Neutral Citation Number: [2025] EWHC 359 (Ch)

Case Nos: PT-2023-000099 and PT-2023-000716

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date of trial: 14-16 January 2025
Date of judgment: 26 February 2025

Before:
DEPUTY MASTER SCHER

Between:
MRS SUMAN BHATIA — Claimant
- and -
(1) MR CHRISTOPHER PURKISS
(as liquidator of JD Group Ltd)
(2) MR DEEPAK BHATIA — Defendants

Thomas Elias (instructed by Gunnercooke LLP) for the Claimant
Nora Wannagat (instructed by Wedlake Bell LLP) for the First Defendant
The Second Defendant was not represented

JUDGMENT

DEPUTY MASTER SCHER:

Introduction

1. This is my reserved judgment following the trial of two related claims concerning 33A The Drive, Uxbridge UB10 8AF (**the Property**).

2. The Property's registered legal owners are Mrs Suman Bhatia and her son, Mr Deepak Bhatia. I will refer to them by their first names herein, meaning no disrespect by doing so.

3. Deepak is a judgment debtor. He owes over £3,400,000 to Mr Christopher Purkiss as liquidator of JD Group Limited, as I will explain below. Mr Purkiss has a charging order over Deepak's beneficial interest in the Property. Suman and Deepak now say that the Property is beneficially wholly owned by Suman, which would frustrate enforcement of Mr Purkiss's judgment.

4. In one of the matters before me, case number PT-2023-000099, Suman seeks to rectify the TR1 transfer deed which (on its face) declares that she and Deepak hold the Property as beneficial joint tenants. In this claim (**the Rectification Claim**), Mr Purkiss is first defendant and Deepak is second defendant. Deepak has admitted the Rectification Claim.

5. In the second matter, case number PT-2023-000716, Mr Purkiss seeks to enforce his charging order by an order for sale of the Property (**the Sale Application**). In this claim, Deepak is first defendant and Suman is second defendant. Deepak has not defended the Sale Application.

6. On 21 March 2024, I ordered that the Rectification Claim and the Sale Application be case managed and tried together. I heard the trial over three days from 14-16 January 2025.

7. My judgment will follow the following structure:

    i) Factual background, identifying the main points in issue

    ii) Representation

    iii) List of issues at trial

iv) Legal framework

v) Comments on the witness evidence

vi) Analysis of each issue

vii) Disposal

Background

8. In this section I set out the factual background to these proceedings. The background is largely undisputed. I will identify the main points in issue as I proceed.

9. Suman is 78. She has a degree in philosophy and economics from Delhi University, and worked until she was 50, including as a supervisor with British Airways. In 1968, she married Mr Sudesh Chander Bhatia. They had two children, Deepak and Joti. They lived at 9 Harwell Close, which they owned as tenants in common.

10. Sudesh founded a number of businesses. Relevantly, JD Enterprises was set up in about 1983. By 1993, it operated as a partnership between Sudesh, Suman and Deepak. Suman's evidence is that she was an inactive partner, other than offering secretarial services. The business, among other things, exported baby clothes to the Middle East. Suman worked for British Airways at the time, which gave Sudesh discounted travel.

11. In 1993, aged 18, Deepak purchased 15 Harwell Close, which he solely owned.

12. Also in 1993, Sudesh was diagnosed with chronic myeloid leukemia. He passed away in 1995. Sudesh's share of 9 Harwell Close passed to Suman as part of the residue of his estate.

13. Suman says that after Sudesh's death, Deepak took full control of JD Enterprises, and carried out many administrative roles for the family. Deepak and Suman say that Deepak controlled Suman's finances. Suman remained a partner in JD Enterprises.

14. Over time, the family business grew, as did the number of companies involved. It is unnecessary to set out the full structure here, other than to note that they included JD Asset Management Ltd (**JDAM**) and JD Group Limited (**JD Group**), which became, for a time, the overall parent company. At certain periods, these companies were public (rather than private) limited companies.

15. For several years prior to October 2008, including at the time of the purchase of the Property, Suman was a director of some of those companies. She was, relevantly, a director of JDAM and JD Group, both then public limited companies. Her evidence was that she played no role whatsoever in managing the companies.

16. At all material times since Sudesh's death, Suman had at least a 50% interest in the family businesses. She was a partner in JD Enterprises; she was a 50% shareholder in JD Group; and she was sole shareholder of JDAM from 2010, having acquired the shares from JD Group.

17. Between about 1998 and 2009, Suman loaned money to Deepak and to the companies, and gave security for a company overdraft. The extent and relevance of these loans is in issue.

18. On 23 May 1996, Deepak and Suman purchased Unit 20 Belvue Business Centre, Northolt. The transfer deed expressly provides that they held Unit 20 "*as Beneficial Tenants in Common in equal shares*".

19. In 1998, Deepak became joint owner of 9 Harwell Close (together with Suman). Deepak says this was to enable a remortgage of £150,000, which was transferred to JDAM. Deepak says (and the company records indicate) that JDAM repaid part of this loan, before the property was remortgaged again in September 2006.

20. In 2006, JD Group Ltd carried out an MTIC fraud, to which Deepak was a knowing party (see paragraph 37 below).

21. In mid-2006, according to Suman, she decided to purchase the Property, which had not yet been built. She says that she asked Deepak and the companies to repay the loans, but they were unable or unwilling to do so. She needed a mortgage, but in order to obtain one, Deepak needed to be a registered proprietor and jointly responsible for the mortgage. Suman says that she agreed orally in late 2006/early 2007 with Deepak that:

    i) The Property would be purchased in the joint names of Suman and Deepak, to facilitate the mortgage borrowing;

    ii) The Property would belong 100% to Suman;

    iii) Deepak would discharge the mortgage interest payments in lieu of interest on the loans extended by Suman to him and the companies;

iv) Before the expiry of the mortgage term, Deepak and the companies would repay Suman's loans so that she could discharge the mortgage loan and redeem the mortgage.

22. This alleged oral agreement is a key issue in the proceedings before me.

23. In September 2006, an early draft of the sale agreement was sent to Deepak. Only the front page of the agreement survives. It was prepared by the seller, and included only Deepak's name as buyer. Suman's name was added in manuscript. It appears that the seller believed Deepak was the purchaser, and Suman was added at Deepak's (or Deepak and Suman's) request.

24. On 21 September 2006, a sale agreement was entered into regarding the Property, with Suman and Deepak as purchasers. Mr Dhaliwal of Simon and Co was the conveyancing solicitor acting for Deepak and Suman. Deepak and Suman say that Mr Dhaliwal received instructions mainly from Tarun Jain, the financial controller of the companies, who has since sadly died. The purchase price was £2,500,000. The sale agreement itself has been lost.

