Neutral Citation Number: [2022] EWFC 110

Case No: ZC20P01401and ZZ20D49528

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/09/2022

Before :

SIR JONATHAN COHEN

Between :

HA	**Applicant**
- and -	
WA	**Respondent**
- and –	
BV	**2nd Respondent**

Mr A Waterman KC, Mr W Tyzack and **Mr G Hogan** (instructed by **Vaitilingam Kay Solicitors**) for the **Applicant**
Ms L Stone KC and **Mr M Lazarides** (instructed by **Family Law in Partnership Ltd**) for the **1st Respondent**
Mr R Todd KC and **Mr E Benson (**instructed by **Bivonas Law**) **for the 2nd Respondent**

Hearing dates: 18-22 July, 9 August 2022

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Approved Judgment

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SIR JONATHAN COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

SIR JONATHAN COHEN:

Introduction

1. In financial remedy proceedings brought by the husband ("H") against the wife ("W") an issue has arisen as to the beneficial ownership of Flats 1 & 2, 30 DS, London ("30 DS"), compendiously at times called by me "the new flat", the two flats comprising one premises.

2. It is the case of H that the premises belong both legally and beneficially to W, in whose name the flats are registered. It is the case of W and her brother ("B") that the flats are beneficially owned by B. Accordingly, B has been joined to these proceedings as 2nd Respondent. As it is B's case that he is the beneficial owner, he has been treated as the applicant in these proceedings.

3. Little is agreed between H and W, as has been the case throughout the enormous number of proceedings between them, mostly conducted over the last year before me.

4. The parties have raised very many issues of fact and argument, both in evidence and by way of submission. I shall refer in this judgment to those that I regard as important. I have considered them all.

5. One fact that has been agreed is that the purchase monies for the new flat came directly from B's sterling account in Russia into the account of the conveyancing solicitors. In addition, it is agreed that W and/or H paid nothing towards the purchase price or the expenses of purchase.

6. The legal representatives of the parties also agree that what I am determining is in reality a straight issue of fact. Notwithstanding the conveyancing documents clearly identifying W as both the legal and beneficial owner of the new flat, do I accept the account of W and B that at all times it was their common intention that the new flat was to be beneficially held by W for B and that in due course W would in accordance with B's instructions transfer it either to B or to his elder daughter; or do I prefer the argument of H, namely that the monies were a gift to W, payment for work done by her, or transfer of family assets from W's family to her, and that the documents accurately set out what was agreed?

7. I heard evidence from all the parties, H in person and W and B remotely from Russia, an arrangement that although initially contentious ultimately ceased to be so, and from Mr SB ("SB") in person, Mr C, conveyancing solicitor, initially in person but when he went part heard remotely, and Mr D, tax advisor, remotely. The technology largely worked well.

Background

8. B is W's older brother by 4-5 years. They are the two children of their father by his first marriage and he has two children by his second marriage. Their father founded in 1993 a business which now owns a very large number of stores in Central Russia. Although there are many companies within the structure, I shall for convenience refer to it as "the business". As a result, W's family has become very wealthy. The business is run by their father and B. B, aged 46, has worked in the business from an early stage

when he finished his university degree. Father and son control the strategic direction of the business, as I so find. The father, mother and each of the two children have a 25% shareholding. W avers that her use of and benefit from her shareholding, including the receipt and use of dividends, is at the direction and discretion of her father.

9. W's work in the business started later than that of B. She says that she began her employment in 2008. She described her role in her Form E as "Financial and Operations Manager." Her work for the business has been punctuated to some extent, though I do not know the full details, by the demands of being a mother of two girls. and of the litigation which has consumed H and W over the last 2 years.

10. W described herself in evidence as being in charge of the banking operations of the business, but without any strategic or executive power. She says that her role in the business is operational rather than managerial.

11. H does not accept this description. He regards her as the brains behind the business and the person who takes all the relevant decisions as to how the Group's money is used. He described her as "the financial architect of the family business and it is (W) who has control of the business and private accounts of the family."

12. During her time at university, W's parents had purchased for her as a graduation gift in 2001 a flat in Moscow, which she owns to this day.

13. H and W married in Moscow in 2006. They spent the early years of their married life in Russia and their elder daughter A was born there soon after the marriage. She is now aged 16.

14. Between 2011-2013 the parties lived in London to give A a taste of education in England. They returned to Russia during school holidays. The family lived in a rented flat when in London during term-time.

