



Neutral Citation Number: [2024] EWHC 1844 (Ch)

Case No: CH-2023-BHM-000005

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CHANCERY APPEALS (ChD)

Birmingham Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham B4 6DS

Date: 22/07/2024

Before :

MR JUSTICE ZACAROLI

Between :

ARVINDAR SINGH
(as trustee in bankruptcy of Mrs Angela Garcha)

Appellant/
Applicant

- and -

(1) ANGELA GARCHA
(2) HARPREET GARCHA
(3) MR SOHAN SINGH GARCHA

Respondents

Simon Passfield KC and James Hannant (instructed by SP Legal Solutions) for the
Appellant

Christopher Pask (instructed by Birkett Long LLP) for the First Respondent
Glenn Willetts (instructed by Talbots Law Ltd) for the Second Respondent

Hearing date: 20 June 2024

JUDGMENT

Mr Justice Zacaroli:

1. This is an appeal against the decision of District Judge Rouine dated 23 January 2023, dismissing the claim of the appellant (the trustee in bankruptcy (the “Trustee”) of the first respondent, Angela Garcha (“Mrs Garcha”)) for a declaration that Mrs Garcha (and thus her bankruptcy estate) has a beneficial interest in three properties (collectively, the “Properties”).
2. The Properties are:
 - (1) 21A Malham Drive, Kettering (“Malham Drive”), a property purchased in the joint names of Mrs Garcha and her husband, the second respondent (“Mr Garcha”) in August 2005.
 - (2) 99 The Lock, High Street, London (“The Lock”), purchased in the sole name of Mrs Garcha in February 2006.
 - (3) 225 Bath Road, Kettering (“Bath Road”), purchased in the sole name of Mr Garcha in December 2009.
3. Mrs Garcha was made bankrupt on 14 March 2018.
4. The Trustee’s primary case is that Mrs Garcha has a 100% (alternatively 50%) interest in the Lock, and a 50% interest in each of Malham Drive and Bath Road. Alternatively, the Trustee contended that the beneficial interests of Mr and Mrs Garcha in each of the Properties reflected the legal title.
5. A major part of the Trustee’s case related to prior statements made by or on behalf of Mr and Mrs Garcha in the context of an investigation by the Northampton Trading Standards (“NTSS”) into Mr Garcha and his property lettings business, which commenced in 2011, and proceedings brought by NTSS in 2017 for a confiscation order. Mr Garcha was subsequently charged and convicted of various crimes of dishonesty, involving the falsification of documents.
6. In the course of those proceedings, various statements were made in documents filed on behalf of Mr and/or Mrs Garcha, which appeared to assert that various properties – including the Properties – were jointly owned by them. For example, in a witness statement dated 19 April 2017, in response to a statement from the prosecution in Proceeds of Crime Act (“POCA”) proceedings, Mr Garcha confirmed that “every property that I own or that my wife ... owns is actually owned by us jointly.” Further, in an application made by solicitors on behalf of Mrs Garcha to vary a restraint order against various properties (including the Properties), it was asserted that, as Mr Garcha’s wife, there was a presumption that she owned at least a half share in the Properties. In a witness statement from Mrs Garcha in support of that application, she referred to Bath Road as the matrimonial home, the implication in context being that she had a half share in it.
7. When the POCA proceedings came before the Crown Court on 8 September 2017, a settlement agreement was reached, under which Mrs Garcha agreed to relinquish any interest she held in numerous properties (included in a schedule to the agreement). The Properties (and one other property), however, were specifically “ring-fenced” and

not included in the assets available for confiscation. The obvious inference is that the assertions made by or on behalf of Mr and Mrs Garcha that Mrs Garcha had an interest in the Properties were accepted by the prosecution.