25. On 28 September 2006, Mr Dhaliwal sent Deepak a form TR1 under cover of a letter. That TR1 did not specify, in box 11, how the property was to be beneficially held. There is a note on the cover letter, in Deepak's handwriting: "*Do not send until we get further info re: holding of property*". Nevertheless, the TR1 was signed (without witnesses) by Suman and Deepak. It was superseded by a later document.

26. During 2006 and 2007, the Property was built, with Suman giving instructions to the developer on the layout of the Property and various other specifications.

27. In about November 2007, Suman and Deepak obtained a loan of £1,750,000 from The Mortgage Business Plc, secured on the Property. The variable rate began at 7.29%, with a £10,611.43 monthly payment.

28. On 13 November 2007, Mr Dhaliwal sent Suman and Deepak an updated version of the TR1 transfer deed, asking for them to sign with an independent witness. They did so, with Mr Jain acting as witness. This signed and witnessed version of the TR1 has no "X" in any box in section 11, where a declaration of trust is usually made.

29. At around the same time, they filled in and signed a "Purchase Leasehold Questionnaire", giving some details about the Property. They did not tick the box in

question 2, which asked whether they would hold the Property as joint tenants or tenants in common. That signed questionnaire was then copied, and marked at the top "*Sent by cab 21/11/07*". Joti says that she found this document alongside the TR1 mentioned immediately above. Suman and Deepak infer that the signed questionnaire and the signed and witnessed TR1 were sent by cab to Mr Dhaliwal on 21 November 2007, with no specification as to how the Property would be held beneficially.

30. On 23 November 2007, the purchase of the Property completed. Deepak and Suman were joint legal owners. The TR1 filed at the Land Registry declares, in section 11, that they are joint beneficial owners also. The X seems to have been inserted after the TR1 was signed, witnessed, photocopied, and sent by cab to Mr Dhaliwal. This is the document which Suman seeks to rectify. Further:

i) Suman's pleaded case is that Deepak informed her that the TR1 was "*still blank in certain respects, with the details completed by Mr Dhaliwal or his staff subsequently*". She says that neither Suman nor Deepak were advised on the meaning of the declaration of trust in the TR1.

ii) She says that the ticking of the box providing that they hold the Property beneficially as joint tenants was a mistake.

These matters are in issue between the parties.

31. The sources of funds for the purchase price and costs of purchase were as follows:

i) £25,000 was paid by JDAM as an early initial deposit to secure the plot;

ii) £302,315.30 more was paid by JDAM;

iii) £275,000 was contributed by Suman in three cheques from her personal bank account;

iv) £125,000 was paid by JD Group;

v) £1,750,000 was borrowed by Suman and Deepak from The Mortgage Business, secured by a mortgage over the Property; and

vi) £125,000 was "rebated" by the seller, in an arrangement which was approved by The Mortgage Business.

32. The total, £2,602,315.30, includes costs of purchase and stamp duty. There is an issue between the parties as to how the company contributions should be treated.

33. On 23 February 2008, Suman and Joti moved into the Property. There is an issue as to whether Deepak also lived there.

34. On 20 June 2008, 9 Harwell Close was sold for £485,000. The parties were unable to tell me precisely what happened to the net sale proceeds after they were paid to Suman and Deepak.

35. On 12 May 2014, JD Group was wound up on HMRC's petition.

36. On 7 May 2020, the liquidator of JD Group (then Michaela Hall) issued an application against Deepak under s212 and s213 Insolvency Act 1986, alleging misfeasance and fraudulent trading.

37. On 3 February 2022, having heard the insolvency application, Deputy Insolvency and Companies Court Judge Agnello KC declared that between March and May 2006, Deepak "*was a knowing party to the carrying on of the business of the Company with intent to defraud a creditor, namely HMRC, by causing the Company's participation in missing trader intra community VAT fraud transactions*". Deepak was held liable for misfeasance and fraudulent trading under s212 and s213 of the Insolvency Act 1986. He was ordered to pay the Liquidator £1,785,892, plus interest and costs. In her judgment (*Re JD Group Ltd* [2022] EWHC 202 (Ch)), the judge made a number of adverse comments about Deepak as a witness, going so far as to say at [87] that "*during the entirety of his cross examination, I did not find the Respondent to be truthful*". I have formed my own view at the present trial, as I explain below.

38. The judge made an interim charging order on 3 February 2022, securing the judgment debt against Deepak's interest in the Property.

39. On 10 February 2022, in his Affidavit of Means, Deepak's evidence was that he holds the legal title of the Property for his mother. He explained that Suman was unable to obtain the mortgage on her own, and that "*the balance of the completion monies came from monies that belonged to my mother*". He said "*I have no beneficial interest in the property. Although I use the property address for my post and other communications, I have not lived at that address since about the end of 2019.*" I will return to those last few words below.

40. On 23 March 2022, Suman's solicitors objected to the charging order being made final on the grounds that Deepak had no beneficial interest in the Property. On 16 May 2022, this objection was withdrawn, although Suman's solicitors reserved the right to make such an argument upon any application for an order for sale. On 23 May 2022, the charging order was made final.

41. On 9 February 2023, Suman issued her claim for rectification of the TR1 and a declaration that she is the sole beneficial owner of the Property.

42. On 29 August 2023, Mr Purkiss issued his claim seeking an order for possession and sale of the Property.

43. I have been told that recently, The Mortgage Business obtained a possession order in respect of the Property.

Representation

44. At the trial before me, Suman was represented by Thomas Elias of counsel, and Mr Purkiss was represented by Nora Wannagat of counsel. I record here my gratitude to both counsel for their considerable assistance during the trial. Deepak was unrepresented, having admitted the rectification claim. He gave evidence but did not otherwise participate in the trial.

Issues for trial

45. The following issues for trial were identified by Mr Elias. They were not agreed, but Miss Wannagat has not put forward a different list of issues, and has not raised any other significant issue at the trial.

46. The issues are:

    i) From about 1996, did Deepak take charge of Suman's finances?

    ii) Did Suman lend Deepak (and/or businesses run by him) and/or secure the lending of significant sums of money in the period from c. 1996 to c. 2007? If so, as at late 2006 / early 2007, what was the approximate quantum of the loans outstanding?

    iii) Did Suman and Deepak reach an agreement, in late 2006 / early 2007, regarding the purchase of the Property, the taking out and repayment of a

mortgage, and the legal and beneficial ownership of the Property? If so, what were the terms of that agreement? The question of where Deepak lived after the Property was completed will be relevant to this issue.

iv) Did Suman provide all the money for the deposit (and associated costs) for the purchase of the Property?

v) Did Suman and/or Deepak understand, and/or receive any legal advice in relation to the statement that "The Transferees are to hold the property on trust for themselves as joint tenants"?

vi) Did Suman and Deepak each understand, and communicate such understanding to each other, that the Property would wholly belong to Suman?

vii) When Suman and Deepak signed the TR1 form and sent it to the solicitor, was the declaration of trust left blank?

viii) Was the declaration of trust box on the TR1 form completed by mistake (in the sense that it was not authorised by and/or did not give effect to the intentions of Suman and Deepak)?

ix) If the claim for rectification is otherwise made out, should the Court refuse relief in the exercise of its discretion by reason of any delay by Suman causing prejudice to the Liquidator, or otherwise?

x) If the Rectification Claim fails should the Court make an order for sale, and if so, what further directions should the Court give?

