

Neutral Citation Number: [2021] EWHC 1954 (Ch)

Case No: PT-2019-BHM-0101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
Property, Trusts and Probate List (ChD)

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 12 July 2021

Before :

HHJ DAVID COOKE

Between :

Mr Khatab Hussain	<u>Claimant</u>
- and -	
Mrs Yasmeen Hussain	<u>Defendant</u>

Sham Uddin (directly instructed) for the **Claimant**
Iqbal Mohammed (instructed by **UK Law Solicitors**) for the **Defendant**

Hearing date: 17-18 June 2021

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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.

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Approved Judgment**HHJ David Cooke:****Introduction**

1. This case concerns a residential property at 4 Richmond Crescent, Slough (“the Property”). It is registered in the sole name of the defendant, Mrs Hussain, having been transferred to her by the claimant for no consideration on 5 November 2012. The claimant’s pleaded case is that it was expressly agreed at the time that the defendant would hold as trustee for the sole benefit of the claimant and would transfer the Property back to him at any time on request. The Defendant however denies any such agreement and pleads that the transfer was expressed at the time as being an unequivocal gift to her.
2. There is no contemporary documentary evidence of these alleged discussions, and specifically no declaration of trust or other contemporary written evidence referring to the existence of any trust. The claimant’s case is put on the basis of a constructive trust arising by virtue of the common intention of the parties expressly agreed at the time of transfer that the claimant should remain the beneficial owner.
3. The Property has at all material times been let to tenants, and not occupied by either of the parties to this case.
4. It is common ground that the starting point for the court is that it is presumed that the beneficial interests follow the legal interests, so that it is for the party asserting a contrary common intention, the claimant in this case, to establish that on the balance of probabilities. The court may have regard to all the available evidence in determining the question, including evidence of the parties’ subsequent conduct in relation to the property, both as between themselves and in relation to third parties, insofar as it sheds light on the presence or absence of any shared intention as to ownership at the time of the transfer; see *Stack v Dowden* [2007] UKHL 17.

Factual background

5. The parties were married in 1985. At that time the defendant, who came from a Sikh background, converted to Islam and the parties went through both an English civil law marriage and an Islamic marriage ceremony. It is unfortunately the evidence of both of them that neither of their families accepted the marriage because of their originally differing faiths. In 1997 they were divorced by the English court, though there seems to have been some uncertainty later between them as to whether this was regarded as sufficient to dissolve the Islamic marriage.
6. It is the defendant’s case that notwithstanding that divorce, for most of the time since 1997 until 2018 they have lived together as man and wife. The claimant puts it the other way round, saying that they lived separately since at least 2010, though from time to time the defendant would ask to come and stay at his house. The defendant has at all times continued to use the title “Mrs Hussain”.
7. During and after their marriage the parties have built up a substantial portfolio of rental properties. Some of these are in the name of the claimant and others in the name of the defendant. There are two properties in joint names, and yet others are held by a company called A1 Properties (UK) Ltd (“the Company”). Until July 2016, the parties were each directors of the Company (except for a short period) and equal shareholders in it, but on 5 July 2016 the defendant resigned her directorship and

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transferred her shareholding to the claimant for no consideration. The defendant accepted that the properties in her name had a value exceeding £2m; she thought those owned by the claimant and the Company were worth somewhat more. None of these other properties is in issue in this claim, and nor is there any issue before me about the ownership of the Company or its assets.