15. In 2016 H and W returned to London to continue A's education in London and they have remained in England until recently, in W's case as a result of injunctions obtained against her when the marriage broke up amidst much acrimony soon after the events which I am called upon to determine.

16. In addition to his involvement in the family business, B had his own investment business. Among his investments, in 2015 he purchased a hotel in Spain and one in Austria and completed the purchase of another hotel in Austria in 2017. It was B's unchallenged evidence that W gave him significant help in the acquisition process of these expensive assets. As a result, he gave her as a reward 300,000,000 roubles, which is the sterling equivalent of about £3m. He did so through the mechanism of "a donation agreement" dated 15 February 2016 which as translated sets out that:

"1.1 The Donor (B) transfers funds on a non-repayable basis in the amount of RUB300m … to the Donee (W) and the Donee undertakes to accept these monetary funds as a gift.

1.2 The transfer of funds is conducted in a non-cash way – by transferring to a personal account according to the bank details provided by the Donee."

17. The benefit of a donation agreement in Russian law as explained in the document provided to me is that it clearly establishes the transaction as a gift and avoids any argument that it is a repayable sum. It releases what would otherwise be the debtor from the obligation to repay the funds received without consideration and establishes the clear intention to transfer the funds as a gift.

18. B's evidence was that the agreement was drawn up by in-house lawyers in the family business. The money was transferred into W's Russian bank account.

19. The veracity of this donation agreement has not been challenged. B described it as an act of gratitude/reward for a job for him which was well done by W. It was not a reward for anything that she did in connection with the family business. B said that how the money was expended by W was a matter for her, although its timing was proximate to the purchase of what became the family home, and the money was no doubt always seen as being likely to be used for that purpose.

20. Soon after this gift was made, W purchased in her sole name Flats 3 and 4, 29 DS, for £6.25m. The purchase price was made up from a combination of B's gift and pre-existing savings made by W. There is no suggestion that H made any financial contribution to the purchase. The family moved into the home in or about August 2016. A re-joined her old school.

21. B was also interested in obtaining an English education for his daughter who at that time was aged 13. She moved to England in time for the start of the academic year 2016 and lived with H and W. Very soon after she arrived, H and W's second daughter was born.

22. B began looking for a flat to buy for himself in the area. His 3 pre-requisites were that:

    i) The flat must be very close to where his sister W lived;

    ii) He wanted to have similar views across the square and from the back of the premises as W had from her home, they being particularly leafy;

    iii) He wished his flat to have a generally similar layout to that which W had in her home.

23. He did not confine his search to DS and viewed other premises in nearby localities. There was one flat in a neighbouring building in DS which he was keen to purchase and a price of £7.8m was agreed, but after considerable enquiry it transpired that the owner's planning permission for works to be carried out had lapsed. B says that this caused him to pull out of the purchase, but the vendor says that he was in the process of rectifying the problem and was told by H that B was no longer interested in buying a London home as his daughter was leaving London.

24. B's desire to purchase his own London home was furthered by the fact that H and W's home was on occasions overcrowded. With H and W's two children and a nanny in residence, there was a shortage of room for B's daughter when W and B's mother came to stay, which she did not infrequently, and for him when he visited London.

25. Between 2016-2017, B made 5 visits to London to see his daughter but also to look at properties which might have been of interest to him. He has produced a copy of his passport showing entry to the UK, which I accept despite H's denial of him making several visits. Towards the end of 2016 B was introduced by H and/or W to SB, a property agent who had helped them find their flat.

26. As 2017 went on, B and his wife took the decision to withdraw their daughter from school in London at the end of the academic year. This was fuelled by their failure to find suitable accommodation that they wanted and by the birth of their youngest child, leading to the decision that they would like the family to be united for several years until their daughter came back to England for university education.

27. There is a dispute as to whether B abandoned interest in buying a London home when his daughter returned to Russia or whether he remained interested, albeit at a less urgent level. W says that she continued to keep an eye open for properties that met his demands. H says that B gave up and no longer had any interest in owning a London property.

28. B has produced a letter from his Russian bank stating that at all times since December 2016 until 2020 he had in his sterling account a sum in excess of £8.7m. This was the result of a series of currency conversions in November-December 2016. It was, on B's case, available specifically for the purchase of his London home and would have paid for his purchase of the property which had the planning issue. H doubts the veracity of the letter. I see no reason to go behind it.

