Neutral Citation Number: [2022] EWHC 2872 (Ch)

Case No: BL-2019-000427

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch)

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 14 November 2022

Before :

MR DAVID HALPERN KC SITTING AS A HIGH COURT JUDGE

- -

Between :
BALWANT SINGH GILL

Claimant

- and –
(1) JASHPAL SINGH THIND
(2) BALJIT GILL THIND
(3) JASHPAL SINGH THIND, BALJIT GILL THIND, AVNEESH SINGH THIND AND JEEVAN SINGH THIND
(sued as trustees of the Thind SSAS Pension Fund)

Defendants

Claim No: CR-2021-000726

AND IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch)

IN THE MATTER OF JEEVES ESTATES LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006 s.994

Between :
BALWANT SINGH GILL

Petitioner

- and –
(1) JASHPAL SINGH THIND
(2) BALJIT GILL THIND
(3) JEEVES ESTATES LIMITED

Respondents

- -
- -

Mr Donald Lilly (instructed by **Candey Ltd) and Mr William Stewart-Parker** (of Candey Ltd) for the **Claimant and Petitioner**
Mr John Randall KC and Mr Robert Mundy (instructed by **George Green LLP)** for the **Defendants and Respondents**

Hearing dates: 11-14, 17-21 and 27-28 October 2022
Draft judgment to parties: 4 November 2022
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Approved Judgment

Remote hand-down: This judgment will be handed down remotely by circulation to the parties or their representatives by email and release to The National Archives. A copy of the judgment in final form as handed down should be available on The National Archives website shortly thereafter but can otherwise be obtained on request by email to the Judicial Office (press.enquiries@judiciary.uk). The date and time for handing down is deemed to be at 10:30am on 14 November 2022

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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MR DAVID HALPERN KC SITTING AS A HIGH COURT JUDGE

Mr David Halpern KC :

1. This is the trial, as to liability only, of a Part 7 Claim and an associated Section 994 Petition. It arises out of a very unfortunate family dispute between Balwant Singh Gill ("**Mr Gill**") and his daughter, Baljt Gill Thind ("**Mrs Thind**"), and her husband, Jashpal Singh Thind ("**Mr Thind**"). The dispute concerns the beneficial ownership of shares in three family companies, Jeeves Estates Ltd ("**JEL**"), Jeeves Investments Ltd ("**JIL**") and Simicare Ltd ("**Simicare**").
2. Mr Gill claims that he is legally and beneficially entitled to the sole issued share in each of JIL and Simicare and to one third of the shares in JEL. The Thinds' case is that he received the JIL and Simicare shares on trust for their children and that he received 100 of the 300 shares in JEL on trust for all his grandchildren.
3. The alleged trusts of the shares are said to have been created by virtue of conversations between the parties. Despite the considerable number of trial bundles, there is a distinct

absence of documents recording the parties' intentions at the date of the alleged creation of each of the trusts. The issues in the case therefore turn to a significant extent on oral evidence. The documents in the case mostly post-date the alleged creation of the trusts and are relevant primarily insofar as they do, or do not, corroborate the oral evidence.

4. This makes it difficult to set out the facts in full before considering the oral evidence, but I give a brief overview of the salient facts which are agreed or clearly emerge from the documents. I confirm that, although I have referred only to the documents which I consider most relevant in helping me to piece together the facts, I have taken into account all the numerous documents to which I have been referred.

The facts in outline

5. Mr Gill is the Claimant and Petitioner. He was born in Punjab in 1939. He is now 83. He came to England in 1963, shortly after marrying his wife Baljinder Kaur Gill ("**Mrs Gill**"). I am told that Mrs Gill speaks no English; she is not a party to the proceedings and was not called as a witness.

6. The Gills have four children:

   (1) Kamaljit Kaur Khela ("**Mrs Khela**"), who lives in Canada with her husband Kundan Singh Khela. They have a daughter and a son.

   (2) Mrs Thind: She and Mr Thind have two sons, Avneesh Singh Thind ("**Avneesh**" born in 1997) and Jeevan Singh Thind ("**Jeevan**" born in 1999), and a daughter, Simran Kaur Thind ("**Simran**" born in 2001). Mr and Mrs Thind, Avneesh and Jeevan are together the trustees of the Thind SSAS Pension Fund ("**Thind SSAS**"). Mr and Mrs Thind are the First and Second Defendants and Respondents. The Thind SSAS is the Third Defendant.

   (3) Ranjjett Benning ("**Mrs Benning**"): She and Mr Benning live in Canada and have two daughters.

   (4) Kuldeep Singh Gill (I shall refer to him as "**Kuldeep**", without intending any disrespect, in order to distinguish him from Mr Gill): He was married for the first time in December 2008 but was divorced by 2010. He re-married in 2016 and has one child by his second wife.

7. Mr Thind is a qualified pharmacist. The Thinds incorporated Aveycare Ltd, which bought Sharps Pharmacy in Brighton in 1999. Following the sale of that business, he has not worked as a pharmacist but has been a successful entrepreneur.

8. It is common ground that Mr Gill made at least two interest-free loans to the Thinds, each of which was repaid within a few months. The first was a loan of just under £10,000 to assist with the purchase of Sharps Pharmacy. The second was a bridging loan of £200,000 towards the purchase by the Thinds of their current home in 2008, which was repaid following the sale of their previous home.

9. It is common ground that the family was a very close one until about the beginning of 2018:

   (1) Mrs Thind used to see her parents several times a week. Mr Thind also visited them regularly.

   (2) The Gills took an active role as grandparents in providing childcare for the Thind children and had a close relationship with them.

(3) There was regular contact between Mrs Thind and her two sisters in Canada. The families in England and Canada met up annually.

(4) However, the Thinds say that there was not the same warmth or closeness between themselves and Kuldeep and that they did not trust Kuldeep following an alleged incident in 2010. They were aware since 2008 that Mr and Mrs Gill had each made wills leaving their residuary estates to Kuldeep. Kuldeep was made bankrupt in 2013 and was automatically discharged in 2015.

(5) Mr Gill became very ill in late 2017 and there was a risk that he was about to die. Mrs Thind's evidence, which Mr Gill disputes, is that she heard him say to Kuldeep: "*You are to keep quiet. You are not going to be involved in the running of the business. It is your food for life*." She says that she and Mr Thind understood this to be a reference to The Laurels, St Margaret's and Sherwood. It is clear that, for whatever reason, relations between the Gills and the Thinds became increasingly strained during 2018. In August 2018 the Gills and the Thinds went to Canada for a family event; by that time they were no longer on speaking terms.

(6) Mrs Khela remains close to Mr Gill and to Kuldeep. It therefore appears that the family has split into two camps: one comprises Mr Gill, Kuldeep and the Khelas; the other comprises the Thinds and the Bennings.

(7) There was evidence that it is a custom within Sikh families (or at least this family) to treat all grandchildren as siblings and not as cousins. When this is coupled with the family's ethos of seeking to provide for the next generation, it makes it plausible that the parties might have intended the shares in JEL to be held on trust for all grandchildren and not merely for the Thind children. Of course, I still have to decide whether there is in fact evidence of that intention.

JEL

10. JEL is the Third Respondent. It was incorporated in 2003. Mr and Mrs Thind were, and remain, the director and secretary respectively. According to the annual return for 2004, the one issued share was held by "*Mr and Mrs J S Thind*". According to the annual return for 2006, the share was transferred to Mr Thind alone. (In relation to all the company documents referred to in this judgment, I have stated where the documents refer to the shareholder as a trustee. Where this is not stated in this judgment, it is because there is no such indication in the documents.) According to the annual return filed in 2008, 200 shares were held by Mrs Thind and 100 by Mr Gill "*as at*" 27 November 2007. This remains the position. (I shall summarise the parties' cases in relation to Mr Gill's 100 shares when I deal with The Laurels.)

JIL

11. In 2004 JIL was incorporated for the purpose of buying Flat 55, Bernhard Baron House, Henrique Street, London E1 ("**Flat 55**"). The purchase was duly completed in the name of JIL for £220,000, with the aid of a mortgage loan from The Woolwich of £164,975. It is common ground that Mr Gill played no part in the acquisition and made no financial contribution.

12. Mr and Mrs Thind have at all times been respectively director and secretary of JIL. The annual return for 2004 gives the name of the shareholder as "*Mr and Mrs B S Gill (Trustees)*", and the Register of Members refers to "*Mr and Mrs B S Gill (as Trustees*

for Avneesh, Jeevan and Simran Thind)", but there is no evidence that any share was actually issued to them. The annual return for 2004 is signed by Mr Thind and I am told that it was prepared at his request by Mr Rakesh Gupta ("**Mr Gupta**"), whose writing appears on the form. Mr Gupta was an accountant at Harrison Bernstein, who were accountants to all the companies until 2017. Subsequent annual returns gave the same information until 2016, when the return included a statement that Mr Thind was a person with significant control ("**PSC**"). However, the annual return for 2018 states that on 21 August 2018 "*B K Gill Trustees and B S Gill Trustees*" transferred the share to Mr Thind.

13. Mr Gill's case is that he had no conversation with the Thinds about acting as a trustee of the share capital of JIL. He never agreed to act as trustee, he did not know that the share had been transferred into his name and he does not recall that he ever received any document in respect of the share. He accepted that he did not provide any consideration for the share and could not explain why it had been transferred to him, but he maintained that he is entitled to it beneficially because he never agreed to a trust.

14. Mr Thind's evidence is that he was advised by Mr Rakesh Patel ("**Mr Patel**") of Harrison Bernstein that, if he put the share in JIL into the name of a grandparent as trustee for their three children, the asset would be outside his estate for Inheritance Tax purposes. Mr Patel also advised him that this could be done by means of a bare trust which did not need to be in writing. He discussed this with Mr Gill, who agreed to be a trustee. In September 2015 Mr and Mrs Gill signed an undated stock transfer form, intended to take effect on their deaths. Mr Thind subsequently dated it in 2018 in order to prevent Kuldeep (as residuary beneficiary of Mr and Mrs Gills' wills) from obtaining control after their deaths.

