



Neutral Citation Number: [2021] EWHC 3476 (QB)

Case No: QB-2017-006364

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2021

Before :

MRS JUSTICE FOSTER DBE

Between :

NATIONAL CRIME AGENCY

- and -

TONINO CARMINO PERSICO

-and-

OSMASTON BUSINESS PARK LIMITED

Mr James Fletcher (instructed by National Crime Agency Legal) for the Claimant.

The Respondent neither appeared nor was represented.

Mr Jonathan Lennon (instructed by Rahman Ravelli) for the Interested Party.

Hearing dates: 21 and 22 January 2021

Approved Judgment

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

.....
MRS JUSTICE FOSTER DBE

Mrs Justice Foster DBE:

INTRODUCTION

1.

This is the judgment in respect of issues arising on the trial of an application for a Final Charging Order brought by the National Crime Agency ("NCA") in respect of the property at 555 Osmaston Road, Derby under title number DY236467 (referred to here as "The Property"). The Property is a roughly oblong strip of commercial land that accommodates several small commercial units; it is situated to the South of Derby and the East of Osmaston Road. Two large advertising hoardings are attached to its boundary. The title deeds to The Property state that the Interested Party is the legal owner.

2.

The Claimant is a statutory agency tasked with a series of crime-related functions including that of crime-reduction. This includes combating organised and serious crime and mitigating its consequences. Among the operational powers available to it are the powers and privileges of an officer of HM Revenue and Customs ("the Revenue"). Those powers have been exercised in the present case. The NCA assumed the taxation functions of the Revenue in respect of certain activities of the Respondent Mr Tonino Persico, and following his assessment for tax, hold a default judgment against him for unpaid tax, National Insurance contributions and interest thereon in the sum of over £1.1 million.

3.

The NCA have identified The Property as beneficially owned by the Respondent, although, as stated, the Interested Party's name appears as legal owner on the Title Deeds. It is NCA's case that the Agency is entitled to a Final Charging Order over The Property because the Interested Party, a company called Osmaston Business Park Limited ("OBPL"), holds it on trust wholly for the Respondent. NCA say that OBPL is a device used to conceal this true ownership from scrutiny, and whilst it is impossible to point to a single document that proves this irrefutably, it is a strong inference from all the facts and circumstances that this represents the true position.

4.

OBPL resist the application saying the true position is reflected in the Land Register, The Property is company property and that company is owned and managed by Mr Persico's niece, Ms Ria O'Neill.

5.

On 7 February 2018 an Interim Charging Order was made by Master Eastman who set down the following issues to be tried:

i)

whether The Property at 555 Osmaston Road, Derby DE24 8NE, title number DY236467, is held on trust for the Respondent by the Interested Party, whether in whole or in part

ii)

if the answer to i) is "Yes", whether the Interim Charging Order dated 7 February 2018 should be made final.

6.

Final Charging Orders have been made in relation to the other plots of land at 555 Osmaston Road.

7.

A number of witness statements have been sworn in these and the earlier proceedings by Mr O'Reilly, a Tax Investigator employed by NCA and by Ms O'Neill, the director and sole shareholder in OBPL. Mr O'Reilly also gave oral evidence at the hearing as did Ms O'Neill.

8.

There is no dispute about the relevant legal framework nor to any substantial degree about the events which happened. The nub of the issue is the correct interpretation of the facts before the court.

RELEVANT PRELIMINARY BACKGROUND

9.

The matter comes before the Court in the following way. On 28 November 2013 555 Osmaston Road Derby, which is made up of four title numbers including The Property, was searched by Derbyshire Police. The whole site is referred to here as "555". It was determined by the police that 555 had been used for processing cannabis bush plants. A witness statement sworn in May 2014 for the purposes of obtaining a Restraint Order in the Crown Court at Derby details various inquiries over time into the Persico family. The picture painted is detailed and complicated describing a series of police raids leading to the seizure of money, documentation and other information regarding the business interests and property holdings of the Persico family, and, in 2014, a series of interviews with the police. The documentation revealed, in broad summary, a web of family property ownership through various corporate vehicles at various times with directors and nominees from among professionals and advisors and occasionally occupants of the Persico family land at 555. The land involved included residential and commercial properties, the corporate entities were in some cases off-shore, many were dissolved shortly after incorporation. The names of family members seldom, but occasionally, appeared on title deeds or named as directors of companies. Identification of the property interests of individual family members was a complex and painstaking task for the financial investigators charged with what was described in the Proceeds of Crime Act 2002 ("POCA") proceedings as a "money laundering, fraud and financial investigation into the financial affairs of Tony [Tonino] Persico, and his associates Raymond John Hill, Ria Persico and Maria Persico".

10.

That financial investigation appears to have begun in March 2010 with the discovery of a builders' bucket full of £6,500 in cash hidden in the back of a car driven by Maria Persico, sister of the Respondent. It also involved, in February 2012, the execution of a warrant at 555 where a Mr Ashraf, manager of one of the units on The Property called "Cars on Demand" sought, through demonstrable untruths, to dissuade officers from searching a locked office where further large amounts of cash were recovered from various places in the office and documentation belonging to Maria Persico. Mr Ashraf had described a Mr Raymond Hill as the owner. He said that he, Ashraf, sublet one unit to a Mr Akbar who paid him rent. The evidence from Mr Akbar was that Raymond Hill was paid the rent in cash by Mr Akbar every month. Raymond Hill, whose name appears on much of the relevant documentation, described himself in a police interview in March 2014, as a businessman and consultant to the Persico family. Evidence gathered by the police and passed to the NCA indicated that the Respondent was the owner of a building at the far end of 555 in a yard area, a car lot containing at that time 35 vehicles. The cash seized by the police was not claimed and became forfeit in uncontested cash forfeiture proceedings under the Proceeds of Crime Act 2002 (POCA).

11.

Investigation of the ownership of the various Land Registry Titles for 555 revealed a series of corporate holdings and ownerships within the Persico family. At the stage of the Derby Crown Court

proceedings in 2014, the position of the police was that documentation from solicitors instructed by the Persico family proved that the true owners of 555 were members of the Persico family and “after some sort of situation in 2008, Tony and Maria are thought to be the current owners of the property and land there”.

12.

Later, the involvement of Maria in The Property was discounted. She denied ever owning it, it was not included in her schedule of assets and it did not form part of the Confiscation Order eventually made. A total of £798,000 benefit was shown on the supporting confiscation proceedings documentation, of which the available amount was found to be £337,000. The Property did not feature. Mr O'Reilly told the Court in the current proceedings that police research, together with NCA's own investigations, suggested that the Respondent was the main owner. Possibly Giovanni Persico had an interest as well, but there was no document showing he had any significant interest. The papers also showed the Respondent had carved out a “big chunk of the side” of The Property that was not covered by the units where he was parking his vehicles, it was apparently under his control for the purposes of his business, advertisement hoardings could also be placed to generate income.

