Neutral Citation Number: [2020] EWHC 2068 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2020

Before :

THE HONOURABLE MR JUSTICE COBB

- -

Between :

Case No: FD19F00024

MAGALI MOUTREUIL	**Claimant**
- and -	
(1) PETER RICHARD ANDREEWITCH	**Defendants**
(2) PIER INVESTMENT COMPANY LIMITED	

IN THE CENTRAL FAMILY COURT

Case No: ZC18P04081

MAGALI MOUTREUIL	**Applicant**
- and -	
PETER RICHARD ANDREEWITCH	**Respondent**

- -
- -

James Weale (instructed by **LSGA**) for the Claimant
Francesca Dowse (instructed by **Penningtons Manches Cooper**) for the First Defendant
The Second Defendant (in proceedings FD10F00024) was not separately represented

Hearing dates: 17 to 19 June 2020

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published.

The Honourable Mr Justice Cobb :

Introduction: the applications

1. There are two applications before the court:

   i) A claim issued on 15 March 2019 under *Part 7* of the *Civil Procedure Rules* by which the Claimant, Magali Moutreuil ("the Claimant") seeks determination of her beneficial interest in shares in a company, Pier Investment Company Limited ('Pier'), and in freehold property owned by the company (the "Ownership Proceedings"); and

   ii) An application issued on 11 September 2018 by Ms Moutreuil pursuant to *Schedule 1* of the *Children Act 1989* ('*CA 1989*') (the "*Schedule 1* Proceedings").

   Although the *Schedule 1* proceedings were issued first in time, it is logical, and agreed, that I should deal with these applications in the order set out above.

2. The Defendants to the 'ownership proceedings' are the Claimant's former partner and cohabitee Peter Richard Andreewitch (although he is the first of two Defendants, I shall refer to him as 'the Defendant' as he is the only defendant to have taken an active part in the proceedings) and the company itself, Pier. Mr Andreewitch is the sole respondent to the *Schedule 1* proceedings.

3. The hearing and determination of these applications immediately follows the hearing and determination of welfare proceedings under *Part II* of the *CA 1989* concerning the five children of the Claimant and Defendant (the "welfare proceedings"). It is

unnecessary for me to share any details of the issues or outcome of the welfare proceedings in this judgment, as (in the event) they have no bearing either on the ownership or the *Schedule 1* proceedings. I reserved judgment in the welfare proceedings, and that judgment is being handed down simultaneously with this.

4. This is the second substantive judgment I have given in these proceedings; on 22 May 2020 I delivered judgment on the Claimant's application for sanction for breach of a freezing order *Moutreuil v Andreewitch (Contempt: No.2)* [2020] EWHC 1301 (Fam). The hearing on sanction has been adjourned, pending delivery of this judgment.

5. This hearing was conducted remotely, but was listed as if in Open Court, and was conducted on that basis, following the guidance in *V v TA* [2014] EWHC 3232 (Ch) at [14]. For a limited period, a representative from the Press Association attended. I have made a reporting restriction order to protect the minor children of the family. A sizeable bundle of material had been lodged for this hearing; I heard the oral evidence of the parties, and submissions from able counsel instructed in this case. I reserved judgment at the conclusion of the hearing.

The issues: burden and standard of proof

6. It is an agreed fact that on 31 July 2000, the Defendant facilitated, or procured, the transfer of all of the shares of Pier from his business associates (Mr OH and Mrs FH) to the Claimant. This was concluded by way of a contract of sale. It is further agreed that the Claimant now legally owns the shares[1].

7. I deal more fully below with the way each party puts its more detailed case (see [92]-[107]) but, for a consideration of the issues of burden and standard of proof, the following should be noted.

8. The Claimant asserts that at the time of the transfer of the shares, and up to the point of the breakdown of the relationship, it was understood and intended by the parties that she would become the outright owner of the shares. She maintains that the reason for the transfer was the Defendant's determination that he should divest himself of any interest in the shares, so as to avoid the claims of creditors and potential creditors; he was at the time of the transfer 'embroiled' (her word) in commercial litigation in Austria. The Claimant asserts that the Defendant made clear that he preferred for her, rather than a business partner, to be the owner of the Christchurch Street home in which they lived (a corollary of her taking ownership of the shares, as this was the main asset of the company). Further, or alternatively, the Claimant asserts that at the time of the transfer, and thereafter, the Defendant made clear, through unequivocal representations to the Claimant, that the shares (and the property in which they lived) belonged to her, and the Claimant acted to her substantial detriment in reliance upon those representations. In the further alternative she asserts that a constructive trust has been established by virtue of their common intention that she should have a sizeable proportion of the shareholding, and hence the property. If the claim fails on all of these bases, the Claimant seeks relief under *Schedule 1* of the *CA 1989*, *inter alia* for a housing fund for herself and three of the parties' five children.

[1] The Defendant's defence reads: "… on or around 31 July 2000, the legal title to the shares was transferred from [FH] and [OH] to [the Claimant] …".

9. For his part, the Defendant emphasises that the company, Pier, was incorporated, and the principal asset (the Christchurch Street property) purchased, some years before he and the Claimant had even met. When he procured the transfer of the shares to the Claimant, he intended, and he asserts that the parties *both* so intended, that she would be no more than a 'bare trustee' or 'nominee' of the shares, and that at no time did she acquire beneficial ownership of the shareholding. He claims to have told her this at the time. His case therefore is that at all times he has been the beneficial owner of the shares. He points to the fact that in 2018 the Claimant signed a document headed 'Notes to the Declaration of Trust' which confirmed this arrangement. In the *Schedule 1* proceedings, the Defendant's open offer is the provision of a capital sum (£200,000[2]) as a deposit for a property (to revert to the Defendant upon sale when the youngest child is 18), on the basis that the Claimant purchases accommodation out of London for herself and the children in the sum of c.£300,000; alternatively he offers her an annual allowance (£12,000) by way of child maintenance.

10. Although the Claimant brought the claim in order to clarify the position in relation to the ownership of the shares (and the property), it is common ground between the parties that the burden lies with the Defendant to show that the Claimant is *not* the sole beneficial owner of the shares, i.e. it is for him to demonstrate that equity does not, in this instance, follow the law.

11. It is submitted by Mr Weale, for the Claimant, that had the Defendant brought the claim, or a counter-claim, he would have run into difficulty in doing so; he argues that I would have had to consider whether the public interest in the due administration of justice would have been served in enforcing an essentially illegal or immoral claim. He urges me to the view that even though defending the claim, I should not permit him to profit from his own deception (i.e. in transferring the shares to the Claimant so that they appear to third parties to not belong to him, while asserting privately that he owns them beneficially). In this regard he pointed me to the Supreme Court's decision in *Patel v Mirza* [2016] UKSC 42, [2017] A.C. 467[3], and to the more recent decision in *Knight v Knight* [2019] EWHC 915 (Ch). While I accept the force of this point, I have not found it necessary to rely on it in reaching my decision.

12. Where I make findings of fact (as I do through the judgment), I do so on the balance of probabilities. I have treated each piece of the evidence carefully, and have not assumed that because one or other party may have misled me over one or more issue, that they have misled me throughout on all points[4].

Factual background

13. The Claimant is aged 44, and is a French national. She was educated to tertiary level in France before coming to England in 1997, initially as an *au pair*, with the intention of improving her English. Her aspirations for a career in this country were put on hold when she became a mother, ultimately with five children, thus limiting her prospects of pursuing a career out of the home. That said, in 2014, in order to support the family (the Defendant was not working), she took part-time work as a shop

[2] Which the Defendant proposes to raise by way of mortgage on Christchurch Street
[3] ""No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." So spoke Lord Mansfield in *Holman v Johnson* (1775) 1 Cowp 341, 343, ushering in two centuries and more of case law about the extent and effect of this maxim." [1] *Patel v Mirza*
[4] Applying the guidance offered in *R v Lucas* [1981] QB 720, [1981] 73 Cr App R 159

assistant in a major department store in central London. She still harbours a hope to pursue further education and to have a fruitful career. The Defendant described the Claimant as an intelligent woman, a timid woman, but not a "businesswoman". I think that his description is apt in all respects.

14. The Defendant is thirteen years older than the Claimant, at 57, and an Austrian national. He has, or has had, a property investment and development business based in Vienna. He bought, renovated, and sold properties, and periodically enjoyed some rental income. He was reasonably successful in the business, which he did mainly alone, although at times in partnership or other business relationships with others, including at one time Mr LH, his wife Mrs FH and their son Mr OH. He built up a property portfolio in Vienna. In 1992, he incorporated Pier. He told me that in the mid-2000s he gave up his business pursuits in order to look after, and be with, the five children, particularly when the Claimant worked out of the home.

15. The Claimant and Defendant met in early 1998; the Claimant moved in with the Defendant later the same year. At all times up to their separation in 2018 they lived together at 62, Christchurch Street, London SW3 ("Christchurch Street"). This is a three-bedroom property in Chelsea, which had been purchased by Pier using the Defendant's money in 1993. It is agreed that the property was in a state of dilapidation when they first cohabited, and remained so for much of the period under review. In the latter stages of the parties' relationship, the Defendant undertook renovations on the property.

16. The Claimant and Defendant never married. The Claimant's case is that there was occasional discussion of marriage, but this did not lead to an engagement, let alone matrimony. Although the Defendant said that he gave her jewellery, it is agreed that he never gave her an engagement ring. The Claimant told me that she had wanted to marry: "I stayed with [the Defendant] for a very long time indeed, we lived as husband and wife… in my heart it was pretty much the same". The Defendant accepts that their relationship was similar to that of a husband and wife[5]. She told me, and I accept her evidence on this although the Defendant denied it, that the Defendant did not want her to take his surname, as he was fearful of jeopardising the arrangement by which the company assets were placed out of his creditors' (or potential creditors') reach.

17. It is common ground between the parties that they had always intended to have a large family. Between 2002 and 2011 five children were born to the couple; they all lived in Christchurch Street until March 2019.

18. In July 2000, after the couple had been in a serious relationship for over two years (for most of that time they had cohabited), the Defendant procured the transfer of all of the shareholding in Pier from the H family to the Claimant. This is one of the key events in the family history which deserves detailed analysis, and on which I focus in the section which follows at [40]-[67] below.

19. In 2002, shortly after the birth of their oldest child ['A'], the Defendant suffered a serious accident, and was incapacitated for months. According to both parties, this prompted a discussion about how the Claimant would be protected in the event of the

[5] Defence para.5

Defendant's death. The Claimant told me that she looked to the Defendant for reassurance about her security. She maintained that the Defendant emphasised to her that as she was the owner of the company, and the property at Christchurch Street, she therefore had no need to worry about her financial security; she added:

> "… the Defendant reassured me that although the property was in a complicated company structure, I was the shareholder which meant that I owned it. … all I had to do to keep it in that structure was to fill in the balance sheet with zero income and send it off to Companies House."