8. In the course of the proceedings brought by the Trustee, Mr and Mrs Garcha advanced various arguments to distance themselves from the statements made in the POCA proceedings, including by denying that they had signed their statements or given instructions for statements to be made on their behalf by their solicitors.
9. A further important element of the Trustee's case was documents from the respondents' solicitors' conveyancing file in relation to the purchase of Malham Drive, which indicated that the respondents gave instructions to their solicitors that they intended to purchase that property as joint tenants. Most significant among these is a response to a requisition raised by the Land Registry from the respondents' solicitors dated 11 October 2005 (stating "we can confirm that our clients are to hold the property as joint tenants") supported by a hand-written note to the same effect.
10. A significant element in Mr and Mrs Garcha's case was an agreement made by them in light of their marriage, on 4 February 2005 (the "Marital Agreement"). This provided as follows:
 - “1. All property (including cash balances) which belong independently at the date of this agreement to each of the Parties (the property) is, shall be, and shall remain, the personal estate of that Party, including all interest, rents and profits which may accrue from the Property and the property of each respective Party shall remain forever free of claim by the other Party.
 2. All property which is obtained or purchased after the date of this agreement, shall be, and shall remain, the personal estate of [Mr Garcha], including all interest, rents and profits which may accrue from the Property and the property of shall remain forever free of claim by the other Party.
 3. This agreement is binding following completion of a ceremony of marriage.”
11. The Trustee initially challenged the authenticity of the Marital Agreement but in the course of the trial the judge ruled that, since Mrs Garcha (and another signatory to that agreement, Mr Nasater Johal) had not been sufficiently challenged on this point in cross-examination, it was not open to the Trustee to pursue a case that the Marital Agreement was not authentic. That ruling is not challenged on appeal.
12. The respondents rely heavily on the fact that there were a number of other lines of argument which were closed off to the Trustee at trial, pursuant to rulings by the judge, on the basis that the case had not been put, or been sufficiently put, in cross-examination of (in particular) Mrs Garcha. These included: (1) the allegation that Mr and Mrs Garcha were party to a mortgage fraud in respect of the funding for the Lock; (2) the contention that the creation of an assured shorthold tenancy in respect of Bath Road was created for the purposes of creating a false impression to others or was a sham; (3) the case that the respondents' intentions had changed once they had

children. The respondents also rely on the fact that various other allegations – for example that Mr Garcha had falsely created an email dated 10 August 2006 evidencing the existence of the Marital Agreement, or that the loan agreement with Mr Garcha Senior had been created after the event to create a false impression – were not pursued.

The judge's judgment

13. The trial of the action took place over four days in July 2022. The judge heard submissions from the parties on 13 October 2022. He delivered an oral judgment at a further hearing on 24 January 2023.
14. The first 77 paragraphs of the judgment are taken up with a recitation of the case of each of the parties. In the course of this the judge referred to (but made no findings on), among other things, the Trustee's reliance on inconsistent statements in the POCA proceedings, the evidence in the conveyancing file relating to the purchase of Malham Drive, and the Marital Agreement.
15. At paragraphs 80 to 86 he recorded his findings as to the Marital Agreement. He first noted the Trustee's acceptance that the Marital Agreement was signed contemporaneously. He then, largely because he accepted the evidence of a Mr Johal who witnessed the agreement being signed, found that the content of the Marital Agreement, and how it came to be executed, were entirely as Mr and Mrs Garcha contended.
16. He accepted, however, that while he accepted the Marital Agreement as embodying the intention of Mr and Mrs Garcha as to the future ownership of property, as at the time it was executed, he did not rule out the possibility that their intentions changed over time.
17. As to the interpretation of the Marital Agreement, the judge stated that he preferred that advanced by counsel for Mr and Mrs Garcha.
18. At paragraphs 89 to 95, the judge dealt with Bath Road. His starting point was that beneficial ownership reflected the legal title (i.e. Mr Garcha had a 100% interest). The Marital Agreement also supported that starting point. He found that there was no evidence of a declaration of trust in favour of Mrs Garcha, or that Mrs Garcha contributed any part of the purchase money (thus ruling out a resulting trust). As to constructive trust, he held that "there is no evidence before me, I find, that there was any agreement between Mr and Mrs Garcha at the point of acquisition that Mrs Garcha would have any interest in Bath Road." He said that finding was consistent with the Marital Agreement.
19. He went on to find that, if he was wrong about this, the Trustee had failed to produce any or any sufficient evidence of any detrimental reliance being suffered by Mrs Garcha. At §94, he referred in support of that conclusion to the fact that in an earlier stage of the proceedings, District Judge Moody had decided the issue of "inferred detrimental reliance" against the Trustee. This was a reference to a decision by District Judge Moody that the Trustee could not argue – in relation to a further property – that it was to be inferred that Mrs Garcha's agreement to relinquish her interest in various properties within the settlement agreement of 8 September 2017