8. There is a certain measure of agreement about the background leading up to the transfer of the Property to the defendant. It was originally purchased by the claimant's parents, and after the death of his mother in 1989 was solely owned by his father, Abdul Aziz. Mr Aziz transferred the property to the claimant, his only child, without consideration, on 22 November 2011. However, shortly after that Mr Aziz made allegations against the claimant and defendant to the effect that he had been fraudulently misled by both of them into transferring the property, having been taken by them to a solicitor where he signed documents under the impression he was making a will. He also made allegations to the police of harassment by the claimant. Mr Aziz is not a party to these proceedings and I have heard no evidence from him. Both parties before me however agree that all these allegations were entirely false; the claimant considers (and the defendant does not dispute) that they were motivated by his stepmother, whom his father had at the time recently married, who wished to be brought from Pakistan to the UK and was upset to find that her new husband had given away his only property here.
9. The allegations in relation to the Property were pursued for a period through solicitors, who wrote letters threatening a claim to have the transfer to the claimant revoked. The first such letter appears to have been on 29 February 2012, only 3 months after the transfer to the claimant (bundle p 169). As a result, the claimant says, he agreed with the defendant that he would transfer the Property to her to protect it from any such claim and went to a solicitor to arrange the transfer. Mr Aziz appears to have instructed his solicitor not to pursue these allegations further however in April 2012; a letter of 27 April 2012 from the solicitor recording those instructions is in the bundle (p 171). It is addressed to Mr Aziz at the Property, suggesting that he was living there at the time. The claimant could give no convincing answer to the suggestion put to him that he had obtained this letter by opening his father's post. If he did so, he must have known by about the end of April 2012 that his father had given this instruction. No doubt of course that was not a guarantee that the allegations would not surface again at some point.
10. The transfer to the defendant was dated 2 November 2012. It recites a consideration paid of £120,000, but it is common ground that no consideration was paid, of that amount or any other. The claimant alleges that the conveyancing solicitor told him the transfer would be better protection if it stated a consideration. It is conceivable that he may well have been told by someone that the transfer might be set aside as a transaction at an undervalue if the defendant was not a bona fide purchaser for value, but not likely that a solicitor would have advised that simply stating a fictitious consideration would have that effect. There is no contemporary documentary evidence indicating that the solicitor was told that the purpose was to protect the Property against claims, or that the defendant was to hold as trustee, or that the claimant was to remain the beneficial owner.
11. According to the claimant's evidence he and the defendant discussed the transfer as a measure to "safeguard" the property from claims on behalf of his stepmother, and the defendant expressly agreed that she would hold it as trustee and transfer it back to him

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at any time if he so requested. The defendant's evidence is that there was no such conversation; rather the claimant had never wanted the Property and said it had only caused him trouble since his father had given it to him, and that he wanted to get rid of it to her and told her it was hers to do what she wanted with.

12. Shortly after the transfer to the defendant it appears that Mr Aziz contacted his solicitor again, this time alleging that he had recently returned from Pakistan and been told by the claimant that he must immediately remove all his belongings from the Property or the claimant would throw them into the street. The claimant spoke to Mr Aziz's solicitor denying these allegations, telling him about the previous fraud allegations and that they had not been pursued, and sent an email on 22 November 2012 stating that he would be taking his own legal advice (p 172).
13. The disclosure includes a strange letter written by the claimant and addressed to his father, dated 24 November 2012, setting out reasons why the claimant said that, contrary to the allegations made, his father had known all about the transfer to himself and had made it willingly. In cross examination the claimant conceded that some at least of what was said in this letter was untrue, and that his father could not have understood it anyway as he could neither speak nor read English. It seems likely the letter was written with a view to it being shown by Mr Aziz to his solicitors so as to influence any advice they gave Mr Aziz.
14. Mr Aziz through his solicitors lodged an objection to the transfer to the defendant. It is not clear when that was filed, but it appears the claimant became aware of it only in January 2013, since his solicitor wrote on 9 January 2013 informing him that he had discovered the objection when enquiring why the transfer had not been registered.
15. The claimant wrote a long letter dated 11 January 2013 to his solicitor (p 179) in which he set out his account of dealings with his father and what he said were the false allegations against him. In that letter he told the solicitor of the allegations of fraud previously made and that his father had instructed his solicitor on 27 April not to proceed with them. He said that his father had been happy to give the property to him when he did so and knew full well what he was doing, but that "when my stepmother was informed that my dad gave me the property in England she was angry at my dad and told him to get the property back for her". Since then, the claimant said, his father had pestered him to sponsor the immigration of his new wife, which the claimant had refused to do, and that refusal had led to the false harassment accusations against him. He went on to say that his father's attitude to the house changed, implying that was the reason the allegations had resurfaced, when he discovered that the claimant intended to transfer it to his wife the defendant, whom Mr Aziz had never approved of because of her Sikh faith.
16. This letter makes no mention of any trust arrangement or of any intention to protect the Property from claims by transferring it to the defendant, which would be odd if the solicitor had been told about that intention at the time of the transfer, as he must have been if, as the claimant said, he had advised that a consideration be stated to guard against the transfer being set aside. I conclude that it is unlikely the solicitor was told of any such motivation, and that the claimant probably decided to include the false statement as to consideration himself or after speaking to someone other than the conveyancing solicitor.
17. It is not clear from the documents what happened to Mr Aziz's objection, but it must have been either withdrawn or dismissed as the transfer to the defendant was

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registered with effect from 5 November 2012, which would be the date it was filed. (p 224).