In his oral evidence (notably, he did not respond in his pleadings or written evidence to the Claimant's written evidence about this at all) the Defendant disputed this, averring that all that was said about her future security was that "as long as she cared for the children while they were small, they would take care of her when they were adults". In relation to these conversations, I prefer the evidence of the Claimant; her account rings true.

20. A later conversation focused on the Claimant's aspiration to pursue a career. Her case on this was that the Defendant had emphasised to her that she would never have to work, and that she would "always have a roof over her head". He denied giving her such an indication, stating that he "certainly did ***not*** say that she would certainly have a roof over her head… I told her 'you won't be on the street'… "I did not want to have her kicked out of the house, and I wanted to be fair, and she would be fair"… "I said that 'we will find a solution' for her". Again, I prefer the account of the Claimant; I consider that the Defendant's version of this conversation has been re-framed by him to fit his stance in the current dispute.

21. It is apparent that the relationship between the Claimant and the Defendant had for many years been difficult, and in the finding of HHJ Lord Meston QC in parallel proceedings under the *Children Act 1989*[6], it was characterised by "years of verbal conflict and abuse" from the Defendant. It soured further in 2017. ln January of that year, an incident occurred at the family home when the Defendant allegedly assaulted the parties' daughter, A, (then aged 15); as a consequence, A left the family home and sought refuge at the home of a friend of the Claimant's. Children's Social Services became involved and, on 21 February 2017, following a Child Protection Conference, all 5 children were made the subject of a Child Protection Plan pursuant to *section 47* of the *Children Act 1989*. On 11 June 2017, a further incident occurred when the Defendant allegedly assaulted A (the Defendant's case is that A "was the aggressor, and [the Defendant] sought to restrain her and protect the other children"). While I make no findings about this[7], the result of this incident is that the police were called and the Defendant was arrested but not, in the end, charged. It is the Defendant's case that [A] left the Property due to an argument with the Claimant not him.

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[6] In which both the Claimant and Defendant played a full part. I have deliberately not cited extensively from Judge Meston's judgment, delivered in private proceedings, but it was referred to by counsel in this hearing, and all parties and their lawyers had access to it.

[7] This was extensively examined by Judge Meston, and findings made,

22. I refer to the incidents in [21] above as they are relevant to my appreciation of the increasingly difficult and (in my finding) abusive atmosphere in the house in the run-up to the parties' final separation.

23. The written statements in these proceedings, and the oral evidence, were replete with examples of escalating hostility, anger, and bitterness between the parties from 2017 through to their separation in 2019, and beyond; the children were caught up in the dispute. Illustrative of the tensions were aggressively worded e-mails sent from the Defendant to the Claimant in the two-year period. I have seen a long run of e-mails, and pick out for illustration only three which post-date the separation:

    i) On 3.9.18, the Defendant wrote to her: "No clinical psychologist worth his salt will fail to diagnose your neurosis. It's a medical condition, not an insult"; the Defendant's evidence when asked to consider this: "this was "obviously not good";

    ii) Later that month, on 19.9.2018, the Defendant accused the Claimant of ignoring her then 6 year old youngest son who had said "I hate you": "you brush aside anything; just think of the Holocaust deniers – with the right mind set you can brush aside anything"; the Defendant accepted in oral evidence that "it was a horrible e-mail; I was very bitter."

    iii) In the following year, (21.6.19), after some cryptic references to her relationship with her children, he concluded: "Mother?! Hate-machine".

24. The Claimant and Defendant led separate lives albeit still under the same roof, with the Defendant occupying the largest bedroom, their older daughter [A] the next largest bedroom, and the four younger children (and occasionally the Claimant, who slept at a friend's home periodically) the third and smallest room.

25. In late-2017, the parties sought to negotiate arrangements between themselves for the future living and contact arrangements for the children, and worked on a document which they entitled a 'Family Status' document; this did not in fact represent, or lead to, an agreement. On one occasion, the Claimant reports that in the disputes about this 'status' document, the Defendant "began hurling mugs … at the wall". The Defendant denied this, but she gave the account with notable congruence, distress, and detail, and I accept her description of this incident.

26. The Defendant told me (when re-examined by Miss Dowse, his counsel) that there was a brief period of reconciliation with the Claimant in early 2018, but the Claimant herself did not give evidence of this, and was not asked about it. If he intended to mean that hostilities temporarily abated, this may (albeit I am sceptical) be true; if he intended to mean that the parties resumed a relationship, in the absence of any other evidence of this, I reject it. Indeed, the Claimant told me, and I accept, that in January or early February 2018, she sought advice from a University Law Clinic about applying for a non-molestation injunction.

27. Over a period of three days in early February 2018 (3-5 February), significant disagreement flared between the parties, generated by a specific dispute over whether the Claimant would sign a home-made 'trust deed' confirming that she legally owned the shares in Pier as a 'bare trustee' only, holding them for the benefit of the

Defendant. I deal with this key event in a later dedicated section below ([68]-87]); it is sufficient to record at this stage that on 4 February, the Defendant was arrested by the police following an assault on the Claimant. On the following day (5 February 2018), the Claimant signed a substitute home-made document produced by the Defendant entitled 'Notes to Declaration of Trust'. On 8 February 2018, the Claimant issued the non-molestation proceedings under the *Family Law Act 1996*, and a 'without notice' order was made, but the process was never served. She said that she was too worried about the Defendant's reaction to receiving the application and court papers. On the following day, she wrote to trusted friends, explaining that she was concerned that she had signed a document "against my will".

28. It was agreed between the parties that they would both leave Christchurch Street on 31 March 2018; this had been prompted by the earlier discovery of a significant ATED (Annual Tax on Enveloped Dwellings) liability which was accruing annually in relation to Pier's legal ownership of the residential property. The Claimant left with four of the five children, but the Defendant and B (the parties' second oldest child, a boy) in fact remained for another 6 months.

29. The Defendant's case was that he ceased living at Christchurch Street after 31 March 2018, but it is apparent that he and B in fact remained there. The Single Joint tax Expert (SJE) instructed in the case proceeded on the basis that the Defendant and his son were 'occupying' the property. After the delivery of the initial report, the Defendant's solicitor then wrote to the SJE to say that the Defendant "did not live there" in the relevant period. When cross-examined about this, the Defendant said that he had received advice from HMRC that it would be acceptable for him to be 'staying' at the property while he was renovating it, and that this would not incur ATED liability. I asked him myself where he was 'living' at that time, and he confirmed that he was indeed 'living' at Christchurch Street and was not 'living' anywhere else. This, it seemed to me, contradicted his solicitors' assertions on his behalf.

30. In March 2018, the Claimant and the children moved to rented accommodation, supported by housing benefit; she has since moved again to a different semi-furnished rented flat, again largely financed by housing benefit. Her current flat is 2-bedroom; the children have the bedrooms while she sleeps in the living room on a sofa bed.

31. The relationship between the parties remained difficult. Acerbic e-mails passed from the Defendant to the Claimant.

32. In September 2018, given her insecure and inadequate housing situation, the Claimant issued an application for an order under *Schedule 1 Children Act 1989*.

33. Two months later, in November 2018, HHJ Lord Meston QC conducted a fact-finding hearing in *CA 1989* welfare proceedings. He delivered his judgment in August 2019. He made a range of material findings about domestic abuse within the relationship, and a number of significantly adverse findings about the Defendant. It would not be right for me to descend into the detail of that judgment delivered at the conclusion of those private proceedings. However, it is pertinent to observe that Judge Meston had made findings about the Defendant's "rigid thinking and insensitivity" and "his determination to have his way", with "little insight into the effects on the children of what had happened, and in particular of his own behaviour and attitude". He

described the "unreasonable and hostile attitude and conduct of the [Defendant]"; significantly, he described the "unrelenting behaviour" of the Defendant in the period preceding the parties' separation.

34. On 26 February 2019, the Claimant's solicitors sent a letter before action to the Defendant in relation to what was to become the 'ownership' proceedings. It contained the following passage:

> "… by virtue of her status as legal owner, [the Claimant] is prima facie the beneficial owner of 100% of the shares in the Company. Insofar as this matter proceeds to trial, the burden of proof will be on you to establish that the position is otherwise".

The letter concluded with this conciliatory offer:

> "For present purposes, and insofar as this matter continues to be the subject of correspondence, [the Claimant] is prepared to limit her claim to 50% of the shares in the Company and/or the Former Family Home… Please would you now confirm that you do not dispute [the Claimant's] entitlement to at least 50% of the Company/Former Family Home … or … provide a full substantive response this letter".

35. On 28 February, ostensibly stung by the assertion that the Claimant owned all of the shares, the Defendant sent the Claimant an e-mail:

> "I exercise my right as beneficial owner of Pier Investment Company to terminate your trusteeship to act in my name and on my behalf … a beneficiary of a bare trust can take control of the property on giving due notice without any reason. In this particular case, however, there are additional points to consider, including your breach of fiduciary duties with possible criminal intent…"

In relation to his last comment (re: criminal intent), the Defendant cited the fact that the Claimant had ticked the 'risk of abduction' box on the form C100 in the *CA 1989* welfare proceedings, and added:

> "You can't just lie without suffering consequences…"

36. The Defendant followed this with a further short e-mail to the Claimant on 8 March 2019, under the subject title 'Bare Trust', which reads:

> "Regarding the bare trust: isn't that what you always wanted? Untangling? So we can go our separate ways? Which you need anyway to be able to claim housing benefit. I will write to your lawyer tomorrow."

37. On 17 March 2019, the Defendant responded to the Claimant's solicitors' letter before action:

> "[The Claimant's] claims to my property are only possible because I made her trustee to my bare trust. This is an extreme betrayal of her fiduciary duties … In addition to that, because this betrayal is so extreme, I consider pressing charges for a criminal investigation. A trustee is under absolute obligation to act solely for the beneficiary and should not claim his assets for herself.".

38. On 28 February 2019 (NB two days after the letter before action: see [34] above) the Defendant purported to transfer the Claimant's entire shareholding to the parties' then 14-year old son, B. This was not followed up by the signing of any stock transfer form. When this came to light, the Claimant applied for and obtained a freezing order, which was granted on 22 March 2019 by DDJ Hodson.

39. On 22 May 2020, as I mentioned in [4] above, I found that the Defendant had breached that freezing order by using the monies from the frozen account to his own use.

The transfer of the Pier shares to the Claimant (31 July 2000)

40. Pier was incorporated in December 1992. It is a holding company with property assets in (or formerly in) Austria[8] and Germany; its principal asset is the property at Christchurch Street, London.