29. It is agreed between the parties that if a property had been purchased by B in or about 2017 the purchase would have been made in his own name.

30. I am further satisfied that B was a very high earner at this time. He has produced tax returns which he says show that in the tax years 2014 and 2015 he received in Russia a total net income of the sterling equivalent £16.4m. H doubts the veracity of these documents too, but I see no reason to do so.

31. There was in the neighbouring building to the family home a property which was its close twin and was just the other side of the party wall. It appeared to have been left unoccupied for some time, but in summer 2019 H observed removals taking place and asked SB to make enquiries as to who owned it and whether it might be for sale. This was not a straightforward process because the property was held in the name of an overseas corporation. The identity of the underlying individual was eventually established and contact made, revealing that he would be prepared to sell at the right price. It is the case of B and W that W suggested to B that he should buy it as meeting his requirements.

32. By about the end of September 2019 a price was agreed. The discussions took place between either H or SB on the one hand and the vendors on the other. B was not directly involved in the negotiations as he speaks no English. W was in Russia for nearly all the time between summer 2019 – February 2020. She was working flat out in the family business and H had the time and inclination to manage the purchase process. H says that he dealt "with the purchase… almost entirely alone." He reported back to W, who in turn reported to B.

33. There was no written or email communication that I have been shown between H, W and/or B in relation to the transaction. There was correspondence with solicitors and accountants to which I will return, but there was nothing between any of the three parties. W and B say this was because they each far prefer dealing with the other by telephone where they can get an immediate response and discuss matters. Although both are proficient with emails it is neither's preferred means of communication.

34. I am entirely satisfied that B made the following payments:

    i) To SB, five payments between October 2019 – May 2020 totalling £62k and were made to SB's business entity. In each instance SB invoiced B for his services in connection with the purchase of the new flat. SB had said to W and H that his charges for negotiating the transaction would be £100k. The balance between what B paid and that sum had been paid by H to SB in small tranches as time went on out of the joint account of H and W.

    Whether W knew of these payments made by H from the joint account is a dispute which I need not resolve, but the background is relevant. It is H and SB's case that because SB had done a lot of work for B on potential business transactions in the period of about 2016-2018 which B had for various reasons pulled out of, it was decided to make payments to help SB out of a cashflow problem that he had. The payments were made between October 2016 – January 2020. They are suggestive that either B or W/H was still looking for a London home because these were payments on account of whatever fees SB would charge for a new purchase.

    ii) B paid directly into the account of XYZ, solicitors, ("XYZ") £755k on 19 February 2020 and £7,845,787 on 26 August 2020. These payments came directly from his personal Russian sterling account and were made for the exchange of contracts and completion of the purchase of the new flat, inclusive of tax and costs of purchase. The actual transfer of funds from B's account was initiated by W who had B's authority to do so.

35. The new flat was purchased in the name of W and in the conveyancing documents she is declared to be the sole beneficial owner.

36. It is the agreement between B and W in respect of the purchase which is at the core of this case. It is the task of the Court to determine what were the real intentions of B and W as to who would have the beneficial interest in the new flat.

37. In the light of the cases of the parties, I regard it of significance that these payments to XYZ, as I find:

    i) Came from B's personal account;

    ii) Were not the subject of a donation agreement;

    iii) Came from an account that he held with his Russian bank in £ sterling; and

    iv) Were made out of his taxed income.

38. It is H's case that these payments were:

i) A gift to H and W or, alternatively and variably, to W alone; and/or

ii) They were payment for the work that she was doing for the family business; and/or

iii) They were a means of transferring part of the family wealth to W as a family member and owed nothing particularly to B.

39. W's disclosure by way of her Form E attachments shows that since October 2019 W had at all material times in her UK Coutts account approximately £12.7m. She therefore did not need B's largesse to pay for the transaction if it was intended to be for the benefit of her, either alone or with H.

40. Exchange on the purchase took place on 28 February 2020 and completion on 1 September 2020. It is relevant in this context to consider the state of the marriage between H and W.

41. The marriage had long had its difficulties. H says that on 24 July 2020 he discovered, as he believes, that W was having an affair. On 27 July 2020 W told H that she wanted a divorce. H says that he informed B and they had a discussion about the marital situation on 7 August 2020.

42. It therefore follows that on H's case, B's transfer of the very substantial sum to complete the purchase took place with full knowledge of the crisis in the marriage. Within 10 days of completion of the purchase of the new flat H had instructed divorce solicitors and his petition was filed on 21 September 2020.