18. On 16 December 2013 an application was filed to register a charge dated 23 October 2013 over the Property in favour of the claimant, expressed to secure a loan of £200,000 made by the claimant to the defendant. Registration was completed in January 2014. It is common ground that there never was any such loan, of that amount or any other. The defendant says she was told that this was a precaution against any attempted fraudulent dealing in the Property by a tenant. It is well known that there have been cases of such dealings, with the tenant intercepting any notices sent by HMLR to the owner at the address itself and either concealing them from the owner or, if necessary, falsifying a reply purporting to be the owner's consent. However, there was already some protection against such a dealing as the defendant's address on the Register for notices was given as her own residential address, not at the Property. The claimant's explanation was that it was "to protect my interest and prevent my stepmother setting aside the gift given to me by my father". It is difficult to see what additional protection a fictitious charge could give against a claim by Mr Aziz, but it may have been in his mind that the fact of registration would serve to give him notice if the defendant herself attempted any dealing with the Property.
19. By 2013 an issue had arisen in relation to a property at Dulais Rd owned by the Company and mortgaged to Natwest Bank. The bank wrote in January 2013 to the claimant at the Company to say that it considered the relationship with its customer had irretrievably broken down. The defendant wrote on 3 March 2013 to say that the claimant was no longer a director, but this apparently did not satisfy the bank and on 2 April 2013 it demanded repayment of its mortgage debt. It appears that correspondence continued for a considerable time between the bank and the defendant on behalf of the Company, but by August 2014 the bank had rejected payment proposals and on 8 September 2014 it appointed LPA receivers over the mortgaged property (p 399).
20. It appears that ways were explored to redeem the Natwest mortgage, at first by a combination of remortgaging Dulais Rd to raise about £65,000 and mortgaging the Property to raise £100,000. Eventually what was done was that the defendant approached Lloyds Bank and obtained a mortgage loan of £130,000 secured on the Property and that amount, plus about £41,000 raised from other sources, was paid to Natwest to clear the Company's debt and costs and redeem the mortgage (p 403). The claimant signed a DS1 form to enable the removal of the registered charge over the Property in his favour.
21. Contact with Lloyds Bank and the solicitors acting was by the defendant, and the solicitors' invoice was sent to the defendant at the Company. All of the relevant correspondence disclosed (see p 496 ff) was in the name of and apparently written by the defendant. There is nothing in this correspondence to suggest that she was anything other than a willing participant dealing in a very competent manner with business matters, and it is apparent that she must have had discussions and probably meetings with the solicitor acting at the time in which she must have confirmed her willingness to charge the Property in her name in support of borrowings for the benefit of the Company.
22. According to the claimant, all this was done at his direction because he was the beneficial owner of the Company (although at the time the defendant held an equal shareholding) and of the Property. According to the defendant in her oral evidence,

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the claimant asked her to help him out by mortgaging her property, which she voluntarily agreed to do. In her witness statement however she gave a different account, saying that she had agreed to charge her property not to benefit the claimant but because the loan was for the benefit of the Company, in which she had a 50% interest. Somewhat inconsistently, she then said that the claimant had agreed to take sole responsibility for repaying this loan as he would benefit from it through his 50% interest.