Law

47. There was no real dispute between counsel about the law on rectification.

48. The leading authority is now the Court of Appeal case of *FSHC v GLAS Trust Corp Ltd* [2020] Ch 365 ("FSHC"). Leggatt LJ, giving the judgment of the Court, said in that case:

> *[46] At a general level, the principle of rectification based on a common mistake is clear. It is necessary to show that at the time of executing the written contract the parties had a common intention (even if not amounting to a binding*

agreement) which, as a result of mistake on the part of both parties, the document failed accurately to record. This requires convincing proof to displace the natural presumption that the written contract is an accurate record of what the parties agreed."

49. After a comprehensive survey of authorities, Leggatt LJ concluded:

[176] For all these reasons, we are unable to accept that the objective test of rectification for common mistake articulated in Lord Hoffmann's obiter remarks in the Chartbrook case correctly states the law. We consider that we are bound by authority, which also accords with sound legal principle and policy, to hold that, before a written contract may be rectified on the basis of a common mistake, it is necessary to show either (1) that the document fails to give effect to a prior concluded contract or (2) that, when they executed the document, the parties had a common intention in respect of a particular matter which, by mistake, the document did not accurately record. In the latter case it is necessary to show not only that each party to the contract had the same actual intention with regard to the relevant matter, but also that there was an "outward expression of accord" – meaning that, as a result of communication between them, the parties understood each other to share that intention.

50. In his submissions, Mr Elias emphasised that "*the communication necessary to establish an outwardly expressed accord or common intention which each party understands the other to share need not involve declaring that agreement or intention in express terms. The shared understanding may be tacit.*" (*FSHC* at [81]). It may have been so obvious as to go without saying, or may have been reached without being spelled out in so many words. (*FSHC* at [84])

51. Miss Wannagat emphasised the need for "*convincing proof*" (*FSHC* at [46], and *Joscelyne v Nissen* [1970] QB 86). Mr Elias relied on Snell's Equity, 35th edn, at paragraph 16-022, which in my judgment accurately places the need for "convincing proof" in context: "*The standard of proof remains the civil standard of the balance of probabilities. However, since the alleged intention contradicts the written instrument, "convincing proof" is required to contradict the inherent probability that the written instrument truly represents the parties' intention because it is a document signed by them.*"

52. Both counsel referred to the case of *Ralph v Ralph* [2021] EWCA Civ 1106, [2021] 4 WLR 128. That case also concerned a claim for rectification of a Form TR1. The claimant sought to remove a cross from box 11 that said that "the transferees are to hold the property on trust for themselves as tenants in common in equal shares". In that case, Sir Geoffrey Vos MR suggested, obiter, that the principles identified in *FSHC* might not apply in a family context. He did not, however, set out what alternative principles might apply. Indeed, he took care not to decide the point, noting at [31] that it had not been fully argued. He expressly applied *FSHC* when deciding not to rectify the Form TR1. I am also bound to apply *FSHC*, as Mr Elias and Miss Wannagat accept.

53. Mr Elias did submit that the family context alters what evidence the Court might reasonably expect to find, and the inherent probabilities of mistakes being made. He submitted that while "*convincing proof*" has traditionally been required to overcome the inherent probability that a written instrument reflects the parties' intentions, in a family context the inherent probabilities are different. He said that discussions about ownership of property are more likely to be informal and oral, and an absence of corroborative documentation would be unsurprising. He also said that errors in legal documents are more likely to be made by unqualified persons in a domestic situation than by lawyers in commercial negotiations.

54. In my judgment, the mere fact that the mistake was allegedly made in a family context does not affect the substance of the legal test which I must apply. In assessing whether Suman has provided sufficiently convincing proof of the alleged outward expression of accord, I will take into account all the relevant circumstances, including various aspects of this particular family's arrangements and relationships. However, I am bound by authority to hold that rectification, even in the family context, requires "*convincing proof to displace the natural presumption that the written contract is an accurate record of what the parties agreed*".

55. The rectification primarily sought by Suman is for the TR1 to state that the Property was beneficially held by Suman. Suman's alternative case was that the declaration of trust was never made by Suman and Deepak. I heard submissions as to what the legal position would then be. It was agreed between counsel that the well-known cases of *Jones v Kernott* [2012] 1 AC 776 and *Stack v Dowden* [2007] 2 AC 432 would apply. Counsel agreed that the presumption is that equity would follow the law, and that the Property would be beneficially jointly owned, unless I found that

the parties had a different common intention. The same basic pleaded issue about the parties' alleged agreement will still need to be decided, identified as Issue 3 above.

56. Concerning defences to a claim for rectification, I was taken to *Snell* at 16-025: "*Even if the foregoing requirements are satisfied, the court may still refuse to order rectification; for the remedy is equitable and discretionary. Thus, it will not be granted to the prejudice of a bona fide purchaser for value without notice who takes an interest conferred by the instrument; and laches or acquiescence will bar the claim.*" The parties made submissions about laches and about the need to come to the Court with clean hands; I will return to those arguments below as necessary.

Witnesses

57. I heard from five witnesses: Suman, Deepak, Joti, Mr Purkiss (the liquidator) and Mr Edward Saunders (the liquidator's solicitor).

Suman

58. Suman appeared to have no grasp whatsoever of financial or business or legal matters. She repeatedly said that she could not remember or did not understand the details of documents containing figures or relating to businesses. For example:

    i) She said she "*never got involved*" in the companies' financial position.

    ii) She said she had nothing to do with the money paid by JD Group for the Property: "*It was not my decision, I was unaware of it all, the accountant took the decision, I had no question for it (sic)*".

    iii) When asked whether the companies owed money to Deepak, she said she knew nothing about it. When shown the list of loans, she said "*I can't explain this, the accountant did it, I accepted his sums*".

    iv) When it came to paperwork, Suman said that she signed blank forms as a matter of course, without understanding them. Her evidence was that she could not remember signing the crucial TR1.

v) Suman even denied knowing that there was a possession order over the Property (her home); when challenged on this, she said that her "*children were dealing with it and that is it*".

59. This extreme level of purported ignorance surprised me, given Suman's degree in philosophy and economics, and her career which included working for a major corporation in a supervisory role. However, 28 years have passed since she retired, and I am prepared to believe that she had a poor memory of events, and that she was not interested in the financial arrangements at the relevant time.

60. This does not help her case: it reduces the reliability of her purported recollection of the agreement with Deepak, especially as she does not remember signing the document she now wants rectified. I therefore treat her evidence of the alleged agreement with great caution.