LNH, The Laurels and JEL

15. In 2005 The Laurels Nursing Home (Hastings) Ltd ("**LNH**") was incorporated. In the following year JEL bought the property known as The Laurels Nursing Home at 71 Old London Road, Hastings, together with the share capital of the company which ran the business. (I shall use the term "**The Laurels**" to refer to the property and/or the business as appropriate, unless it is necessary to distinguish between them.) The Laurels was bought with the aid of a mortgage of a little under £1m from Abbey National and a cash payment of about £400,000.

16. Mrs and Mr Thind have at all times been respectively director and secretary of LNH. According to the annual return for 2006, 25 shares were held by Mrs Gill, 37 by Mr Thind and 38 by Mr Thind (with no mention of any trusts). Somewhat curiously, although the return filed in November 2007 gave the same details for the shareholders as at 4 October 2007, the return filed in December 2008 stated that all the shares had been transferred to JEL on 27 February 2007. Since that date LNH has been a wholly-owned subsidiary of JEL.

17. It is common ground that Mr Gill paid £133,000 towards the purchase price, this being approximately one third of the cash which was required in addition to the mortgage, and that 100 of the 300 shares in JEL were issued to Mr Gill after LNH had become a subsidiary of JEL. It is also common ground that Mr Gill has received back approximately £108,000.

18. There is a dispute between the parties as to the terms on which Mr Gill holds the shares in JEL:

(1) Mr Gill's evidence is that he agreed to enter into a joint venture with Mr and Mrs Thind in relation to The Laurels and he therefore owns his shares absolutely. He says in his trial witness statement that Mr Patel advised him to take £108,000 out of the business; it is not clear whether he is saying that he was advised to take it as a dividend. He accepts that he has not paid tax on this money, but he blames Mr Povey who prepared his tax returns.

(2) Mr Thind's evidence is that, during a family gathering in December 2005, he told Mr Gill about the Thinds' plan to buy The Laurels and to borrow part of the purchase price from the Bank. He says that Mr Gill replied: "*I will lend you the money but give it to the grandchildren, one third of it*". The cash contribution for the purchase was £400,000, and Mr Gill lent £133,000.

19. Between 2012 and 2014 a substantial extension was built to The Laurels, funded by a loan from Lloyds. There is no evidence that Mr Gill advanced any money or played any part in relation to that loan.

Simicare and St Margaret's

20. In 2005 Simicare was incorporated (it was originally called Thind Investments Ltd). Mrs and Mr Thind have at all times been respectively director and secretary of Simicare. According to the annual return filed in 2008, Mrs Thind was the holder of the sole share in Simicare "*as at*" 4 October 2008. According to the annual return filed in 2009, Mr Thind was the holder of the sole share in Simicare "*as at*" 4 October 2009. The annual return for 2013 states that the sole share was transferred on 5 October 2012 by Mr Thind to Mr Gill. The annual return for 2016 states that Mr Gill is the PSC, the nature of his control being "*the trustees* (sic) *of that trust (in their capacity as such)*". The annual return for 2018 states that Mr Gill transferred the one share to Mrs Thind on 21 September 2018, and it records that she is the PSC.

21. On 1 June 2011 Simicare bought the land and business of St Margaret's for £1,565,000 plus the value of stock. The purchase was made with the aid of a loan of £1,173,000 from Lloyds Bank ("**Lloyds**"). It is common ground that Mr Gill played no part in the acquisition and made no financial contribution.

22. In August 2013 an account was opened with Nationwide in Mr Gill's name, with no mention of any trust. The account was used to pay school fees for the Thind children. Mr and Mrs Thind say that Mr Gill signed the documents required to open the account and also signed cheques for school fees. Mr Gill maintains that his signatures are forged. The handwriting experts were unable to reach any concluded view on these documents, due to their poor quality.

23. The parties' respective cases in relation to Simicare are broadly similar to their cases in relation to JIL. There is no evidence that any document was ever given to Mr Gill in respect of the share. He says that he was unaware that the share had been put in his name, but he claims it beneficially on the basis that he never agreed to be a trustee.

24. The Thinds' case is as follows:

(1) In or about February 2010 they became interested in buying St Margaret's Nursing Home, 20 Twiss Avenue, Hythe CT21 5NU ("**St Margaret's**"). They intended sending Avneesh and Jeevan to a private school in the near future and using the profits generated by St Margaret's to fund the school fees. Mr Patel advised Mr Thind that the dividends would not be taxed as his income if the share capital was in a grandparent's name.

(2) In or about April 2010 the Thinds and their children went out for dinner with Mr and Mrs Gill. On that occasion Mr Thind told Mr Gill about the intended purchase of St Margaret's and Mr Gill agreed once again to act as trustee for their children.

(3) In or about June 2013 Mr Thind discussed this with Mr Patel, who advised that a bank account be opened in Mr Gill's name in order to receive dividends and pay school fees. Mr Thind mentioned this to Mr Gill, who agreed to open an account at Nationwide as trustee for the Thind children. Mr Gill duly opened the account in his name (albeit that it does not state that he is a trustee) and handed the paperwork to Mr Thind, who registered the account for internet banking with Mr Gill's consent.

(4) They moved Avneesh and Jeevan from a state school to a fee-paying school in September 2013. From that date dividends from Simicare were paid into the Nationwide account and used to pay school fees.

(5) Mr Gill signed an undated stock transfer form in September 2015, which Mr Thind completed in 2018, in order to prevent the share from falling into Kuldeep's hands after Mr Gill's death.

The 2011 Option

25. On 8 September 2011 an option agreement was signed by Mrs Thind and Mr Gill ("**2011 Option**"):

(1) Clause 1 refers to Mrs Thind as "*owning*" 200 shares in JEL and Mr Gill as "*owning*" 100 shares, with no mention of any trust.

(2) Clause 2 provides that, on the death of either party, his or her personal representatives and the survivor respectively will have put and call options over the others' shares.

(3) Clause 3 provides for any resulting sale to be at a fair price, with a provision for valuation.

(4) Clause 5 states that neither party will encumber his or her shares without the other's consent.

26. The evidence as to the genesis of this document is as follows:

(1) Mr Thind's evidence is that in the spring of 2010 his financial adviser, Mr Chris Woolhouse ("**Mr Woolhouse**") of St James's Place Partnership, expressed concern that there was no document to prove the trust of Mr Gill's shares in JEL, the particular concern being about Kuldeep acquiring the shares after Mr Gill's death. Mr Thind discussed this with Mrs Thind, who shared his concern, and he also discussed it with Mr Gill on a trip to Dubrovnik in August 2010. However, the matter was not progressed until Mr Woolhouse reminded him of it in the summer of 2011. Mr Thind then instructed Mr Woolhouse's colleague, Mr Mike Constantine, to draft an appropriate document. Mr Thind's witness statement records his understanding of the effect of the document when it was signed: "*if Mr Gill died, Baljit and I would receive the shares automatically so we could settle the trust ourselves.*" In cross-examination he explained that he used the term "*settle*" to mean winding up the trust by paying out the beneficiaries.

(2) The limited documentary evidence shows that Mr Constantine sent a rudimentary form to Mr Thind to be completed as the basis for drafting the document. The form did not make any reference to a trust. Neither Mr Woolhouse nor Mr Constantine gave evidence.

(3) Mrs Thind's evidence is that she left this to her husband, but that she shared his concern about what Kuldeep might do after Mr Gill's death.

(4) Mr Gill's evidence is that Mr Thind brought the document to his house without prior notice and asked him to sign it, which he did.

27. Read objectively, the 2011 Option says nothing about any trust of Mr Gill's shares in JEL. However, I bear in mind that what matters for the purpose of these proceedings is what conclusions, if any, I can draw from this document as to the state of mind of each of the parties in 2011.

Sherwood and WHL

28. In 2012 the Thind SSAS was formed for the purpose of buying the property known as Sherwood House, 209-211 Maidstone Road, Rochester ME1 3BU ("**Sherwood**"), which was a former care home in a dilapidated condition. The property was bought in the name of the SSAS for £395,000. Major works of refurbishment were duly undertaken, following which the Care Quality Commission reinstated Sherwood's licence as a nursing home.

29. Watts Healthcare Ltd ("**WHL**") was also incorporated in 2012. Mr Thind has at all times been the sole director. According to the first annual return, Mr Thind was the holder of the three shares in WHL. On 1 November 2013 he transferred his shares to JEL, which is stated in the annual return for 2016 to be the PSC. Since that date WHL has been a wholly-owned subsidiary of JEL.

30. It is common ground that Mr Gill transferred £280,000 to WHL in nine instalments between November 2012 and November 2014, and that he received back £50,000 in July 2015 and £200,000 in December 2016.

31. Mr Gill's case is that he made an oral agreement to enter into a joint venture with Mr and Mrs Thind in respect of Sherwood on the same basis as previously, i.e. that he would have one third and they would have two thirds. He says that £200,000 was his contribution of approximately one third of the purchase price of £395,000 and that the remaining £80,000 was his contribution of approximately one third of the cost of the initial refurbishment works. He says that he did not realise that the property had been bought in the name of the Thind SSAS and he claims, for the purpose of section 994, that his one-third share in JEL should be valued on the assumption that it includes the property. He claims that, pursuant to the joint venture, he had a role in the refurbishment works.

32. The Thinds' case is that Sherwood was bought by the Thind SSAS because it had the cash available and they were advised that this would be a permitted investment. However, they were advised that the SSAS could not run a business, which is why the business was acquired by WHL. They claim that the £280,000 from Mr Gill was a loan, of which £250,000 has been repaid. It is accepted that Mr Gill provided a small amount of help with the renovation of Sherwood, but it was not substantial.