13.

Maria Persico was present at the time of the November 2013 search and was arrested. Stephen O'Neill, Ria O'Neill's father and Maria's erstwhile partner, was discovered in the Cars on Demand unit, which was no longer trading, weighing out a large amount of cannabis bush. He was arrested. Other members of the family were interviewed in relation to drugs charges, including the Respondent. He gave “no comment” answers in interview on 27 February 2014 in response to all questions concerning ownership of The Property. Maria Persico pleaded guilty to the drugs charges against her in November 2015. She was sentenced to 2½ years imprisonment for conspiracy to supply Class B drugs. Mr Ashraf was sentenced to 2 years.

14.

There were no criminal proceedings against either the Respondent or Giovanni Persico. Ria O'Neill was questioned by the police but similarly, no charges were brought against her.

15.

In confiscation proceedings against Maria Persico, an agreement was reached in which she accepted shared ownership of certain land located at 555 Osmaston Road but not including The Property. Although it was initially included in the confiscation proceedings against the others, it subsequently appeared to the police that in truth the Respondent owned The Property namely land registered under title DY236467 at 555 Osmaston Road.

16.

A Restraint Order granted to Derbyshire Police in the criminal proceedings in respect of (inter alia) The Property was lifted, and to protect the position, the NCA made an application to the High Court on 20 June 2017 for an emergency Freezing Order in respect of The Property and one other known as Limesdale Avenue, in which it was understood the Respondent also retained an interest. The Order was granted ex parte, thereafter a claim form was issued in June 2017 and served on the Respondent and the Interested Party.

17.

In the meantime, from the investigating materials supplied by the Derbyshire Police in respect of the Respondent, the NCA deduced that trading activities including renting warehouse units to businesses, had been carried out by him over a number of years producing rental income, but none had been

declared so a significant quantity of tax on those activities was due and owing. It was in respect of such sums that the claim was made against the Respondent by the NCA exercising the powers of the Revenue. It totalled £522,199.88 in unpaid income tax, a further amount calculated at £313,916.64 representing National Insurance and penalties under the Taxes Management Act 1970. A further sum representing statutory interest of £269,741.30 brought the total claim to £1,135,857.82.

18.

The Respondent did not respond to the claim and Judgment in Default was obtained on 1 November 2017. There was no attempt by the Respondent to defend the claim or contest the judgment.

THE LEGAL BASIS FOR THE APPLICATION

19.

The judgment in default of Defence upon which this application is founded arose by virtue of the exercise by the NCA of powers under section 317 of POCA. The relevant Part of POCA is headed “Part 6 Revenue Functions (sections 317 – 326)”.

20.

Section 317 provides relevantly as follows:

“317 General Revenue functions

(1) For the purposes of this section the qualifying condition is that the National Crime Agency has reasonable grounds to suspect that—

(a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or

(b) a company is chargeable to corporation tax on its profits arising in respect of a chargeable period and the profits arise as a result of the company's or another person's criminal conduct (whether wholly or partly and whether directly or indirectly).

(2) If the qualifying condition is satisfied the National Crime Agency may serve on the Commissioners of Inland Revenue (the Board) a notice which—

(a) specifies the person or the company (as the case may be) and the period, and

(b) states that the National Crime Agency intends to carry out, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice.

...”

The interpretation section within Part 6 of POCA provides:

“326 Interpretation

(1) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

...

(4) Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and it is immaterial—

(a) who carried out the conduct;

(b) who benefited from it.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

...”

21.

In the present case, as stated, the NCA raised an assessment upon the Respondent in respect of what the NCA, in its best judgment, assessed to be the unpaid tax from the Respondent's undeclared business activities. No objection was raised to lawfulness of the exercise of this power nor the quantum of the sums.

22.

Section 1 (1) of the Charging Orders Act 1979 provides where relevant:

“ 1 Charging orders.

(1) Where, under a judgment or order of the High Court ... a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Act imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.

(2) The appropriate court is—

(a) in a case where the property to be charged is a fund in court, the court in which that fund is lodged.

(3) An order under subsection (1) above is referred to in this Act as a “charging order”.

...

(5) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to—

(a) the personal circumstances of the debtor, and

(b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.

...”

23.

CPR Rule 73.10A(3)(a) provides:

“(3) At the hearing the court may—

(a) make a final charging order confirming that the charge imposed by the interim charging order continues, with or without modification.

(b) discharge the interim charging order and dismiss the application;

(c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order;

(d) direct a trial of any such issues, and if necessary give directions; or

(e) make such other order as the court considers appropriate.”

THE COURT’S APPROACH

24.

Mr Lennon, Counsel for OBPL, urged the court to be cautious in its approach. He drew attention to the fact that alternative methods of enforcement were available. He referred particularly to the features of the different Part 5 claim under POCA whereby under sections 243 to 288 specified enforcement authorities may bring civil proceedings in the High Court to recover property that is or represents property obtained through unlawful conduct. The essential issue for determination in such a claim is whether the property represents the proceeds of crime. The action is brought against the property not the person who holds it. The Respondent in Part 5 proceedings may therefore not be the person who was guilty of unlawful conduct. A Part 5 Civil Recovery claim may be referred to the NCA after the prosecution or investigation has failed. In such cases where there is a dispute of fact, as here, as to title, the NCA mounts a civil claim in which they would be obliged to demonstrate that the property they sought was derived from criminal conduct on the part of the Respondent. The ability to step into the shoes of the Revenue in the manner described means, however, that the NCA need only prove that the Respondent beneficially owns the property they seek. They need not show the criminal derivation of the funds, even though a corollary of a successful finding for the NCA would be that the Respondent had a good reason (it is to be inferred, nefarious) to conceal his property behind (in this case) the corporate structure of the Interested Party.

25.

Mr Lennon describes this as a “short-circuit” of “all of the protections that would normally apply by turning a criminal allegation (albeit in a civil case) into just a debt enforcement claim”.

26.

It appears that this is the first time the court has had to consider the operation of these provisions in circumstances where recovery is sought in respect of property where a dispute exists as to title. It is well established that equity follows the law, and that, absent of proof to the contrary it is to be presumed that the beneficial title to The Property is held by the person who is named on the legal title, in this case the Interested Party OBPL (Re Norris [2001] UKHL 34 and Stack v Dowden [2007] UKHL 17). Alternatively, he described it as the NCA seeking a declaration on land interests to enforce a debt. He emphasised that the usual route for actions of this nature was civil recovery and argued that none of the protections available to a Respondent to proceedings under Part 5 of POCA inhered in the present case under Part 6. Whilst he did not go so far as to argue that use of Part 6 was in some way an abuse of the court’s process, he submitted the court must have regard to the case law concerning the proof of important issues which in this case include, by extension, criminal conduct.