61. There is another aspect of Suman's evidence which gives me cause for concern. She was internally inconsistent. On a number of occasions, she contradicted herself before claiming a lack of memory.

i) For example, she initially denied being Deepak's partner in JD Enterprises, saying "*I was only in partnership while he [her husband] was alive until April 1995".* She continued, "*After he passed, my son took over full control of JD Enterprises and I had nothing more to do with it.*" She was then shown accounting documents which stated she was in fact a partner. In response, she said "*I don't recall, it is not within my knowledge, it was 20 years ago.*"

ii) Another example concerned her directorships. In her witness statement, she said "*After Deepak moved away, I recall that, he formed a number of companies of which I was a director*". In oral evidence, she denied being a director of JD Group or JDAM, saying "*I don't think I was a director of any of my son's companies."* When she was taken to a Companies House printout of her appointments as director of five different companies, she said "*If that's what it says, yes*", then said (consistently with her witness statement) "*The only thing in my defence - I was a director just as a namesake, I had no role in anything at all, the golden rule was two mandatory directors, I was just there for that sake and nothing else, I had no involvement in anything."* Later in evidence, she was reminded that she was a director of JD Group between 2001-2008, which she surprisingly denied again. When reminded about the

Companies House printout, she said "*If I was, it was only a mandatory position, I had no involvement in running the business.*"

iii) Concerningly, Suman contradicted her own pleaded case about the alleged Agreement.

a) In her witness statement, she wrote "*We agreed that:*

> *23.1. He would obtain a mortgage large enough to include what he owed me.*
>
> *23.2. He would pay the interest costs on the full monies borrowed until he had discharged all his loans to me.*
>
> *23.3. Once he had paid me back, I could reduce the mortgage debt, which would be much before the expiry of the term.*
>
> *23.4 Deepak and I understood from the very beginning that the Property was being purchased for me as a replacement of my property at 9 Harwell Close, which is why I was purchasing the Property from my own funds."*

b) Her pleaded case, mentioned above at paragraph 21, was that:

> *Deepak would discharge the mortgage interest payments in lieu of interest on the loans extended by Suman to him and the companies;*
>
> *Before the expiry of the mortgage term, Deepak and the companies would repay Suman's loans so that she could discharge the mortgage loan and redeem the mortgage.*

c) Her evidence in cross-examination was different. She said "*He was paying mortgage instalments until he paid the loans back to me...It was an efficient way of paying back loans to me... Once he has discharged loans to mortgage, it is all done... He is paying his loan through the mortgage payments*". This was surprising but unambiguous - she was saying that (contrary to her pleaded case) the payment of mortgage interest had the effect of repaying the loan from her. This was evidence of a different agreement.

d) I conclude that in her oral evidence, she misremembered (or did not fully understand) her written evidence and her pleaded case on the Agreement itself.

iv) Because of these contradictions generally, and about the alleged agreement in particular, I do not find Suman's evidence of the alleged agreement at all reliable.

62. I am conscious that Suman is 78, and that she found the process of giving evidence physically and emotionally exhausting. I made due allowance for this by giving her breaks when requested. I would also note that Miss Wannagat conducted the cross-examination with exemplary courtesy. Suman's evidence was peppered with long pauses, which may have been used to think through the implications of her answers, or which may have been because she found cross-examination a difficult experience. I am prepared to assume the latter. However, many of the examples of self-contradiction above occurred early on in her evidence, and they cannot be excused by exhaustion.

63. For all these reasons, I am driven to the conclusion that I cannot rely on Suman's witness evidence on the main factual issues between the parties, save where it is corroborated by contemporaneous documentary evidence.

Joti

64. Joti's evidence was problematic in different ways.

65. On several occasions, when asked a straightforward question, instead of giving a straightforward answer Joti made several points of argument, trying to further her mother's case. For example, Joti was asked whether there was a written security agreement dating from before May 2007. Rather than saying "no", or "I don't know", she said "*Do you expect us to keep it for over 30 years? We were very lucky to find what she did.*" When shown accounts from 2006, which did not refer to a secured overdraft, and from 2007, which did refer to a secured overdraft, she said "*Speak to an accountant about that... The accountant may have changed, or the regulation may have changed.*"

66. When it was put to her, on the basis of contemporaneous documents, that her brother lived at the Property, she gave a long and rambling answer: she referred to various documents such as an asset report and a Zoopla printout connecting him to a

property in Brentford and in Turkey, and said also that "*sometimes he stayed over*", and "*his room didn't even have curtains*". When it was put to her that her brother had lied about living at the Property, she was defensive: "*[using the address] was just a convenience; why would he explain his whole life story?"* When shown a document in which Deepak himself had said that he had lived at the Property "*for six or seven years"*, she said "*That is probably just how long the Property had been around for".*

67. From these exchanges, it seemed to me that rather than trying to assist the court with spontaneous and truthful evidence, she was trying to assist her mother and her brother.

68. I was also concerned about Joti's obvious hostility towards the questioner. The hostility may have been a natural reaction to watching her mother being cross-examined. She clearly wanted to leave court as soon as possible to be with Suman. However, it gave me further reason to doubt that she was trying to assist the Court with frank and truthful evidence.

69. For these reasons, I do not consider her evidence to be reliable, unless supported by contemporaneous documentation.

Deepak

70. Deepak's evidence was very unsatisfactory in a number of respects.

71. First, it was tainted by a clear hostility towards the liquidator. He was resentful about the MTIC proceedings, saying that he "*won't let these people win a second time".* He showed some anger, referring to "*people's greed*" as causing his downfall.

72. Secondly, rather than giving frank answers, he misconstrued reasonable questions against him and tried to control the questions asked. When it was suggested that "*The reason you agreed to pay so much [mortgage interest] is because you were expecting to own an interest in [the Property]"*, he lost his temper. He interpreted the question as offensively implying that he was "*stealing"* from his sister (because she would also have inherited the Property in due course). He did not satisfactorily answer that question. He also tried to control the manner of Miss Wannagat's questioning, insisting that instead of saying "*mortgage"*, she must say "*interest only mortgage*".

73. Thirdly, on several occasions, instead of giving answers to the best of his knowledge, Deepak sought to refer to and rely on evidence that was not before the court.

i) When asked about the cover of an early draft sale agreement, apparently prepared by the seller (see paragraph 23 above), he said "*you call him*".

ii) When asked about company staff handling his personal matters, he sought to rely on a video apparently posted online in 2003-4.

iii) Of Mr Dhaliwal, the solicitor, he said "*Why did you not call him?"* and referred to what may have been a draft witness statement (as to which see below).

iv) When challenged about whether he lived at the Property, he said "*You must have had private investigators; ask the neighbours; if you are so sure where is your proof?*"

74. Fourthly, his evidence suffered from internal inconsistencies. For example, he accepted that his mother was a shareholder of certain companies, but then said that she had no financial interest in them whatsoever. A more involved example is the extraordinary level of inconsistency in his evidence about where he lived, which I deal with fully below.

