cs pursuant to the 2007 agreement in respect of 3VR and the 2005 agreement in respect of 349RR.

102
As to (iii), D2 made clear that she had no contemporaneous knowledge or understanding of her involvement.

103
As to (iv), Mr Briggs submitted that the trust deed executed by SP was the product of D1's drafting or instructions and that it was a deliberate breach of duty by D1 as a trustee for C1 pursuant to the 2005 agreement. Its purpose was to conceal the fact that D1 was the recipient of £150k but that was a dishonest breach of the fiduciary duties owed by D1 to C1. Mr Ghaffar submitted that there had been no deliberate concealment from C1.

104
The trust deed relating to 349RR executed by SP was created by or on the instructions of D1 to serve D1's purposes. In May 2009, C1 was in Pakistan and reliant on D1 to hold to the 2005 agreement.

D1's conduct was a deliberate and flagrant breach of that obligation. The trust deed was intended to and did serve to conceal the fact that D1 had taken the proceeds of the sale of 349RR to SP for his own use.

105
As to (v), s.32(1) Limitation Act 1980 provides that in relation to a limitation period under that Act, where any fact relevant to the claimant's right of action has been concealed from him by the defendant, the period of time shall not begin to run until the claimant has discovered, or could with reasonable diligence have discovered, it. S.32(2) provides that deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

106
Mr Briggs submitted that D1's conduct in relation to the trust deed fell squarely within the term "breach of duty" for the purposes of s.32 and that, whatever period amounted to "some time", the relevant period to be explained is the interval between the transaction in May 2009 and the date six years before the issue of the claim form, that is 3.11.09. Over that period C1 was in Pakistan and entirely reliant on D1 as D1 obviously knew. Mr Ghaffar submitted that these submissions were unclear and that there had been no breach of duty by D1.

107
On the facts, I agree with and accept Mr Briggs' submissions.

108
As to (vi), Mr Briggs referred again to the interval between May 2009 and 3.11.09. He relied on the facts that C1 was in Pakistan throughout that period, that record keeping and dutiful accounting were intentionally not a feature of the 2005 agreement, and that such records as there were maintained by D1. In consequence, C1 could not with reasonable diligence have discovered matters in such a short window of opportunity, i.e. before 3.11.09.

109
Mr Ghaffar submitted that C1 could have made any enquiries he chose. He knew both parties to the transaction, D2 and SP personally. He could have contacted either or both of them for information as to how the proceeds had been distributed. In short, with reasonable diligence C1 could have discovered what had happened well before 3.11.09.

110
On D2's evidence and my findings D2 did not know what happened to the proceeds of sale beyond the fact that she did not receive them. As to SP, having observed him give evidence and considered his evidence in the round, I am far from persuaded that C1 would have received an informed and accurate account, not least because D1 was more than capable of and had no scruples against misleading SP where money and his own interests were at stake, and was more than capable of persuading SP to act irrationally and against his own interests. In addition, SP made clear that he was not at all pleased that his business affairs were under discussion and that he preferred to keep matters in which he was involved to himself. I therefore accept Mr Briggs' submissions on this issue

Limitation ~ C2's claims

111

The limitation issues raised relating to the claims advanced by C2 are : (i) did D1 deliberately conceal any fact relevant to C2's right of action from C2? (ii) did D3's alleged knowing receipt of 37LR amount to the deliberate commission of a breach of duty against C2 in in circumstances in which it was unlikely to be discovered by C2 for some time within the meaning of s.32(2) Limitation Act 1980? (iii) did D5's alleged knowing receipt of £100,500 from the proceeds of sale of 349RR to SP and from the property at 3VR amount to the deliberate commission of a breach of duty against C2 in in circumstances in which it was unlikely to be discovered by C2 for some time within the meaning of s. 32(2) Limitation Act 1980? (iv) if so, has C2 shown that she could not, with reasonable diligence, have discovered those matters before 3.11.09?