constituted detrimental reliance. The judge saw no reason why the same conclusion did not apply in relation to Bath Road. He also considered that the respondents' submissions as to *res judicata* had "compelling force" to them.

20. At paragraphs 96 to 109, the judge dealt with The Lock. Here, it was for Mr Garcha to establish he had an interest, because legal title was solely in the name of Mrs Garcha. The judge first recited the parties' submissions, noting in particular that Mrs Garcha relied on the Marital Agreement, and that her evidence as to her reasons for entering into it were not challenged in cross examination.
21. At paragraph 105 he set out his decision. Having noted (consistently with his conclusion in relation to Bath Road) that the starting point is that equity follows the law, he then concluded (at §107) that there was an agreement that the beneficial interest was to be held solely by Mr Garcha. Given its importance to the points raised on this appeal, I set out his findings in this regard in full:

"There is, in my judgment, an express agreement which indicates a common intention on the part of Mr and Mrs Garcha that the beneficial ownership of The Lock ought to be held in a different way to the legal ownership. I refer to the marital agreement and I refer back to and repeat my previously expressed findings as to the force and effect of that document about the beneficial ownership of any properties purchased after the date of that agreement being held by Mr Garcha alone. I also repeat the observations about Mrs Garcha's case and why she entered into the marital agreement not being challenged, effectively, or perhaps at all on cross-examination, and further the view which has been expressed that whilst, to an outside observer, Mrs Garcha's position on these issues might appear strange, it is nonetheless, apparently, a decision and conclusion that she reached independently following the receipt of independent legal advice."

22. The judge then turned to consider the issue of detrimental reliance by Mr Garcha, concluding that this was established by reason of Mr Garcha's conduct in funding the deposit for the Lock and assuming responsibility for paying the mortgage.
23. At paragraphs 110 to 121 the judge dealt with Malham Drive. He repeated the core submission of the parties at paragraphs 110 to 117. At §116, he recited the Trustee's reliance on the conveyancing documents, which indicated an intention that the property be held jointly, and on the statements by Mr and Mrs Garcha in the Proceeds of Crime Act proceedings, to the same effect. He set out his conclusions at §118 to §119, which I again set out in full:

"118. I refer back to the position which I have taken earlier in this judgment in respect of the meaning, force and effect of the marital agreement. It is entirely appropriate that I adopt that position in relation to the marital agreement and Mallam Drive also. I confirm that I do. This means that I am satisfied that in relation to Mallam Drive there was a clear and express common intention between Mr and Mrs Garcha that the beneficial ownership would be held in a way which was different from the legal ownership. I repeat what I have said previously about the nature of this common intention, even though the

Applicant may find it unusual that Mrs Garcha agreed to such an arrangement.

119. I confirm that nothing which I have seen or read persuades me that there is any or any sufficient evidence to enable me to conclude that any point after the entry into the marital agreement there was an agreed departure from the terms of the marital agreement as to the beneficial ownership of Mallam Drive as between Mr and Mrs Garcha, when compared to the common intention expressed in the marital agreement. The way in which for counsel [sic] Mr Garcha suggests that I should approach any conclusions I might draw from any steps taken or statements made by Mrs Garcha in the POCA proceedings, absent any evidence of any common intention in relation to such steps from Mr Garcha or Mr Garcha Snr, has compelling force to it, I find.”