Taking stock

33. I pause to take stock of what emerges from the evidence summarised above.

34. As regards JEL, Mr Gill is registered as holder of 100 shares and Mrs Thind as holder of 200 shares. The value of JEL lies in the fact that it is the owner of the The Laurels business and is the holding company of LNH (which is the legal owner of The Laurels land) and of WHL (which is the legal owner of the business, but not the land, of Sherwood). The issue is whether Mr Gill holds his one-third shareholding on trust. It is common ground that he paid £133,000 at the time of the purchase of The Laurels and sums amounting to £280,000 over the period of the purchase and refurbishment of Sherwood, but there is a dispute as to the nature of these payments. Mr Gill says that these sums were his capital contribution to a joint venture with the Thinds; they say that these were loans. If Mr Gill has a beneficial interest in JEL, an issue arises as to the fact that the Sherwood land is registered in the name of the Thind SSAS.

35. As regards JIL, the sole share is said to have been issued to Mr and Mrs Gill. They have never executed a transfer of the share; however the annual return states that the share was transferred to Mr Thind in 2018. JIL owns Flat 55. Mr Gill accepts that he never paid for the share and made no contribution to the purchase of Flat 55, but he claims the share (and hence the entire value of JIL) on the basis that he was named as shareholder without any trust being declared. The Thinds' case is that, if he is still the shareholder, he holds the share on an express or resulting trust.

36. As regards Simicare, the sole issued share is said to have been transferred by Mr Thind to Mr Gill in 2013. Mr Gill has never executed a transfer of the share; however the annual return states that it was transferred to Mrs Thind in 2018. Mr Gill claims the share (and hence the entire value of Simicare, which lies in its ownership of the St Margaret's business) on the basis that he was named as shareholder without any trust being declared. The Thinds' case is that, if he is still the shareholder, he holds the share on an express or resulting trust.

The purported trust deeds

37. The Thinds rely on two documents entitled "*Bare Trust*". One is a typed document containing the handwritten date 7 January 2005. It purports to be a declaration signed by Mr and Mrs Gill as settlors and Mr Gill as trustee, stating that Mr Gill holds the one share in JIL as trustee for Avneesh and Jeevan. The signatures of Mr and Mrs Gill purport to be witnessed by Audra Cullen.

38. The other document is in the same form, save that it relates to the one issued share in Simicare, it bears the handwritten date 1 August 2015 and the signatures purport to be witnessed by S M Gear.

39. I deal with these documents at this stage in my judgment for two reasons. The first is that I must decide whether or not these documents form part of the indisputable documents in the case, alongside those referred to above. The second is that, if I am able to reach a conclusion on the authenticity of these documents, that conclusion might help me to assess the honesty and credibility of the witnesses.

40. Mr Gill's case is very simple: the documents are forgeries which were probably created in 2018 after the relationship between the parties had broken down.

41. Mr Thind's evidence is in essence as follows:

    (1) He took the two documents to Mr and Mrs Gill one weekend in September 2015, and the Gills duly signed them in his presence.

(2) The trust deeds were in favour of all three children, but after they had been signed he and his wife decided that they should be amended so as to exclude Simran. He therefore produced fresh versions omitting her name and took these to the Gills. The documents were returned to him signed but undated. He subsequently added the dates and asked two of his employees to sign as purported witnesses.

42. Each side instructed a handwriting expert, Mr Michael Handy for Mr Gill and Ms Ellen Radley for the Thinds:

(1) The experts produced a joint report stating that there was "*strong evidence*" that Mr and Mrs Gill did not sign either document, and that the signatures were freehand simulations by someone else.

(2) Ms Radley explains in her report that she uses the term "*strong evidence*" to mean a "*highly confident opinion, which ... is a relatively narrow band slightly below [very strong evidence]. There may be a small restriction or limitation of some kind on the examination. An alternative explanation is considered unlikely*". She defines "*very strong evidence*" as being a "*very narrow band of opinion of very high confidence which just falls short of the conclusive level. An alternative explanation is considered highly unlikely.*"

(3) The experts also examined the earlier version of the Simicare trust deed which included Simran. They agreed that the evidence was "*inconclusive*" as to whether Mr Gill's signature was genuine. Ms Radley thought that there was "*limited positive evidence*" that Mrs Gill's signature was genuine, whilst Mr Handy thought that the evidence was "*inconclusive*" in relation to her signature.

(4) In view of the level of agreement between the experts, the parties did not call them to give oral evidence.

43. Mr John Randall KC, leading Mr Robert Mundy, submitted on behalf of the Thinds that the court is not obliged to accept handwriting evidence. That is, of course, correct, but in the present case there would need to be strong contrary evidence to persuade me to depart from the unanimous opinion of the experts. I do not regard their conclusion on the two trust deeds which are relied on by the Thinds as being undermined by the less clear-cut evidence in relation to the earlier version of the Simicare trust deed.

44. The evidence relates to communications with Lloyds during 2015 is as follows:

(1) JIL banked with Lloyds at its Chatham branch. Mr Trevor Shave, who gave evidence, was the Thinds' relationship manager until his retirement in 2018. It is clear from his evidence that he was not qualified or authorised to decide what evidence was needed for compliance purposes. His role was to pass on requests from Ms Lynne Hodgson of the compliance team, and no doubt to feed back to Ms Hodgson any relevant information obtained from the client. It was also part of his role to manage the inevitable irritation which some clients would display when asked to provide information for compliance purposes. He emailed Mr and Mrs Thind on 2 April to alert them to the fact that Ms Hodgson might contact them seeking information.

(2) On 7 April Ms Hodgson did contact Mr and Mrs Thind to say that the Bank's records showed that Mr and Mrs Gill were the "*shareholders/ultimate beneficial owners*" of JIL and that the Bank needed Key Account Party Forms to be completed by them, as well as copies of their passports or driving licences. Ms Hodgson made no reference to any trust of the JIL share.

(3) On 15 April Mr Thind emailed Trevor Shave, saying: "*I am perturbed at the amount of time that this is going to take, would Lynne rather I just walk down the road and open an account at another bank. What is the risk to the bank?*" Mr Shave responded 20 minutes later, saying that he would speak to Ms Hodgson and do his best "*to short circuit things*".

(4) On 3 June Mr Shave emailed Mr and Mrs Thind, referring to a conversation with Mr Thind and repeating the request for Key Account Party Forms to be signed by Mr and Mrs Gill.

(5) Mrs Thind says that she took Mr and Mrs Gill to the Chatham branch on 19 June 2015 when they each signed a Key Account Party Form for JIL. Mrs Thind says that she filled out most of the forms, whilst Mr Shave confirmed in his evidence that he wrote the name of the company (JIL), and that against the words "*If beneficial owner percentage of ownership of Business/Organisation*" he wrote "*50%*" on each form. The Key Account Party Forms are signed by Mr and Mrs Gill and no challenge has been made to the authenticity of those signatures.

(6) On 29 June Mr Shave emailed Mrs Thind, thanking her for her time earlier and saying: "*As discussed, can you kindly send me copies of the Trust Deeds in relation to the shares held in [JIL]*". (I am not sure why the request refers to Deeds in the plural, given that it relates solely to JIL). Mrs Thind replied the next day to say that Mr Thind would "*get the necessary paperwork asap*".

(7) On 27 August Harrison Bernstein sent an email to Mr Thind, attaching a document entitled "*Bare Trust Doc*". This document stated that Mr and Mrs Gill held the share in Simicare as bare trustees for Avneesh, Jeevan and Simran. There was space for the date and for the signatures of the trustees and the witness. (It is not clear why Harrison Bernstein included the name of Mrs Gill, who was shown on the annual return as trustee with Mr Gill of the share in JIL, but not the share in Simicare.)

(8) Mr Thind's evidence about the obtaining of the bare trust deed is as follows:

(a) At the time that the Nationwide account was set up in 2013, he thought it would be best if there was a document for the bare trust, and Mr Patel agreed. On 10 August 2013 he sent a text to Mr Patel "*to remind you, re setting up a bare trust for the children and Simicare shares*". Mr Patel agreed, but in the event this was not pursued, because Nationwide agreed to open the account without any such document.

(b) However, in late June or early June 2015 Mr Thind told Mr Patel that Lloyds now required evidence of the JIL trust. Mr Patel said that he would provide a document which Mr Thind could amend to use for both companies.

(c) Mr Patel sent the bare trust deed for the Simicare share to Mr Thind, who amended it by substituting JIL for Simicare. At this stage it named all three children as beneficiaries.

(d) Mr Thind says that his view at the time was that he did not need a trust deed for Mr Gill's shares in JEL for three reasons: (i) because Mr Gill held only one third of the shares; (ii) because he (Mr Thind) did not think one could name all the grandchildren as Mrs Benning might yet have children; and (iii) because those shares were already protected by the 2011 Option.

(9) On 1 September Mr Shave chased Mrs Thind, saying he needed a copy of the Trust Deed to show that Mr and Mrs Gill held the share in JIL on trust for "*the children*". Mr Thind emailed Mr Shave on 2 September 2015, attaching the bare trust deed. Mr Thind accepted in evidence that the version which he emailed to Mr Shave was unsigned and that it showed all three children as beneficiaries.

(10) On 11 September Mr Shave emailed Mr Thind to say that "*after much discussion, I hope we have reached a reasonable compromise to finalise compliance requirements for [JIL]. I have gained agreement that [a] letter from you, as director of the company, setting out the structure of the trust will suffice*". He then set out the form of the required letter, to be signed by Mr Thind. It was to include the following:

> "*Settlors:* *Mr Balwant Singh Gill*
> *Mrs Baljinder Kaur*
> *Type of Trust:* *Bare Trust*
> *Beneficiaries:* *Anveesh* (sic) *Thind*
> *Jeevan Thind*
> *Simran Thind*
> *The beneficiaries are under the age of 18 so they currently have a contingent interest.*"

Mr Shave said in evidence that the discussion to which his email refers was with Ms Hodgson.