23. What does not seem to be disputed is that thereafter responsibility for repaying the £130,000 mortgage loan was in fact regarded by both parties as being solely that of the claimant personally. He personally paid into the defendant's account each month, from the rents he collected for the Property, the £850 required to meet the mortgage payments, which were then paid on to Lloyds by standing order from the defendant's account. That would be consistent with the Company being regarded as beneficially the claimant's asset and not a joint asset.
24. It is not in dispute that at all times since the Property was transferred by Mr Aziz it has been let to tenants and the tenancies have been managed by the claimant, who has collected and retained all the rents paid, out of which he paid the monthly Lloyds mortgage amounts and kept the rest for himself. This was so both before and after the transfer to the defendant. Tenancy agreements were signed by the claimant and named him as landlord. Where legal proceedings were required against tenants, they were taken and managed by the claimant.
25. The defendant's case in response is that the claimant has at all times exercised coercive control over her in their relationship and has at times been violent to her, and that although she does not deny that the claimant managed the Property and collected and used the rents as he pleaded, she pleads that this is irrelevant to ownership as the claimant had "refused to allow the defendant to manage the tenancies at the property and unlawfully coerced her into allowing him to receive rent from the tenants thereof" (defence at para 12, p 9). She gave no details of the alleged refusal and coercion either in her pleadings or witness statement, and there is no mention of anything of that nature, or of any attempt by her to exercise management control over the Property in any contemporary docs until the dispute in 2016 referred to below. Her pleading does not say, as it might have, that since the Lloyds loan was repaid from rents at the Property it had been wrongly paid from the defendant's money when the claimant should have used his own. If prior to mortgaging the Property the defendant was already in the position that the claimant was collecting rents for it against her will, it seems unlikely that she would have been willing to allow her property to be charged on a basis that would in effect ensure that he continued to retain those rents. There is no indication in any of the documents disclosed, until the dispute in March 2016 referred to below, of any objection by the defendant to the claimant receiving those rents and using them for this purpose.
26. The defendant does now make a counterclaim for an account of monies received from such rents and payment to her, but it is put on the basis that the claimant has been "unjustly enriched" by receiving the rents, which is an odd pleading in circumstances where she alleges any consent she gave to his doing so was obtained by coercion.
27. The allegation of coercion to collect rent for this property is in contrast to dealings with other properties in the defendant's name, for it does not seem to be seriously disputed that she actively manages and receives and retains the rents from those properties. In her oral evidence the defendant said that there had been occasions when

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both of them had collected rents for properties irrespective of who owned them, which is more suggestive of cooperation in managing their respective portfolios than of the defendant being excluded by the claimant from managing her own. She has made no complaint in these proceedings that the claimant has wrongfully prevented her from managing her other properties or retained rents due to her from them. One is bound to ask why, if the claimant exercised coercive control to deprive the defendant of the rents for this property, he did not do so for any other?

28. There was a serious falling out between the parties at some point in early 2016. At that point the defendant moved out of the house she had been living in with the claimant. That house is registered in his sole name and he refers to it as his house. On his account the defendant broke back into the house on 7 March 2016, gained access to his office and used the computer there to remove £10,000 of his money from his bank account (see p 428). She also took numerous private documents from his filing cabinets including personal notes and records of his that she later included in her disclosure.
29. The defendant refers to it as ‘our’ home since on her account they were living there as man and wife at the time, and says that she came home one day to find that the locks had been changed and as a result had to instruct a locksmith to break in so that she could obtain her belongings. She agrees she took £10,000 from a bank account, but says it was a joint account. I assume that is correct. The claimant however said in an email on 9 March (p 430) “you have no right to this money as this money in my account for the last five years I have been using to have my rental properties rent paid in, not a penny is paid in this account from your properties rent”. The defendant has at no stage contradicted that.
30. The defendant agrees that she removed documents but says they were only what she needed to be able to deal with her own properties. The personal documents, she says, were mixed in with these. Having seen those documents, it is difficult to accept that if she had looked at them at all she could realistically have thought she had any good reason to remove them, and their nature is such that it would seem unlikely that they would have been mixed in with, or plausibly confused with, any documents relating to her own properties. The need to obtain documents relating to her own properties is consistent with the defendant herself managing those properties and intending to continue to do so.
31. After that incident however the claimant took action in relation to the Property that appears to have been designed to force the claimant’s hand in some respect. In an email of 8 March 2016 (p428) the claimant demanded that the defendant make various payments out of the £10,000 she had taken, including “Transfer £850 to your property account for 4 Richmond Crescent loan repayment”. The defendant evidently refused to do so and later the same day sent a text to a friend named Tibra who seems to have been acting as a go between, saying (p 429) “Tibra can you tell Johnny [ie the claimant] if he does not pay his loan £850 I took out for him which is due tomorrow I will sell the property the loan is on. Up to him. I do not want to go to solicitors again and will not go to his house again...”.
32. The claimant understandably relies on this text. It plainly refers to the Property and the monthly loan payment next due. The loan is “his” loan and not something the defendant accepts any responsibility for. The threat to sell if he does not provide funds to pay that can in my view only realistically be seen as a threat to affect the claimant’s interests in some way by selling the Property, contrary to what she knows

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would be his wishes, and implies therefore that the defendant must have regarded the claimant as having an interest in the Property that would be lost by selling it.