43. It is agreed between the parties that notwithstanding the completion of the purchase nearly two years ago, the new flat has remained unoccupied and in its original state, save for occasional periods when the children's nanny has stayed there when the presence of the maternal grandmother left insufficient room for her in the family flat.

44. On 6 February, shortly before the remission by B of the exchange monies to the conveyancing solicitors, W wrote to the Russian bank asking for information as to how she should deal with the formalities relating to the transaction and saying (as translated):

"*We are buying a real estate. According to the deal I buyer. And I want to make a payment from (B's) instead of me according to the donation agreement.*

Check please the documents……As I understand, I also need a donation agreement. What else do you need?"

45. There was then a telephone call between W and the bank officer with whom she was dealing, who then replied (as translated):

"*For currency control, we need*

3. A letter from you in Russian in this form: I … ask my brother … to make payment instead of me on favor … in the amount …under the contract…

In this case, the donation agreement is not needed.

We will be able to make a payment and send it to (B) in the online bank for confirmation."

46. W explained that her reference to the purported need for a donation agreement was a confusion on her part because she thought that foreign currency controls required such an agreement in circumstances when the purchase was to be in her name rather than that of her brother, who was providing the funds. She pointed out, in my judgment persuasively, that:

    i) From the heading given by the bank in the email exchange it is plain that the discussion was taking place in the context of currency control;

    ii) That had it been a gift to her by B, the money could simply have been transferred into W's personal account, as happened in 2016;

    iii) If it were a gift, there would have been a donation agreement as there was in 2016.

47. H contended in evidence that there was a donation agreement between B and W which they have failed to disclose. This was not put to B. There is no evidence to support this contention and I reject it.

The Witnesses

48. I have seen H and W give evidence at length before. Their mutual animosity is obvious. Each was quite determined to have his/her say and brooked no interruption. Their answers were inclined to be very discursive. W's evidence was given more calmly than that of H and at times H was inclined to make allegations without any evidential basis. The questionable reliability of their evidence made the evidence of other witnesses all the more important.

W's brother

49. The first witness was W's brother. I found him to be a level-headed and credible witness. I have already mentioned his evidence that the sum that he provided to W in 2016 was a reward from his own personal resources for work carried out for him by W in his private (as opposed to family business) capacity. I am satisfied that it was the subject of the donation agreement to which I have referred.

50. I accept that he did not change his mind about looking for a London flat in 2017 or thereafter when his daughter returned to Russia, but it assumed lesser importance. Nevertheless, he kept intact the sterling account which he had established for the purpose of a purchase.

51. This is a family which has a history of providing first homes for its members as they grow up:

    i) W was gifted her Moscow apartment at age 21.

    ii) When H and W bought their London home in 2016 enquiries were made by them of making A (then aged about 10) the holder, albeit that this foundered by reason of her being underage.

iii) B purchased a property in Moscow for his eldest child, the completion of which took place when he was 18 or soon after.

52. It would therefore be consistent with history if B were to purchase a property in London for his eldest daughter if she was to be there. It had been anticipated that she would come to university in London. In fact, she has entered university in Moscow, but that was as a result of covid restricting her ability to travel and the fallout from this most acrimonious divorce taking place between H and W. B says that the current intention is for her to do a Masters' degree in London.

53. B speaks no English and SB speaks no Russian. Although they have met once, they have never conversed because they have no common language.

54. B regarded the fact of the purchase of 30 taking place in W's name as being of no significance. He knew that she would transfer the new flat to him or his daughter whenever and as he wanted; at all times he was the 'real' or 'ultimate' owner. It was simply a matter of convenience that the property was purchased in his sister's name because of the infrequency of his visits to London, his lack of English language and to facilitate W's management of the property in his absence.

55. H's case was that "the money was gifted to (W) and me for the purchase. This was a tax efficient way for monies to be provided to (W) from her family in respect of her work in the businesses as well as her dividends received, on the basis that no tax is payable in either Russia or the UK to HMRC upon offshore monies being gifted."

56. The suggestion that the transfer of the monies to W was part of the cascade of family money from the wider family to the narrower family, as Mr Waterman KC put it, is superficially attractive. He is right to say that W and H have always lived off her family business at a rate far higher than her relatively modest salary (excluding her receipt of dividend income) would have permitted. He hypothesised that it was all the result of family handouts.