41. The property at Christchurch Street was purchased in 1993 for £264,000. The transaction had been effected by Mr LH. In a letter sent by Mr. OH to the Defendant in the context of this litigation (dated 24 February 2020), he confirmed that: "you [i.e. the Defendant] were requesting his [Mr LH]'s assistance to purchase a property in the UK since you lived overseas at the time". The Claimant accepted in her evidence before me that the management of the properties in Austria/Germany was undertaken by the Defendant; it appears to be agreed that the Austrian/German properties were purchased and refurbished within Pier's activities. Two (or possibly three) properties were purchased in Germany after the birth of the parties' older children, between 2004 and 2010, which the family visited from time to time for holidays. It is fair to say that the Claimant told me that for much of the duration of the relationship she had not really understood the extent of the assets of the company; she told me "[i]t was only later, by looking at all of these documents, that I realised that they [the German properties] are part of Pier". The Defendant's case (though it lacks specificity) is that "I do not own property in Austria anymore".

42. At the date of the hearing, there was no value ascribed to the shareholding of Pier, but it was estimated to be in excess of £2m.

43. The Defendant was the director of Pier until 2015 and then again from 2017. Mr LH (referred to at [14] above), was said to be the company secretary in the early days of the business, although I have not seen any document disclosing the business

[8] Until 2004

relationship between the Defendant and Mr LH or his family. Mr LH (and latterly Mr OH and Mrs FH) were said by the Defendant to be 'bare trustees' or 'nominees' of the assets of the company. Mr OH, in the same letter referred to above ([41]) claimed:

> "I confirm my understanding that you were/are the ultimate beneficiary owner of the company since no other party was involved as far as I was/am aware. Our involvement in your company ceased when we transferred the shares in accordance with your request."

44. By a deed dated 31 July 2000, the shareholding in Pier was transferred to the Claimant from Mr OH and Mrs FH (Mr LH having died), at the request of the Defendant. By that time, the Claimant and the Defendant had been in a relationship for over two years and had been cohabiting for much of that time.

45. Consideration for the transfer was expressed to be £5.00. The Defendant's pleaded case was that it was *he* who had provided the 'consideration' of £5.00 and had handed the money to the H's:

> "[The Claimant] purchased legal title to the shares for £5, which money was provided by [the Defendant]"[9]

46. The Defendant in fact produced no evidence to support the contention that the £5.00 was provided by him; and/or that insofar as it was provided by him it was provided other than by way of gift to enable the Claimant to buy the shares herself. In the position statement filed for this hearing, Miss Dowse asserted that "[a] sum of £5 was paid by [the Claimant] directly to [the Defendant] as the beneficial owner (not to [Mrs FH])". In fact, when pressed on this under cross-examination, the Defendant recanted entirely those accounts, and asserted that the 'transfer of £5.00 was "notional consideration" or an "accounting exercise" and that no money ever passed hands (he did not recollect "…the handing of a £5 passing from one hand to another…"). Mr Weale observed, in reliance on the case of *Prime Sight Ltd v Lavarello* [2013] UKPC 22 [2014] AC 436, that the Defendant is now estopped from denying the payment of £5 as consideration for the shares, and is nonetheless held to his bargain:

> "[47] … contractual estoppels are subject to the same limits as other contractual provisions, but there is nothing inherently contrary to public policy in parties agreeing to contract on the basis that certain facts are to be treated as established for the purposes of their transaction, although they know the facts to be otherwise".

47. The Claimant's case is that after the transfer had been effected, the Defendant gave her the two stock transfer forms signed, respectively, by Mrs FH and Mr OH. The Claimant added:

> "[The Defendant] kept all the other documents relating to Pier in his study, even though I had agreed to become Company Secretary as well as the shareholder, but he said I

[9] Defence, [13.2]

> was to have the stock transfer forms in case I ever needed evidence to prove my ownership of the Shares".

She produced and exhibited these to her statement. The Defendant did not respond to or engage with this evidence, and I accept the Claimant's account.

48. So why were the shares transferred? The parties agree that in the 1990s the Defendant had become involved in litigation in Austria over his property business. It is perhaps most informative to turn to the Defendant's own witness statement in this regard:

> "In 1993 I was 50% owner of six properties in Vienna … I was drawn into multiple litigation because of issues arising out of the shared ownership properties and I was exposed to a number of liabilities directly from this. At the same time, I wanted to purchase a property in England, as this had always been my wish, but I was concerned about a new UK property being exposed to the same sorts of litigation in Austria. For that reason, when I bought my UK property at 62 Christchurch Street, I decided to take steps to shield it from future exposure. In doing so, I asked the [H] family, who I had met through my Austrian lawyer, [Dr N], to act as my trustees. I gave [Mr LH] £260,000 and he bought a house for Pier Investment Company Limited" (emphasis by underlining added)

49. The phrase "shielded from future exposure" is one which features elsewhere in the Defendant's evidence. In his response to the letter before action he said that he was:

> "… drawn into litigation of all sorts, liabilities etc. For that reason, I tried to shield my UK properties (sic) from future exposure and asked the H family to act as my trustees. I only met [the Claimant] years later in 1997/98. Within less than two years of our friendship, I asked her in 2000 to take over from the H family and become my new trustee, which she accepted"[10] (emphasis by underlining added).

50. The Defendant confirmed at the hearing that he was "being pursued" in relation to his business affairs in the 1990s; he described one particular creditor, a Dr K (who the Claimant told me, and I accept, he referred to as a "vampire"), as pursuing him for large sums of money; the Defendant produced a lawyer's invoice which confirmed work done on this suit. He told me that he was concerned that enforcement of orders in the Austrian litigation may follow him to England. The Claimant recalled (and asserted in her pleaded her case) that the Defendant was also being pursued by the tax authorities in Austria; the Defendant did not address this contention in his Defence, and I make no finding about it.

51. The Claimant told me, convincingly, that the Defendant was "quite paranoid and anxious" about the possibility of bailiffs attending at Christchurch Street, and she

[10] Extract from the Defendant's response to the Letter Before Action: 17 March 2019

clearly recalled that he told her: "if they come to the door, you should say that you are the owner of the house". The Claimant's oral evidence was that the Defendant had repeatedly told her that "there were people after his money" and that he wanted her to "protect the asset".

52. Importantly, and aligned with his wish to 'shield' or protect his assets from his creditors or potential creditors, the Claimant's evidence is that the Defendant wanted her to become the owner of the Christchurch street property "because it made sense for *me* [i.e. the Claimant] to own our home rather than a 'business associate'". She said that the Defendant expressly assured her that, following the transfer, she "would own the property and that this was in both of our interests because if [the Claimant] were the owner it would be safe from his creditors"; he had added: "you will be the owner of a house in Chelsea – what is there to worry about?"

53. What was said at the time of the transfer? The Claimant is absolutely clear that there was no question that the transfer of the shares was to vest in her the ownership of the company. Indeed, she says, through her solicitor in the Letter Before Action[11]:

> "… there would have been no conceivable purpose (or at least one that did not involve the deception or defrauding of third parties) of transferring the assets into the Claimant's name if that were not the position".

54. She added to this in her oral evidence:

> "I was asked to protect the house, for it not to be taken away by his creditors; it was daunting for me to do. I was leaving my comfort zone, but because I loved him, I took this responsibility to be the shareholder … so that we could have the home where we were going to start our family".
>
> "What he said was very simple. You help protect this asset the house that is owned by the company by becoming the shareholder, and in this way you prevent the house being taken away… we were together in a romantic relationship… it was a project together, to start a family and we had to do this together… I did not quite understand the whole scope for me…I did not know if I would have to go to court[12]… I took the risk indeed to have to be in court for him eventually, but I loved him despite my anxiety."
>
> "I was in love, and [the Defendant] had already had a great influence on me; he was very persuasive…he expressed his desire to have a large family".

She said that the Defendant confirmed to her at the point of transfer that she was now the 'owner' of the shares; she said that there was no discussion about her being the 'legal owner' or the 'beneficial owner'; there was no mention of the words

[11] Letter before action: 26.2.2019
[12] i.e. in the event of a dispute over enforcement of judgment debts.

'nominee', or 'trustee'. She said that she was anxious that by taking ownership of the shares she may be exposing herself to litigation, but that it was time to "take responsibility" and, in her words, "be an adult".

55. The Claimant has acknowledged that, following the transfer of the shares, she felt that she had a (non-binding) moral obligation towards the Defendant[13]. She has not fully explained this phrase, nor was she in fact asked to do so. I assume it reflects her expectation or intention to do 'the right thing' in sharing the asset with the Defendant once the ownership issue has been clarified. I return to this at the conclusion of my judgment.

56. The Defendant's case is very different. He asserted that at the time of the transfer he merely wanted the Claimant to be the 'nominee' or 'bare trustee' for the shares, and that at all times he intended that they would remain in his exclusive beneficial ownership. He disputed the Claimant's evidence that he felt that it was better for the shares to be owned by her rather than a business partner, and asserted that he had transferred them because Mr LH and Mrs FH had become "distracted", and "had less and less time to give to my business dealings", leaving him "feeling unimportant". He told me in his oral evidence that "I felt that I could trust [the Claimant] … I explained to her my situation in legal and practical terms."

57. The Defendant told me that at the time of the transfer of the shares he explained to the Claimant the concepts of a trust; he said that he used the specialist terms 'bare trustee' and 'nominee' to convey to the Claimant that she was to have no interest in the shares. He added in his oral evidence (again referring to the conversation in 2000):

> "… I told her about the split between legal and beneficial ownership, and that it [the concept of the trust] comes from Crusader times".

He claimed that in explaining the terms of the trust to her, he had drawn on the historical origin of the creation of the trust dating back to the Third Crusade in 1190. It was extremely surprising, claimed Mr Weale, that this quite idiosyncratic historical detail had not found its way into the Defendant's pleaded Defence nor any of his written evidence, prompting the accusation of forensic embellishment of an already incredible account. This evidence in any event jarred, in my assessment, with his assertion (when dealing with the representations in the company accounts) that he did not know the difference between 'beneficial interest' and 'beneficial ownership' (see [61(ii)] below).

58. Mr. Weale succinctly illustrated the inherent contradictions within the Defendant's case, by asking the Defendant in cross-examination how he would have responded, after 2000, had Dr K had approached him and asked the question 'so, who owns the property at Christchurch Street?' The Defendant did not answer Mr. Weale's question

[13] Letter before action: 26.2.2019, and see also Particulars of Claim para. 12: "It was understood and intended that the above transfer would constitute an outright transfer of the legal and beneficial ownership in the Company's shares. Such a transfer was necessary in order to ensure that the Company/Property was (and/or remained) insulated from [the Defendant's] creditors. Notwithstanding the above, [the Claimant] felt that she had a (non-binding) moral obligation towards [the Defendant] in respect of the Company/Property." In her Reply to Defence it is noted that she refers to it as a "perceived moral obligation to look after [the Defendant]" which was "merely a feature of their close relationship"at the time.

directly. He responded with the words: "I would advise him to proceed as he thinks fit". Mr Weale pressed for a clearer answer, but the Defendant could not or would not oblige. In my finding, the Defendant knew full well that had he confirmed to Dr K that he owned the property beneficially he would have defeated his whole purpose of the 2000 transaction, and would have exposed him to enforcement of debts accruing in any foreign litigation; yet denying that his beneficial ownership of the property, while possibly putting Dr K off the scent, would have totally undermined his case in these proceedings.