75. Fifthly, Deepak gave highly exaggerated evidence about a draft witness statement from Mr Dhaliwal, to which I return in paragraph 92(iv) below. Deepak said "*he knows this is Mum's house*", and that his draft witness statement "*will confirm everything I am telling you*". This was not true. The document to which Deepak was referring confirmed very little of Deepak's case. It did say that Deepak was added as a purchaser for the purpose of obtaining a mortgage, and that Suman paid the balance of the purchase price; but it did not say anything at all about the alleged agreement that it would be "M*um's house*", or how the declaration of trust in the TR1 came to be made.

76. Sixthly, I take into account, to a limited extent, the remarks of Deputy ICCJ Agnello KC, who found that at the hearing before her Deepak lied throughout, and that he was complicit in a fraud. He showed no insight or remorse for this, saying in the present trial that "*I did not lie about anything, the Judge had an opinion.*" While the fact that he was found to have lied in a previous hearing does not necessarily mean

that he is lying now, the Judge's remarks did cause me to treat Deepak's evidence with further caution, as he is a witness with a history of lying in court.

77. Taking all of this into account, I conclude that I cannot rely on Deepak's evidence where it is not corroborated by contemporaneous documentary evidence.

Mr Purkiss

78. Mr Purkiss, as liquidator of JD Group since 19 April 2022, had no relevant evidence to give on the question of whether there was a mistake in the TR1, or the question of whether Deepak and Suman had reached a different agreement. His evidence goes mainly towards the question of whether there is a defence to the rectification claim, if otherwise successful. I will return to this below.

79. Mr Purkiss's evidence was clearly given with the intention to assist the court. He agreed that throughout his appointment as liquidator, he knew that Deepak's beneficial interest was contested. He also agreed that the previous liquidator, Michaela Hall, decided to pursue Deepak without knowing the value of the equity in the Property. He frankly agreed that the creditors of JD Group would not recover from this action, and that the only benefit from it would be payment of his and his lawyers' fees.

80. Mr Elias did not suggest that Mr Purkiss was anything other than a truthful witness. I agree.

Mr Saunders

81. Mr Saunders is a partner in Wedlake Bell LLP, and was a partner at Moon Beever solicitors until it merged with Wedlake Bell. He has had conduct of this matter since August 2017.

82. He frankly accepted that, as partner in a firm which is acting on a Conditional Fee Agreement, he had a personal interest in the outcome of the case.

83. He has a detailed knowledge of the documents in this case. Mr Elias suggested that he was too close to the documents to be able to determine his own true recollections; that may indeed be so, but I do not think it matters. Mr Saunders did not have evidence to give on the fundamental questions of whether there was a mistake in the TR1, or whether a different agreement was reached as to the beneficial ownership

of the Property. His evidence, like Mr Purkiss's, went more to the equitable defences to the rectification claim, to which I will return below.

84. Mr Saunders gave long, careful answers to several questions, punctuated by pauses. I attribute those pauses as stemming from a desire to be accurate, rather than to consider the implications of his answers. He was aware of the limits of how much he could assist the court, having no first-hand knowledge of the transaction. He was ready to accept when put to him that some of his evidence was his own inference.

85. At one point, Mr Saunders strayed into the territory of an expert valuer: he was asked (without objection from Mr Elias) to elaborate on his analysis of the property's value. I was not asked for (and did not give) permission for this, and I do not accept his opinion evidence on the property's current value.

86. I have no doubt of the truth of Mr Saunders' evidence or of his desire to assist the court.

Absent witness and adverse inferences

87. One witness notable for his absence was Mr Dhaliwal, the conveyancing solicitor acting for Suman and Deepak on their purchase of the Property. There was no formal witness statement from him. Miss Wannagat asks me to draw an adverse inference from Suman's decision not to call him.

88. On the subject of adverse inferences, in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, Brooks LJ said:

> *(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

89. In *Magdeev v Tsvetkov* [2020] EWHC 998 (Comm), Cockerill J referred to *Wisniewski* and said at [150]: "*the tendency to rely on this principle in increasing numbers of cases is to be deprecated. It is one which is likely to genuinely arise in relatively small numbers of cases; and even within those cases the number of times when it will be appropriate to exercise the discretion is likely to be still smaller.*"

90. Cockerill J referred also to *Manzi v King's College Hospital NHS Foundation Trust* [2018] EWCA Civ 1882, where Sir Ernest Ryder SPT said: "*Wisniewski is not authority for the proposition that there is an obligation to draw an adverse inference where the four principles are engaged. As the first principle adequately makes plain, there is a discretion i.e. "the court is entitled [emphasis added] to draw adverse inferences*". In *Manzi*, it was also made clear that such matters as proportionality may give rise to a valid reason for a witness's absence.

91. Cockerill J then said at [154]:

In my judgment the point can be dealt with relatively briefly thus:

i) This evidential "rule" is, as I have indicated above, a fairly narrow one. As I have noted previously ([2018] EWHC 1768 (Comm) at [115]), the drawing of such inferences is not something to be lightly undertaken.

ii) Where a party relies on it, it is necessary for it to set out clearly (i) the point on which the inference is sought (ii) the reason why it is said that the "missing" witness would have material evidence to give on that issue and (iii) why it is said that the party seeking to have the inference drawn has itself adduced relevant evidence on that issue.

iii) The Court then has a discretion and will exercise it not just in the light of those principles, but also in the light of: a) the overriding objective; and b) an understanding that it arises against the background of an evidential world which shifts - both as to burden and as to the development of the case - during trial.

iv) In this case, save as to one very narrow issue with which I will deal at the appropriate point below, the exercise required of the parties relying on this principle has not really been done.

v) I have nonetheless considered the point to the best of my ability based on the rather broader submissions made, and am not satisfied that the "missing" evidence is properly regarded as material such that it would be appropriate to draw an inference. This is particularly so when it comes to the "hindsight" roster put forward on behalf of Mr Tsvetkov, but applied also to Mr Skachko, who was apparently not present at the bulk of the meetings in relation to which the inference was said to arise, and who would add nothing on the spreadsheets with which Mr Tsvetkov had also engaged.

vi) Further, against a background where:

a) many of the "missing" were not party witnesses;

b) no evidence was put forward as to their availability and willingness;

c) and (as regards the absences on Mr Magdeev's side) the parties were limited to four witnesses of fact by the Order of Phillips J of 29 January 2019;

there would be a good explanation for not calling such witnesses.