(11) On 21 September Mr Shave sent a chasing email, which resulted in Mr Thind emailing a letter dated 22 September in the required form on JIL notepaper. Mr Thind's evidence is that he copied the text supplied by Mr Shave without reading it. The fact that he included the misspelling of "*Anveesh*" in his letter lends some support to his evidence on this point.

(12) On 23 September Mr Shave sent a further email saying that he had omitted one line from the draft letter, which should say: "*Trustee: Mr Balwant Singh Gill*". He set out a revised template in exactly the same form as previously (including the misspelling of "*Anveesh*"), save that he added the extra line. Later that day Mr Thind replied attaching a revised letter in the required form, which once again showed all three children as beneficiaries.

(13) Mr Thind's evidence about the signing of the trust deeds and stock transfer forms is as follows:

(a) In September he became worried about what would happen to the shares if Mr Gill died or became demented. He therefore asked Harrison Bernstein to provide stock transfer forms. One weekend in September he visited the Gills, taking with him these stock transfer forms, as well as the bare trust deeds for the shares in JIL and Simicare. He asked the Gills to sign the bare trust deeds for Lloyds' compliance purposes and to sign the stock transfer forms. He did so in case anything happened to either of them and to protect the shares from Kuldeep. The Gills duly signed the documents, which were undated. (These transfers have never been produced.)

(b) That evening, he became worried about the effect on Simran of being a named beneficiary, because she was suffering from anxiety and depression. He discussed this with Mrs Thind and they agreed that Simran should continue to be a beneficiary but that her name should be removed from the list of

beneficiaries. This was subsequently explained to Avneesh and Jeevan, but not to Mr Gill, because they wished to keep this within the immediate family.

(c) During the course of the next week he left the revised trust documents with Mrs Gill and returned the following weekend to collect the documents, which had been duly signed by Mr and Mrs Gill.

(d) The signatures had not been witnessed, but on the following Monday he took the two trust deeds to work and asked two members of his staff, Ms Sue Gear and Ms Audra Cullen, to sign as witnesses to the Simicare and the JIL trust deeds respectively. He inserted the date 7 January 2005 on the JIL document; his reason for backdating it was that he had told Mr Shave that the trust had been created in 2005 and he was embarrassed that the deed had not been created earlier. He inserted the date 1 August 2015 on the Simicare deed, but he cannot recall why he backdated it.

(14) The first time that the trust deeds saw the light of day was in a letter dated 19 November 2018 from the Thinds' solicitor, when the JIL and Simicare trust deeds were produced with no indication that they had been backdated.

45. I draw the following conclusions from the evidence summarised in paragraph above:

(1) The email from Ms Hodgson on 7 April described the Gills as "*shareholders/ultimate beneficial owners*" of the share in JIL. If she had checked at Companies House, she would have seen annual returns stating that the Gills were trustees. This suggests that she probably obtained the information from Mr Shave, who is likely to have heard it from the Thinds.

(2) Mr Shave said in cross-examination that Mr Thind's email of 15 April was not untypical of customers who objected to having to provide compliance documents to satisfy the Bank's remediation team. I find this answer to be surprising and not readily credible. Whilst I accept that some customers would find it irritating to have to provide the required information, I would not expect the response to be as intemperate and disproportionate as Mr Thind's email of 15 April (paragraph above). In my judgment this email provides some support for the conclusion that Mr Thind was unwilling or unable to provide the information.

(3) I am satisfied that Mrs Thind took Mr and Mrs Gill to the Bank on 19 June, where they met Mr Shave, and the Gills signed the Key Account Party Forms. I am satisfied that it was Mr Shave who wrote on the Forms that each of Mr and Mrs Gill was a 50% beneficial owner. Mr Shave's evidence is that this was a mistake. I shall return to this when I consider his evidence.

(4) Mr Shave's email of 29 June, asking for copies of the trust deeds in relation to the JIL share, is the first written reference, as between the Thinds and the Bank, to any trust. I am satisfied that the request must have originated from Ms Hodgson, and that it was made following receipt of fresh information, probably via Mr Shave. The information must have been given to Mr Shave either (i) at the meeting on 19 June, whether by Mrs Thind or by Mr Gill or (ii) following the meeting, in a conversation with Mr or Mrs Thind.

(5) Mr Thind's evidence is that he thought he needed the document solely to satisfy Lloyds' compliance requirements in relation to JIL. This does not explain why he asked Mr Patel to draft a document in relation to Simicare, given that Nationwide

had not required this when the account into which the Simicare dividends were paid was opened in 2013.

(6) Mr Thind forwarded the unsigned bare trust document to Mr Shave on 2 September. He has provided no satisfactory explanation as to why it was not signed before it was sent to the Bank, given that Mr or Mrs Thind used to see the Gills several times a week. He realistically accepted in cross-examination that "*I wouldn't expect a bank to act on an unsigned document.*"

(7) After Mr Thind had sent the unsigned document to Mr Shave, a further nine days passed before Mr Shave replied on 11 September referring to the "*reasonable compromise*", under which the Bank would be satisfied with a letter signed by Mr Thind. This is a very curious email:

(a) It is hardly surprising that Ms Hodgson would not have been satisfied with the unsigned trust document. What is surprising is that the Bank was willing to accept a letter instead of having sight of the signed version. Be that as it may, this is what Mr Shave asked for. The reference to "*finalising*" compliance requirements makes it clear that the Bank was not pressing for a signed version of the bare trust deed.

(b) Given that relations between the Thinds and the Gills were good at this time and given that they visited one another frequently, one would have thought that the obvious course for Mr Thind would have been to ask the Gills to sign the JIL Trust Deed, if there was indeed a trust. This would have provided the Bank with what it needed, without having to find a compromise solution.

(c) Mr Shave said in cross-examination that he must have had a conversation with Mr Thind which led to this email being sent. I consider it likely that it was this conversation which resulted in the Bank not pressing for the signed trust deed.

(8) I accept that on 22 and 23 September Mr Thind copied and pasted the text supplied by Mr Shave without noticing the misspelling of "*Anveesh*". However, the same cannot be said for the inclusion of Simran's name. If he and his wife had just decided that Simran's name should be excluded, he would surely have noticed the inclusion of her name. This points to the likelihood of the revised version of the trust deed being signed some time after 23 September.

(9) On Mr Thind's own admission, he asked members of his staff to sign the two trust deeds as if they were witnesses, when they had not in fact seen the deeds being signed. He also admits that he backdated both deeds, in the case of the JIL trust by more than 10 years. His explanation for backdating it is that he had told Mr Shave that there had been a trust for some years and he was embarrassed that the deed had only just been signed. However, Mrs Thind's evidence in her witness statement is that Mr Shave asked her at the meeting on 19 June "*if we could get a trust deed drawn up for Lloyds' compliance purposes*"; there was therefore no basis for Mr Thind's alleged embarrassment. In my judgment Mr Thind has not provided any good reason why he did not arrange for the deeds to be properly witnessed and why he did not explain to Mr Shave that the deed had only just been signed but evidenced a pre-existing trust.

(10) Mr Thind has not provided any satisfactory explanation as to why he proceeded to have the trust deeds signed by the Gills. It cannot have been because the Bank was insisting on this, given that Mr Shave had emailed on 11 September to say

that he would instead accept a letter signed by Mr Thind in lieu of the deed, and that Mr Thind complied with the Bank's request on 23 September.

(11) If the trust deeds had been signed by Mr and Mrs Gill before 22 or 23 September, I consider it likely that Mr Thind would have sent the signed deeds to Mr Shave instead of, or in addition to, the letter.

46. The provisional conclusions which I have drawn in paragraph above present a confused and equivocal picture. I am not satisfied that this evidence, by itself, proves that the trust deeds were forged. However I am satisfied that it points towards the deeds being forged and not towards the deeds being genuinely signed by the Gills in 2015. When this conclusion is considered together with the expert evidence, I am satisfied that the two trust deeds were forged, probably in 2018. In reaching that conclusion, I bear in mind the standard of proof of fraud set out in *Re B (Children) (Care Proceedings: Standard of Proof)* [2009] AC 11 at [15].

The proceedings

47. Mr Gill's Part 7 Claim was issued on 22 February 2019, together with an application for a freezing order and a proprietary injunction. The Thinds agreed not to dispose of their shares nor to dispose of the Laurels, St Margaret's and Sherwood until further order, but the balance of Mr Gill's application was adjourned and subsequently withdrawn, with costs payable by him.

48. Mr Gill then applied to continue derivative claims on behalf of Simicare, WHL, JIL and the Thind SSAS. This application was dismissed in December 2020.

49. On 22 April 2021 Mr Gill presented his petition under section 994 of the Companies Act 2006. The petition originally related to JEL, JIL and Simicare. However, immediately before the start of the trial, Mr Gill withdrew the petition insofar as it related to JIL and Simicare, on the basis that he claimed to be the sole shareholder and was therefore unable to petition as a minority shareholder.

50. There is no need to refer in this judgment to the numerous applications which were made in the course of the proceedings.

The Claimants' witnesses

51. Mr Donald Lilly, who appeared with Mr William Stewart-Parker for Mr Gill, gave the customary, but important, reminder of the observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [16-23] as to the fallibility of witnesses' memories.

52. Mr Randall referred to the observations of the Court of Appeal in *Natwest Markets Plc v Bilta (UK) Ltd* [2021] EWCA Civ 680, which focus on the correct approach for a judge to take where there are no relevant contemporaneous documents or none which are sufficiently helpful. This aptly describes the situation which is faced in the current case. The Court of Appeal said at [51]:

> "*Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence, the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness-*

box, especially when their version of events was challenged in cross-examination."