27.

Counsel for OBPL submits that whereas it has been held in a straightforward case that it is a matter of the court’s discretion whether an interim charging order is converted into a final charging order and it is trite that such discretion must be exercised equitably with regard to the interests of all parties. The concept of what he characterised as “a State agency pursuing a charge for a property that is not held in the name of its debtor”, is novel. He submits there is a burden on the NCA to prove very clearly and cogently what it asserts, namely, that contrary to the presumption from the Register entry, beneficial ownership of The Property is in the Respondent, and not the Interested Party.

28.

He emphasises the statutory qualifying condition which must be satisfied before the agency may even begin the process and take over the Revenue function is the requirement for reasonable grounds to suspect that income, profits or gains, arising or accruing to a person (which includes a corporate individual) are chargeable to tax.

29.

Mr Lennon reminds the court that in *National Guild of Removers and Storers Ltd v Jones (t/a ATR Removals)* [2012] EWCA Civ 216, a case concerning an application for a Final Charging Order, the Court of Appeal observed that although before the enactment of the CPR a Respondent to a final charging order application bore the burden of showing why an order nisi should not be made final, the modern approach is somewhat different and the Court did not determine the issue by reference to the burden of proof. The observations of Pitchford LJ in that case were strictly obiter, however, the circumstances of the present case are in any event rather different, in my judgement, where the usual presumption that the beneficial title follows the legal title is sought to be displaced by the party applying for the Charging Order to be made final.

30.

He submits and I accept, that where an issue such as this requires determination as a preliminary matter, the burden of proving that legal title is displaced falls on the NCA. Mr Fletcher for the NCA did not seek to persuade me otherwise. I also agree it is important the court is aware of the breadth and depth of the powers sought to be exercised here. As appears from what follows, however, there are evidential safeguards where serious issues require to be proved in civil proceedings. The

provisions of Part 5 constitute, as does Part 6 of POCA, part of a range of remedies available to the agencies seeking to recover the proceeds of wrongdoing.

31.

He referred to the well-known series of cases beginning with *In re H* [1996] AC 563 where Lord Nicholls indicated the more serious an allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it, reflecting as the case law all does, that nonetheless, it is agreed, the standard of proof remains on the balance of probabilities. The court must decide whether the asserted state of affairs is more likely than not to be the true one. Mr Lennon referred to *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 reflecting that a civil tribunal requires cogent evidence to be satisfied that a person has behaved in a reprehensible manner. In *re D* [2008] 1 WLR 1499 and in *R v Mental Health Review Tribunal (Northern Region)* [2006] QB 468 further iterations of these principles he said apply to Ms Ria O'Neill in particular. She may face serious consequences if what the NCA are saying is proven to be correct.

32.

I accept the court will be careful to examine the quality of the evidence when serious allegations are made with possible criminal ramifications for the parties involved. The court will also be careful in cases where it is accepted there is no direct evidence available of the matter to be proved, but rather circumstantial evidence and inference from other facts.

33.

Nonetheless, I remind myself that the court is entitled to draw inferences of fact where direct evidence is absent and, that the cumulative effect of several strands can be stronger than any individual part of evidence as was famously said by Baron Pollock in *R v Exall* (1866) 4 F and F 922 at 929:

"Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

34.

Further, the very nature of the allegation against the Respondent, that he deliberately concealed his involvement in, and ownership of, The Property leads to the common-sense deduction that direct evidence may be largely or wholly missing. The court will in such a situation have to look carefully at the materials to analyse what is plausible and what is inherently implausible, recognising that one starts from the proposition, as Mr Lennon reminds me, that it is, generally speaking, inherently less likely that a criminal, or otherwise culpable explanation for events, is the correct one.

35.

Mr Lennon encapsulates the unusual features of the present case in the following way in order to support a submission that the court must be careful and that clear and cogent evidence is required by the NCA to persuade the court to make final the interim Charging Order:

i)

although supported by a judgment for tax, that tax was not assessed by the Revenue, rather it was also the NCA – who seek this order.

ii)

Further and unusually, there is a dispute of fact involving a third-party (that is OBPL, through Miss O'Neill).

iii)

It is a corollary of this case, that the third-party must be a "willing co-conspirator in a sham arrangement to hide the Respondent's assets from the State". Ms O'Neill in effect stands accused of money-laundering.

36.

I accept that the courts approach must be to place the burden of proving the relevant assertion on the NCA, namely that although legal title is in OBPL, in truth, the whole beneficial interest is enjoyed by the Respondent. The consequences of such a finding may be serious for the Interested Party and its director, and cogent evidence is needed to support NCA's case. Nonetheless, it clearly is not impossible for NCA to seek to build a case from inference, but the evidence to do it should be cogent.

THE EVIDENCE AND ARGUMENTS

37.

The NCA acknowledges that the Interested Party, a company, is a legal entity with rights and liabilities of its own distinct from its shareholders (subject to very limited exceptions). Its property does not belong to its shareholders, even where it is owned and controlled by one person (see in particular *Salomon v A Salomon and Co-Ltd* [1897] AC 22, *Macaura v Northern Assurance Co Ltd* [1925] AC 619). However, the NCA say that in truth, the Interested Party must be regarded as holding The Property on trust for the Respondent in the particular circumstances of this case. They point to a series of what they say are significant anomalies which reveal OBPL and Ms O'Neill is no more than a front for the Respondent.

38.

The core witness for the Claimant was Mr Paul O'Reilly who explained the documentation upon which he bases the reasoning behind the NCA's conclusions. He is a Tax Investigator employed by the NCA and as he also confirmed in oral evidence, before that he was a Tax Investigator with the Revenue. He had been involved in investigating the Respondent and his family following the transmission of the case from the police to the NCA. He had not, he was clear, relied solely on conclusions reached in police investigations.

39.

The following outline, the accuracy of which was not disputed on behalf of the Interested Party, derives from his sworn evidence and oral evidence to the Court.

40.

Mr O'Reilly explained that enquiries into who actually owns the land at 555 proved complex. 555 consists of four title numbers: DY281290, DY234852, DY338768 and DY236467. Title DY338768 was split out of DY234852. It was held by a company called Leek Investments Limited, as was DY281290. Leek was dissolved in 2011 with the land still listed as an asset. Attempted transfers out of the two plots from Leek in 2013 into another Persico family connected company failed. These two titles passed to the Crown as bona vacantia, as did DY234852 - in respect of which a similar rescue attempt by the Respondent failed. Although arrested and charged, proceedings were not continued against the Respondent, but it was the NCA's belief that the main beneficial owner of the land at 555 was the Respondent. The NCA considered Giovanni but there was no evidence of a significant holding and, as

Mr O'Reilly put it to Mr Fletcher, the Respondent had "carved out a big chunk of the site that was not the units, parking his vehicles there", and it had the (commercial) advertising hoardings on it. No documents involved the Respondent - except one insurance document for a vehicle.