33. The defendant has not put forward any other explanation in her pleading or written evidence. Her response when asked in cross examination was to say “when I send a text I don’t pay attention to what I say” and that the claimant had been “blackmailing” her by refusing to pay the £850 instalment due., and that for her whole life he had always kept all their funds (not an allegation made elsewhere, and inconsistent with her earlier evidence that the properties they had been acquired had been bought from “pooled funds”). I do not accept that the defendant did not intend to say what she did in this text. No doubt it was a response to his having said he could not pay the £850 (and other sums falling due) because she had taken the money he had collected to do so, but the threat to sell the Property is more indicative of a threat by the defendant to pressurise the claimant than the other way round.
34. The defendant also sought to take control over rents paid by the tenants at the Property. On 6 April 2016 solicitors instructed by her wrote to those tenants (p 407) saying that she acted for “Mrs Yasmeen Hussain in relation to rent arrears on [the Property]”. They did not explain what her interest in the Property was. The tenancy agreement named the claimant as the landlord (p 412) though it also had unexplained references to the Company and the defendant on the front page (p 411). The solicitors said that the defendant had “disinstructed her agent in this matter and requires all future payments... to be sent to her at our office...”. The letter does not state what arrears are alleged to exist, and according to the claimant the defendant knew full well there were no arrears as the tenants had paid their rent regularly to him. He told the tenants that this letter was a tactic in a dispute between the defendant and himself and got them to sign an authority to deal with it on their behalf (p 409). The defendant had done this he says to embarrass him as the tenants were friends of his.
35. The “agent” referred to is plainly the claimant. This letter notably does not say that the claimant has been wrongly collecting rent, and is couched in terms that appear to accept that in the past he has had her consent to do so.
36. It appears that some or all of the rent was being paid by Housing benefit, as the solicitors attempted to have those payments redirected to the defendant (p 423), apparently without success.
37. The same solicitors issued a county court claim on 18 May 2016 against the tenants seeking recovery of alleged rent arrears (but not possession) said to have been two monthly payments of £1350 due on 15 April and 15 May 2016 (p 419). They later filed a schedule (p 410) stating that the payment due on 15 March 2016 had also not been paid, though that must if true have been known when they issued the claim.
38. The claim was defended but it does not seem to have reached a hearing. Instead by early July it seems the parties had reconciled. On 5 July the defendant resigned as director of the Company and transferred her share in it to the claimant (p 450). The defendant’s solicitors recorded on 3 July a message from her (p 424) asking them to “put [the proceedings] on hold”. They later received an email instructing them to bring the proceedings to an end, and wrote to the defendant on 26 August 2016 (p 426) advising her that this could be done by discontinuance or settlement and a consent order and explaining the costs consequences of each. The documents do not show how the claim did come to an end, but the defendant signed a letter to the

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tenants (p 425) dated 19 August 2016 in which she apologised for bringing the claim against them and said:

“I had personal disagreements with [the claimant] and as I did not know the details of what you paid [the claimant] ... I decided to take the court action hoping...I would get the information...

I confirm [the claimant] ...transferred [the Property] to my name on the understanding that he has full authority to manage the property and keep all monies for himself and only on his death the property will be mine to do as I wish.

I have now resolved all issues with [the claimant] and agree for you to pay all monies related to [the Property] to [the claimant]...”