92. Miss Wannagat asked me to draw an adverse inference from the absence of Mr Dhaliwal. Mr Dhaliwal is likely to have had material evidence to give, and his absence was surprising:

i) As conveyancing solicitor, he would be most likely to know how the declaration of trust in the TR1 came to be made.

ii) The only witnesses for Suman were herself and her children, and they would naturally want to rely on an independent witness if he had relevant evidence to give.

iii) On 30 October 2024, Suman's then solicitors applied for an extension of time for witness statements, listing Mr Dhaliwal as a potential witness.

iv) At trial, Deepak referred to a draft witness statement by Mr Dhaliwal in which he confirmed "*everything I was telling you*". This draft witness statement, handed up to me by Mr Elias in closing submissions, implies that Mr Dhaliwal was at some point willing to give evidence. However, it was an exceptionally unimpressive one-page document. It was messily hand-written, photographed, and sent by WhatsApp to Deepak (according to Deepak). In the first paragraph, Mr Dhaliwal gave his current role. In the second paragraph, he said that he worked for Simon & Co solicitors when Suman and Deepak (sic) acquired the Property. In the third paragraph, he said "*I recall the transaction as it was a large acquisition of a new build house on a prestigious road. I recall that Deepak was added as a purchaser due to [?eligibility] to obtain a mortgage. I believe Suman was at an age where mortgage companies would decline any application however all the purchase price and expenses less the mortgage advance was from her own resources.*" There is a handwritten statement of truth but it is not signed (or if it is signed, the signature is not shown in the photograph of the document). I was not asked to formally admit this document as hearsay evidence, and do not place any reliance on it as evidence of the facts therein. Its relevance is limited to my assessment of Deepak's reliability (as to which see above) and my decision on whether to draw an inference from Mr Dhaliwal's absence.

93. Mr Elias argued that, contrary to *Magdeev v Tsvetkov*, there was no statement from Mr Purkiss's side as to (i) the point on which the inference is sought (ii) the reason why it is said that the "missing" witness would have material evidence to give on that issue and (iii) why it is said that the party seeking to have the inference drawn has itself adduced relevant evidence on that issue. Instead, these themes were developed only orally, in closing submissions.

94. Mr Elias argued that there was a good reason in evidence for Mr Dhaliwal's absence – namely, his fear of being sued by Joti (or more accurately Suman, with Joti's encouragement).

95. Mr Elias relied on *Wentworth v Lloyd* [1864] HLC 589 as authority for the proposition that an adverse inference should not be drawn from a party's unwillingness to waive legal professional privilege. However, there is no evidence that that is the reason for Mr Dhaliwal's absence.

96. Having considered Mr Elias's and Miss Wannagat's submissions, in my judgment, this is not an appropriate case to draw an adverse inference from Mr Dhaliwal's absence.

i) Miss Wannagat has asked me to infer that Mr Dhaliwal's evidence would probably have been unhelpful to Deepak. I consider that to be too broad an inference to be useful in my assessment of the matters in issue. Miss Wannagat did not go so far as to ask me to infer (for example) that Deepak and Suman intended to declare a trust by ticking the relevant box in part 11 of the TR1; or that they instructed him to do so.

ii) There is also a reasonable explanation for Mr Dhaliwal's absence: that he was reluctant to give evidence because he was concerned about exposing himself to litigation by the Bhatia family (to "put his neck on the block", in Mr Elias's words). His willingness to provide a short draft witness statement, but not to develop it further, is consistent with this.

97. I now turn to the issues between the parties.

Issue 1. From about 1996, did Deepak take charge of Suman's finances?

98. I accept Suman and Deepak's evidence that Deepak acted as "head of the family" after his father's death, and that he had responsibility for his mother's finances after that time. This was not seriously challenged by Miss Wannagat. I have explained (at paragraphs 58-59 above) that I believe Suman was uninterested in financial matters at the relevant time.

Issue 2. Did Suman lend Deepak (and/or businesses run by him) and/or secure the lending of significant sums of money in the period from c. 1996 to c. 2007? If so, as at late 2006 / early 2007, what was the approximate quantum of the loans outstanding?

Money owed by Deepak personally

99. There is clear documentary evidence showing that Suman funded the family companies to a considerable degree between 1996 and 2007. I have seen bank statements showing significant movement of funds between Suman's own bank accounts and those of the companies, and the nominal ledgers of JDAM also record loans from (and repayments to) Suman.

100. This is obviously not the same as a loan to Deepak. While Deepak may have controlled the companies in practice, his mother was at least a 50% shareholder or 50% partner in all of the relevant family businesses. I cannot treat a loan to, or repayment by, a company as being equivalent to a loan to, or repayment by, Deepak himself. This would be problematic if the company was wholly owned by Deepak; all the more so, when the company is owned by both Deepak and Suman. To ignore the corporate structure would be contrary to fundamental company law principles. There was no relevant loan to Deepak personally at the time of the alleged agreement.

Provision of security

101. Mr Elias asks me to treat Suman's provision of security for company overdrafts as if that provision of security were a loan. It seems that Suman, from 31 May 2007 at the latest, permitted the borrowing of JD Group to be secured against funds in her Bank of India account, and preventing her from using those funds. In my judgment, however, this provision of security is not the same as actually lending the money JD Group. When that security was enforced in 2009, and Suman's funds went to the Bank of India, she may well have had the right to be indemnified by JD Group. However, JD Group did not owe her money in 2007 merely because she provided security for its borrowing.

102. Further, there is an issue as to the date from which this security arrangement was in place:

i) Miss Wannagat took me to a security agreement dated 31 May 2007, between Bank of India Eastham Branch (sic) and Suman, by which JD Group's overdraft would be secured by a personal guarantee by Suman, with rights over certain funds belonging to Suman being granted to the bank as security. There is no earlier document than this granting security rights over Suman's funds, and Miss Wannagat asks me to infer that no earlier document exists. I note that the agreement dated 31 May 2007 does not refer to a previous document (for example, by saying that an earlier similar agreement is superseded).

ii) Miss Wannagat also relies on JD Group's accounts. The accounts for the year ended 31 March 2007 record an overdraft of £726,316, with a note saying "*Bank overdraft facilities are secured by the provision of personal*

guarantees by the directors of the company". There is no similar note in the accounts for the year ended 31 March 2006. However, 31 March 2007 predates the security agreement mentioned above.

iii) Mr Elias argued that the overdraft must have been secured before 2007, because it would be commercially unrealistic for the bank to lend JD Group money without security. While there is no documentary evidence to support this, Mr Elias notes that 17 years have passed, and so the absence of older documents should not imply that they never existed.

103. On balance, I am not persuaded that Suman had granted a security interest over her funds in support of JD Group's borrowing prior to 31 May 2007 (and in particular in late 2006/early 2007, the time of the alleged agreement). As I note above, I do not find the witness evidence to be reliable generally where not supported by corroborative documentary evidence. There is no documentary evidence of any earlier security being granted over Suman's property. Regarding the commercial likelihood of an overdraft being granted without security, there may have been other ways to secure such borrowing: for example, over the company's assets, or with a personal guarantee.