41.

With respect to The Property Mr O'Reilly explained that:

i)

documents lodged at the Land Registry show that on 12 May 2003 Giovanni Persico, the Respondent's cousin, together with the Respondent, bought two plots of land, DY236467 (namely, The Property) and DY234852 for the sum of £210,000. (Maria Persico's name appears with theirs on the TR1 but her name is struck through by manuscript amendment).

ii)

On 29 September 2008 Giovanni Persico appears described on a handwritten fax sheet as the director and 100% shareholder of UK Land - however the company paperwork does not reflect that position. The company had been incorporated on 25 September 2008 with the registered office at 555 Osmaston Road and Raymond Hill was appointed a director on that day. He resigned on 30 August 2009 and was replaced by a man called Alan Hill, who is his brother. Subsequent investigation showed Alan Hill had no knowledge that he was a director of this company, of which he had never heard.

iii)

On 17 October 2008 The Property and DY234852 were transferred into a company called UK Land and Property Investments Ltd ("UK Land") for no consideration. The document of transfer, the TR1, was signed by the Respondent, by his cousin Giovanni Persico and by Raymond Hill.

iv)

On 9 November 2009 The Property (i.e. only DY236467) was transferred, again, for no consideration, out of UK Land into a company called Stockton Brook Investments Ltd. Raymond Hill signed as a director of UK Land, although he had resigned from that post on 30 October 2009. UK Land was dissolved on 4 May 2010. The police interview of Raymond Hill shows that he understood that Stockton Brook Investments Ltd was, in his words, "another company that was formed for the lads [i.e. the Persicos]". When that company was incorporated on 15 October 2009 the director was named as Cheryl Hancock, the wife of Raymond Hill.

v)

At the date of Mr O'Reilly's September 2018 statement, the other plot of land DY234852 still remained registered to UK Land, although that company had been dissolved on 4 May 2010.

vi)

On 7 December 2010 The Property was transferred from Stockton Brook Investments Ltd into OBPL which had been incorporated on 3 November 2010. Raymond Hill was appointed as director on the same day. Again, no consideration was paid.

vii)

OBPL was formed by a professional corporate formation company, and a person from Formation Direct Limited, was the sole shareholder of OBPL until on 10 December 2010 (as recorded in the annual return dated 5 December 2012) the shareholding was transferred to Ms Ria O'Neill, i.e. three days after The Property had been transferred into OBPL. In other words, she had been appointed as

sole shareholder when she was 16 years of age. Two years later on 5 December 2012 Ms O'Neill was appointed a director, the day Raymond Hill resigned.

viii)

Stockton Brook Investments Ltd was dissolved on 7 June 2011. It did not trade nor submit any accounts.

42.

Mr O'Reilly recounts in his "second" statement, (the first relied upon in these proceedings is in fact his affidavit dated 17 June 2017 in the POCA Part 6 proceedings against the Respondent), how, during the course of his investigations and prompted by them, OBPL began to file accounts with HMRC. These are dated from the period of Ria O'Neill's appointment. Before that, dormant company accounts had been filed for the periods ending November 2011 and November 2012. Further, the balance sheet for OBPL as of November 2011 has no mention at all of The Property transferred into it on 10 December 2010. The balance sheet was approved by the Board and signed on their behalf by Raymond Hill on 5 December 2012, which was the day he resigned. The accounts for 2012 were signed by Mr Ashraf, referred to above, co-accused of Maria Persico in relation to the drugs offences, who was imprisoned for 2 years. There is no record of Mr Ashraf having been a director.

43.

Copies of accounts and rental schedules were filed by the Interested Party indicating income from retail units on the site from December 2012 at approximately £40,000 per year. Mr O'Reilly says this begs the question as to what happened to the rental income for these places from 2003. Certainly no declarations were made for the purposes of tax. These monies have been treated as the undeclared income of the Respondent and he has been assessed to tax on them. The Claimant has also treated the half-share of the purchase monies namely £105,000, an undeclared income on which he has been assessed to tax and on which the uncontested judgment debt has arisen. Other investigations turned up further information concerning the properties.

44.

The accounts for the year ending 30 November 2013 show that OBPL acquired a major asset valued at £411,165. It also apparently acquired a creditor to the tune of £411,173. Mr O'Reilly met with the agent of OBPL in December 2015. In response to enquiries, they answered HMRC that they had seen no documentary evidence in respect of the transactions and the entries were made solely on the basis of discussion with their clients. Mr O'Reilly interprets these entries as an attempt to ensure that the value of the land asset was recognised in the company by the beneficial owner. Raymond Hill indicated to the police in his interview in 2014 that the value of The Property was about £500,000.

45.

The NCA argue that this shows that Ria O'Neill is not the true beneficial owner, those entries indicate there is no value in the company. The true owner, the NCA argues, is the Respondent. Mr Fletcher for the NCA points out, it was only in 2015, after the investigation started, that the accounts appear to have reflected the company's acquisition of The Property in any event.

46.

In his fourth statement Mr O'Reilly drew attention to material uplifted by Derbyshire Police showing that rents for land at 555 were collected on behalf of another company called Osmaston Business Park (Derby) Limited ("OBP(Derby)L"). This company was dissolved in 2014 having made no taxable returns. The OBP(Derby)L documentation included receipts for rental of the industrial units at The Property. Mr Ashraf who held the two issued shares, was one of the two directors. The NCA rely on

these material to support the submission that in truth OBPL and Ms O'Neill were not in control of The Property, contrary to her evidence in this action. A lease document for one of the units, seized by police, commencing 10 December 2012 named Osmaston Car Sales as landlord, a company operated by the Respondent. That company had also issued receipts to the tenant for rent. All of which was consistent with operations by the Respondent, and not Ms O'Neill and OBPL as claimed by her.

47.

Since Mr O'Reilly made his statements in this case new evidence was submitted from the current agent for the Interested Party on this issue which I gave permission for OBPL to rely upon. A Mr Moffatt signed a statement a few days before trial started in which he explained he had prepared amended accounts for OBPL as accountant to the company for whom his firm had acted since 10 March 2017. He produced a set of amendments to the accounts in which the liability for £410,000 to an unnamed creditor had been changed. He said this liability had appeared for the first time in 2013; he did not know the history behind how the figure was reached, noting it was not recorded in the accounts for the year the transfer was made. He said Ms O'Neill was asked about it but she did not know of its implications or where it had come from. Indeed, he described her as "not, at the time, particularly financial (sic) astute" reflecting she was young when she took over the company and that she did not appear to really understand what was asked of her. She had told him she did not believe OBPL to have any creditors. The previous accountants did not really assist, he said, and so he had left the creditor in the accounts for November 2016 to November 2019. On review of the NCA documentation it seemed to him the land and the £410,000 creditor must be related. He has now seen the fact that the transfer had been made not for monetary value, this should have been a revaluation reserve. There was he suggested, never a creditor.