59. After the transfer of the shares, it is agreed that the Claimant played no administrative role in the company, although from 2015 to 2017 she was a director of the company. The Claimant told me: "He was looking after the paperwork and I was looking after the children". That said, the finances of the Company and the Claimant became entwined. Until 2018, the Company did not have a separate bank account; rather, payments relating to the Company were made to and from a Santander (formerly Abbey National) account in the Claimant's sole name which had been set up at the Defendant's instigation shortly after the shares in the Company were transferred to the Claimant. That account was, in turn, replenished by the Claimant from her earnings during all the years when she was in employment, both before and after having children, as well as from the child benefit, child tax credit and working tax credit.

60. The annual returns of Pier to Companies House have been disclosed in the proceedings in the context of this dispute, and are revealing. The Claimant's 100% beneficial ownership in Pier is clearly confirmed by each of the Company's accounts filed at Companies House from 2000 to 2014; the Company's annual return dated 20 November 2015 (but filed on or around 23 November 2015) contains the statement that the Claimant was the sole shareholder of the Company. These documents were all signed and filed with Companies House by the Defendant personally.

61. The Defendant sought to respond to this powerful evidence as follows:

    i) "It was clearly an error on my part to list [the Claimant] as having a beneficial interest when in fact she had none. My nominees, the [Hs], never had the beneficial interest so could not pass this on to her. [The Claimant] is seeking to claim ownership based on a filing error"[14] (emphasis added);

    ii) In relation to the 2000 accounts: "I did not understand that there was a difference between legal and beneficial ownership"; a point which is surprising given his apparent lecture on the genesis of the trust law referable to the twelfth century crusades (see [57] above);

    iii) In relation to the 2001 accounts, he sought to make a distinction between the phrase "beneficial interests" and "beneficial ownership", adding "I regret" this filing. He claimed to be ignorant of the concept of 'beneficial interest' and claimed to have used the phrases having 'borrowed' them from the previous accounts. The Defendant said that he knew it was important to declare accurate information, but claimed only now to be aware that it is a criminal offence to make a false statement to Companies' House: "In the early years I did not know better";

[14] Defendant's statement [69]

iv) "With my limited command of the English language at the time, it was natural for me to adopt the previous wording after the share transfer to the Defendant] in 2000. It was clearly an error on my part to list [the Claimant] as having a beneficial interest when in fact she had none"[15];

v) He claimed to be fearful that Companies' House would reject his filed accounts if he changed the wording (though he appears not to have sought or obtained any advice to assist him);

vi) In later correspondence with the Claimant's solicitors (8 March 2019), the Defendant referred to the way in which the Claimant had been presented to Companies' House as "clearly an error of judgment on my part to state in Companies House filings that she was also beneficial owner when in fact she was not"; (emphasis added)

vii) In 2016, when the law required the identification of 'person with significant control'[16], the Defendant identified the *Claimant* on the declaration to Companies House as such a person who "holds directly or indirectly" 75% or more of the shares in the Company; only after the litigation commenced did the Defendant substitute himself in that role. The Defendant has not asserted that she was being held out as a person with significant control on a false basis; indeed, it would be an offence if he was to do so[17];

viii) And generally, he denies that "the wording used accurately reflected the position"; "Unfortunately, as pleaded above, the wording was inaccurate"[18].

62. When the 2016 declaration ([61](vii) above) was pointed out to the Defendant by the Claimant's solicitors, he replied:

> "Regarding your letter about my filings to Companies House: I will have to check the filings, if confirmed what you say, I am grateful for you pointing out an obvious clerical error" (emphasis by underlining added).

63. In his Defence, he pleaded that he had made, and filed, that statement in the mistaken understanding that it referred to the position of the Claimant as legal (not beneficial) owner of the shares. He corrected this only in early January 2018 when it was apparent that the parties were separating, and his long-standing arrangement appeared to be vulnerable.

64. Therefore, to summarise, until 2017 it appears that there is not a single document filed with Companies' House which shows anything other than the Claimant as the legal

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[15] Per Defendant's witness statement

[16] *Part 21 A and Schedule 1A of the Companies Act 2006* introduced by the *Small Business, Enterprise, and Employment Act 2015; sections 790D* and *790E Companies Act 2006*

[17] Section 1112 Companies Act 2006: "(1) It is an offence for a person knowingly or recklessly–
(a) to deliver or cause to be delivered to the registrar, for any purpose of the Companies Acts, a document, or
(b) to make to the registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular."

[18] per Defence para.17.5 and 18

and beneficial owner of the shares; there is no document which would indicate that the Claimant in fact held or holds the shares on trust for the Defendant.

65. On 5 June 2018, the Claimant's solicitors wrote a letter before action in the *Schedule 1* proceedings. On 16 July 2018, the Claimant's solicitors wrote a follow up letter to the Defendant to discuss settlement of the prospective *Schedule 1* claim. In response to the second letter, the Defendant replied (17.9.2018) with thinly veiled threats of criminal or regulatory measures against the Claimant and her solicitor as follows:

> "The answer to this is that it is nobody's business, least of all yours unless your client would claim herself that ownership from me. If that were the case, I would be forced to start criminal proceedings. It's very straightforward: A trustee has strict obligations under the law. Your client would then be asked why she violated her trustee obligations. If, interrogated under criminal investigation, she would blame everything on ill advise (sic.) from say, her legal representative, it would be unavoidable to further investigate that claim as well. In Austria we have for that purpose the chamber of lawyers disciplinary committee, where I had the pleasure once or twice to initiate proceedings to disbar certain questionable elements from the legal profession".

66. During the course of the relationship, the Christchurch Street property remained in a poor state of disrepair and "very run down"[19]. When the local authority became involved in this family's life, they were concerned about the state of the accommodation; the living conditions did not improve significantly. This remained the case throughout the parties' relationship. When the parties separated the Defendant sought to refurbish it so that the property could be let. There is a dispute over the source of the funds for the renovation works. I am reasonably satisfied that the large proportion of the funds for the renovations came from the Santander account (referred to at [59] above) into which the Claimant had placed her own income from employment and benefits. I was unimpressed with the Defendant's assertion, in the absence of evidence of the same, that he had reimbursed the Claimant in cash from the proceeds of sale of Vienna properties (the sales had all taken place many years earlier) or the sale of (unspecified) antiques in Vienna.

67. I am advised that the current tenant of Christchurch Street wishes to leave and has served notice. The tenancy ends in July 2020.

'Notes to the Declaration of Trust': 5 February 2018

68. The Defendant placed heavy reliance on the fact that on the 5 February 2018 the Claimant signed a document entitled 'Notes to the Declaration of Trust'; he maintains that this document spells out the long-standing arrangement or understanding between the parties.

69. The document reads as follows:

[19] Cross-examination of the Claimant

> "I. Magali Moutreuil (the "nominee") holds all shares of Pier Investment Company Limited (the "assets") as nominee of and trustee for and on behalf of Peter Andreewitch both of 62, Christchurch Street [full address].
>
> II. Miss Moutreuil was asked by Mr Andreewitch in 2000 to become his nominee, which she accepted without asking or receiving any promises of financial gain. She bought on his behalf the shares for a nominal amount of £5 in total, which was paid by Mr Andreewitch. At the time of the share transfer to Miss Moutreuil, Pier Investment had no trading activities, no liabilities or mortgages and owned only one asset, the freehold property of 62, Christchurch Street.
>
> III. Mr Andreewitch's previous nominee was Mr LH, his wife Mrs FH and his son Mr OH. Miss Moutreuil never had any contact with them, did not negotiate with them, and met only Mr LH about 16 years later…
>
> IV. The only asset of Pier Investment in 2000, the freehold property, was purchased in 1993. Miss Moutreuil did not know any of the people involved with the Company at that time, did not live in England, and met Mr Andreewitch only in 1997. Therefore she did not and had no reason to fund or contribute to the purchase of the house."
>
> The document is signed and dated.

70. Given the weight attached to this document by the Defendant, the circumstances in which it was signed requires a little elaboration.

71. As I have earlier discussed, by the start of 2018, the relationship between the Claimant and the Defendant was disintegrating rapidly and in a highly conflictual way. Over a number of months from the end of 2017 the parties had discussed the arrangements for the children going forward. A 'Family Status' document (see above [25]) had been prepared and discussed; the Claimant told me that the Defendant had prepared the first draft and she did not agree with its terms. The Defendant's draft document contemplated, *inter alia*, that three children would live with one parent, two with the other, "and after a month the situation reverses". The Claimant told me that there had been "a fight about this… I told him that this is madness; siblings should stay together."

72. The Claimant told me that the Defendant was "relentless" in trying to persuade her to agree to the arrangements. She told me in her oral evidence that the document was composed:

> "… at a time of great turmoil. I approached [the Defendant] and suggested that we should go to mediation, as I wanted to have the assistance of professionals in advising on the right plan for us all. [The Defendant] rejected the idea on the ground of cost. I made some enquiries, and was told

> that it would take 4-6 meetings to arrange the practicalities. He said that every penny had to be saved for the house. He then started to compose this… I felt very unsure about this. This was all hypothetical."

The Claimant said that the Defendant prepared the first draft, and that they then exchanged ideas about it, which took many weeks. However, she said that "I found the strength to resist signing the document", and did not do so.

73. On 3 February 2018, the Defendant presented the Claimant with a draft form of trust document which he had taken as a *pro forma* from the internet. It read as follows:

> "I, the undersigned [the Defendant's name is inserted here] of 62, Christchurch Street, London SW3 ("the nominee") do hereby acknowledge and declare that I hold all shares of Pier Investment Company Limited (the "Assets") registered in my name as nominee of and trustee for and on behalf of [the Defendant] ("the beneficiary")….
>
> I hereby expressly and irrevocably undertake that on receipt of written instruction from the Beneficiary I will promptly transfer the legal title of Assets to the Beneficiary or to any other third party as he may direct.
>
> I further undertake not to conduct or present myself to any third party as the beneficial owner of the Assets nor to cause …
>
> … save for the legal title I have absolutely no interest in or rights over the Assets".

74. The Claimant first saw this at about 9pm on 3 February, after she had returned home from work. She told me :

> "The children were not ready for bed yet, and I had to do all that. About 9.30pm it started…. I remember [the Defendant] coming down holding my vanity case and emptying it onto the settee… it went on until 1.30am the next morning,"

The Defendant denied that he had discussed the trust document with their son, B (then aged 13), but very shortly after the presentation of the document, B joined the conversation between his parents and asked his mother to sign it; the Claimant believed (in my judgment rightly) that B had been fetched from his room and encouraged to 'do his father's bidding'; she described it later in her oral evidence as a "horrendous scene". The Claimant recalled the Defendant calmly watching, eating fruit, while B wept and pleaded.