112
Mr Briggs' overall submission was that D1's complicity with C1 in the fraud perpetrated against C2 was concealed by D1 and D3 (by D1 as his agent), and that C2 could not, with reasonable diligence, have discovered that complicity until C1 returned home from Pakistan on 8.12.13. Further, during his absence in Pakistan, C1 was avoiding service of matrimonial proceedings and not responding to court orders. That she was in possession of information making clear that C1 had perpetrated a fraud did not suffice to alert her to the possibility of D1 being complicit and a fraudster jointly with C1 or on his own account.

113
As to (i) and instances of D1's deliberate dishonest conduct relating to and concealment from C2, Mr Briggs referred to a number of examples including the forging of C2's signature, the arrangements for documents to be sent to D1's home so that they would not come to C2's attention, the arrangements for the valuer's visit to 119PG on the remortgaging of that property, the evidence that D1 deliberately misled C2 as to C1's whereabouts, and the suggestion and encouragement given to C1 by D1 to remove himself to Pakistan for six years. Mr Briggs further submitted that D1 promoted matrimonial proceedings against C1 to avoid revealing his involvement in the fraud perpetrated against C2. Viewed holistically, every act was designed to defraud C2 of her jointly owned property and deny her access to C1's assets, concealment from C2 was an essential element of the making and implementation of the 2005 agreement and the 2007 agreement. Mr Ghaffar submitted that only C1 concealed any relevant facts from C2 and that on one occasion D1 told C2 that C1 was in Pakistan. I agree with and accept Mr Briggs' submission. It was of the essence of the arrangement between C1 and D1 that C2 was to be kept in the dark, in particular as to D1's involvement, and D1 had no compunction about so doing. Had it been otherwise, his standing and reputation in the male community of which he was part would have been undermined.

114
As to (ii), Mr Briggs referred to Giles v Rind (No2) [2008] EWCA Civ 118 and the judgment of Arden LJ, with which Sedley LJ and Buxton LJ agreed. Arden LJ considered the meaning of the phrase "breach of duty" at s.32(2) and was unwilling to accept that it extended to "any legal wrongdoing whatsoever" but accepted that it did extend to a legal wrongdoing that gives rise to a right of action. Mr Briggs submitted that knowing receipt fell within that definition of breach of duty.

115
Addressing knowing receipt, Mr Briggs referred to In re Montagu's Settlement Trusts [1987] 1 Ch 264, and the judgment of Sir Robert Megarry V-C at p.283, as authority for the proposition that the knowledge of an agent as to title will be imputed to the principal if the agent was engaged to investigate those matters. Strictly, the judgment was that where a solicitor had been engaged to act generally, and not ascertain whether title to certain property was subject to or free from trusts, no

duty to investigate title arose. By contrast, the very task of D1 in the transfer of 37LR was concerned with the passing of title; and, in his oral evidence, D1 acknowledged as much.

116
Mr Ghaffar submitted that during 2007, if not before, C2 knew that 37LR had been transferred to D3. Referring to his cross-examination of C2, Mr Ghaffar also submitted that she then believed that C1 and D1 had conspired to cheat her of her monies. There was no great leap of imagination to then be suspicious of the sale of 37LR.

117
Mr Ghaffar also referred to Montagu's Settlement, including Sir Robert Megarry's analysis of the circumstances relevant to imputation of knowledge at pp.283-5 and the eight point summary of conclusions at pp.285-6. It is not necessary to set these passages out in this judgment. Mr Ghaffar submitted that D1 relied on solicitors to investigate title, including C2's intentional participation, and D3 did not ask D1 to investigate title but left it to D1 to deal with that issue and then effect a transfer to him.

118
On the evidence, in 2007 C2 was advised by solicitors in the context of matrimonial proceedings and had obtained documents relating to transactions from the solicitors purportedly acting for C1 and her. C2's suspicions appear to have been based on the fact that C1 spent a lot of time with D1, at least as C2 saw it. Any enquiry of C1 or D1 would not have been met with frank confession. More importantly, D3 (whether in Mumbai or in the UK due to illness) would not have been contactable, and would not have responded other than through D1.

119
On the facts, D1 did not leave it to solicitors to investigate title in the sense of verifying C2's genuine involvement in the transaction; on the contrary, he was instrumental in ensuring that she did not know about or participate knowingly in the transfer of 37LR. D3 was no more than a nominee for D1, and D3 is inevitably fixed with D1's knowledge. D1's participation with C1 in the plan to defraud C2 of her property interests was deliberate and fully culpable. In consequence D3 is fixed with D1's deliberate breach of duty against C2 in circumstances which were unlikely to be discovered by C2 for some time.