48.

Despite investigations, agencies have discovered no active involvement of Giovanni Persico in spite of his apparent previous joint purchase of two plots of land. The NCA believe that the Respondent now has sole beneficial ownership, and the rents from the retail units are received by him. The Respondent's interview produced no comment answers in response to all questions about the ownership of The Property or the other land at 555 Osmaston Rd.

49.

The NCA argues that a number of areas of activity demonstrate its case to be true. These are, in broad terms:

i)

the manner in which The Property was acquired;

ii)

the way it was transferred and held;

iii)

the links between the Respondent and The Property; and

iv)

the parties' history of (non) engagement in the application and the Claim.

50.

Mr Fletcher submits that the evidence proffered by Ms O'Neill compounds the position rather than the reverse and shows, even more clearly, that the involvement of OBPL was to conceal true ownership of The Property.

51.

Mr Fletcher submitted that the evidence of Mr O'Reilly points to a series of anomalies that together give rise to a clear inference that the Respondent is the beneficial owner of the whole of the equity in The Property and that OBPL is part of the systematic concealment of his interest in it over time. He articulated the relevant factors as follows:

i)

The Respondent made no challenge to the NCA's claim which included that he had laundered his proceeds of crime into DY235467, was in receipt of rent and was the beneficial owner of The Property.

ii)

Neither the Respondent, nor anyone else involved in the transfer of DY235467 has provided any statement in support of OBPL's opposition to the application.

iii)

The Respondent was the original joint purchaser of The Property.

iv)

The Property was then transferred through various companies for no value.

v)

Raymond Hill has shown by his evidence in interview, as well as the documentary evidence that his involvement in the companies that held The Property, was under the direction of the Persico family.

vi)

Individuals and entities involved in the transactions are linked to the Respondent.

vii)

OBPL, the vehicle currently holding The Property, was incorporated on 3 November 2010 and a few weeks later, on 7 December 2010, The Property was transferred to it for no consideration.

viii)

Ms O'Neill appeared to acquire the whole shareholding on 10 December 2010, just three days after OBPL acquired The Property for no consideration when she was aged just 16 – and she was not even aware of it at the time.

ix)

OBPL only began to file accounts showing trade once the NCA had begun its tax investigation. Before this the accounts suggested the company was dormant.

x)

The filed accounts suggested that The Property had been rented and OBPL derived rental income. No rents had been declared by the Respondent or any of the companies through which DY236467 had passed. The NCA treated the rental income as the Respondent's income and assessed him for tax on that basis - and the Respondent challenged none of it.

xi)

The fact that there was a creditor of the company (OBPL) in the sum of £411,000, matching the value attributed to land suggests that someone else is the true beneficial owner of The Property, there is no value in the company.

xii)

On 26 February 2014 during an interview under caution Ms O'Neill gave no comment answers to all questions regarding her or her family's connection to the land at 555 Osmaston Road.

xiii)

On 25 February 2014 in an interview under caution Raymond Hill stated his role was to act on behalf of the Respondent.

xiv)

When interviewed on 27 February 2014 the Respondent also gave no comment in relation to his connection to land at 555 Osmaston Road.

xv)

Ms O'Neill accepts she was served with the Restraint Order, Freezing Order and the claim form against the Respondent which explicitly set out the NCA case that the Respondent was the beneficial owner of The Property. Neither she nor OBPL sought to vary or discharge any order which is inconsistent with their case that the NCA is wholly mistaken, and that The Property belongs to the Interested Party. The Charging Order was a serious clog on OBPL's commercial freedom to raise money.

52.

In oral evidence Mr O'Reilly gave further detail of the investigation. Agreeing that the Respondent had not been prosecuted in the drugs matters, he described him as an "Iconic Untouchable". In every case, he explained the NCA considers whether it might be suitable for Part 5 or Part 6 proceedings and has its own additional powers of investigation which it used in the current case. The police had indicated that the Respondent and Maria Persico were thought to own The Property and he said parts of 555 were clearly used by the Respondent where vehicles from the ice cream business were parked, yet the NCA could find no trace in any account of the rental cash nor the cash from an ice cream business run by the family during the relevant time. The NCA noted that Raymond Hill collected rents in cash – as Mr Ashraf told them, and it was clear from Raymond Hill's interview that what he did, he did on behalf of the Respondent and Giovanni. All the evidence showed that the trading all seemed to be in cash, rents and ice cream revenue.

53.

Although the NCA had asked for further materials to support the claim of legitimate business activities, no bank statements revealing business income at the relevant time were provided. There had been an attempt to come to an agreement about the sums owing from the Respondent and from Maria very early on but the sums discussed were quite inadequate to meet the calculated liability, thereafter the Respondent refused to cooperate.

54.

Mr O'Reilly referred in his evidence to a further anomaly, with regard to the other land, under title DY234852, originally bought by Tonino and Giovanni Persico together with The Property. He exhibited paperwork showing that, after the dissolution of UK Land, the Respondent, on 12 April 2013, incorporated a new company bearing a very similar name to UK Land – but omitting the "s" on the end of "Investments". That new company was dissolved in June 2018. This was an attempt by the

Respondent to try and regain ownership of DY234852 using a very similarly named vehicle to that of the company which had held The Property but was dissolved in May 2010. The Respondent was director and 100% shareholder. The relevant information for that company had been provided to Companies House by Raymond Hill. When challenged by Mr Lennon that this showed that the Respondent did not conceal his interests, the same with the Leek Investments company, indeed it showed the reverse, Mr O'Reilly disagreed: the Respondent had to appear on the paperwork if he was going to attempt to preserve the properties from going to the Crown as bona vacantia.

55.

Ms O'Neill had been arrested and interviewed by police during the criminal investigation. She denied any involvement in the wrongdoing and answered no comment to all questions concerning her alleged ownership or her family's connection with The Property, or the other properties then in issue.

56.

In her first witness statement opposing the Final Charging Order, Ms O'Neill asserted that OBPL was her company and she the sole legal and beneficial owner of The Property. Her statement concentrated on the fact that the police had initially contended that her mother, Maria Persico, owned The Property jointly with the Respondent but then changed their minds, and The Property was not included in the Confiscation Order made against her mother. Now the NCA took up the reins and were saying it was her uncle's. Her written evidence asserted that she was appointed director on 5 December 2012. The documents demonstrated she was wrong about this – it was 10 December 2010.

57.