Mr Gill

53. Mr Gill's trial witness statement (his fourth statement, dated 10 December 2021) does not comply with PD57AC and is a very unsatisfactory document. The court at the Pre-Trial Review ordered him to make a fifth witness statement explaining how it came to be prepared. This fifth statement reveals that the trial witness statement was drafted by Candey, his solicitors, based on his three earlier witness statements, and was sent to him for comment. Comments were provided by email written by Kuldeep, based on a discussion between Mr Gill and Kuldeep. Accordingly, both Candey and Kuldeep had significant roles in the drafting of the statement.

54. He gave evidence for a full day (with slightly extended breaks at his request). At the PTR it had been agreed that an interpreter would be available on the basis that she would be needed only occasionally. In fact, it proved very difficult to understand his answers in English and therefore most answers were given in Punjabi and translated by the interpreter. It was not clear to what extent he was choosing to downplay his grasp of English in the witness box, but I am satisfied that he had understood the conversations in English, before the issue of proceedings, which formed the principal subject matter of the evidence. Importantly, he had no difficulty understanding the opening questions which were asked in cross-examination:

"*MR RANDALL: Mr Gill, have you ever held any property on trust for someone else in your family?*

A. No, sir, I never had any trust.

Q. Do you understand that if somebody holds property on trust they are holding it for someone else?

A. I understand that.

Q. And you have never done that?

A. Never ever in my life .

Q. So you understand what a trust is, but you have never done it?

A. Never, I did not make any trust in my life."

55. Mr Gill is in poor health and clearly found it very stressful to give evidence. That evening he was apparently taken ill and next morning his GP wrote to say that he was unfit to continue giving evidence. It was therefore agreed that his witness statement would stand as his evidence, together with such oral evidence as he had been able to give. However, the medical evidence was far from satisfactory.

56. After making every allowance for his age and infirmity and his difficulties in understanding and communicating in English, he was a very unsatisfactory witness. He came to court with an agenda and he was determined to use every question in cross-examination as a platform from which to set out (and frequently repeat) the points he wished to make. I found it difficult to determine whether his failure to answer questions was deliberate or not.

57. Insofar as the topics covered in his trial witness statement were the subject of cross-examination, nothing I heard gave me any confidence that I could rely on those parts of his witness statement. Not only was he a wholly unreliable witness, but there were

occasions when I am satisfied that he knowingly gave false evidence. I give two examples.

58. The first concerns the share in JIL. In his affidavit of 21 February 2019, sworn in support of his application for a freezing order, he said that he learned in 2018 that the share in JEL (he meant JIL) "*had been transferred by the Trustees of B K Gill and B S Gill to the First Defendant. I believe that the first and second defendants are those trustees*." His original Particulars of Claim (signed with a statement of truth) stated that "*the said shareholding was held by the First and Second Defendants as trustees of the B K Gill and B S Gill Pension Fund.*" In other words, his original case was that the annual return for JIL described him and his wife as trustees because they were trustees of their own pension fund. In fact, however, there was no such pension trust. In cross-examination he sought to blame his original solicitors and leading counsel and (falsely) claimed that they had apologised for providing incorrect information, even though he had continued to instruct them for some time after it was admitted that there was no such pension trust.

59. The second is his denial in cross-examination that he and his wife were taken by Mrs Thind to Lloyds in Chatham, where he had a conversation with Mr Shave. I accept the evidence of Mr Shave and Mrs Thind that this meeting took place. I also note that there has been no challenge to the authenticity of the signatures of Mr and Mrs Gill on the Key Account Party Forms signed that day.

60. I have no reason to think that the remainder of his witness statement is any more reliable, having regard both to the cross-examination and to the circumstances in which that statement came to be prepared. By way of example, his witness statement says that he was the project manager for the refurbishment of Sherwood, which he says happened between 2013 and 2016. He claims that he climbed onto the roof and that he moved all the furniture from the rooms. This is plainly untrue. In 2016 he was aged 77 and was not in good health. I have seen a photograph of him in 2015 where he is holding a walking stick.

61. I must also consider what to make of the evidence relating to the Nationwide account:

    (1) As stated in paragraph above, an account was opened with Nationwide in the name of Mr Gill in 2013. Mr Gill claimed that he knew nothing about this and that his signature had been forged on the relevant documents.

    (2) The expert handwriting evidence was inconclusive on the authenticity of his signatures, given the poor quality of the material available to the experts.

    (3) Mrs Thind's evidence is that he would regularly give her documents received from Nationwide which she would pass to Mr Thind. I consider that it is unlikely that the Thinds obtained the documents otherwise than from Mr Gill. This suggests that Mr Gill must have been aware of the existence of the account and of the fact that the moneys in that account were not for his own benefit.

    (4) I also regard it as unlikely that the Thinds would have been able to open the account and satisfy Nationwide's requirements without obtaining identification documents from Mr Gill.

    (5) I therefore have considerable doubts about his evidence relating to the Nationwide account. When I take into account my conclusion as to his evidence generally, I am satisfied that this evidence is untrue.

62. For the reasons set out in paragraphs 53. to above, I conclude that I cannot rely on any of Mr Gill's oral evidence unless it is consistent with contemporaneous documents or is inherently probable.

Mr and Mrs Khela

63. Mr and Mrs Khela were both due to give evidence by video-link from British Columbia. However, Mr Khela cancelled at very short notice on the ground of ill-health and his witness statement was admitted as hearsay evidence. The medical evidence was far from satisfactory.

64. Mrs Khela's evidence was concerned principally with the family's visit to Canada in August 2018. The high point of her evidence was the assertion in her witness statement that Mrs Thind told her that "*my father had a one-third share in the Businesses and that he had invested funds to obtain that share*". The witness statement defined "*the Businesses*" as meaning JEL and "*its subsidiaries*", JIL and Simicare. Mr Khela's statement was to the same effect.

65. I accept that the Khelas' own children would stand to lose if their evidence about JEL were accepted, and that this is potentially a reason why their evidence should be accepted. Despite this, I have no hesitation in rejecting their evidence in its entirety. In the first place, by August 2018 the battle lines had been drawn; there is no way that Mrs Thind would have said that Mr Gill was beneficially entitled to any shares. Secondly, Mrs Khela's assertion is not consistent with either side's case in respect of JIL and Simicare, where Mr Gill claims the entire beneficial interest and not merely one third.

66. I reach this conclusion without reference to any other evidence, but my conclusion is fortified by the judgment given by Bernard J in the Supreme Court of British Columbia on 19 March 2021 in *Khela v. Clarke* [2021] BCSC 503. His excoriating judgment concludes at [131] as follows:

> "*I find that the Khelas acted in bad faith and with dishonesty of purpose in their dealings with Mr Clarke, and their dishonesty carried through to their testimonies at trial*."

The Defendants' witnesses

Mr Thind

67. Mr Thind was in some respects an extremely impressive witness. He is a successful businessman who is plainly very intelligent and articulate. He gave evidence fluently and confidently and had a ready answer for every question. However, the other side of the coin is that he appeared to treat his evidence as a brief to be mastered. He had at his fingertips all the details, not only of his 100-page witness statement, but also of the extensive trial bundles. An example is found in the following exchange:

> "*MR LILLY: Why was it in JEL's interests to pay substantial sums into the restoration of a freehold building when it did not have any interest directly or indirectly in it?*
>
> *A. My Lord, that's a brilliant question and I'd love to answer it in detail, if I may. Right, I'd like to go to E1.1, 69. And then I can justify , my Lord, why*."

68. Mr Thind said in cross-examination that he did not like doing paperwork. He gave this as his reason for any failure to answer emails or to correct errors in documents sent to him. I accept that he was a busy man who might have had little time for paperwork

which was of no obvious benefit to himself (e.g. confirmations sought by Lloyds or Mr Basu for compliance purposes), but I do not accept that this is an explanation for any failure to read or respond to documents which he regarded as important, given that he had the intelligence, the determination and the requisite attention to detail to do whatever would advance his business interests.

69. Mr Thind's evidence is that he was advised by Mr Patel at the outset that there were tax advantages in putting the shares into the name of a grandparent as trustee for his children, and that this could be done by a bare trust which did not need to be in writing. He says that he accepted this advice.

70. I find it surprising that any competent accountant would advise that there was no need for writing: although a trust of shares may be declared orally, it is obvious that there may be evidential difficulties in proving it without a document. However, I also note that Mr Patel's work was unsatisfactory in many respects, which makes it possible that he did give this advice.

71. If Mr Thind did in fact receive and accept this advice (as to which I reach no conclusion), it would explain why there is no trust document in respect of the shares in JEL. However, it does not explain why he thought it necessary to have the 2011 Option in respect of JEL and the 2015 trust deeds in respect of JIL and Simicare.

72. He has given two reasons:

    (1) One reason is that, from about 2010, he became increasingly concerned as to what Kuldeep might do after Mr Gill died or became incapacitated. I do not regard this as a satisfactory explanation. In the first place, it presupposes a sudden realisation that he might fail to establish an express trust because of absence of documentary evidence, even though there was no legal requirement for a document. I find it slightly surprising that Mr Thind would have suddenly realised this after 2010. Further, it leaves unexplained why he transferred the share in Simicare to Mr Gill in 2012 without any trust document and why it took him a further two years to follow up his request to Mr Patel, originally made in 2013, to draft a trust deed.

    (2) Mr Thind's other reason is that he thought that third parties, such as banks, might require written evidence. This does not fit the facts, since Nationwide opened the account in Mr Gill's name without requiring to see any trust document of the Simicare share, and Lloyds ultimately accepted a letter from Mr Thind in lieu of an executed trust deed of the share in JIL.

73. I must now consider the 2011 Option and the trust deeds in greater detail. I have summarised the contents of the 2011 Option at paragraph above. I find the facts in relation to Mr Thind procuring and signing the 2011 Option to be as follows:

    (1) The document was drafted by Mr Constantine of St James's Place on Mr Thind's instructions.

    (2) I find it improbable that a financial adviser, albeit not a lawyer, would have drafted a put and call option if he had been asked to draft a trust deed.