120
Issue (iii) relates to the allegation that £100,500 of the proceeds of sale of 349RR in 2009 were paid to D5. On the evidence that did not happen and the payment went instead to D1. The proceeds of sale of 3VR in 2011, by which time D5 was serving his prison sentence for murder, were also remitted to D1.

121
As to (iv), Mr Briggs accepted that in or by 2007 C2 knew that her signature had been forged and that properties jointly owned by her had been transferred without her involvement or consent. Mr Briggs submitted that what C2 did not know and could not have found out was that the property transactions were a sham because the fraud perpetrated by C1 and D1 was kept to themselves. Over the course of 2007 and until July 2008 relations between C1 and C2 were very poor, hence the Family Law Act 1996 and freezing orders obtained by C2 against C1 in September 2007; and, as from July 2008, C1 had left the jurisdiction and avoided contact with, and evaded service by, C2. D1 was obviously not a source of reliable information for C2 and he appeared removed from the transactions. In short, C2 could not with reasonable diligence have discovered the involvement of D1 with C1 before 3.11.09.

122

Mr Ghaffar referred to Lewin on Trusts, 19th Edn, at 44-154 and focussed on the word “could” in the phrase “could not with reasonable diligence have discovered”. He submitted that C2 plainly had the ability to discover all matters relating to her claim and further that Ds did not owe fiduciary duties to C2. Mr Ghaffar also referred generally to Attorney General of Zambia v Meer Care & Desai [2007] EWHC 952 and specifically to Lewin on Trusts at 44-144 for the proposition that if there are two defendants, deliberate concealment by one does not extend time against the other, even if the effect of the concealment is to preclude the claimant from discovering that he has a claim against the other.

123
Mr Ghaffar submitted that no material facts were concealed from C2 and that by the end of 2009 C2 and solicitors that advised her in relation to matrimonial proceedings were aware of the remortgaging, twice, of 119PG, the sale of 37LR and 349RR, that proceeds had been put beyond her reach, and that a man called “Ibrahim” was the buyer of at least one property.

124
I have already made findings as to liability as trustee against D1. To the extent that a finding on this issue is required, it is important to keep in mind that concealment from C2 was an essential element of the scheme agreed upon and implemented by C1 and D1 together. On the facts, C1 and D1 worked together to conceal the true facts from C2, and, crucially, the involvement of D1. C2 could not with reasonable diligence have discovered the relevant facts to claim against them. I do not consider the passage in Lewin on Trusts at 44-144 relied upon by Mr Ghaffar to be of assistance to D1 on the facts of this case. I accept Mr Briggs’ submission that C2 could not with reasonable diligence have discovered the involvement of D1 with C1 before 3.11.09.

Conclusion

125
In summary C1 and D1 did make the 2005 agreement, very largely in the form alleged by Cs; the identity of the transferees of 37LR and 349RR was not settled in June 2005 as part of the agreement but was developed as the agreement was implemented. D1 became an express trustee. The running account of the transferred sums submitted by Mr Briggs in his closing submissions is, on the balance of probabilities, an accurate account of the transferred sums. The transferred sums were demanded shortly after C1 returned from Pakistan on 8.12.13. In addition, D1 is liable to account for monies retained from transfers of 37LR and 349RR. D3, and as from 18.6.14 D3 and D4, had and have no beneficial interest in 37LR; the transfer to D3 was a sham transaction. D1 and D3 and, since 18.6.14, D3 and D4, claim to have received rents from 37LR and are liable to account for such. D1 is accountable for the rents from 349RR. The 2007 agreement was made between C1 and D1 in the express terms alleged. 3VR was acquired pursuant to the 2007 agreement. The purchase in D5’s name was a sham. D1 is liable to account for 27% of the proceeds of sale (approximately £48k) and 50% of the net rental income. The illegality of the dealings between D1 and C1 is not a bar to Cs recovering in this action. There is no operative limitation defence precluding recovery.

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[1] Claim discontinued 10.11.15