57. However, one of the difficulties that this argument faces is that it was never put to B or even to W. There was next to no exploration as to how the family finances operated save in respect of the £3m payment in 2016. How W came to have the best part of £13m in her bank account was never explored with her. W has made it in plain in the financial remedy proceedings that she regards that money as held for H and W's daughters. H disputes this but if W is correct it would on H's case have been the obvious source for the purchase of the new flat which he says was to be purchased for their benefit, but this was never canvassed.

58. There is no evidence that B has ever made a substantial gift to any member of W's family other than the £3m in 2016, and he denies that he has ever done so. The 2016 payment was the subject of the donation agreement to avoid any ambiguity about whether there was a debt. He gave a convincing reason for why that payment was made. I can see no reason why he would have made another such payment from his own resources 4 years later, particularly at a time when he knew that the marriage was in a critical state, and when W was in no need of his financial assistance.

59. B regarded H's suggestion that W was the brains behind the business who in effect managed its strategic direction as risible. He made it clear that he and his father have

complete control of the business and that W does not make significant decisions nor design financial strategy. She implements what they determine. True it is she bears the job title of "CFO", but both he and she said that it equated to meaning "head of accounts" and does not bear the significance which it might be given in the UK. I did not think that his reaction to H's suggestion was other than genuine.

60. B rejected H's assertion that when the new flat was found, W rang him to ask if he would like the flat as a matter of politeness and that he declined.

61. I found B a persuasive witness. On occasions his recollection of dates was shown to be incorrect, but this does not shift my view that his evidence was reliable on major matters.

Professional Witnesses

62. I heard evidence both from Mr D of FF, the now-retired tax advisor of H and W in London, and Mr C, a partner of XYZ.

63. There were common themes to both their evidence. Each had a first meeting with H and SB in the absence of W. At that meeting they were each told the nature of the proposed transaction and that the purchase was intended long-term to be for the children of H and W. The second meeting in each case involved W as well as H and that was their only involvement with W. Thereafter H and SB took over the reins again.

64. In addition, neither has any attendance notes of any meeting, an astonishing omission, particularly by the solicitors.

65. This absence of this contemporaneous documentation, other than correspondence which they had with H or SB, makes this case considerably more difficult. When credibility is key, this lacuna is very regrettable.

Mr D

66. He first met H with SB in connection with these matters on 25 September 2019. It is plain that he must have been told at this initial meeting of the intention to purchase the new flat and that the purpose of the purchase was that each daughter of H and W would end up with one flat (i.e. the family flat or the new flat) and to that end he or a colleague later drew up a schedule setting out the options as to how the purchase might be made and whether by asset purchase, share purchase or trust purchase. I am satisfied that the schedule was prepared on the instructions of H, Mr D never at that time having discussed the purchase with W.

67. Mr D says that the various options were discussed at the meeting that he had with H and W on 4 October 2019. W said that she had no recollection of discussing the schedule at the meeting or ever seeing it. Neither FF nor Mr D has any record of it ever being given to W or H or it being emailed to them thereafter. W says that from her point of view, all that she was focussed on at the meeting was whether the purchase should be made by way of share purchase of the company holding the premises or whether it should be an asset purchase in her name.

68. Mr D has no independent recollection of the meeting which is hardly surprising, and he thought that it occurred on 29 October 2019 when H attended with SB. It was only when it was drawn to his attention that he could not possibly have met W on that date as she was then in Russia, that he changed his mind to say that the meeting was on 4 October. This is not a criticism of Mr D but it illustrates the difficulty of reconstructing what was said and done long after the event when there are no contemporaneous records.

69. I accept that it was Mr D's understanding when the meeting took place on 4 October that the premises were to be for the children of H and W. I think it probable that the schedule was prepared and printed for the meeting on 4 October, as the metadata suggests, but I regard it as unlikely that the schedule was given to the parties or seen by them. I conclude that for three reasons: first, neither H nor W produced it as a document in these proceedings and the only copy came from FF's files. Secondly, W made her own hand-written notes at the meeting which she has produced. Her notes would have been unnecessary if she had the schedule and they support her case of what was at the forefront of her mind. Thirdly, the absence of any confirmatory record in the accountant's files.

70. I find it probable that all the various options for purchase were discussed on 4 October, including a purchase for the benefit of H and W's children, but that W's focus was much more limited and was confined to the issue of an asset or share purchase. Whether or not the issue of the purchase being for the girls was raised, I am satisfied that W never agreed that this was to be the case.