    (3) I do not find it credible that Mr Thind signed the document without reading or understanding it. The document is written in plain English. I have said at paragraph above that the impression I have formed of Mr Thind is that he takes great care in respect of any documents which he regards as important. His

evidence was that the 2011 Option was an important document because it was intended to allay his fears about the steps that Kuldeep might take.

74. The 2011 Option makes very little sense if Mr Thind thought that Mr Gill held the shares in JEL on trust. If, however, he believed that Mr Gill held his shares beneficially, then the document makes more sense. Mr Thind presumably assumed that Mrs Thind would survive Mr Gill, and he wanted to ensure that Mrs Thind would be able to buy out Mr Gill's estate.

75. As regards the purported trust deeds of the shares in JIL and Simicare:

    (1) Mr Thind's admission, that he backdated the trust deeds and he arranged for them to be signed by employees who had not in fact witnessed the signatures, would be an unsatisfactory starting-point for anyone claiming that the deeds were genuinely signed in September 2015. It is particularly unsatisfactory in the case of a qualified pharmacist.

    (2) For the reasons which I summarise at paragraphs 45. and 46. above, I am satisfied that the signatures of Mr and Mrs Gill are forgeries, probably created after the Thinds returned from Canada in September 2018.

    (3) Further, I conclude that Mr Thind gave untruthful evidence by inventing the story that Mr and Mrs Gill had signed them in September 2015.

76. On 10 January 2019 Cripps LLP, acting on behalf of JEL, Simicare, LNH and WHL, wrote to Harrison Bernstein disputing a statutory demand served on the companies for unpaid fees. The letter states that Harrison Bernstein were instructed to set up a trust of the share in Simicare "*for the benefit of Mr Gill's grandchildren (including Mr Thind's children)*" and goes on to complain that they had failed to ensure that all necessary documentation was put in place in respect of the trust. This is contrary to Mr Thind's case in two respects. Firstly, it describes the trust of the Simicare share as being for all grandchildren, not just for the Thind children. Secondly, it is inconsistent with Mr Thind's evidence that Mr and Mrs Gill had signed the bare trust deed of the Simicare share which Harrison Bernstein had emailed to him. Mr Thind accepted that he was the one giving instructions to Cripps but claimed that they must have misunderstood his instructions and that he did not see or approve the letter. Whilst this evidence is not conclusive in itself, it lends further support to my conclusion in relation to the forgery of Mr and Mrs Gill's signatures on the trust deeds.

77. I bear in mind that witnesses might not tell the truth for a number of reasons and that it does not follow that a witness who fails to tell the truth about one matter is necessarily failing to tell the truth about others. However, the evidence in relation to the trust deeds is particularly important, firstly because it involves reliance on a document which has been forged, secondly because it involves compounding the dishonesty by giving untrue evidence, and thirdly because the forgery is key evidence in support of the Thinds' claim in respect of the shares in JIL and Simicare. For these reasons, I conclude that I cannot rely on any of Mr Thind's oral evidence unless it is consistent with contemporaneous documents or is inherently probable.

Mrs Thind

78. The prime question concerning Mrs Thind's evidence is whether she has given honest and credible evidence which is sufficient to fill the gaps left by my not accepting Mr Thind's evidence. She gave evidence in a straightforward manner. Although she is the company secretary for JIL and JEL and the sole director of LNH and Simicare, she left

financial issues and liaison with accountants to her husband. She readily acknowledged that her evidence was therefore more limited than that of her husband. She also acknowledged that her memory of the relevant events was imperfect and that she was suffering at times from "*brain fog*". However, to the extent that she was able to give relevant evidence, it was not seriously undermined in cross-examination and was broadly consistent with the documents.

79. She said that she had no direct conversation with Mr Gill about JIL or Flat 55, but she recalled overhearing parts of a conversation in the living room of the Gills' home in about April 2004 between Mr Thind and Mr Gill. She took from this conversation that Mr Gill had agreed to be a trustee of JIL. I treat this evidence with a degree of caution, given that she was moving in and out of the kitchen and was also playing with the children during the conversation.

80. She said that she overheard a conversation between Mr Thind and Mr Gill in the Thinds' home in December 2005. She understood from this conversation that Mr Gill would lend some money for the purchase of The Laurels and that he would be given a one-third shareholding, which he would hold on trust for all of his grandchildren. She did not overhear the whole conversation, because she was also engaged in helping her mother to prepare food and in supervising the children. She did join in the conversation at one point, saying that the lounge area in The Laurels was too small and would need to be changed. Further, at one point Mr Gill addressed her as well as her husband, when he said that nothing should be said to Kundan Khela, because he would also ask Mr Gill for a loan. During 2006 she had various conversations with Mr Gill, when he used the word "*loan*" but she cannot be more specific. Once again, I treat this evidence with a degree of caution.

81. She said that in about April 2010 she and her husband took their children and Mr and Mrs Gill out for dinner at Nando's in Bluewater. On that occasion Mr Thind told Mr Gill that they were thinking of buying St Margaret's for the benefit of their children and that Harrison Bernstein had advised that this could be done using a bare trust, as had been done with JIL. Mr Gill was keen on the idea and said he was happy to be a trustee again. She particularly remembers the conversation because Jeevan (then aged 10) asked her to translate Punjabi phrases used in the conversation into English.

82. She recalled a conversation in the Gills' living room in or about late October 2012 in which Mr Thind told Mr Gill about the works that would be needed to Sherwood and Mr Gill offered a loan of £280,000 towards the cost of doing the works.

83. She said that Mr Gill telephoned her several times in August 2013 to say that letters from Nationwide had arrived. She collected these letters and gave them to Mr Thind. I accept this evidence. Although the handwriting experts' evidence was inconclusive on the authenticity of Mr Gill's signatures on the Nationwide documents, I consider it to be inherently improbable that the account could have been opened and operated without his knowledge. This supports the Thinds' case that Mr Gill knew he was a trustee of the Simicare share.

84. As regards the meeting on 19 June 2015, she said that Mr Shave told her parents that he needed to verify their identities because they were holding shares in JIL on trust for the grandchildren. Mr Gill agreed with this and the Gills both signed the Key Account Party Forms. As noted above, there is no challenge to the authenticity of Mr and Mrs Gills' signatures on those documents.

85. As regards the trust deeds and stock transfer forms allegedly signed in 2015, Mrs Thind said that she was aware that Mr Thind had obtained those documents and that he took them to Mr and Mrs Gill for signature. She had no involvement in the process of obtaining the Gills' signatures. She confirmed that Mr Thind discussed the issue of removing Simran's name from the trust deeds and that she agreed with this.

86. In my judgment Mrs Thind was an honest witness. I have indicated those parts of her evidence which need to be considered with caution, and the reasons for such caution. Subject to that, I accept her evidence as broadly reliable. I regard her as sufficiently removed from the forgery, albeit by a narrow margin, so as not to be tainted by it.

Avneesh

87. Avneesh is now aged 25 and is training to be an accountant. His knowledge as to the trusts derived largely from his parents and in that respect it does not significantly advance the Defendants' case. He did state that Mr Gill told him more than once that The Laurels was held on a "*trust arrangement*" for all the grandchildren but he gave no further details of the conversation. He said that he could not recall the exact words used and he acknowledged that he did not understand at the time what a trust arrangement was. Although he was an honest witness, his evidence does not materially assist.

Jeevan

88. Jeevan is now aged 23. He has an impressive academic record, including a law degree from York, a Masters in management from the LSE and an MBA from Yale.

89. His evidence was largely confined to what he recalled being told by his parents and was further limited by the fact that he was very young when most of the events which he witnessed occurred. For example, he said that he recalled overhearing the word "*trust*" from time to time but could not say when or where. He readily accepted in cross-examination that he did not know what a trust was until he started his law degree in 2018, and that Mr Gill might have used it in an untechnical sense, e.g. by saying that he trusted Mr Thind's business instincts.

90. However, he did recall two relevant conversations with Mr Gill. The first was the dinner at Nando's in Bluewater in 2010 or 2011, when he was aged 10 or 11. On that occasion Mr Gill told him that St Margaret's was going to be for him and his siblings.

91. The second was in about March or April 2011 at the Gills' home, when his parents were telling Mr Gill about the proposed purchase of St Margaret's and Mr Gill said to him "*Look how hard they are working for you*."

92. I am satisfied that Jeevan was an honest witness. I attach some weight to his evidence of the two conversations with Mr Gill, but it is limited because he was very young at the time and because his memory might well have been unconsciously influenced by what he has subsequently been told.

Mr Basu

93. Mr Aurijit Basu ("**Mr Basu**") is a chartered accountant and proprietor of Dhillons Accountants Ltd. He was first contacted by Mr Thind in the summer of 2017 because Mr Thind was dissatisfied with Harrison Bernstein.

94. He said that he had an introductory meeting with Mr Thind on 1 July 2017. The meeting was primarily concerned with the proposed sale of Aveycare, but also touched briefly on the other companies. Following that meeting Mr Basu produced a report entitled "*Mr Jas Thind Portfolio Summary*" which he emailed to Mr Thind on 4 July 2017. This document included a table showing the shareholdings in the different companies, followed by notes and questions about each company. In particular it stated as follows:

    (1) JEL was owned as to 33% by Mr Gill and as to 67% by Mrs Thind. He added: "*If I remember correctly, 33% of the shares are owned by Mr Gill and these shares are not held on trust. Is that correct?*"

    (2) JIL was owned by "*Mr BK and Mr* (sic) *BS Gill Trustees*". He added: "*We need to review the trust documents.*"

    (3) Simicare was owned by "*Mr BS Gill – 100%* ". He asked: "*Are the shares held in a trust by Mr Gill on behalf of the kids? Do you have any Trust documents to this effect?*"

95. Mr Basu confirmed that he took the information about each company from Companies House, but he apparently failed to note that Mr Gill was recorded in the PSC for Simicare as being a trustee. It does not appear that Mr Thind responded to the email of 4 July, and I therefore draw very little from it. On 26 July 2017 Mr Basu re-sent his table of companies for the purpose of obtaining clearance to act for these companies, and Mr Thind replied within four minutes confirming that it was correct. Again, I attach little significance to this reply, given that it related only to compliance requirements affecting Mr Basu.