She explained her lack of engagement as being because of her naïveté, she was not avoiding the consequences of the litigation. She said she did not really understand what was at stake, further she could not afford to engage in the proceedings. Family times had been difficult, her mother had been recently released from prison and their home was being sold because of the Confiscation Order. The NCA took issue with the Interested Party's alleged inability to engage solicitors, producing evidence that in about May 2018 with regard to the Final Charging Order over four Land Registry Titles for 555 Osmaston Road she instructed Bailoran Solicitors on behalf of OBPL and they corresponded with the NCA, suggesting it was clear she would have had some idea of the seriousness of the proceedings from the documentation.

58.

Ms O'Neill said her understanding was that Giovanni Persico had owned and controlled The Property as well as DY234852 and that he and the Respondent had bought the plots of land at 555 Osmaston Road from monies derived from the sale of other properties. The Respondent and Giovanni Persico had a falling out and, having done badly in her A-levels, Giovanni had "decided to help me" and to allow her to develop the industrial units on the two plots of land and develop them into a business. She said she "eventually agreed" to take them on and she was appointed director in December 2012 when she was 18 years of age. Mr O'Reilly notes that, as indicated above, DY234852 was, by this time, bona vacantia and thus not Giovanni's to deal with. Further, at the time of the alleged gift to Ms O'Neill of The Property, it appeared that legal title was owned by another company, under control of a third-party.

59.

In her statement she described family disagreements in about 2008 and that in an effort to settle the disagreements the land at 555 was split into four parcels and new titles created. One of which was The Property, DY236467. Mr O'Reilly noted she is also incorrect about this. Before that date, the land

was already split. One parcel was acquired on 6 May 1999. One parcel was transferred out of another parcel into a separate company, the directors and members of which were The Respondent, Giovanni Persico and another. Thereafter in May 2003 the remaining part of DY234852 was acquired by the Respondent and Giovanni Persico and The Property was also acquired by them.

60.

Ms O'Neill claimed she had invested time energy and resources into renovating The Property, had used the rental deposits and then the rent. She asserted that the Respondent had an interest in DY338768, but she was the holder of The Property absolutely. Mr O'Reilly sought to cast doubt upon the picture of engagement in business activity of this nature, pointing to materials seized from her home by the police indicating her involvement in other employment, namely mobile ice cream sales.

61.

In cross-examination Ms O'Neill admitted she had been studying English and psychology, nothing commercial, and had just started sixth form college in December 2010 when she was made a shareholder - and she did not know she had been a shareholder from 2010. She had not expressed any intention at the time of taking over the running of commercial property. She described Raymond Hill as the accountant for the family, she could not explain why the Annual Return completed by Raymond Hill in May 2012 recorded that shares were transferred to her on 10 December 2010: it was "not within her knowledge". She agreed she'd been living at home with her mother and younger sister. Her case was that in 2012 Giovanni had informed her and her mother that he was walking away from the land that he and the Respondent held - in other words accepting that they both had ownership at that point. She agreed, it was not mentioned that she owned the land, but she became a director. She answered at another point that the 2010 date was a "mistake". When put to her that Giovanni had no property to give, since she at that point owned it herself, she said the document was incorrect. She had not dealt with this discrepancy in her written evidence. When shown her name on the annual return document she said, "it should have been Giovanni's", but she denied being used by her uncle and his brother to hide The Property.

62.

Ms O'Neill said there was no involvement from any other member of the family in running her company, even though she had no business experience at all but she had "learned as [she] went along". She accepted she had no evidence of any workings or plans for development of the land and business she claimed to have been running, nor research she had done, nor documents evidencing her involvement at that time, for example in acquiring business or for the advertising hoardings, dealing with council tax, or dealing with or other business matters.

63.

Ms O'Neill's claim (in her statement dated 16 September 2020) that she also managed folio DY234852 and its industrial units, was countered by further evidence from Mr O'Reilly in his third statement to the court, to the effect that UK Land, its registered owner since 17 October 2008, was dissolved and struck off the Register on 4 May 2010 for failure to make returns to HMRC or Companies House. DY24852 thereafter became bona vacantia. That property was disclaimed by the Treasury Solicitor on 19 September 2019 and the freehold title extinguished. Mr O'Reilly produced the relevant documentation which he said showed this land's direct connection to the Respondent, who was the true beneficial owner of The Property before UK Land was dissolved.

64.

In her first statement, Ms O'Neill presented a list of lease agreement dates to which OBPL was said to be a party all dating from several years after the arrest of Ms O'Neill and the other members of the family and postdating the interviews under caution in 2014: the first in time was dated 1 January 2016. Her documents also showed it was over 2 ½ years after she claimed to have taken over the business that the bank account was first opened. Further, Mr O'Reilly observed that most of the company's income is not lodged to any bank, and it cannot be determined from the documents who receives the rents collected. The rents do not appear in bank accounts of hers uplifted during the police search of the family properties in November 2013. In cross-examination Ms O'Neill accepted that the only documents she had provided were rental agreements for the later years. There was no rent book nor spreadsheet to evidence the business she said she had been running in the earlier years. She said she did not use a rent book.

65.

She also accepted that she was served with the Restraint Order by the Crown Court in 2014 a time at which she had two years' experience of running a business. She understood it meant she could not deal with the site owned by OBPL and she was unable to deal with what, for her, was her most significant asset at a time when she might well have needed or wanted to borrow against the land to develop it. It was suggested to her that, given it was her case that she owned The Property, not the Respondent, she would have believed the NCA's case to be ridiculous, yet she did not contest it. When also asked if she discussed it with her mother or uncle, her answers were, no, she was not in a position to fight and her priority was her mother. Then again, in 2017, the NCA asserted it belonged to the Respondent, and she accepted to Mr Fletcher that she did not challenge that. She did not speak to her uncle about it and when asked if there was any reason why her uncle the Respondent did not challenge the NCA case, she did not respond. She could not remember whether the application had been served upon her and said she did not know the detail. She had not asked her uncle for assistance in showing the court that she owned it.

66.

Ms O'Neill accepted she had no other documentation to show receipt of rents, there was no bank account until 2015, and when shown the later balance sheets for OBPL apparently signed on their behalf by her, purporting to show the receipt of money in December 2012, in January 2013 and so forth totalling £3,400 a month, before OBPL had a bank account; she said it was all received in cash. When asked why she had not opened a business bank account her answer was she did not know that a business bank account was an option.

67.

When asked about the absence of the land in the accounts as an asset as of November 2011, she had no answer. She could not say why those accounts were not amended. When asked why Mr Ashraf had signed on behalf of the board on 19 December 2012 but she was the director she said, "I was using the same accountancy as Ashraf and that was a mistake". She agreed that no amendment had been sought.

68.

When shown the OBPL accounts for November 2013, approved on 19 June 2015 that did show an asset in some £411,000, she said she "did not instruct as to those figures". She said it must have been the accountant - Maples Accountancy in Derby. When challenged that the accountants would have looked to her for information, she denied it. When shown a note of Maples' meeting with the NCA on 23 December 2015, stating the information on value and creditors was; "based on discussions with their clients only and that they had seen nothing that supported these", she denied she had instructed

it. Her case was she had not noticed it before, the new accountant asked her about it. She denied the creditor was put in because there was no good explanation for the no-value transfer of The Property into the company; or that the reason was for her uncle to have some value represented in the accounts. She also denied the amendment to the accounts was sought in light of the subsequent recovery actions.