75. In the Defendant's account, he recalls B saying to his mother "look mummy you always said it is his house so what is the problem?"; he referred to B "begging" his mother to sign the document, going down on one knee to do so: "he fell on his knee, lowering his body and begged her…". I am aware, having recently conducted the

Part II CA 1989 welfare proceedings, that Judge Meston found, following the fact-finding hearing in November 2018 (notably, much closer in time to the events in question):

> "It is quite clear that the father involved [B] in lengthy and difficult incident when he tried to persuade the mother to sign a document or documents she was unwilling to sign. Both parents described [B]'s obvious distress and it is hard to understand how and why the father allowed that distress to continue throughout the episode on the night of 3rd/4th February 2018." (emphasis added)

76. The trust document was not signed. The Claimant went to bed. B went to bed. The Defendant plainly did not for some hours later, in the early hours of the morning of 4 February 2018 (04:17hs), the Defendant sent the Claimant an e-mail (ostensibly with no message content) containing attachments which were explanatory articles lifted from a website about 'bare trusts'.

77. On the following day, the issue of the trust document soon re-surfaced. The Claimant accepts that she initiated the conversation because she "… was struggling to understand the terms of the documents… the terms were quite technical… he was persistent, and I did not understand… he became increasingly rude". The Defendant told her that he had explained the terms already and that "If you are too stupid to understand it, that's not my fault." The parties argued, both agreeing that they had lost their patience with the other; on this occasion there was a physical altercation and the Claimant suffered a bruised face. The Defendant asserted that the blame lay with the Claimant for this incident as she had instigated the conversation on that day. The Defendant told me that "I am not proud of it, I struggled with her….". The police were called.

78. The Defendant was arrested; the police record referred to him as "non-compliant" in his arrest and there was a scene at the house in front of some of the children. The Claimant decided not to press charges. When the Defendant was released later that night, the Claimant told me that she thought he may be 'chastened', but she states that, instead, he was triumphant. The Defendant is reported by the local authority to have referred to the incident of 4th February 2018 as "unfortunate", but he had said that he felt that it had "cleared the air".

79. I heard a certain amount of evidence about these events, which had themselves been earlier carefully examined (on the same or largely the same material) by Judge Meston in the context of the welfare proceedings (November 2018). My finding entirely corresponds with his:

> "Essentially the incident arose because of the father's determination that the mother should sign documents which he had drafted and which she did not fully understand, and because she was unwilling to do what he wanted. His behaviour towards the police clearly indicated his angry and determined frame of mind; and at no point does he appear to have reflected that he could or should have gone about matters in any different way".

80. In the early hours of 5 February 2018 (00:59hs) the Defendant sent the Claimant a further e-mail attaching more information lifted from other websites about trusts.

81. On the afternoon of Monday 5 February, the Claimant told me that she was preparing tea for the children, she was supervising their homework, and she was trying to get the children ready for bed. The Defendant chose this moment to present her with a further document entitled "Notes to Declaration of Trust". This is the document the terms of which are set out at [69] above. She said:

> "… as you can appreciate there was still a lot of animosity lingering in the air. It was very tense…. The children were having their dinner…. They were three chaotic days, and there was nothing normal anymore."

82. In relation to the specific document presented on this occasion the Claimant told me in her oral evidence that:

> "[The Defendant] assured me that the note (the declaration) had no value[20] whatsoever… it was simply to show [B] that we are building trust (or trying to build trust) and that we are trying to work towards something, a solution, He told me it had no legal value."

She added

> "I did not want to see [B] brought to "boiling point" again." (as he had been on the Saturday evening: 3 February).

83. The Claimant described the events of 5 February 2018 in her oral evidence as "*le coup de feu*" (literally 'the gunshot'):

> "It was unbearable. [The Defendant] presented the document for me to sign when I was trying to prepare the children for bedtime. He was trying to pressure me. Again, using [B] …. He was trying to summon [B]. I did not want to see [B] brought to that state again I had been hit the day before. Can you imagine the situation for a moment…? I signed the document, in the dreadful circumstances just described. I had been hit the day before. On Sunday 4 February".

84. The Defendant gave a different account. He said that the Claimant had been "nice, neutral and not unfriendly" when she had returned from work. He told the Claimant that he had prepared another document "without legal issues", and added:

> "… she read it… B was there… he took over, and it was a very calm discussion between the mother and B, and nothing unpleasant from either side, and she signed it… I did not say that it was not have legal effect. I did not intend

[20] Her pleaded case is "no legal significance".

> her to be in an endless lawsuit. About 7pm she signed it." (emphasis by underlining added).

The Defendant accepted in his Defence (albeit he retracted this in oral evidence) that he had told the Claimant at the time that "it was of no legal significance and emphasised that it was not the declaration of trust". I accept the Claimant's account, confirmed as it was by the Defendant in his pleaded case. The Defendant denied that he had coerced the Claimant into signing the document; the Claimant did not have or retain a copy.

85. As it happens, at or about that time (possibly the same day) the Claimant had been referred by the Local Authority's Family Services to a domestic violence charity, Advance. Following advice from that charity, on 8 February the Claimant issued her application for a non-molestation order under the *FLA 1996*; the documentation in support was apparently prepared by the charity. The witness statement in support of the non-molestation order dated 7 February 2018 made reference to Pier owning the property, and Pier "is the [defendant's] company" adding "I have some shares within this company and understand that I am a legal owner but not a beneficiary owner". At about that time, or within weeks of this statement being signed, the Claimant was offered emergency social housing. Materially, the Claimant disclosed to the benefits office that she *did* own the shares in the company; for this reason, she was not entitled on a means-test to social housing, but qualified because of the history of abuse.

86. On 9 February 2018, the Claimant, fearful that in bowing to pressure to sign the 'Notes to the Declaration of Trust' she may have compromised her financial security, she wrote a letter to the head of the children's primary school, and to the Rector of their Parish. The Rector returned the letter later, and the Claimant exhibited it to her statement. It reads:

> "On Monday, [the Defendant] made me sign a document to do with our house. I don't know what it meant exactly but I am worried that I may have done something I didn't mean to do. On Sunday, the day before, [the Defendant] had hit me after emotionally blackmailing me the night before, using our son [B] to make me sign… I felt bullied and scared and did not want any more pain for our son or for myself. I want to tell someone I trust about this and the fact that he forced me to sign against my will."

87. The Defendant refutes any suggestion of coercion or attrition; his case is that the Claimant exercised free choice in signing the Notes to Declaration of Trust:

> "She refused to sign the "Declaration" because she was concerned about the tax position, and she refused to sign the "Family Status" (Parenting plan) as we had not yet finalised the child arrangements, but she did sign the Notes. If she felt afraid and under duress, she would have signed all of the documents. Her decision to sign one of the three documents demonstrates that she had complete control to sign whatever she wanted, and she was certainly not under any duress. Likewise, if she felt that the Notes did not reflect the true

> ownership of the property, she would have simply refused to sign that document too."

The purported transfer of the Pier shares to B on 28 February 2019

88. On 28 February 2019, some months after the *Schedule 1* proceedings had been issued and two days after service on him of the letter before action in the ownership proceedings, the Defendant purported to register an electronic transfer of title of the Claimant's entire shareholding in Pier to B, the parties' oldest son, then aged just 14. In his Defence, the Defendant asserts that she "would or should have consented to the same". I discuss the Defendant's actions below, but it is appropriate to record here that his assertion that the Claimant would have consented to the transfer is preposterous. The step of purportedly registering an alleged transfer had only been taken, in my finding, because the letter before action had made clear that the Claimant was looking to seek "a declaration that the Company holds the Property on trust for [the Claimant] as well as a declaration as to [the Claimant's] ownership of the shares in the Company."

89. Unsurprisingly, the purported registration was not accompanied by a stock transfer form, let alone one signed by the Claimant; as there was no "proper instrument of transfer" executed (as there should have been under *section 770* and *section 771 Companies Act 2006*), it follows that an offence was committed by the company and by "every officer of the company who is in default" (*section 771(3) Companies Act 2006*). Pier remains under a duty to rectify the register in this regard[21].

90. The Defendant's actions prompted the Claimant to make an application for an injunction to freeze *inter alia* the company bank account. This order was made by DDJ Hodson on 22 March 2019.

91. Miss Dowse submits that the circumstances surrounding the electronic registration of the purported transfer of the 'legal ownership' of the shares to B and/or the Defendant "may not be ideal, but they are a 'red-herring' that should not distract the court".

The Claimant's case

92. Mr Weale describes his client's case in the ownership proceedings as "overwhelming". He formulates it in one of three ways:

    i) The Claimant became both the legal and the full beneficial owner of the shares in 2000; that was the clear intention of the parties at the time;

    ii) The Defendant is estopped from denying the Claimant's beneficial ownership of the shares and the home, under the doctrine of proprietary estoppel;

    iii) There was a common intention constructive trust that the Claimant was entitled to at least 50% of the shares and/or the family home.

[21] Lloyd J as he then was in *Michaels & Another v Harley House (Marylebone) Limited* [1997] 1 WLR 967 at 975D); "if it is or becomes plain that an entry is mistaken, it is open to the company to rectify it without an order of the court, and the company should do so" (emphasis added).

93. The Claimant's primary case ([92](i) above) is put simply. In 2000, the parties intended and understood that the Claimant would become the owner pure and simple (put another way, the legal *and beneficial* owner) of the shares once the transfer had been effected. The purpose behind the transfer was to ensure that the Defendant did not have any interest in the shares whatsoever, thereby preventing (so far as possible) the shares and the property from being "attacked" (i.e. seized or sequestered) by his creditors. This arrangement was brought about in circumstances where the Claimant and Defendant had been in a serious cohabiting relationship for nearly two years, and both saw the sense of the assets being held within their relationship. On these facts, the company, Pier, held the property on trust for the Claimant. As to that last point, Mr Weale relies on the judgment of Lord Sumption in *Prest v Petrodel Resources Ltd & Others* [2013] UKSC 34, at para.52:

> "Whether assets legally vested in a company are beneficially owned by its controller is a highly fact-specific issue. It is not possible to give general guidance going beyond the ordinary principles and presumptions of equity, especially those relating to gifts and resulting trusts. But I venture to suggest, however tentatively, that in the case of the matrimonial home, the facts are quite likely to justify the inference that the property was held on trust for a spouse who owned and controlled the company".

94. As I have made clear above (see [47]) the Claimant was the 100% owner of the shares, the holder of the stock transfer forms, and the person held out to Companies' House after 2016 as the 'Person with Significant Control of the Company'.