104. In any event, as I have said, I do not consider security provided by Suman to be equivalent to lending.

Quantum of lending

105. For the purpose of this trial, I do not need to determine (and the parties have not asked me to determine) precisely what sums were or are outstanding between the different parties. This is not an account. Using a relatively broad brush, from the evidence I have seen, it appears that in late 2006/early 2007:

i) Deepak did not owe Suman anything;

ii) JD Group did not owe Suman anything;

iii) JD Enterprises (the partnership) owed Suman approximately £88,000;

iv) JDAM owed Suman approximately £279,000. I have calculated this as follows:

a) My starting point was the Schedule to the Reply and the documentary evidence supporting it, which alleged a balance of approximately £354,000 loaned by Suman to JDAM as at 5 April 2007.

b) Most of the movements of funds were agreed between counsel. The main exception, and the largest alleged loan to JDAM, was a £150,000 payment made on 20 June 1998, upon the refinance of 9 Harwell Close. Mr Elias asked me to treat this as being loaned solely by Suman, as (on his case) she was sole beneficial owner of 9 Harwell Close. Miss Wannagat asked me to treat the £150,000 as a loan being made partly by Deepak, as he was added to the title of 9 Harwell Close, and was jointly liable for the borrowed funds. I consider that it is appropriate to treat Deepak as joint lender of the £150,000 to JDAM, because he was joint borrower from the bank and therefore joint owner of the funds lent to JDAM. Rather than having a separate category of funds jointly lent to JDAM, for present purposes I am treating the total loaned by Suman to JDAM as £75,000 less than the £354,000 total pleaded by Suman, i.e. £279,000.

106. I should add that because the money was loaned to businesses in which Suman had an equal interest, the presumption of advancement (on which counsel made some submissions) does not arise.

3. Did Suman and Deepak reach an agreement, in late 2006 / early 2007, regarding the purchase of the Property, the taking out and repayment of a mortgage, and the legal and beneficial ownership of the Property? If so, what were the terms of that agreement? The question of where Deepak lived after the Property was completed will be relevant to this issue.

107. To determine this crucial issue, I have considered the witness evidence, the contemporaneous documents, and the surrounding circumstances.

Witness evidence

108. Deepak and Suman both gave evidence about the agreement. Joti also gave evidence that Suman told her about the agreement. I have already said that I found Suman, Deepak and Joti's evidence to be unreliable generally, and refer to my comments at 58-77 above.

109. There is a further reason to treat their evidence with caution, which is that the alleged agreement on which the rectification claim is based is (obviously) self-serving. It would benefit the Bhatia family significantly if Deepak had no beneficial interest in the Property.

110. There was also inconsistency between them about the alleged agreement. Suman said in her witness statement that it became clear that it was necessary for Deepak's name to be on the title for mortgage purposes in April 2007, whereas Deepak said that it had always been the plan since early 2006. When Suman was asked about this in cross-examination, and shown paragraph 26 of her own witness statement, Suman said "*We're talking about 2007...? [Long delay] You know, I don't recall this, but yes, I read it now.*" This further reduces the weight I give to Suman's evidence of the alleged agreement.

Contemporaneous documents

111. I have considered the following potentially relevant contemporaneous documents:

i) I have seen Deepak's handwritten note of a discussion between Suman and Deepak as to how the Property could be purchased. It does not record any kind of agreement as to the beneficial ownership of the Property; on the contrary, it appears to show that they discussed using Deepak's solely owned property (15 Harwell Close) to fund the purchase of the Property.

ii) An early draft sale agreement, prepared by the seller, includes Deepak's name as purchaser. Suman's name was added in manuscript. The seller must have assumed or believed that Deepak was the purchaser, and Suman was added after September 2006 at Deepak's (or Deepak and Suman's) request. However, I do not place weight on the seller's mistaken assumption or belief.

iii) Further, the accounting records of JDAM records the payments mentioned in paragraph 31 above (the purchase monies provided by JDAM) as "Mrs S Bhatia & D Bhatia Drive Account". It appears that JDAM treated the purchase money as being loaned to Suman and Deepak. While this was not put to Suman or Deepak during cross-examination, and so I treat the point with some caution, I note that Mr Elias had no ready explanation for this.

iv) I refer below to the TR1 in which no box was ticked.

112. Accordingly, there was no contemporaneous document supporting the existence of the alleged agreement. The documents listed above are somewhat inconsistent with such an agreement, although they are by no means determinative of the issue.

Surrounding circumstances generally

113. The circumstances principally relied on by Mr Elias in submissions were:

i) The Property was a replacement for Suman's existing home, as the family had long planned.

ii) The Property was fitted out to Suman's specifications. This was not challenged by Miss Wannagat.

iii) The source of the purchase money, as set out above.

iv) The alleged mortgage arrangement, whereby Deepak would pay the interest but not the capital repayment, and Suman would use her own wealth to repay the mortgage at the end of its term.

v) Suman's desire to treat her children equally.

114. Miss Wannagat relied on the following countervailing circumstances:

i) Deepak lived at the Property as his home.

ii) The early draft version of the contract in September 2006 named only Deepak as purchaser, with Suman's name being added later (as to which see paragraph 23 above).

iii) The alleged agreement was very much against Deepak's interests. Instead of enjoying interest free loans from his mother to the companies, he became (jointly) personally liable for a £1,750,000 mortgage, with interest at a variable rate but starting at £10,611.43 per month, or £127,337.16 per year. Even if his mother had truly agreed to repay the capital, under the alleged agreement he was making himself liable to pay very significant interest for the businesses' borrowing. Putting that borrowing at its highest (in Deepak's favour) at approximately £442,000, he would be paying approximately 29% interest.

Deepak's home

115. The parties placed great importance on the question of whether Deepak lived at the Property after the purchase. That was reasonable: if he did live there, it is a strong indicator that the parties did not agree that the Property would belong beneficially only to Suman.

116. My starting point is Deepak's own evidence of where he lived. He denies ever living in the Property. In Annex C to his witness statement, Deepak lists his "residences", which indicate that he lived in more than one property at a time (but never the Property). For example, he says that in 2008 he lived in a penthouse apartment in Brentford; a property at Warren Road, in Uxbridge; and Unit 20 Belvue Business Centre. He added that he spent a lot of time abroad, and said in his witness statement that he lived in up to five different places at once. In cross-examination, he added to the list of properties he lived at, referring to an address in Belgrade. He had no good answer for why that was not listed in Annex C of his witness statement.

117. In cross-examination, Deepak described spending £100,000 to convert an office space at Europa House, on an industrial estate, into an apartment. He says he lived there for eight years from 2010-2018 as his "*permanent abode*". There was no documentary evidence supporting this. In re-examination, he was taken to photographs of Europa House: they quite clearly show a glass-walled staff recreation area. Indeed, the photographs were in a marketing brochure which described his so-called "permanent abode" as follows: "*This is a great space for staff to enjoy their breaks in. The very spacious room comprises of a fully fitted kitchen with oven and hob, a dining area with table and 4 chairs and a relaxing zone with sofas and TV. There is even a small bedroom and storage room.*" Deepak was shown this marketing brochure, and said "*There's my kitchen, my bed (I should have made it), my shower, my towel, and my view of the cars.*" This was unconvincing. While making due allowance for the various ways in which people might choose to live, I do not believe that Deepak (who prided himself on his success) lived for eight years in a glass-walled staffroom above a car showroom on an industrial estate.