69.

She admitted reluctantly (and her evidence was in my judgement, very hesitantly given on these issues) she had signed off the accounts without knowing where figures came from. When pressed, she still did not understand where the figures came from, even with her new accountant.

70.

As to why (she said) she had not got her uncle to help her she'd not spoken to him since 2017 for "personal reasons". When the details of the ice cream business, noted down in her hand, were put to her, she said the business was not hers but belonged to her grandfather who could not put it down in writing as she could. There were business development plans, in a notebook and analysis of takings. She denied receiving any of the money, although she has been assessed to income tax on it. She accepted as Mr Fletcher suggested to her, there was more information on the ice cream business than there was concerning OBPL and its claimed operation and expansion by her. When it was suggested it was no coincidence that the 30 November 2013 accounts were only signed late, in 2015, upon the NCA action, she accepted she knew by that date that the NCA were looking into the accounts, and also that the bank account was first opened in May 2015 but said "I did not really accept the responsibility of the accounts". She denied that the timing of the opening of the OBPL bank account or the late signing of the accounts showed that they were trying to legitimise the acquisition of The Property because now the NCA were looking into it, rather it was just that she was inexperienced.

71.

In re-examination she said she just continued as normal after the investigation started, she was not in a position to afford further legal work to contest matters. She confirmed again she had no idea that the valuation of £411,000 odd was in the accounts until she left the previous accountants. She said it was her decision alone to remain silent in police interviews, asserting she had no criminal record.

72.

The case on behalf of the Interested Party in a nutshell was that the NCA could not displace the presumption and the burden of the evidence given by Ms O'Neill was directed to that proposition. This was an attempt to pierce the corporate veil, without sufficient evidence. It could not be argued on the basis of any positive documentary evidence that The Property was held in trust for the Respondent; further, it was unorthodox to seek to mark an interest in land by the reference found in the accounts to a creditor, the court should not deduce from this there was any trust at all. Mr Lennon suggested that in fact there was evidence that there was no trust. The police and the CPS did not prosecute the Respondent; he emphasised the difference between the police case, in which the Respondent and Maria were named, and the case now made by the NCA. The court required cogent evidence if the trust were to be found, and it was lacking here. There was logic in the fact that at the age of 18 Ms O'Neill became a director of OBPL, as she achieved adulthood. Mr Lennon drew a distinction between the treatment of DY234852 where an invalid transfer could be shown and the concealment of interest might be argued but, as to The Property, that was not so. The evidence showed the Respondent "can hide if he wants to", and in respect of The Property he has not done so. He relied on the records in the accounts of rent paid in and invited the court to dismiss the application

CONCLUSIONS

73.

I have accepted the evidential safeguards relied upon by Mr Lennon and am cautioned by him to be careful that such conclusions as I reach are supported by cogent evidence. Accordingly, I have scrutinised with care the documents and transactions that the NCA say give rise to the strong inference that the Respondent is the beneficial owner of The Property with the effect that OBPL who are on the Title hold it in trust for him. I listened carefully to Ms O'Neill's evidence seeking to rebut the suggestion that OBPL hold The Property for her uncle beneficially.

74.

I have however come to the clear conclusion that the NCA have proved that they are entitled to the Final Charging Order.

75.

I agree, as is submitted by Mr Fletcher that this is not, properly understood, a question as to whether or not the company is a sham, nor of piercing the corporate veil. In the words of Lord Sumption at [28] in *Prest v Petrodel Resources Limited & Others* [2013] UKSC 34:

"28...References to a "façade" or "sham" beg too many questions to provide a satisfactory answer. It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the "façade", but only looking behind it to discover the facts which the corporate structure is concealing."

76.

Mr Lennon invites me to consider the late evidence of Mr Moffatt, the new accountant as supportive of his submission there was no trust of the land. His view was that you could not represent the ownership of The Property by another, and he recharacterized the entry in the accounts as a valuation. That evidence takes the matter no further in my view - Ms O'Neill was not telling Mr Moffatt that the land was held for someone else and it has never been suggested there was any relevant deed or documentation. The conclusion I reach is based on the plethora of "strands" that emerge from the whole of the evidence, which in my judgement support the submission that OBPL may be looked behind, in order to see the true picture.

77.

Mr Lennon submitted there was some sense in the fact that Ms O'Neill was first a shareholder, and may not have known it, because young then when she became an adult she was made a director. It was also relevant that the four plots of land had been treated differently, this piece should be considered as treated differently from the rest, consistently with her case that this bit was hers.

78.

Mr Lennon relied on the fact that she had submitted evidence of the receipt of rent that was not being paid away elsewhere. This also supported the case she made that OBPL was not beneficially owned by another but by her absolutely and she took the profits.

79.

I am unable to accept these submissions. When asking the central questions, and firstly whether it has been shown that there was concealment here, the character of the transactions involving The Property are central. The purchase of The Property, a valuable piece of land, by The Respondent and his cousin is not denied. Its transmission through a series of corporate entities without any consideration paid raises a clear question as to what the commercial purpose of these transactions might be and where the Respondent's interest might be represented. The non-appearance of The Property on the balance sheet of the entities to which it was passed until eventually resurrected as an asset - but mirrored by an almost exactly equal, unnamed liability, point in my view inexorably towards the interposition of the companies "so as to conceal the identity of the real actors" i.e. the real owner/s of The Property, and the existence of The Property. The presence of a "creditor" was a clear and cogent indication that the value of the land was elsewhere than in OBPL - it left no value in the company. The companies through which it passed were in some cases created shortly before receipt of The Property and then dissolved soon after its disposition. The use of these vehicles is reasonably deduced to be the holding of The Property that belonged to the Persicos without their named involvement as directors or shareholders. This also points towards concealing true ownership. This is the natural conclusion from the transactions explained to the court, as it was the conclusion of the accredited financial investigator in respect of this and other properties and entities. The financial investigator described the title history of 555 Osmaston Road as very complicated with the audit trail "very well obscured" as to who owns The Property, stating that it would be an easy matter to get a fresh solicitor to sell The Property as the checks would be circular and it would all appear legal.

80.

In my judgement the "real actors" here could only ever be Tonino Persico and, possibly, Giovanni. As to the owner being the Respondent, this is supported by a number of pieces of cogent evidence. Raymond Hill was clearly a central actor in the property affairs of the Persico family. The name of Raymond Hill appears on the transfer of The Property into UK Land and on the transfer out into Stockton Brook Investments Ltd. He appears as a director of UK Land and of OBPL for a while. Raymond Hill said in police interview that he had registered several companies for the Respondent.