Mr C

71. The evidence of Mr C was plainly a difficult process for him. He accepted that his firm had been very slipshod (my word) in their processes. In fairness to him, at an early stage he handed over the conveyancing process to one of his partners rather than keeping it within his own team, but that hardly explains the failings, particularly as Mr C was copied in to many if not all of the email communications. Mr C readily accepted that the court was likely to be critical of the way the firm had acted.

72. Mr C met H and SB on 28 October 2019, and I find that he was told by them (probably by H) that the purchase was to be made with a gift from B.

73. The only time that he ever met W was on 22 November 2019. That took place in a public area at a Mayfair restaurant where they had agreed to meet for the purpose of W showing her documents in accordance with the KYC procedure. In their written statements H and W respectively put the length of the meeting at 10 minutes and 5 minutes, whilst Mr C remembered it as being about 45 minutes. It seems probable from the timings of photographs of W's documents, combined with a message about running late, that the meeting took 20-30 minutes.

74. I can have no certainty as to what was discussed at the meeting. H had already told Mr C that the money was to come from W's brother. Mr C understood that the flats were to be for the benefit of the children and in his oral evidence became more confident that he gained this information at this meeting, but he has no notes and never referred to it in any correspondence. It seems to me more likely that he was told this when he first met H in the absence of W, because as H told Mr D at their first meeting (in the absence

of W), that this was to be the case, it is probable that he would have done the same when he first met Mr C.

75. Mr C agreed that W never said to him that she was to be the beneficial owner of the property, and it was simply his impression from his brief meeting with her in November 2019. This is too vague to be reliable.

76. Mr C accepts that he never gave W any advice of any sort at any stage. He did not advise her about beneficial ownership and never talked to her about the difference between legal and beneficial ownership. He said that he never discussed a resulting trust with the parties arising from B's payment of the entire price because he did not know exactly what a resulting trust was or how it arose.

77. This omission is the more stark because the concept of trusts is not one familiar to Russian law. Neither W nor H at this stage was aware of the meaning of the term "beneficial owner". Yet, the conveyancing documents are replete with reference to it.

78. Mr C said that it is normal practice to have a retainer letter signed early. That never happened in this case. A draft was not produced until that dated 13 January 2020, though it was not sent to SB by XYZ until 31 January 2020. It was never subsequently re-dated although it went through several editions. Its errors also included the following:

    i) It gave the wrong flat numbers;

    ii) The first draft described W and H as intended to be the joint owners of the property, rather than W alone;

    iii) Throughout the document there are references to "you" in the plural rather than singular, even when it was corrected to describe W alone as the purchaser;

    iv) There are whole paragraphs which are material to joint purchasers but inappropriate to a sole purchaser.

    Whilst the reference to the purchase being in joint names was remedied when pointed out, the other errors were not corrected.

79. Although the retainer letter is addressed to W it was not sent to her but was sent to SB instead for him to give it to her. The chain of communication adopted by Mr C was XYZ-SB-H-SB-XYZ and the solicitor relied on SB or H to obtain W's signature when required. Not once did Mr C seek to communicate directly with his client (W).

80. Every document that the solicitors required W to sign came via this indirect route. Likewise the property report which should have gone to W was sent only to SB and H. The documents to be signed by W came pre-prepared and all that W was required to do was to sign them without any explanation being given to her by the solicitor whose job it was to do so.

81. The failings do not stop there. At no stage did XYZ seek to contact B, even though they were aware that he was the sole source of the money. No KYC or other checks were carried out on him. Mr C said that he did not realise that the money would come direct into the solicitors' account from B's account but that if he had known that he

would certainly have made further enquiries of everyone and completed the KYC paperwork with B. That was never done. Likewise says Mr C, if he had known that B was paying SB direct and thus that SB had a pecuniary interest in the transaction he would never have permitted SB to witness W's signature.

82. The conveyancing documents, assignment of licence, SDLT form and retainer letter all refer to W being the beneficial owner. The retainer letter does give some explanation of what beneficial ownership is, but I find that I can put little weight on the documentation in circumstances where W was given no advice and where there is no evidence that I find satisfactory that she understood the full effect of what she was signing.

The Evidence of Mr SB

83. SB runs a property business. He lives close to DS. He shares a Greek heritage with H. He was at one stage a good friend of both W and H but it was plain to me that notwithstanding his description of himself as a good friend of both parties, he is now far closer to H than to W.