Grounds of appeal

24. The Trustee advanced nine grounds of appeal:

Ground 1: The judge failed to give reasons or otherwise failed to give adequate reasons for his decision that there was no (or otherwise insufficient) evidence of a common intention by Mr and Mrs Garcha to hold the Properties jointly.

Ground 2: The judge failed to give reasons or otherwise failed to give adequate reasons for his decision that the presumption that Mr and Mrs Garcha’s beneficial interest in the Properties were the same as their beneficial interests in light of the documentary evidence relied on by the Trustee.

Ground 3: The judge failed to give reasons for his apparent finding that Mr and Mrs Garcha’s evidence was credible.

Ground 4: The judge was wrong to conclude that properly interpreted, the Marital Agreement evidenced an intention that all properties purchased by Mr and/or Mrs Garcha were to be owned wholly by Mr Garcha only.

Ground 5: The judge failed to give reasons or otherwise failed to give adequate reasons for his decision as to why Mr and/or Mrs Garcha’s interpretation of the Marital Agreement was to be preferred to that of the Trustee.

Ground 6: The judge was wrong to find that Mrs Garcha being unchallenged on her evidence as to the reasons for her entering into the Marital Agreement was a relevant consideration.

Ground 7: The judge failed to give reasons for his finding that Mrs Garcha had not relied to her detriment upon the common intention held by (on the Trustee’s case) Mr and Mrs Garcha.

Ground 8: The judge was wrong to find that the issue of whether Mrs Garcha had relied to her detriment on (what the Trustee says) was Mr and Mrs Garcha’s common intention, the issue of detrimental reliance was *res judicata* as regards Bath Road.

Ground 9: The judge was wrong to exercise his discretion in favour of Mrs Garcha and order the Trustee to pay Mrs Garcha's costs of the Application.

25. Mr Passfield KC, who appeared with Mr Hannant on the appeal (Mr Passfield not having appeared below), however, condensed the grounds relating to the judge's conclusions in the judgment into three essential points: (1) the judge failed to give reasons for his conclusions as to the intentions of Mr and Mrs Garcha in purchasing the Properties, and failed to weigh up all of the evidence in reaching them (grounds 1 to 3); (2) complaints as to the judge's conclusions in respect of the Marital Agreement (grounds 4 to 6); and (3) complaints as to the judge's conclusions on detrimental reliance (grounds 7 and 8).
26. Mr Willetts, who appeared for Mr Garcha, contended that the arguments advanced by Mr Passfield to the effect that the judge failed to take into account various matters strayed beyond the grounds of appeal. I do not accept this. It is true that grounds 1 to 3 are all expressed as the judge having failed to give reasons. In the text beneath each of the grounds, however, it is contended that the judge failed to address key matters of evidence, and in so doing failed to marshal the evidence or to give reasons for rejecting (if he did reject) those matters. As I explain in the next section, part of the complaint as to the inadequacy of reasons relates to the failure to address inconsistent evidence and explain why it was disregarded.

The law on giving reasons

27. The requirement that a judge give adequate reasons for his or her decision was explained by Lord Phillips MR in *English v Emery Reimbold & Strick Ltd (Practice Note)* [2002] EWCA Civ 605; [2002] 1 WLR 2409, at §15 to §21.
28. It is unnecessary for a judge to deal with every argument advanced by the parties: "It is sufficient if what he says shows the parties, and if need be the Court of Appeal, the basis on which he has acted..." (Griffiths LJ in *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119, 122) which Lord Phillips MR said, at §18, applied to judgments of all descriptions. At §19, he said:

"It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

29. At §21, Lord Phillips MR said:

“When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision.”