81.

The financial investigator was also clear that Tony Persico was the true owner of 555 - although he at that stage thought Maria was also. It was not suggested that Giovanni retained any interest in DY236467. Further, the evidence at the site, from those who worked there, connected the Respondent with the large plot at the end where he is described as being the owner of the building. He used part of The Property to park his vehicles.

82.

It is also relevant when assessing the evidence in support of concealment in respect of The Property to look elsewhere to the nature of the business operations of the Respondent. The statement of the financial investigator in support of the Restraint Order under the POCA in May 2014 sets out evidence showing the product of investigations into the financial affairs of the Respondent, giving examples with respect to other properties in which the Respondent so conducted his affairs that he appeared to be unconnected with property yet, signed for the disposal of it and benefited from the disposal. The statement describes the systemic use of companies and an obfuscated audit trail regarding all of the properties featuring in the investigation. Among those properties was 555 Osmaston Road. I am not persuaded by the argument that he showed himself on the paperwork if he was involved - I agree with Mr O'Reilly, the Respondent's attempts to rescue other property from bona vacantia required his "presence" on the paperwork.

83.

The involvement of Giovanni Persico was largely dependent upon the evidence of Ms O'Neill who claimed, as the sole shareholder and director of the Interested Party to have been in receipt of his gift of The Property. I regret I found her evidence entirely unconvincing on any matter of importance to the case she sought to advance. As a starting point it was at the least improbable that an inexperienced student at school with no business training or experience would be put in charge of a company to be run by her, on her case as a genuine enterprise, and without any help or assistance from her experienced family. Even were that accepted as true, other material not least her answers to questions demonstrated that in truth she had little idea of what had gone on in respect of OBPL even after she allegedly directed and managed the business of the company. Her answers concerning the representation of the approximate value of the land (as it was understood by Mr Hill to be) in the accounts revealed plainly her ignorance of what was going on. If she did not direct the insertion of the sum of money and the creditor into the accounts, not only does it give the lie to her management and control but begs the question as to who did.

84.

The absence (before police intervention) of any underlying documentary evidence of her claims to have engaged in running a business on her own from The Property seriously undermined her case. It is in my judgement wholly improbable that she did so, and in my judgement clear that OBPL holds The Property on trust for another. I am satisfied that she was seeking to implicate Giovanni to distance the Respondent from the case; it is much more likely than not that the Respondent holds the beneficial interest in this property. His appearance on the documents, seeking, as Mr O'Reilly suggests, to reassert an interest in other land at 555 by means of a deceptively named company makes it likely that he retained an interest in other property on the site, and is emblematic of an attempt to use corporate structures to retain property without revealing his identity as owner. This is consistent with the contention that he did so here.

85.

The assertion in sworn evidence by Ms O'Neill that there had been a disposition of The Property to her by Giovanni in the Autumn of 2012 was just inconsistent with the documents. Even she did not seem to know she had been made the owner whilst she was 16 years of age and a schoolgirl. She told a story in her statement about going to view the site in 2012, trying to visualise what she could do, and after some deliberation eventually agreeing to take it on and being appointed the director and sole shareholder. I do not accept that evidence. She disclaimed all assistance from relations, she accepted she had no business experience, nor had she expressed any desire to enter business, yet claims she was herself in charge of a company for which she had produced no evidence before the date of the NCA's investigations of rental receipts.

86.

In my view most tellingly, she had no explanation for an extraordinary entry in her own company's accounts concerning The Property, which entry suggests as Mr O'Reilly believed, there was in truth no value in the company for her because it indicated that the whole holding of the land belonged elsewhere. Her oral evidence on this issue, the gist of which I have set out, served to diminish the reliability of her evidence significantly. In my judgement the attempt to reflect the value of the land in the accounts is powerful evidence that OBPL was used to conceal true ownership of The Property. Later retrospective amendments to those entries in the accounts by new advisers do not diminish the effect of this evidence. Ms O'Neill's answers in cross-examination also showed real ignorance of the workings of the corporate vehicle in which she claimed to be the director and sole shareholder,

carrying on her own business, developing her own site, and managing her own affairs. She had no explanation as to why there was no mention of the land as an asset in the 2011 accounts. She had no feasible explanation as to why Mr Ashraf had signed as a director of OBPL in 2012 when that, allegedly, was her role. She had no evidence to support her claim that she had redeveloped the site and expended resources upon it. Her only proffered answer in respect of the 2010 recording of her as sole shareholder was that it was a mistake.

87.

In my judgement, it beggars belief that she, as a 16 year old schoolgirl studying English and psychology, a sole shareholder in a commercial entity - a holding she was unaware of, was active directing mind at 18 or ran the OBPL business as she claimed. Handwritten evidence concerning the ice cream business, (also at the time it seems a cash trade), was uplifted from her bedroom in the police searches. It contained she said notes for her grandfather's ice cream business - including notes on the development of the product and other matters. Any similar material supporting her claim to be engaged in the business of OBPL was notably lacking - until that is there were police inquiries - then accounts were filed, a bank account opened and steps taken to declare some business income. It is not credible, if her story is true, that she was unaware of the possibility of a business bank account and so did not open one until that time. I do not believe her evidence on who was in truth in control of OBPL, its business, or The Property: she was the façade behind which the true owner operated.

88.

It is not irrelevant that every opportunity to advance the case so as to set the record straight and support Ms O'Neill's story has been ignored by the Respondent. He did not challenge the assessments nor the proceedings brought on the back of the assessments. Indeed none of the opportunities to clarify the land holdings were taken by any of the players, including Ms O'Neill. It is striking that at no time did Ms O'Neill seek to set aside the Restraint Order put upon OBPL by the Crown Court, I accept that is commercially inconsistent with her explanation of regenerating the land herself or being interested as she claimed.

89.

The NCA argue, and I accept, that it is irrelevant that the NCA has not pursued Civil Recovery proceedings against the Respondent. The criteria applicable to an application under Part 5 of the 2002 Act are not applicable to a Part 6 claim. The judgment upon which the NCA rely, is a judgment for tax due and owing and constitutes a debt. The Respondent is in the position of a judgment debtor against whom enforcement action is being taken, and, on the Claimant's case, is concealing behind a corporate structure, property which he owns and which may be utilised to discharge the judgment debt.

90.

It seems to me clear that this case falls fair and square within the "concealment" category of cases in which the law will look through the interposition of a corporate structure which is concealing the true actor. In this case the true beneficial owner of The Property is the Respondent who had provable connections to 555, and directly to The Property in any event.

91.

The matters which the NCA put before the Court enumerated above in paragraphs 49 and 51 constitute powerful material and in my judgement an irresistible inference arises that the Respondent is the beneficial owner of the whole interest in The Property and I so find.