84. It was SB who introduced H to Mr C as the two of them had worked together on several previous transactions. He said that it was he who told Mr C that the money was a gift from W's brother and emailed him to that effect, but it does not matter whether it was him or H. It was through him that communications between XYZ and the family went.

85. SB says that H never took a financial step without consulting W. Whether in fact H did consult W would have been something of which SB would have been unlikely to have had direct knowledge. It was not explained why it was that SB was quite so involved in the transaction, why he attended meetings with H with solicitors and why he twice went to the accountants with H. It is not as though H is any less capable than W. H is a graduate of the same university as W and plainly intelligent.

86. There is a dispute between the parties about the witnessing of documents, including whether W's signature was actually witnessed by SB and also whether the nanny, from whom I did not hear, witnessed the signature of one document. I do not regard this as a dispute that needs to be resolved and nor do I have any reliable evidence upon which I can do so.

87. It was SB, he said, who told Mr C about how the transaction was to be financed and, in whose name, or names it was to be in.

88. SB plainly bore a degree of animosity towards B and W. He commenced his evidence with an uninvited and curious complaint about their absence from the court room. He feels misused by B by reason of B's failure to complete at least one particular transaction which he had negotiated with much endeavour for B. As a close friend of H, who has been very distressed at the course that the family proceedings have taken, it would not be surprising if he felt partisan.

89. I reject his account of him very frequently, several times a week, bumping into W in or around DS during this period. W's presence in London between July 2019 – February 2020 was no more than a matter of a few weeks in aggregate.

90. He has never spoken to B or W about the matters in issue and I do not accept that he has any source of information about them other than from H. His evidence did not assist significantly with the matters I have to determine.

W's Evidence

91. I have covered much of her case earlier in this judgment. She was asked why she did not correct Mr D when he mentioned, as I accept he did, the possibility of the new property being held for her children. The correspondence surrounding the setting up of the meeting on 4 October make it clear that W was only available for a meeting in England for just a couple of days, and I accept her evidence that she was solely focussed on the issue of whether the purchase was to be of shares or asset.

92. W's schedule was punishing. She was working full-time. She delegated the purchase of the flats to H. I accept that she relied upon him to give the necessary instructions and did not seek to check what he was saying.

93. I have to ask myself whether it is really likely that W would have signed documents without fully understanding them. She is after all an able and experienced businesswoman. She plainly looked at some documents at least to the extent of signing on every page.

94. W was given little chance to study in any detail the conveyancing documents which along with the retainer letter and SDLT declaration make it clear on their face that she was to be the sole beneficial owner. The documents were sent via SB to H who presented them to W to sign without her ever being given an explanation of their contents. Nevertheless, she had the opportunity to ask questions if she needed to. This is a factor that weighs against her and I put into the scales.

95. I have also borne in mind as requested the contents of W's first statement made on 14 October 2020. I do not place on it the significance that Mr Waterman does. She states clearly at paragraph 24 that "*I am effectively just holding (the new flat) on behalf of my brother"* and at paragraph 26 "*I do not consider this property truly belongs to me."*

96. Whilst her case is not there set out as specifically as it might have been that she does not have a beneficial interest in the property, I do not consider that this is an inconsistent account with her case at trial. I have also to bear in mind the haste in which she was required to produce that statement.

H's Evidence

97. I have likewise dealt with much of his evidence in the preceding paragraphs.

98. H accepts that he never put in writing to anyone that the new flat was to be purchased for one or both of their children. He says that it was he who told Mr C that the money was to be a gift to him and W.

99. In his statements he describes B's money as being a gift variously to both of them and to W alone. While this inconsistency may not be significant, I am more troubled about how his case developed.

100. He described how W had unlimited access to funds which she could take as she chose, whether out of the business or from the accounts of family members such as B. I do not accept his description of her ability to use the accounts of others as, in effect, her own.

101. His suggestion was that the funds were not a gift or payment for work done but were a passing of family money to W to avoid taxation. This is not easy to follow as I find that the money was paid from B's personal account and from taxed income and I do not accept H's description. When it was put to H that B had produced his tax returns to show that the funds came from his taxed income, H would not accept that the tax returns were genuine copies and would only accept it if the originals were properly witnessed, signed, and sealed by someone independent. There is no evidence that B has provided false tax returns to the court.