39. The defendant does not dispute that she reconciled with the claimant and instructed her solicitors to stop the claim against the tenants. She says however that the messages the solicitors refer to were sent by the claimant from her email account and the letter to the tenant was written and typed by him and she merely signed it to keep him happy as a result of the coercive control he exercised over her. The words were his and not hers, and so rather than supporting his case show that at the time he was not claiming to be the owner of the property but only to be entitled to receive the rent during her life. He had forced or coerced her into signing the documents to transfer her interest in the Company to him.
40. The claimant denies that he wrote either the messages to the solicitors or the letter to the tenant. As to the former, I do not have the text of them but nothing turns on who composed them given that the defendant accepts that she did confirm to the solicitors that she wanted to stop the claim. I think it likely that the claimant did compose the letter to the tenant, given its content which seems to go well beyond what the tenant would need to know in relation to the ending of the proceedings and to be more designed to justify or restore the claimant’s position in their eyes. Given that likely purpose, however, I do not think it gives any reliable guide to the arrangements actually made between the claimant and defendant in 2012.
41. The claimant relies on a text sent by the defendant in January 2017 (p 142):
- “I want to be with you and keep trying but if you don’t want to be with me and want to be or marry other [t]hen end things properly. Give proper divorce get rid of all ties.
- Sell the two properties in joint name. Pay loan [off] Richmond and tf in ur name. Then I would never see or contact you not because that’s what I want but you do.
42. The reference to being with another is to relationships the defendant knew or suspected the claimant was having with other women, and that to a “proper” divorce is to an Islamic divorce, since it was an issue at the time between them whether despite the English law civil divorce they were still regarded as married in Islamic law.

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43. The defendant's explanation of this text in cross examination was, firstly, that she was living with him at the time but he had told her to leave his house taking all her possessions and sending her numerous abusive texts. She said she had transferred another property to him (I have no evidence relating to that) and knew that if she offered the claimant money or properties then he would be happy. She then said she "didn't pay much attention to what I said, he's always wanted me to beg him to come back. After a couple of days I was back and he was happy".
44. I cannot accept that as an explanation. The content of this text is not an offer to persuade the claimant either not to separate or to take the defendant back, but her proposal of how to finalise a separation between them if that is what the claimant wants (albeit the defendant does not). It could not even be said to be pointing out unpalatable consequences of separation that might persuade the claimant not to go through with it. Nor does it show any sign of not having been thought about; it is a wholly rational proposal as to how to deal with the separation of their personal and business affairs. The defendant seemed to me to have made that suggestion up on the spot, seeking to distance herself from something she must have known was damaging to her case.
45. Rather, this text seems to me to be a clear recognition that the Property and the two in joint names constitute "ties" that need to be undone if the parties were to separate permanently (and, by implication, that their other business affairs were already separate and would not need to be rearranged). In relation to the Property her proposal is not just that the claimant should pay off the Lloyds loan taken by her, which would be sufficient if she regarded the Property as hers and having been encumbered on his behalf, but that it be transferred to the claimant, presumably without payment as she apparently contrasts this with the sale of the properties in joint names. It is in my judgment a clear indication that the defendant recognises that the Property is regarded as held for the claimant.
46. The claimant also relies on a text exchange on 29 September 2017 (p 143). I do not have the full context but it appears to have been at a time when they were not living together and to begin with the defendant asking the claimant to deal with some court proceedings that had been issued against them, presumably in relation to one of their properties. She then says:

"Don't know if I should say I was in hospital all day Saturday with heart problems"

47. The claimant responds that she should deny receipt of the court documents and that he will deal with the claim, and then says:

"Enjoy whatever life u got left as we don't think until it's too late, my friend Tahir also had minor heart attack few weeks ago, take care.

I don't want to sound funny about it but please make sure my Mum's property 4 Richmond Crescent stays with me, as it means a lot to me..."

to which the defendant replies:

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“No one is troubling me. Just when I am not with you I shut down. I can’t help how I feel. Long time with you got used to your foundation. Lol. Yes your property is safe. I’m not popping [off] yet! Huggy Bear!”

48. The defendant’s account of this is that at the time she was desperately trying to get back together with the claimant and was prepared to say anything that would please him. She said she was astonished that after she told the claimant of her health problems he responded by talking about what would happen to a property if she were to die. I can accept that the nature of their relationship was that the defendant was keen, even desperate, to get back together after periods of separation, despite the controlling nature of the claimant in that relationship that re-emerged as soon as they did resume living with each other.
49. No doubt the claimant’s response to her health problems was, insofar as it was personal, at best rather minimal as an expression of sympathy or concern, and could well be said to be insensitive in going on to address property issues, as he seems to have recognised himself. But I am not satisfied that this is a sufficient explanation for what is said here by the defendant herself. If the defendant thought at the time that the Property was hers and that the claimant was demanding that she give it back to him as a precondition to getting back together, she would more likely have phrased this somewhat differently, perhaps as an offer to give it to him to induce him to reconcile. Instead she acknowledges it as “your property”, apparently whether they do or do not get back together, which is in my judgment indicative that that was how she knew he regarded it, and also that she knew that he did as well.