95. In answering the Defendant's case that he retained the entire beneficial interest in the shares, the Claimant pleads[22] as follows:

> "By retaining or creating a beneficial interest in the Company and/or the Property in [the Defendant]'s favour, [the Defendant]'s objective of protecting the Property from creditors would have been defeated. Conversely, by procuring the transfer of legal and beneficial ownership to [the Claimant], [the Defendant] believed that the Property (i.e. the family home) was protected from potential third-party claims against him in future".

96. If I were to find that this was not what was achieved by the parties, it is argued by the Claimant that the Defendant is estopped from denying the Claimant's beneficial interest in the shares by reason of various representations made to her over the years about her interest. The Claimant maintains that in reliance on those representations (which I have referred to above at [19], [20], [47], [51] and [52]) she acted to her detriment in the following ways:

    i) Over the 18 year relationship, the Claimant gave up any opportunity to advance her own career; she ceased her employment, trusting in the Defendant's assurances that she would always have a roof over her head and

[22] Reply to Defence para.8.2.3.2

would never need to work because of the financial security provided by the former family home;

ii) The Claimant invested all of her time, money (in the Santander account) and energy into raising a family with the Defendant and supported him and the family physically, emotionally, and financially;

iii) The Claimant has expended all of the financial resources available to her, not only in supporting the family's outgoings in general, but specifically: (i) to discharge the Annual Tax on Enveloped Dwellings (approximately £7,000/annum) as a consequence of Christchurch Street being held by the Company, over several years; and (ii) to meet the outgoings and the costs of maintaining/renovating the Christchurch Street home. Not only did the Defendant actively discourage the Claimant from saving for herself (even by way of paying into a pension scheme), but he deprived the Claimant of the ability to save by ensuring that her resources were all applied to the expenditure of the home, household and Pier.

97. The Claimant's pleaded case is that she has: (i) expended all of her assets; (ii) no significant pension; (iii) reduced her prospects of accumulating a significant pension and/or savings in future; (iv) reduced her prospects of obtaining skilled and/or well-paid employment; (v) acquired no interest in any property other than Christchurch Street.

98. Further, and in the further alternative, it is asserted that at all material times the parties' express and/or inferred common intention was that the Claimant would have a beneficial interest in at least 50% of the Christchurch Street property and/or the company. For the reasons which I have already outlined, the Claimant acted to her detriment in reliance upon that shared intention. It is argued that she is therefore entitled to a declaration that she is the beneficial owner (as to at least 50%) of the Christchurch Street property, under a common intention constructive trust.

99. Only if, contrary to the Claimant's primary case presented in the three alternative ways above, the Claimant is found not to be entitled to the property and/or the shares in Pier (or at least of such proportion of those assets as will enable her to maintain the children living with her), the Claimant seeks relief under *Schedule 1* of the *Children Act 1989, inter alia* for a housing fund.

100. Materially, the Claimant maintains that it was only *after* the parties' relationship deteriorated that the Defendant sought to suggest, for the first time since the shares were transferred to the Claimant, that she was not in fact the owner of them.

101. In the *Schedule 1* proceedings Mr Weale described the Defendant's offer (summarised at [9] above) as "derisory" and "insulting". The Claimant was asked whether she could cope at present, to which she responded, "I fear that this would involve me staying on benefit for many more years, and this is a very nerve-wracking situation…".

The Defendant's case

102. The Defendant's case is that he was at all material times the beneficial owner of the shares in the Company, and the Claimant was no more than a 'bare trustee'. He says that the shares in Pier are now legally owned by him and his son, B, and are beneficially owned by him. He regards the Claimant's assertions otherwise as an "extreme" form of "betrayal", so serious "that criminal intent has to be considered"[23]. He asserts that it would have been absurd for him to contemplate that, within a relatively short time of the start of their relationship, he would have effectively gifted his company (and its valuable assets) to the Claimant:

> "I had always been clear with her whenever we had a discussion about finances, or my business, and she confirmed to me that she understood, that she had no interest in the company, or my property, and that her only involvement was in her role of Trustee holding the property on bare trust for me. As I experienced with my previous Trustee, I expected honesty, integrity, and loyalty from [the Claimant] in her professional capacity, in which she was obliged to act solely for my benefit, and not for her own".[24]

103. His case is that Mrs FH and Mr OH did not beneficially own, and so could not transfer, the beneficial interests in the shares. Moreover, the common intention of all the parties (including the Claimant) was that the Defendant would remain the beneficial owner of the shares.

104. He pointed to the fact that the Claimant was a stay-at-home mother who busied herself with the domestic tasks of caring for the children, and was unconcerned with the business of Pier; this, he maintained, underlined the fact that she was no more than a nominee shareholder and./or bare trustee of the shares. He relied on the Claimant's acknowledgement in her evidence that he was effectively the financial 'controller', and had had all of the dealings with Companies House;

105. He placed weight on the fact that the Claimant had filed a statement on 8 February 2018 in support of her application for a non-molestation order under the *FLA 1996* in which she referred to Pier as the "Respondent's [Defendant's] company". She highlighted that she had said in the statement that she owned "some shares" but was not a beneficial owner. He suggested that this could not have been an inadvertent error of drafting because she had subsequently confirmed the accuracy of the statement in a statement filed in *CA 1989* proceedings in May 2018. Miss Dowse argues that the Claimant could have sought to distance herself from that earlier remark, or explain its clumsy/ill-advised use had she wished to do so; she did not.

106. In considering the circumstances in which the 'Notes to the declaration of Trust' were signed, he denied that he had been responsible for any domestic abuse in the household over the years, and specifically denied any abuse over the critical weekend. The Defendant denied aggression and abuse towards A, adding that although he had found A to be a "difficult child" he had "at all material times behaved appropriately towards her". As to the allegation of historical abuse of the Claimant, he relied on an extract from the Claimant's medical records to the effect: "happy in marriage (sic.)"

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[23] The Defendant's e-mail to Judge Meston 10 March 2019
[24] Per Defendant's witness statement

(18 June 2014), and on 3 April 2017 "… breakdown with partner… difficult at times… no DV". He did not draw attention in these proceedings to the full text of the 2014 entry which included "husband (sic.) … strong personality, sometimes difficult … Low mood secondary to family issues", and an extract cited by Judge Meston in the earlier welfare proceedings (20th June 2017): "ongoing emotional abuse from partner – long-standing.… Would like to separate but difficult to get him to leave house...".

107. Miss Dowse, for the Defendant, accepts that whoever is found to be the true beneficial owner of the shares, would own the assets of the company (including the property at Christchurch Street) in the same measure. She further accepts that there was really no scope for a finding on the evidence that the parties owned the shares/property 50/50, or in some other proportion; this is a case where the evidence leads only to one conclusion that the 'winner takes all'. The Defendant put it this way himself in his response to the Letter before Action:

> "Finally, all your claims are either completely true or completely false, but you state in pt.30 her "unanswerable entitlement of at least 50%" - which doesn't make any sense. If your claims are true, she would have an "unanswerable entitlement" of 100%" if they are false – nothing".

The law

108. The primary question for me to consider is whether the Defendant has discharged the burden on him of showing that the beneficial ownership is different from the legal ownership. It is his case of course that although the Claimant had legal title, he had the whole beneficial interest in the shares, and the Claimant owned the shares as a bare trustee or nominee for the Defendant.

109. A secondary set of legal principles may be engaged here, and I was addressed upon whether the evidence reveals:

i) That the Defendant should be estopped from denying the Claimant a share in the property as a result of representations he made to her, and her acting to her detriment;

ii) That a common intention constructive trust was established which indicated that the parties owned the shares beneficially in a particular proportion.

110. As to the primary question, in the absence of a declaration of trust, there is a presumption in law that the beneficial interests follow the legal title. As Baroness Hale said in *Stack v Dowden* [2007] UKHL 17 at [56]:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-

> owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest."

111. As to the secondary questions, Mr Weale drew my attention to section from Lewin on Trusts (20th edition) at 10-62/10-63. The author there suggests that in a domestic context, the search is made to the parties shared intentions, actual, inferred, or imputed, in the light of their whole course of conduct in relation to it. A constructive trust arises in connection with the acquisition by one party of a legal title to property whenever that party has so conducted. Lewin suggests that where, as here, a claim is made by a person (the Defendant) to displace the presumption that the beneficial ownership of property follows the legal ownership, the following questions must be addressed:

i) Does the case fall within the domestic consumer context, such that the common intention doctrine applies?

ii) Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date?

iii) In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?

iv) Has the claimant relied to his detriment on the common intention relied upon?

v) If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?

vi) If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?"

112. In respect of the first requirement namely the 'common intention doctrine' I was taken to the decision of the House of Lords in *Lloyds Bank Plc v Rossett* [1991] 1 A.C. 107 at p.132:

> "[t]he first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially." This can "only … be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been.""

113. Therefore, as Lord Hope said in *Stack v Dowden* [2007] (above) at [5]:

> "Parties are, of course, free to enter into whatever bargain they wish and, so long as it is clearly expressed and can be proved, the court will give effect to it. But for the rest the state of the legal title will determine the right starting point."

114. Mr Weale accepts that in the absence of an express agreement, a relevant agreement may nonetheless be inferred, and in this respect, he quotes again from Lewin (at [10-166]:

> "An inferred intention is, in the case of each party, the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate it in his own mind and even where he acted with some different intention which he did not communicate to the other party."

The requirement of detriment is more flexible where an express or inferred common intention has been established (as compared with the situation where detriment is itself relied upon in order to establish such an intention). The position is summarised in Lewin at [10-069]:

> "The claimant must provide that he has acted to his detriment in the reasonable belief that by so acting he was acquiring a beneficial interest. This means that the claimant must have done something which he could not reasonably be expected to have done unless he was to have an interest in the property. There must be some link between the common intention and the acts relied upon as detriment… The detriment need not necessarily consist of expenditure of money or some other quantifiable financial detriment, and it suffices that the claimant has changed his position in some substantial way in reliance on the common intention so that the repudiate\on of the common intention by the defendant would be unconscionable"

115. Baroness Hale in *Stack v Dowden* at [61] made a number of important points, and the paragraph therefore benefits from full citation:

> "*Oxley v Hiscock*[25] was, of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the

[25] *Oxley v Hiscock* [2004] EWCA Civ 546, [2005] Fam 211.

purchase. As to the second, Chadwick LJ said this, at para 69:

> " . . . in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have - and even in a case where the evidence is that there was no discussion on that point - the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that *each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property*. And in that context, the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home." (emphasis supplied)

Oxley v Hiscock has been hailed by Gray and Gray as "an important breakthrough" (*op cit*, p 931, para 10.138). The passage quoted is very similar to the view of the Law Commission in *Sharing Homes* (2002, *op cit*, para 4.27) on the quantification of beneficial entitlement:

> "If the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended."

That may be the preferable way of expressing what is essentially the same thought, for two reasons. First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair".