30. Mr Willetts drew my attention to the following passages of the judgment of Patten LJ in *Weymont v Place* [2015] EWCA Civ 289, at §1, §4, §5 and §6:

“1. The Court of Appeal does not usually entertain appeals where the only grounds of challenge to the judgment of the trial judge relate to the judge's findings of fact. Decisions of this Court and the Supreme Court have repeatedly recognised the advantages which the trial judge enjoys in hearing the live evidence and assessing the credibility of the witnesses. The function of the appeal court is not to re-hear the case but to review the decision which the trial judge has made. For this reason, it will only interfere with his findings of fact if it becomes clear that there was no evidence to support them; that the judge misunderstood the evidence; or that he made findings which no reasonable judge could, in the circumstances, have made see *Re B (a Child)* [2013] UKSC 33 at [52]-[53].

...

4. But the relative immunity of the trial judge's findings of fact to interference on appeal depends upon the trial process having been conducted in a way which confirms that the trial judge has properly considered and understood the evidence; has taken into account the criticisms of the evidence advanced by the parties' legal representatives; and has reached a balanced and objective conclusion about points on which differing or inconsistent evidence has been given in making the factual findings which form the basis of his decision.

5. An important aspect of this process is the production of a properly reasoned judgment which explains to the parties and to any wider readership why the judge has reached the decision he has made. This includes making a reference to the issues in the case; the legal principles or test which have to be applied; and to why, in cases of conflicting factual evidence, the judge came to accept the evidence of particular witnesses in preference to that of others.

6. The judge is not, of course, required to deal with every point raised in argument, however peripheral, or with every part of the evidence. The process of adjudication involves the identification and determination of relevant issues. But within those bounds the parties are entitled to have explained to them how the judge has determined their substantive rights and, for that purpose, the judge is required to produce a fully reasoned judgment which does so: see *English v Emery*

Reimbold & Strick Ltd. [2002] EWCA Civ 605. The production of such a judgment not only satisfies the court's duty to the parties but also imposes upon the judge the discipline of considering the detail of the evidence and the legal argument.”

31. In *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, Males LJ, at §46, added that “fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it”.

Grounds 1 to 3.

32. In my judgment, the judge did fail to provide adequate reasons for his conclusions as to the beneficial ownership of the Properties. There was, in this regard, important evidence that was inconsistent with the assertions of Mr and Mrs Garcha that the properties were wholly beneficially owned by Mr Garcha, in the form (primarily) of the evidence given by them in the course of the POCA proceedings and (secondarily) of the conveyancing file in relation to the acquisition of Malham Drive.
33. I accept that the judge had this evidence in mind, as shown by the fact that he referred to it, and to the Trustee’s reliance on it, at various points in his judgment. The problem, however, lies in the fact that in explaining his conclusions he either made no reference to it at all or (in relation to Malham Drive) made a reference to it which does not enable the reader of the judgment to understand his reasoning in rejecting it.
34. As to Bath Road, having grounded his conclusion on the Marital Agreement, the judge said that there was “no evidence” of any agreement at the point of acquisition that Mrs Garcha would have any beneficial interest in it. Since he made no reference here to the inconsistent evidence in the POCA proceedings, it is impossible to know whether he either (1) accepted the explanations of Mr and Mrs Garcha in which they denied that the statements in those proceedings, purportedly made by them or on their behalf, were in fact made by them or on their behalf, or (2) concluded that they did make, or authorise, such statements, but concluded that they were not true. The difference is important, particularly because if he concluded that they did make or authorise the statements, that may well have given rise to further questions. In particular, whether having made prior statements which, if Mr and Mrs Garcha’s case in these proceedings was to succeed, must have been untrue, impacted on a claim to equitable relief.
35. The same point arises in relation to The Lock, where the judge similarly based his conclusion that there was an agreement that it was to be held on trust for Mr Garcha solely on the Marital Agreement, and made no mention at all of the inconsistent statements made in the POCA proceedings.
36. In relation to Malham Drive, the judge’s conclusion was again based on there being no evidence to satisfy him that there was an agreed departure from the position as stated in the Marital Agreement. In this case, however (as I have noted above), he did make reference to the “steps taken or statements made by Mrs Garcha in the POCA proceedings”, but said only that he found that the submission from Mr Garcha’s counsel “absent any evidence of any common intention in relation to such steps from Mr Garcha or Mr Garcha Snr” had compelling force to it.