96. Mr Basu gave evidence that he overheard a telephone conversation between Mr Thind and Mr Gill (on loudspeaker) in late 2017 or early 2018, in which Mr Thind asked Mr Gill how much was outstanding on Mr Gill's loans and Mr Gill said that he was owed at least £30,000 on the loan by Watts. I attach very little weight to this, because it was a conversation not involving Mr Basu and he does not know the context in which the question was asked.

97. On 3 January 2018 Mr Basu emailed Mr Thind attaching draft tax returns for Mr and Mrs Thind. He said:

    "*Baljit dividends:*

    (a) Without knowing the full extent of Mr Gill's personal tax position and in order to maximise Baljit's tax bracket, I have reported Baljit's dividend from Jeeves at £13,400 dated 31.03.2017. So Mr Gill's dividend share comes to £6,600.

    (b) If Mr Gill's other earnings are below £9,400 he should have no additional tax to pay."

98. The observation about Mr Gill's other earnings appears to suggest that Mr Basu viewed Mr Gill as being beneficially entitled to his shares in JEL. A similar issue arises in relation to Mr Basu's email of 3 August 2018 to RBS, attaching accounts for the various companies which RBS required to see before making a loan. Although the email said of Simicare that the shares were "*held in a bare trust by Mr Gill for the benefit of Jas's children*", it said of JEL simply that it was owned as to 67% by Mrs Thind and 33% by Mr Gill (with no mention of any trust).

99. In cross-examination he explained that he consciously adopted the stance which he expected HMRC to take. HMRC would not accept that Mr Gill's shares in JEL were

held on trust because there was no documentary evidence to support this. He contrasted this with the share in Simicare, where there was a trust deed, albeit that he confirmed in an email of 9 April 2018 that he had yet to see a signed trust deed. (Mr Basu said that he did see an executed trust deed at some point, but he could not remember when; he does not say that it was before November 2018.)

100. I found Mr Basu's explanation unsatisfactory for the following reasons:

    (1) RBS's request had nothing to do with HMRC but was concerned with understanding the nature of the proposed security. If it was appropriate to tell RBS about the trust of the Simicare shares, it must have been equally appropriate to tell RBS about the trust of the JEL shares.

    (2) If one adopts Mr Basu's logic, HMRC would not have accepted the Simicare trust deed because it was unsigned to Mr Basu's knowledge.

101. This causes me to conclude that, whilst I do not reject Mr Basu's evidence outright, I should approach it with considerable caution.

102. Mr Basu also gives evidence that he went with Mr and Mrs Thind to a difficult meeting at Mr Gill's house in mid-2018. He says that he told Mr Gill that Mr Gill held the shares in JEL on trust for all his grandchildren, to which Mr Gill replied "*for the moment*". Mr Lilly did not put it to Mr Basu that these (or similar) words were not said; I accept that Mr Gill used these words. It is not entirely clear what Mr Gill meant by these words, but they tend to suggest that he regarded himself as currently holding the JEL shares for the benefit of his grandchildren.

Mr Shave

103. Mr Shave was the Defendants' senior relationship manager at Lloyds from 2007 until his retirement in 2018.

104. The most important aspect of his evidence related to his meeting with Mr and Mrs Gill and Mrs Thind at the Chatham branch on 19 June 2015. His evidence was that he told the Gills that the Bank's remediation team had carried out a standard review of the JIL account and had found that there was a need to obtain identification documents from them, because they were trustees of the share in JIL. Mr and Mrs Gill appeared to understand what he had said, but he could not be sure. Importantly, he did not appreciate that Mrs Gill spoke no English.

105. He could not recall the source of the Bank's information that the Gills were trustees of their share, but thought it was probably something that Ms Hodgson had learned from looking at the records of JIL at Companies House.

106. He said that he filled out section 5 of the Key Account Party Forms. When cross-examined about the words "*50% beneficial owner*" against the names of each of Mr and Mrs Gill, his response was that this was his mistake. He did not appear to have much familiarity with trusts.

107. He was unable to recall what prompted him to write on 29 June 2015 asking to see any trust deeds, but he thought that it must have been something said either at the meeting or afterwards, which he would have passed on to Ms Hodgson.

108. As regards the email on 11 September referring to a "*reasonable compromise*", he agreed that there must have been a further conversation with Mr Thind which explored

what the remediation team required and what Mr Thind could provide, but he did not recall whether Mr Thind had said that he could not provide a signed deed.

109. I find that Mr Shave had little understanding of trusts and did not appreciate, when he filled out the forms on 19 June 2015, that he was treating the share in JIL as beneficially owned by Mr and Mrs Gill. If he had intended this, he would not have sent the email on 29 June 2015 asking to see the trust deeds. However I attach limited weight to his evidence that he explained to the Gills that they were trustees, both because he did not realise that Mrs Gill speaks no English and because of his general confusion about trusts.

Mr Povey

110. Mr Povey was employed by LNH as bookkeeper. In August 2018 he visited Mr Gill, whom he already knew, in order to see if he could help resolve the family dispute. He recorded part of the conversation. I accept that Mr Povey honestly believed that Mr Gill said in that conversation that the shares in JEL were for his grandchildren. However, having read the relevant part of the transcript, I am unable to accept that Mr Gill made this clear. I therefore attach no weight to Mr Povey's evidence or to the transcript.

Mr Satnam Singh

111. Mr Satnam Singh, who is Mr Thind's father, was clearly an honest witness, but most of his evidence was limited to what he had been told by Mr Thind. He confirmed that he never spoke to Mr Gill about any trust for grandchildren. I therefore attach no weight to his evidence.

Mr Slaughter

112. Mr Paul Slaughter is the director of G.P.S. Projects Ltd, which constructed the extension to The Laurels starting in 2012. He confirmed that he never saw Mr Gill on site and was unaware of his existence. I accept this evidence, which contradicts Mr Gill's claim that he helped with some of the building works at The Laurels.

Mr Gupta

113. Mr Rakesh Gupta was too ill to give evidence, even remotely, but his statement was relied on as hearsay evidence. He was the accountant at Harrison Bernstein who had prepared the annual returns for the companies but he was unable to add anything material to the facts set out above. He said that any advice about bare trusts would have been given by Mr Rakesh Patel, whom neither side called as a witness. I did not find this evidence to be of assistance.

Additional evidence

114. There was a considerable amount of additional evidence to which I was referred, but in my judgment none of it was sufficiently clear and unequivocal to assist. I refer briefly to the most significant documents and alleged events.

Mr Woolhouse

115. It is common ground that Mr Thind sought financial advice from Mr Chris Woolhouse of St James's Place, and that Mr Thind also introduced Mr Woolhouse to Mr Gill.

116. On 17 December 2008 Mr Woolhouse wrote to Mr and Mrs Gill, following a recent meeting with them. It appears from the letter that the purpose of the meeting was to give them advice on tax-efficient investments. The letter includes a table of assets, against each of which a value is stated for Inheritance Tax purposes. The table includes "*Nursing Home*", the value of which is stated to be "*n/a*". I accept that the only nursing home in 2008 would have been The Laurels. It was said on Mr Gill's behalf that the inclusion of The Laurels showed that Mr Gill and Mr Woolhouse treated it as being owned by Mr Gill beneficially, and that "*n/a*" meant only that no value had yet been assigned to it. Conversely, it was said on the Thinds' behalf that "*n/a*" showed that Mr Gill did not regard it as an asset which he owned beneficially. Mr Woolhouse was not called to give evidence, and in any event I would not have expected him to remember why he had written these words in a letter nearly 14 years ago. I cannot draw any conclusion from this letter.

Simran

117. As already stated, Mr and Mrs Thind's evidence was that they initially intended the trust of the shares in JIL and Simicare to be for all three children equally, but that in September 2015 they decided to remove Simran's name from the trust deeds, whilst making it clear to Avneesh and Jeevan that she was to retain an equal share. The reason they both gave was that Simran was suffering from anxiety and depression, and they did not want her to be put under any pressure, e.g. in choosing new directors of the companies.

118. Even allowing for the fact that the Thinds are not lawyers and apparently made the decision without seeking legal advice, this reasoning makes no sense, since it is the trustee and not the beneficiaries who would exercise the voting rights attached to the shares.

119. Mr Lilly cross-examined Mr Thind (doubtless with Mr Gill's approval) on the basis that he had invented this story about Simran to explain why she had not been called as a witness. Mr Thind was visibly distressed by this line of questions, which I am satisfied was unfounded.

120. The reason for the removal of Simran's name remains an unexplained mystery, but I have been unable to extract from this evidence anything which assists me in deciding the key issues in the case, save insofar as it assists in establishing the date on which the purported trust deeds were created.

121. The removal of Simran's name is of no effect, insofar as a trust had previously been declared.

HMRC investigation

122. In September 2020 HMRC launched an investigation into Mr Thind's tax affairs following a tip-off, which the Thinds say came from Mr Gill. The only document which I have seen in this regard is HMRC's letter of 2 July 2021 which concluded that Mr Thind was liable to pay additional Income Tax amounting to a little over £22,000 in respect of dividend payments settled on a bare trust for the benefit of his children. This presumably relates to the Simicare dividends used to pay school fees. HMRC appears to have accepted that the dividends were held in trust for his children, but that he and

not Mr Gill was the settlor. I do not have any further information about this investigation and am unable to draw any further conclusions from it.

Discussion

123. I start with the legal ownership of the shares:

(1) In the case of JEL it is common ground that 100 of the 300 shares were transferred to Mr Gill and remain vested in him as shareholder.