116. I am satisfied that the principles set out above are of equal application to assets other than the real property[26]. The Claimant's case is that she was/is the beneficial owner of the *property* – the Courts have recognised that where property is held within the

[26] see Lewin (op cit) at [10-050]: "The principles discussed here are, however, also applicable to assets other than to real property…"

company, the company may be taken to have shared the parties' intentions such that the company itself holds the property on trust in accordance with the shares agreed between the parties and/or determined by the Court (in this case, the controlling/directing mind of the Company was at all times the Claimant and/or Defendant). In this regard, Mr Weale referred me to the Court of Appeal's decision in *Chan Pui Chun v Leung Kam Ho* [2003] 1 FLR 23. In that case, the family home was purchased through an offshore company. Applying principles of constructive trusts, the Court held that the property was held on trust by the company. The relevant conclusion of the first instance judge (which was upheld on appeal) is referred to at [40]:

> "The first issue is whether [the Company] is the beneficial owner of Hill House or a trustee. In view of Miss Chan's evidence, which I accept, of what was agreed on 3 June 1995, it is clear that the agreement was that the parties would be beneficial owners of Hill House in the proportions of 51:49. Accordingly, [the Company] is a trustee and a shareholding of 51:49 in [the Company] reflects the parties' interests in the sole asset of [the Company] at that time, namely Hill House."

117. Even though the property at Christchurch Street had been purchased before the Defendant transferred the shares to the Claimant, I am satisfied that this is of no consequence of its own; the relevant event is the transfer of the shares.

118. The Claimant's case is put, alternatively, on the basis that a proprietary estoppel has been created. For this it would be sufficient for the Defendant to have given an assurance and/or led the Claimant to believe that she had acquired or would acquire an interest in the Company/Property. An important distinction between constructive trust and proprietary estoppel is that where the Court is satisfied that a representation has been made and a claimant has acted to her detriment, reliance will be presumed (*Greasley v Cooke* [1980] 1 W.L.R. 1306 at 1311). As explained by Lord Walker in *Thorner v Major* [2009] 1 W.L.R. 776 (at [29]), it is now well-established that proprietary estoppel:

> "is based on three main elements … a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance."

119. The principles applicable to a claim in proprietary estoppel of this kind were recently summarised by Lewison LJ in *Davies v Davies* [2016] EWCA Civ 463 at [38] and repeated in the more recent decision of the Court of Appeal in *Guest v Guest* [2020] EWCA Civ 387 at [47], and I have noted further his comments about *Davies v Davies* [2016] at [52]. The Courts have recognised, in addition to expenditure, the following as constituting sufficient detriment in order to justify relief being granted (see *Megarry & Wade: The Law of Real Property* (9th ed.):

i) Giving up a career or educational opportunities: see *Ottey v Grundy* [2003] EWCA Civ 1176 and *Chun v Ho* [2003] 1 FLR 23);

ii) The claimant "positioned his whole life on the basis of the assurance given to him and reasonably believed by him": *Davies v Davies* [2016] EWCA Civ 463.

120. As to the value of the relief to be granted, the approach which I should adopt is that outlined by Lewison LJ in *Davies v Davies* [2016], namely:

> "a sliding scale by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the greater would be the weight that should be given to the expectation".

Further clarified by Lewison LJ's further remarks in *Habberfield v Habberfield* [2019] EWCA Civ 890, at [68] to [69]:

> "Looking back from the moment when assurances are repudiated, the nearer the overall outcome comes to the expected reciprocal performance of requested acts in return for the assurance, the stronger will be the case for an award based on or approximating to the expectation interest created by the assurance. That does no more than to recognise party autonomy to decide for themselves what a proportionate award would be."

This approach was expressly approved by Floyd LJ in *Guest v Guest* see [52]-[53].

121. The Defendant strongly asserts the legitimacy of the scheme by which the Claimant held the shares as nominee. It is contended on his behalf that the structure of appointing a nominee shareholder enabled him legally to hold the company and remain anonymous thereby achieving his intention of limiting his risk. It is for that purpose that a nominee shareholder was utilised and continued to be so on transfer to the Claimant. Miss Dowse glides over the central proposition that 'equity follows the law', to consider how the court will approach the issue of beneficial ownership on constructive trust principles per *Lloyds Bank v Rossett* [1990] 2 FLR 155. In this regard, her submissions dovetail with those of Mr Weale.

122. The Defendant asserts that the Claimant, having apparently acknowledged the existence of the German assets of Pier has failed to plead 'separation' given her real interest only in Christchurch Street: per *Prest v Petrodel Resources Limited and Others* [2013] UKSC 34.

123. Miss Dowse argues that on 5 February 2018 the parties signed the Notes to the Declaration of Trust albeit retrospectively. She goes on "the express agreement reflects the facts of the case and is therefore binding on M. There is no room for the court to consider constructive trust. M's case fails at this stage". It is asserted that in presenting her case, the Claimant has failed to demonstrate undue influence in the signing of the 'Notes' document and in this regard Miss Dowse cites *RBS v Etridge (No 2)* [2002] AC 773, *NA v MA* [2006] EWHC 2900 (Fam), and *Hopkins v Hopkins* [2015] EWHC 812 (Fam), claiming that *Hopkins* serves as a recent and entirely appropriate reminder that there is a high threshold in establishing duress.

Ownership proceedings: Discussion and Conclusion

124. This is an unusual dispute. The outcome, it is agreed by counsel, will turn to a very large degree on my findings of fact. In that regard, my assessment of the credibility of the parties, and the cogency of their respective accounts, will be key: either I accept the Claimant's account, or I accept the Defendant's account. In the Defendant's own words ([107] above) "[i]f your claims are true she would have an "unanswerable entitlement" of 100%" if they are false – nothing." Counsel further accept that there is little scope within these proceedings for a determination that the parties beneficially own the shares (and the property/ies) in equal or similar portions. Even though the courts in these cases often search to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it[27], in *this* case there is little room for investigation of this particular territory. Their positions are starkly expressed, and the strong feelings generated in this case are doubtless accentuated by the predicted result in which one 'winner takes all'.

125. While Baroness Hale in *Stack v Dowden* [2007] at [68] observed that in family disputes, strong feelings are often aroused which often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms, in *this* case, by contrast, I am satisfied that the Defendant has reinterpreted the past in a less than honest way. I have of course already made adverse findings about him in the committal proceedings ([2020] EWHC 1301 (Fam), note for instance [29]) and I have been conscious to look with fresh eyes at his evidence in these proceedings. In this regard, I have scrupulously applied the guidance of Lord Lane LCJ in *R v Lucas* [1981] QB 720, [1981] 73 Cr App R 159; just because I found that he had lied in the contempt proceedings about withdrawals from a frozen account, it does not follow that he has lied in his evidence in these proceedings, specifically concerning the key issues concerning the transfer of the shares to the Claimant, and/or the purported creation of the trust. That all said, where the evidence of the parties diverges, I have had no hesitation in preferring the evidence of the Claimant.

126. The Claimant gave her account of events surrounding the transfer of shares and subsequently thoughtfully and in an emotionally congruent way. She expressed apprehension at taking ownership of the family home (which is what she sincerely and honestly believed she was doing, in my finding); it was obvious from her demeanour and language that she felt the great weight of responsibility as the shareholder owner of the company. She conveyed her extreme upset at having to remember some of the worst aspects of the abuse which I am satisfied (and indeed HHJ Lord Meston QC found) that she had suffered during the relationship, upset at the divisions which it had brought among her own children, and gave her account without guile or embellishment. I took the view that she was genuinely trying to help the court by trying to describe the events as accurately as possible, painful though the process of recall was.

127. In a detailed witness statement, drafted at a time when he had advice from his first class legal team, the Defendant, materially in my view, failed to address many of the factual claims raised by the Claimant; he made little attempt to engage with them. For instance, in her Particulars of Claim, the Claimant had alluded to a number of

[27] Hale in *Stack v Dowden* at [60]

important conversations which I have included in my list at [96] above (see especially [20][28] and [52][29]). Notwithstanding my explicit permission to the Defendant to file evidence in reply to that of the Claimant, he chose not to do so. He appears to have adopted the policy of 'the less said the better'.

128. The Defendant is an intelligent man with, I am sure, many qualities; I have met (remotely) two of his sons who are engaging, bright young men, qualities which I am sure have been acquired from *both* of their parents. For much of the relationship he has used this intellect but also his rigid and insensitive personality (see [33] above) to control the Claimant. I find that his attitude towards the Claimant both historically and in the course of his evidence was both patronising, and dismissive; the evidence reveals him to have been unreasonable and hostile in his relationship with her, little recognising her qualities, and consigning her to a subservient role within the household. These characteristics, which I am sure were present for much of their relationship, intensified during the breakdown of his relationship with the Claimant. The Defendant became, by his own admission, "bitter" with the Claimant, and was, on my finding, extremely angry about the developing situation which was not to his liking. He periodically unleashed his anger in deeply offensive and hurtful e-mails to the Claimant and treated her with contempt, impatience, and aggression. On at least one occasion (4 February 2018) I am satisfied that his aggression caused him to strike the Claimant, leading to his arrest.

129. On an issue as relatively simple, but nonetheless significant, as how the consideration for the transfer of shares was achieved in 2000, he was unable to provide a consistent account; in his Defence he asserted that he had "provided" the money himself (see [45]/[46]), in the 'Notes to the Declaration of Trust' (see [73]) he stated that the £5.00 was "paid by Mr Andreewitch", and in his position statement for this hearing, a similar explanation was offered. But when pressed in cross-examination he explained the 'payment' was never actually made but was a 'notional accounting' exercise ([45]/[46]). On a separate issue, I find that on 5 June 2020 he provided, or caused to be provided, false information to the single joint tax expert in regard to his and B's continued occupation of the property following the parties' separation: he and B *were* 'living' at the property.

130. I am satisfied that in July 2000 the parties understood and intended that the Claimant would be the outright legal and beneficial owner of the shares upon the transfer. I am further satisfied that the Claimant purchased the shares for consideration (£5.00), and that the Defendant is estopped (on the basis of the decision in *Prime Sight v Lavarello* cited above at [46]) from now claiming otherwise. At that time, I am satisfied that the Defendant feared that creditors would come after him and his assets; I accept the Claimant's evidence (see [51] above) that he believed that there were "people after his money" and he was paranoid about bailiffs arriving at the door. The Defendant in my judgment took the risk that transferring the shares to the Claimant, in respect of whom he assumed he would remain in a long-term relationship, was overall less of a risk than the more pressing claims of his creditors. I am satisfied that the Defendant wished to ensure that he was divested of any beneficial interest in the shares so as to prevent (so far as possible) the shares and the property from being claimed by those with his creditors.

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[28] "always have a roof over your head"
[29] "you will be the owner of a house in Chelsea – what is there to worry about!"