Discussion and conclusion

50. I do not doubt that the claimant was a very controlling individual during his relationship with the defendant and their children. There is a considerable amount of written material, in addition to the witness evidence, that makes that clear. It does not show the claimant personally in a good light at all or evoke any sympathy for him or his conduct in those relationships. I have not referred to this in any detail as it could I think only add to the distress of other family members to do so in a public judgment. Nor do I doubt that if the motive of the claimant and/or defendant in transferring the Property to the defendant was to prevent or deter any claim by Mr Aziz to recover it, they acted dishonestly in doing so and falsely representing that it had been sold for £120,000. However, neither of those issues is determinative of whether the parties, at the time of the transfer, agreed that notwithstanding that transfer it was still regarded between them as being the claimant’s property.
51. Their own evidence now as to what was discussed at the time is of course diametrically opposed, unsurprisingly as they are now in a bitter dispute. Nor is there any contemporaneous documentation that sheds light on the issue one way or the other. The file of the solicitor who acted at the time is not available to show what he was told about the reason for the transfer. I have rejected the suggestion of the claimant that the solicitor advised that the transfer would be better protected against being set aside if it falsely stated a consideration; the suggestion by the defendant in her witness statement (p 103) that the same solicitor, apparently aware that it was a gift but not being told of any intention to defeat claims, recommended for an unexplained reason that “a figure be put on the transfer” is similarly incredible.

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52. In the circumstances, the best available evidence is that of how the parties themselves subsequently acted and corresponded with each other in relation to the property. I do not place any significant weight on correspondence with third parties, such as the letter by the claimant to his father, or what was written in response to allegations made against him, or to the tenant, since all of that correspondence is likely to have been composed to present to third parties whatever picture may have seemed to be expedient at the time.
53. As between the parties themselves, however, there is in my judgment sufficient material to be confident as to how they regarded the matter.
54. Firstly, I reject the defendant's contention that the claimant gave her the property because he did not want it, or that it was a burden, or held bad memories of his relationship with his parents or that he wanted her to own it in order to spite his father. All of that would be completely inconsistent with his thereafter having continued to manage the property as he had since it was transferred by his father, and receiving and dealing with the rents as I am satisfied he did. It would be even more inconsistent with his having, as the defendant claimed, exercised his coercive control over her to insist on doing this, refusing to allow her to deal with the property or collect the rents herself, especially when he is not said to have done so in relation to other properties in her name.
55. The suggestion that the claimant was concerned to thwart any potential claim by his father is not implausible. Although by the time the transfer was made in early November 2012 it was some months since his father had told his solicitors not to proceed with such a claim, it was only a few days before his father returned from Pakistan and further disputes arose involving, according to Mr Aziz, a refusal to let him return to live in the property and/or, as the claimant says, more false allegations against him and the resurrection of the claim of fraud. It would not be surprising if the claimant had had wind of that return, and he may have been concerned that it would lead to the sort of allegations that it in fact did.
56. It is of course correct as Mr Mohammed submits that if a transfer to the defendant was to be effective to defeat the claim she would have to be the beneficial as well as the legal owner (and that would not have been enough unless she was a bona fide purchaser for value) but it would be unrealistic to infer that it must therefore have been the claimant's intention to transfer on that basis. The claimant has demonstrated that he was quite willing to disguise the nature of his transactions from the outside world to suit his purposes, as he did by inserting the false statement of consideration in the transfer and later creation of a sham charge over the property. If his father had brought a claim, I have no doubt the claimant would for the purposes of opposing it have insisted that he had sold the Property in good faith to the defendant for £120,000. But that does not mean that that is what had happened.
57. I am satisfied that the claimant did continue to manage the Property and receive the rents as his own money, and I reject the contention that he did so by exercise of coercive control over the defendant. Whatever the position in relation to other aspects of their domestic and family relationships, there is no evidence (beyond generalised assertion) that the claimant took any such approach in relation to other properties held by the defendant. He exercised control over the Property, I find, with the defendant's consent, and the fact that this property was dealt with differently from the others in her name indicates that they both regarded it as having a different status, consistent with the claimant's contention that it was regarded as his.