37. This appears to be a reference back to §111 of the judgment, where the judge said:
- “Counsel for Mr Garcha says that insofar as anything was said by Mrs Garcha in the context of the POCA proceedings about relinquishing any interest in Malham Drive to protect Mr Garcha’s interest in *certain* other properties, there is no evidence that that was ever the intention of Mr Garcha or Mr Garcha Snr.”
38. In that passage, however, the judge was addressing the different point about Mrs Garcha having *relinquished* an interest in Malham Drive. The critical statements – that both she and Mr Garcha made (or at least appear on the evidence to have made) in the POCA proceedings – were to the effect that she *had* a beneficial interest in the Properties. That point is not addressed in the judgment at all.
39. If, contrary to the above, the judge was intending to refer to some other submission of Mr Garcha’s counsel, then the problem is that it is impossible to identify from the judgment what that submission was, and so impossible to discern the judge’s reasoning for dismissing the evidence.
40. Further, in relation to Malham Drive, although the judge referred to the Trustee’s case based on the documents in the conveyancing file, he failed to explain why he disregarded that evidence.
41. I consider that by reason of these omissions, the judgment fails to enable the parties or an appeal tribunal to “analyse the reasoning that was essential to the judge’s decision” (per Lord Phillips MR) and fails to show that the judge “has reached a balanced and objective conclusion about points on which differing or inconsistent evidence has been given in making the factual findings which form the basis of his decision” (per Patten LJ). Similarly, I consider that there was contrary evidence which the judge should have dealt with and explained why he did not accept it (per Males LJ). Accordingly, I allow the appeal on grounds 1 to 3.

Grounds 4-6.

42. I will first address ground 5 – inadequacy of reasons for the judge’s conclusion as to the interpretation of the Marital Agreement. All that the judge said about this was at §86:
- “In terms of the interpretation of the specific provisions of the marital agreement itself, I respectfully adopt and prefer, in comprehensive terms, the interpretation of the relevant clauses of the marital agreement as advanced to me by counsel for both Mr and Mrs Garcha individually, when compared with the submissions made on that point by counsel for the Appellant.”
43. There are a number of prior references in the judgment to the parties’ positions on the Marital Agreement. Nowhere, however, does the judge identify the rival arguments presented to him as to the interpretation of the agreement.
44. Mr Willetts submitted, in reliance on the first two sentences of §21 of the judgment of Lord Phillips MR in *English v Emery* (set out above), that the judge did not have to

detail, or even summarise, a submission which he or she accepts.