(2) In the case of JIL and Simicare there is no evidence that Mr Gill ever received any instrument of transfer in respect of the shares. However, section 127 of the Companies Act 2006 provides that the register of members is prima facie evidence of any matters which are directed or authorised to be inserted in it. On this basis I conclude that Mr and Mrs Gill were the registered shareholders of the only issued share in JIL, and that Mr Gill was the registered shareholder of the only issued share in Simicare, until the registers were altered by Mr Thind in 2018.

124. I must now decide whether Mr Gill is entitled to those shares beneficially or holds them on express or resulting trust. The law is uncontroversial:

(1) In the case of an express trust, the burden is on the Defendants to prove that Mr Gill's words and actions, when viewed in the context of the surrounding facts and matters, showed a clear intention to make a disposal of the shares in question so that the alleged beneficiaries would acquire a beneficial interest. No particular formality is required. The leading case is *Paul v Constance* [1977] 1 WLR 527, where the Court of Appeal upheld the judge's conclusion that the words "*the money is as much yours as mine*" were sufficient to create a trust on the facts of that case.

(2) In the case of a resulting trust, if Mr Gill acquired the shares without giving consideration for them, there is a presumption, easily rebutted, that he holds them on a resulting trust for whoever caused the shares to be put in his name: *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 at 312D-313E *per* Lord Upjohn.

125. I have rejected the evidence of Mr Gill, the Khelas and Mr Thind and I have identified which documents I find to be of no assistance in resolving these issues. Leaving aside all the evidence which I have discarded, I must now decide whether the remaining evidence is sufficient to give rise to express or resulting trusts, taking into account the overall plausibility of the evidence and the other factors stated in *Natwest Markets Plc v Bilta (UK) Ltd*.

JIL and Simicare

126. Despite my conclusion that the trust deeds are forgeries, it does not necessarily follow that there was no declaration of trust by Mr Gill. It is at least theoretically possible that these forgeries were created, not because there were no express trusts, but because Mr Thind was concerned that he would fail to prove the trusts in the absence of written proof signed by Mr Gill.

127. The annual returns for JIL stated that Mr and Mrs Gill were trustees of the share in JIL. This does not, of itself prove that there was any trust, since there is no evidence that the Gills were aware of the annual returns. Conversely, however, the absence of any

equivalent statement on the annual returns for Simicare and JEL is some indication that Mr Thind did not regard Mr Gill as trustee of his shares.

128. There is evidence which, whilst not conclusive, tends to suggest that there was no express trust:

    (1) The email from Ms Hodgson of Lloyds on 7 April 2015 referring to Mr and Mrs Gill as "*shareholders/ultimate beneficial owners*" of JIL tends to suggest that the Bank had received this information from the Thinds, since it is inconsistent with the annual returns; and

    (2) The natural reading of Mr Basu's email of 3 August 2018 is that he understood (presumably on instructions from Mr Thind) that Mr Gill was the beneficial owner of the share in Simicare. I found Mr Basu's attempt to explain away this email unconvincing.

129. Conversely there is also evidence which, whilst not conclusive, tends to suggest that there was an express trust:

    (1) Mr Gill's likely knowledge of the Nationwide account (see paragraph above); and

    (2) The fact that Mr Gill did not ask about dividends in JIL or Simicare.

130. The evidence of Mrs Thind is firstly that she overheard a conversation between Mr Thind and Mr Gill in 2004, in which Mr Gill agreed to be a trustee of JIL, and secondly that Mr Gill agreed during the dinner at Nando's in 2010 to become a trustee of St Margaret's (i.e. Simicare). In respect of the evidence relating to St Margaret's, she is corroborated by Jeevan. I have explained why I treat the evidence of Mrs Thind and Jeevan with a degree of caution, but I nevertheless give it some weight.

131. Their evidence is bolstered by my conclusion on the overall plausibility of the evidence, in circumstances where Mr and Mrs Gill made no financial contribution to those companies. I can see no good reason why the Thinds would have put the share in JIL into the names of Mr and Mrs Gill and the share in Simicare into the name of Mr Gill, unless the shares were to be held on trust. Mr Lilly floated the idea of some unspecified tax fraud, but I have no evidence that there was a tax fraud, and the conclusion of HMRC's investigation does not provide any basis for suggesting a tax fraud.

132. In my judgment, the overall implausibility of the Thinds making a gift of the shares in JIL and Simicare, coupled with the limited reliance which I place on the evidence of Mrs Thind and Jeevan, satisfies me on the balance of probabilities that Mr Gill agreed (i) in 2004 that he and his wife would accept the share in JIL, and (ii) in 2012 that he would accept the share in Simicare, in each case as trustees for Avneesh, Jeevan and Simran equally.

133. If I am wrong in finding that there was an express trust, I would have concluded that the shares in JIL and Simicare are held on a resulting trust for Mr and Mrs Thind, on the basis that they alone provided the capital for JIL and Simicare.

134. Mr Lilly submitted that the forgery of the trust deeds was a sufficient basis for applying the doctrine of illegality as set out in *Patel v Mirza* [2017] AC 467, so as to negate any resulting trust. However, he accepted that, if I found Mr Gill to have been dishonest (as I have done), then the court should impose a resulting trust. In any event, there is no evidence that the Thinds' assertion of a trust is itself based on anything unlawful; the illegality is confined to the evidence which is deployed in support of the assertion.

135. I conclude that Mr Thind had no right to alter the share registers of JIL and Simicare in 2018 by substituting his own name as shareholder in place of Mr Gill. There are two reasons for this conclusion. The first is that I do not accept Mr Thind's evidence that Mr Gill signed undated stock transfer forms. Secondly, on Mr Thind's own evidence, these forms were not to be used until after Mr Gill's death.

136. Section 125 of the Companies Act 2006 gives the court power to rectify the register where the name of any person is, without sufficient cause, entered in or omitted from the register of members. Although Mr Thind was wrong to take the law into his own hands, there would be no point in ordering rectification in this case, given that Mr Gill is clearly an unsuitable trustee and that Mr and Mrs Thind have each offered an undertaking to hold their respective share in JIL and Simicare as trustee for their three children equally.

JEL

137. I have found it more difficult to determine the position in relation to Mr Gill's 100 shares in JEL. In contrast to the JIL and Simicare shares, where Mr Gill did not know that he was a shareholder and clearly gave no consideration for the shares, it is common ground that he did receive the shares in JEL and did advance substantial sums in relation to The Laurels and Sherwood, albeit that it is disputed whether these were loans or investments.

138. The Thinds' case depends upon the court accepting two propositions:

    (1) That Mr Gill agreed to hold the shares on trust; and

    (2) That the trust was for all his grandchildren, not merely the Thind children.

139. Mr Gill's statement to Mr Basu that he held his shares for the benefit of his grandchildren "*for the moment*" (see paragraph above) tends to suggest that he regarded himself as a trustee. Further, if he thought that the moneys received in respect of JEL were dividends and not repayments of loans, he should have declared them to HMRC. I reject his attempt to blame Mr Povey for not including this on his tax return and I find that he received the sums as repayment of loans. It follows that he received the shares without making any capital investment.

140. I take into account Mrs Thind's evidence, on which I place limited reliance, that Mr Gill agreed to become a trustee in 2007 in relation to The Laurels. Her evidence is bolstered by what I consider to be inherently implausible. In my judgment it is implausible that the Thinds would have agreed to give Mr Gill a one-third share in the business unless he agreed to take on one third of the liabilities and responsibilities, in particular:

    (1) One third of the capital contributions, not just for the purchase of The Laurels and Sherwood, but also for the extension to The Laurels;

    (2) A personal guarantee for the bank loans, alongside the guarantees given by the Thinds; and

    (3) A substantial role in running the businesses, and not merely offering childcare.

141. As against this, I bear in mind that the 2011 Option Agreement tends to suggest that Mr Thind regarded Mr Gill as beneficial owner of his shares in JEL (see paragraphs 73. and above), as does Mr Basu's email of 3 January 2018 (see paragraph above).

However, on balance I conclude that these are not sufficient to outweigh the factors set out above.

142. I have considered whether it is inherently plausible that the Thinds created a trust for all the grandchildren of Mr Gill:

    (1) I bear in mind the agreed evidence that Sikh families (or at least this family) regarded all cousins as being siblings and that the Thinds were very close to Mrs Thind's existing nephews and nieces in 2007.

    (2) I also bear in mind that Mr Thind said that he was not close to his own brother's children in 2007.

    (3) I do regard it as slightly surprising that the Thinds intended to confer a benefit on their nephews and nieces, as well as their own children, which was not for a fixed sum but extended to one third of the entire value of The Laurels and any other businesses which subsequently became part of JEL (viz. Sherwood).

    (4) However, although it seems more plausible that the trust would be limited to the Thind children, no such case is advanced by either of the parties. The only choice, on the evidence, is between a trust for all the grandchildren and full beneficial ownership for Mr Gill.

143. I therefore conclude, by a narrow margin, that Mr Gill received 100 shares in JEL as express trustee for all his grandchildren.

144. This leaves the difficulty of ascertaining the terms of the trust, which are far from clear. I accept that the parties intended the shares to be divided between all grandchildren, but that leaves the question of the cut-off date. The parties contemplated in 2007 that Mrs Benning might have further children in the future and I find that they intended to include these children. At the date of the trust, the Thinds had not yet fallen out with Kuldeep and there is nothing to suggest that they intended to exclude Kuldeep's unborn children. However, I have not heard counsel's submissions on when the class was intended to close, and hence the size of each grandchild's beneficial interest. I will need to hear further submissions before declaring the terms of the trust.

145. If I am wrong in finding that there was an express trust, I would have concluded that Mr Gill's shares in JEL are held on a resulting trust for Mr and Mrs Thind, on the basis that they alone provided the capital for these companies and that Mr Gill's only contribution was by way of loans which have been largely repaid.

Disposition

146. For the reasons set out above, I dismiss the Part 7 Claim and the Petition. I will hear counsel as to the terms of the order, including the declaration as to the trusts of the 100 shares in JEL.