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58. The defendants' text messages in January and September 2017 are in my view, for the reasons given above, clear indications that she regarded the Property as being the claimant's and not hers. Her threat to sell it in 2016 and her attempts at that time to gain control of it and of the rents paid were, in my view, not done with a view to recovering what she had always considered to be hers but in order to exact revenge on the claimant for having broken up with her, in a way that she knew would particularly impact on him.
59. Insofar as it is suggested that the claimant has invented the claim he now makes to exact his own revenge on the defendant for leaving him and marrying someone else, as she now has, I reject that. I do not overlook the fact that since he discovered her remarriage in 2018 the claimant has in correspondence demanded that in addition to returning the Property to him the defendant should also transfer to him the two jointly owned properties, or that evidence was given of other proceedings having been initiated between them (Mr Mohammed objected to my being told their outcome) or that he had made oral threats implying he would bring claims in relation to other properties owned by the defendant. No claims to any other properties have in fact been made and none of the other threats made is in issue before me, and even if such threats were made and are not well founded, it does not affect the evidence that I have relied on.
60. I find therefore that it was agreed between the claimant and defendant, at the time the Property was transferred to her, that it would nevertheless continue to be regarded as owned by him. That agreement must have come from their discussions at the time, and is therefore an express agreement. It is not necessary to make findings as to the exact form of words used, though I should say I am not satisfied that they included express references to her holding as trustee for his sole beneficial interest, such as the claimant has pleaded. It is not necessary that such words should have been used; the essential element was the recognition of continued ownership "however imperfectly remembered and however imprecise the terms used may have been" to adapt Lord Bridge's words in the often-quoted passage from *Lloyds Bank Plc v Rossett* [1991] 1 AC 107 at p 132.
61. Mr Mohammed submits that in order for there to be an enforceable constructive trust it must be shown that the claimant has acted to his detriment in reliance on the common intention as to ownership, and that no such reliance can be shown in relation to any of the matters occurring after the transfer which were all, he submits, to the claimant's advantage rather than his detriment. But this misses the point; the detriment to the claimant consists in his having transferred legal title to the Property to the defendant in reliance on her agreement that it would still be treated as owned by him, not on anything done thereafter.
62. Mr Mohammed further submits that it must also be shown that it is inequitable for the defendant to resile from the common intention, and that it is not inequitable in circumstances where the transfer was a sham intended to deceive others. However, insofar as it was such a sham, its purpose was one that the defendant knew about and realistically can be assumed to have shared, and so however disreputable it may have been in relation to others, as between these parties it cannot be said to be inequitable to require the defendant to comply with what she agreed.
63. I find therefore that the Property is held by the defendant on constructive trust for the claimant. There will be judgment for the claimant accordingly. There will be matters

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arising, such as the manner in which to deal with the Lloyds loan that is accepted to be the claimant's responsibility, which I invite the parties to reflect in an agreed order.

64. The defendant raised a number of matters by way of counterclaim, as follows:
- i) By para 18 of the Defence she sought an order that the claimant pay to her the whole sum originally advanced by Lloyds. That was not pursued at trial.
 - ii) By para 19 and the prayer for relief, she sought an order that the claimant should pay immediately to her the whole balance now outstanding on the Lloyds loan. This appears to be based on an assertion that the claimant agreed to repay the Lloyds loan on demand, but there is no foundation for that. No doubt the claimant is obliged to provide funds to meet payments due to Lloyds as they fall due, and if the defendant has in the past been obliged to make payments for which she has not been reimbursed she must now do so, but I see no justification for making accelerated payment of sums that are not yet due.
 - iii) By para 21, she seeks an account of all rents received by the claimant from the property. In view of my findings on the claim, that element must be dismissed.
65. I will list a date for this judgment to be handed down remotely, without attendance by either side. If there are matters arising that cannot be agreed, counsel should provide my clerk with agreed dates of joint availability and a time estimate for a subsequent hearing, if possible to be dealt with remotely.