45. That must be read, however, with the third sentence, which identifies the essential requirement as being that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's conclusion. If the judge had included his own reasoning for reaching his conclusion on the interpretation of the Marital Agreement, then his brief reference to accepting/rejecting the parties' submissions may have been appropriate. In the absence of such reasoning, however, it is not possible to understand the process of reasoning which led the judge to his conclusion. Accordingly, I allow the appeal on ground 5. That makes it unnecessary to consider separately ground 4 (the absence of reasoning for the conclusion being sufficient in itself).
46. Ground 6 raises a subsidiary point relating to the judge's findings both as to the interpretation of the Marital Agreement (i.e. relevant to grounds 4 and 5) and as to the common intention of the parties at the time of the later purchases (i.e. relevant to grounds 1 to 3). It relates to the fact that the Trustee's counsel did not challenge Mrs Garcha in cross examination on her evidence as to the reasons for entering into the Marital Agreement.
47. The judge placed reliance on this in a number of places in the judgment in support of his conclusion as to Mrs Garcha's intention that the beneficial interest in the Properties (purchased *after* the Marital Agreement) was held by Mr Garcha: see, for example §98, §107 of the judgment.
48. In her first witness statement, Mrs Garcha said: "...the purpose of the agreement was to protect/safeguard properties [Mr Garcha] purchased prior to my involvement with him and to ensure that they would continue to be safeguarded should the marriage not last."
49. This reason, which cited only the need to protect *existing* properties, could not support Mr and Mrs Garcha's case as to their intentions in relation to subsequently acquired properties. Indeed, it might be said to undermine reliance on the Marital Agreement to support that case. To the extent that the judge appeared to rely upon this in support of the conclusion as to the intentions of Mr and Mrs Garcha in relation to subsequently acquired property, then I consider he was wrong to do so.
50. Mr Willetts said that Mrs Garcha's evidence in her second witness statement made it clear that the purpose in entering into the Marital Agreement was to protect later properties. He referred in particular to §23, §25, §27 and §32 of her second statement.
51. In §23, Mrs Garcha gave the same reason as in her first statement: "Harpreet asked me if I would be prepared to enter into a marital agreement *because, prior to meeting me, he had built up a successful business and property portfolio and wanted to protect it*" (emphasis added).
52. At §25, she said that the Marital Agreement "...is clear" and said that "following the marriage, all property purchases and investments belong to Harpreet..." That is not evidence of her purpose at all, as opposed to a submission about the meaning of the agreement.

53. At §27, she said that the Marital Agreement “is straightforward. I fully agreed at that time and still do that all properties and investments were to remain as belonging to Harpreet”. At §32, she said that she was aware of Mr Garcha’s plans to expand his portfolio but it was very much his business and not mine.” Neither of these is evidence of her purpose in entering into the agreement.
54. I find nothing, therefore, in these passages from Mrs Garcha’s second statement which undermine her clear evidence as to the reason for entering into the Marital Agreement that she gave in her first witness statement.
55. Accordingly, I consider that the judge fell into error in placing reliance on the fact that Mrs Garcha’s evidence as to the reasons why she entered into the Marital Agreement were not challenged in reaching his conclusions both as to the interpretation of the Marital Agreement and as to the subsequent joint intentions of Mr and Mrs Garcha.

Ground 7

56. This ground relates only to Bath Road, where it is for the Trustee to establish that Mrs Garcha suffered detriment in reliance on the common intention that she was to have a beneficial interest, in circumstances where the property was purchased in Mr Garcha’s sole name.
57. Under this ground the Trustee contends that the judge failed to give reasons for finding that Mrs Garcha had not relied to her detriment. The Trustee also contends that the judge erred in focusing only on the question whether Mrs Garcha made financial contributions in respect of the property, and thus ignored her case that she gave up a lucrative employment to focus on looking after the family.
58. All that the judge said in his judgment on this point was (at §93):

“Furthermore, I find that, even if I was wrong on the absence of any such agreement as to the beneficial ownership of Bath Road, the Applicant has comprehensively failed to produce any or any sufficient evidence of any detrimental reliance suffered by Mrs Garcha.”
59. Although this is only a very shortly stated reason, it falls into a different category than the absence of reasons I have addressed above in relation to the other grounds. This is not a case where there was a critical piece of inconsistent evidence which the judge failed to deal with at all. In this case, I consider that it was sufficient for the judge to say that – on the totality of the evidence presented – he was not satisfied that the burden of establishing detrimental reliance had been established. Moreover, there is nothing in this part of the judgment to suggest that the judge had focused only on financial detriment, and I reject that further criticism of the judgment.
60. Accordingly, I dismiss the appeal under ground 7.