102. H says, logically on his account, that there was no need for anyone to thank B for the money he provided because it did not come from his own resources. This, I find, is not the case but, if it were a gift, it would be an extraordinary matter of discourtesy if no thanks were given. All agree that none were given.

103. In his oral evidence H went further than his statement and alleged that there was a donation agreement which B and W have suppressed. This had not been put to them and I have no evidence which would support such a contention.

104. A strange part of H's case was his evidence that before the purchase was finalised they asked B as a matter of courtesy whether he would like to have the flat. B and W denied that any such suggestion was made. I cannot see why such an offer might have been made if by then, on H's case, B had long abandoned any interest in having a London flat or if it was simply a transfer of family funds to W.

105. It is said in submissions on behalf of H that it would have been highly risky for him to have perpetuated over about a year the deceit that the new flat was a gift (or however it is put) from B to W/H for the benefit of their daughters, when at any time W might have found out what he was doing, in particular from the professional advisors. I accept that there is some force in this point, but it was H who handled the transaction and had all the dealings with it.

106. I am not persuaded by the argument that by speaking to B on 7 August 2020 to discuss the marital crisis H ran the risk of upsetting the whole apple-cart by prompting B to withdraw. Whilst that might well be the case if the purchase monies were to be a gift to W (or H/W jointly), there was no such risk if the new flat was always intended to be truly owned by B. Indeed, it would be surprising if the transaction was not mentioned if it had been a gift, but it is not H's case that it was mentioned.

My Approach

107. The parties agreed through their respective counsel that at the end of the day this case turns on who I believe. Either W and B are telling the truth or H, supported by SB, are truthful.

108. I am mindful of the words of Baroness Hale in Stack v Dowden [2007] UKHL 17 at para 68 that

The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms.

109. However, Lord Walker and Baroness Hale added these words in Jones v Kernott [2011] UKSC 17 at para 13

if the task is embarked upon, it is to ascertain the parties' common intentions as to what their shares in the property would be, in the light of their whole course of conduct in relation to it.

110. My task is to establish if the evidence shows that common intention. I do so against the background of the documents signed by W which describe her as the beneficial owner of the new flat.

111. I am particularly swayed by the facts and matters surrounding the payments of money. I am less persuaded by the documentary evidence for the reasons that I have given.

112. I found B's evidence reliable, and it is the agreement between B and W which is at the core of this case. In particular, I can see no reason:

i) Why the funds should have come out of B's personal account which contained his taxed income if the monies were part of a family distribution or a reward for her endeavours in the family business.

ii) If W had control of the finances, why she would be taking money from B's personal account rather than from the business accounts to which she had access.

iii) If the money was a gift for it not to have been paid to W's account rather than direct into XYZ's account.

iv) Why B should be passing over to W the very money which he had set aside in his own account to buy in his own name a property in 2017.

v) Why B would be making a gift to W at the very time that the marriage was ending and divorce proceedings in prospect.

113. In addition

vi) The absence of the donation agreement is striking, especially when compared with the 2016 gift.

vii) W had in her own bank account the available funds to purchase the flat. Why should she be accessing B's funds in those circumstances?

114. I have taken into account that the common intention that I find to have existed between W and B that he alone was to be the beneficial owner of the new flat is uncorroborated by documentary evidence. There would be an obvious incentive for a creation by them of a self-serving argument, but the surrounding circumstances to which I have referred

give significant support to their evidence on these issues and which I found to be persuasive.

115. I take into account also the inconsistencies which appear in both H's case and W's case. I have factored them into my thinking as I have reached the conclusion that I am satisfied B has discharged the burden of proof upon him and that it was the common intention of W and B that B alone should hold the beneficial interest in the new flat and that accordingly W holds the premises on trust for him.

116. In the circumstances it is not necessary for me to go further into the law of resulting trusts.

Post-script

117. On handing down this judgment, I invited submissions as to whether or not there should be anonymisation or naming of Mr C and XYZ, of whose conduct I have been so critical. I am grateful for the representations made on behalf of Mr C and XYZ.

118. As is apparent, I have decided that they should not be identified. My reasons in brief are as follows:

- I do not think that it would be right to name them when no party or other witness is to be identified.

- I accept that it would not be fair to name only Mr C when others in the firm must share the blame.

- It would cause disproportionate damage to Mr C's reputation, particularly when his lapses and those of XYZ are being otherwise addressed.

- I accept that his contrition is genuine and that at no stage of his evidence has he sought to evade his responsibilities.