131. I reject entirely the Defendant's account that in 2000 the Defendant used the term 'bare trustee' or 'nominee' or that he lectured the Claimant over the historical genesis of the notion of beneficial interest by reference, as he told me in evidence, to the crusades (specifically the Third Crusade of Frederick Barbarossa to the Holy Land) of 1190, or otherwise. I further reject his case that the Claimant had "confirmed to me that she understood, that she had no interest in the company, or my property, and that her only involvement was in her role of Trustee holding the property on bare trust for me[30]"; I am satisfied that this language was simply not used at the time, and the Defendant invented the account. His case on this was somewhat undermined, in my judgment, by the fact that he saw the need to bombard the Claimant with website articles on 'bare trusts' in the early hours of the weekend mornings in early February 2018 as part of his mission to educate her about the terminology in order to extract her signature to his 'Notes' document.

132. Consistent with the Claimant's account above was her evidence which I accept (supported by her production of the relevant documents) that the Defendant gave her the two stock transfer forms, and entrusted her with their safe keeping (in contrast to all other paperwork which was kept in his study), as they were – in his words – to prove her ownership of the company.

133. All of this is of a piece with the terms on which the returns to Companies' House were made for the years following 2000, reflecting the Claimant's ownership of the company. I reject the Defendant's various implausible explanations for these many submissions. His purported ignorance of the difference between 'beneficial ownership' and 'beneficial interests' is inconsistent with his apparent working familiarity with the concept of trusts and their origins. I reject his lack of understanding of the forms based on his command of English; he is fluent in written and spoken English including in a business context and has conducted three hearings before me without a request for or a need for an interpreter. As a businessman of many years' experience both here and abroad, I am wholly satisfied that he knew that it was important, indeed necessary, to file *accurate* accounts with Companies House; I find that he was fully aware that he was representing to Companies' House that the Claimant was the sole beneficial owner of the company, because that indeed was their common understanding. Moreover, in 2016 I find, on the evidence, that the Defendant well knew that the requirement to identify the Person with Significant Control referred to the ultimate beneficial owner. In the circumstances, the Defendant intended to (and did) represent to Companies House — in the knowledge that such information was liable to be relied upon by third parties — that the Claimant was the beneficial owner of the shares in the Company. I reject entirely the Defendant's case that the submissions to Companies House were the product of an 'error' (he is a meticulous and pedantic man, as I have previously found), let alone a 'clerical error', or an 'error of judgment' (see [61] and [62] above).

134. I attach little weight to the fact that the Claimant had referred to Pier as the "Respondent's [Defendant's] company" in a statement filed in *FLA 1996* proceedings (the general accuracy of the statement being confirmed in a subsequent statement filed in *CA 1989* welfare proceedings). The statement was prepared by, or with the assistance of, a domestic abuse worker who would have had less appreciation of the significance of this comment than a solicitor. I accept the Claimant's account that she

[30] Defendant's witness statement [20]

was so bewildered by the new terminology which had been bandied about in the home in the previous few days (i.e. 'legal owner', 'beneficial owner') which the Defendant was using to describe the ownership of the house, that she simply repeated what she had recently been told by him, without thinking. As a consequence, the Claimant did not (she said, with force it seemed to me) want to provoke the Defendant any further than necessary by raising issues in the statement which she knew to be highly controversial.

135. The Defendant laid much store by the fact that the Claimant did not appear to have much, if any, understanding that the properties purchased in Germany in the early 2000s (2004-2010) had been purchased through the vehicle of Pier. That she had no real appreciation of the extent of the assets of the company is, to my mind, of no materiality. One has to remember that it was the *Defendant* who procured the transfer of the shareholding to the Claimant; had it been the other way around, the Defendant may have had more of a point – i.e. in those circumstances the Claimant could be expected to have had a clearer idea of what she was acquiring if she was the prime mover in the acquisition.

136. In an atmosphere of increasing dysfunction, tension, and acrimony, within the home, evidenced in part by the Defendant's assaults on the parties' older child (see [21] above), I find that there were unpleasant scenes between the parties over the negotiation of the Family Status document in late 2017, and early 2018; I simply do not accept the Defendant's evidence that the Family Status document was calmly negotiated, nor do I accept his evidence that the "rota system" for the children was the Claimant's suggestion (as he alleged). This provided an indicative prelude to the intolerable pressure which the Defendant then brought to bear on the Claimant over the signing of the trust document (and the 'Notes to Trust Document') in February 2018 – his attempt to rewrite history.

137. There is no doubt, in my finding, that the Claimant's signing of the Notes to the Declaration of Trust was only achieved following and as a result of a concerted and relentless campaign of attrition and harassment over the course of three days, involving – with considerable and genuine sadness to the Claimant – the parties' 14 year old son. The Claimant told me that she felt that the Defendant's subtle but undoubted determination to involve B in the dispute between them added a significant and painful layer of emotional pressure on her. That the Defendant felt he needed to procure her signature to this 'Notes to Trust Document' at that time is highly revealing about his own recognition about the weakness of his position; indeed his desperation to obtain the Claimant's signature is eloquent of his recognition that without the signed document he knew that he was without any proper basis for a claim to the shares. It is notable that he told her at the time, as I accept he did, that the document was to be of no legal 'value' or effect (see [82]-[84] above) when he now seeks to place such heavy reliance upon it.

138. Consistent with his increasingly and profoundly coercive course of conduct towards the Claimant, I find that he attempted (in part successfully) to alienate the Claimant from her legal support network by making, or threatening to make, ill-founded complaints about them to their regulatory bodies[31] and (in the solicitor's case)

[31] Complaint against the Claimant's counsel in the welfare proceedings for 'Character Assassination, Tampering with the Court Bundle, Misrepresentations, Recklessly Misleading'.

broadcasting his grievance to the staff of the Legal 500 publication, and was undermining of her relationship with B. I regret that I detected some satisfaction in his assertion that the litigation has "cost you your son"[32].

139. Miss Dowse argued that the evidence taken at its highest did not amount to conduct a type or degree which would justify a finding of undue influence; and relied on the decision of *Hopkins v Hopkins* [2015] EWHC 812 (Fam). I am unpersuaded by this point. First, having reviewed the evidence filed in the welfare and in the finance proceedings, I am satisfied that the domestic abuse suffered by the Claimant from the Defendant (in the form of coercive and controlling behaviour towards her, and emotional abuse of her) was some of the most marked I have encountered in recent family litigation. And secondly, and in any event, undue influence has no real relevance because the 'Notes of Trust Document' do not represent a legally binding agreement which the Claimant seeks to set aside.

140. The last desperate throw of the dice for the Defendant was his purported transfer of the shareholding to the parties' 14-year old son (B) in March 2019. This step, taken in panic, was perhaps the most revealing example of (a) his ruthlessness to pursue his own objective, (b) the ease with which he was prepared to involve the children in the dispute, (c) his low regard for the law, and (d) his contempt for the Claimant and her obvious and unanswerable claim to legal and beneficial ownership of the shares. He must have realised that this very act would serve to poison the Claimant's relationship with her own son, as indeed I regret it has. It was plainly not, as Miss Dowse urged on me, a 'red herring' ([91] above).

141. The transfer of the shares to the Claimant, and the legal effect of so doing, might upset commercial sensibilities, but the Claimant makes a strong point that it was of course the *Defendant* who was "organising all this", not her. It is indeed clear in my finding that *he* was the one who was making the decisions, and she saw her role as:

> "… seeking to protect the house which was to be a home for the family… I trusted him… my English was hesitant… he asked me to become the owner of the shares as this would protect the house which would be the home for the family".

I have to remember that "context is everything", and the "domestic context is very different from the commercial world"[33]. Thus:

> "… an outcome which might seem just in a purely commercial transaction may appear highly unjust in a transaction between husband and wife or cohabitant and cohabitant…" (*Stack v Dowden* at [42]).

142. It was suggested by the Defendant, as a sincerely held limb of his arguments, that the parties five *children* feel strongly that the company and the home belong to the Defendant; he made complaint that B had not been joined as a party to the proceedings in his own right. At one time, he was proposing that B (now aged 16) should give evidence. I can attach no real weight to the children's views on this issue;

[32] E-mail from the Defendant to the Claimant 7.3.2019
[33] Stack v Dowden [69] (Baroness Hale)

indeed I am deeply troubled that the children (or any of them) should have been allowed or encouraged to form any view about the ownership of the business or the property (the youngest is still only 8 years old). I accept the Claimant's sincerely expressed regret that:

> "I don't think that they [i.e. the children] should have been engaged in the process and conversations like this. Whatever he [i.e. the Defendant] may have said to the children, I was under a very different impression".

143. While in his oral evidence the Defendant was able to express some contrition and insight into some of his behaviours, it is clear that this phase in the parties relationship was characterised by unrestrained bitterness on the part of the Defendant which coloured all of their interactions.

144. In conclusion, I am entirely satisfied that it was understood and intended that the transfer of shares in 2000 would constitute an outright transfer of the legal and beneficial ownership in the Company's shares to the Claimant. The Defendant has failed to discharge the burden on him of proving otherwise. I do not, in the circumstances, need to deal with the Claimant's secondary cases.

145. Were I have been required to do so, I am satisfied that on the evidence the Defendant made a number of material representations about the Claimant's financial security in the property (see [96] etc above for the list of references), as a consequence of which the Claimant acted to her detriment in the ways described above (see [96/97]). Had I not reached the conclusion that the beneficial ownership passed to the Claimant in 2000 when the shares were legally transferred, I would have had no hesitation in concluding that the Defendant should be estopped from denying her claim to the entire shareholding or a sizeable portion of the shareholding.

146. For the avoidance of doubt I should add that there simply was no evidence that there was at any time prior to transfer of the shares, or exceptionally at some later date, any agreement, arrangement or understanding reached between the parties that the shares in the company were to be *shared* beneficially. There were no express discussions of that kind at all. This is common ground. Any claim therefore based on common intention constructive trust would have failed.

147. For the reasons set out above, I make the following declarations:

i) A declaration that the Claimant is the sole beneficial owner of the entirety of the shares in Pier;

ii) A declaration that the purported registration of the shares in the Company in [B]'s name was invalid and of no effect;

iii) An order requiring the Defendant to register the shares in the Company in the Claimant's name and to take (or procure the taking of) all necessary steps in order to achieve that outcome.

148. That said, as I noted earlier, in her letter before action, the Claimant maintained that she recognised that, following the transfer, she had a (non-binding) moral obligation

towards the Defendant. This was repeated in her pleaded Particulars of Claim. My assessment of the Claimant is that she will probably act on her stated moral obligation now that the ownership of the shareholding has been resolved.

149. Having concluded that the shares in Pier are owned legally and beneficially by the Claimant, it is not necessary for me to go on to determine the *Schedule 1* claim. I propose to say no more about that at this stage, and/or unless required by the parties to do so.

150. That is my judgment.