Ground 8

61. This ground relates to the judge’s conclusion, summarised at [19] above, rejecting the argument that Mrs Garcha had suffered detriment by giving up her interest in the other properties listed in the schedule to the settlement agreement dated 8 September 2017.

62. The Trustee focuses on the judge's comment about *res judicata*. As I read §94 of the judgment, however, the judge's principal conclusion was that, for the same reasons that DJ Moody had given in the earlier judgment, the Trustee could not establish the necessary element of detrimental reliance by reference to the circumstances surrounding Mrs Garcha agreeing to give up any interest she had in the scheduled properties in the context of the settlement agreement. His comment that the argument about *res judicata* had "compelling force" was merely a further reason justifying that conclusion. Accordingly, even if he was wrong about the *res judicata* point it would not get the Trustee anywhere, because there is no appeal against his principal conclusion on this point.

Ground 9

63. This ground relates solely to Mrs Garcha. The judge awarded Mrs Garcha her costs of the proceedings. His reasons are set out at §133 to §148 of his judgment. He relied on the fact that Mrs Garcha was a party because the Trustee had chosen to join her. That, he said (at §142), gave rise to a potential costs exposure, because litigation is not a risk free exercise. As between the Trustee and Mrs Garcha, the Trustee was the unsuccessful party and should, according to usual principles, be liable for Mrs Garcha's costs.
64. The Trustee appeals against that decision on the grounds that Mrs Garcha was joined to the proceedings only because she was legal owner (and therefore trustee) of The Lock and (partly) of Malham Drive. In reality the dispute was between the Trustee and Mr Garcha. The only *potential* interest Mrs Garcha could have was one that was aligned with the Trustee: to establish that she had an interest in the Properties, which would have been of benefit to her in the event there was any surplus. In fact, however, Mrs Garcha chose to align herself with her husband, and contended that the beneficial interest was owned solely by him. (I note that it was not suggested below that, given that Mr and Mrs Garcha's interests were aligned, the Trustee should not have to pay for two sets of solicitors and counsel, and the appeal is not brought on that basis.)
65. Mr Passfield submitted that, as trustee of two of the Properties in the context of an internal dispute between the Trustee and Mr Garcha over the beneficial interest, Mrs Garcha ought to have remained neutral, citing Halsbury's Laws of England (Vol 98, 2019) at §347: "Where the dispute is between rival claimants to a beneficial interest in the subject matter of the trust, the duty of the trustee is to remain neutral and to offer to submit to the court's direction".
66. As Mr Pask (who appeared for Mrs Garcha on the appeal) submitted, an appeal against the exercise of a trial judge's discretion in respect of costs faces a high hurdle: see, for example, *Terracorp Ltd v Mistry* [2020] EWHC 2623 (Ch), per Miles J at §85. He submitted that the judge was entitled to exercise his discretion in the way that he did. Mrs Garcha was not brought into the proceedings as an independent trustee, but as someone accused (until trial at least) of dishonest collusion with Mr Garcha in the fabrication of documents, notably the Marital Agreement. In those circumstances she could not have been expected to remain neutral.
67. In my judgment, Mr Pask's submissions are to be preferred. This was not a case involving an independent trustee who could be expected to remain neutral, but one in which personal attacks were made on the honesty of Mrs Garcha. I consider that it

was within the range of discretion open to the judge to conclude that in those circumstances – and on the basis that Mrs Garcha was the successful party – she was entitled to her costs. Accordingly, I dismiss the appeal on ground 9.

Conclusion

68. In light of the above conclusions, I allow the appeal in relation to grounds 1-3 and 5-6. I need not address ground 4 (which goes to the substance of the judge's conclusion on the interpretation of the Marital Agreement) because that issue will need to be retried in any event given my conclusions on the other grounds. I dismiss, however, the appeal on grounds 7-8 and on ground 9. I will invite submissions from the parties as to the appropriate directions to be given for the case to be re-tried.