118. As for the Property itself, Deepak has given various inconsistent statements. His early statements all indicate that he lived at the Property; it was only later, when the Property was under threat from the charging order, that he began to deny living there. Further:

i) On the mortgage application form prior to purchasing the Property, he said "I declare that the property will be used as my sole main residence."

ii) On his driving licence, the Property is given as his address.

iii) His tax returns give the Property as his address.

iv) In the context of the liquidation of JD Group:

a) He gave the Property as his address in the director's questionnaire in May 2014, and in the Official Receiver's questionnaire on 10 September 2014.

b) On 10 September 2014, he signed a statement saying "I have lived at 33A The Drive for 6 or 7 years".

c) In an interview on 22 April 2015 with Mike Ruane (a colleague of the liquidator of JD Group), he gave the Property as his "current residential address".

d) He did the same in an interview with the liquidator's solicitors on 31 October 2017 (although the transcript records "33 The Drive" rather than "33A The Drive").

v) In a witness statement given on 15 November 2021 in Case No CR-2014-002237 (the MTIC proceedings), he gave the Property as his address.

vi) In an affidavit in the MTIC proceedings sworn on 10 February 2022, he said "*Although I use the property address for my post and other communications, I have not lived at that address since about the end of 2019.*"

vii) Following the draft judgment in the MTIC proceedings, Deepak (through his then solicitor Mr Treon) said for the first time, to the liquidator's solicitor, that he did not have any beneficial interest in the Property.

viii) In his witness statement in the present proceedings, he said that in the 10 February 2022 affidavit he meant to say that he had not visited the Property since the end of 2019. I do not believe this. First, Suman herself said in cross-examination that Deepak would visit, and denied there ever being a two-year gap between visits. Secondly, it is implausible that he would not have visited his mother between the end of 2019 and February 2022, given their evidence of emotional closeness (which I believe).

ix) In his witness statement in the present proceedings, Deepak also said that prior to 2019 "*I would only stay (for a few nights) at the Property when I visited my mother.*" Inconsistently with this, his evidence in cross-examination was that "*if Grandma came, I maybe even lived there for a month*".

x) In cross-examination in the present proceedings, he said that he referred to the Property as a correspondence address because he needed a permanent address for his relationship with banks. I was not convinced by this. Annex C indicates that he lived at the Brentford penthouse address for 15 years; and at Unit 20 for 18 years (with one gap). If that were true, there was no good reason why one of those could not be given as his permanent addresses.

xi) When pushed in cross-examination, Deepak said "*So what if I did live with her!*" and "*You must have had private investigators, ask neighbours, if you are so sure where is your proof!*" While not quite an admission, these outbursts made me doubt the truth of his evidence that he lived elsewhere.

119. Deepak has produced scant evidence connecting himself with other residential addresses. One would expect to see numerous utility bills and other documentary evidence proving residency at a particular address. All I have seen is:

i) The photographs of the glass-walled staff room, mentioned above.

ii) A spreadsheet showing shared expenses concerning a property at Warren Road in 2006-7. I accept that this spreadsheet indicates that Deepak lived there with someone for that period, but that was before the Property was purchased.

iii) Deepak was not on the electoral roll as residing at the Property, but there was no evidence that he was on the electoral roll as residing anywhere else.

120. Suman's and Joti's evidence in support of the rectification claim was that Deepak did not live at the Property. In particular, Joti said that Deepak had his own bedroom (which she said lacked curtains), but said that he did not live there. However, for the reasons above, I found Joti's evidence unreliable. Suman was asked about Deepak's inconsistent statements, in particular whether it was true that Deepak had not lived at the Property since 2019 or whether he had not visited her there since 2019. She said that she "*could not remember what he did*", which was entirely unsatisfactory.

I reject Suman and Joti's evidence that Deepak never lived at the Property. I consider this to be a misguided attempt to help Deepak and retain Suman's home.

121. On the balance of probabilities, taking all of this into account, I find that Deepak lived at the Property from at least 2007 to 2019. He may have spent time abroad, and may have slept over at the office from time to time, but his home was the Property. This is an important factor in my judgment as to whether there was an agreement that the Property was to be wholly owned by Suman.

Other surrounding circumstances

122. I will deal with the other circumstances relied on by Mr Elias and Miss Wannagat more briefly.

123. I accept that Suman gave specifications to the developer, and I accept that Deepak (through Mr Jain) gave instructions to the solicitor. This division of responsibility seems consistent with an intention of beneficial joint ownership.

124. The source of purchase money was primarily a mortgage loan, with £1,750,000 borrowed by Suman and Deepak jointly. £275,000 of the deposit/costs of sale came from Suman personally. £125,000 was rebated by the seller. The remainder came from businesses jointly owned by Suman and Deepak: £327,315.30 from JDAM, and £125,000 from JD Group. Much, but not all, of JDAM's contribution (£279,000 out of £327,315.30) can be attributed to repayment of loans to Suman. This means that around £173,315.30 of the deposit/costs of sale was paid by companies jointly owned by Suman and Deepak, which cannot be attributed to loan repayments.

125. Suman's pleaded case, that she "*had contributed all of the deposit monies for the Property, and had paid stamp duty and other expenses relating to the purchase of the Property*," is clearly not made out. I find that the source of purchase money was a mixture of money from Suman, money from jointly owned businesses, and money jointly borrowed from The Mortgage Business. This is more consistent with an intention to beneficially own the Property jointly, than with an intention that Suman should be sole beneficial owner.

126. I was not persuaded that Deepak and Suman truly agreed that Deepak would be liable for repayment of the mortgage loan. I consider the evidence of Suman, Joti and Deepak to be unreliable for the reasons I have said.

127. I accept that, in general, Suman desired to treat her children equally, and that joint ownership of the Property (for which Suman paid more of the deposit) might lead to an imbalance between what Joti and Deepak received. However, this desire did not stop Suman from jointly owning businesses with Deepak, or from lending money to the businesses over time. Moreover, any unfairness could be remedied by a gift to Joti in due course. Indeed, Suman has recently changed her will to ensure Joti benefits more from her estate. Suman's desire to treat her children equally does not lend any real support to the alleged agreement with Deepak concerning the Property.

128. I also accept Miss Wannagat's submission that the alleged agreement would have been very detrimental to Deepak, and would have made no sense. Before the alleged agreement, the businesses enjoyed interest free loans from Suman. If the alleged agreement were true, he would have become jointly liable for a £1,750,000 mortgage. The interest on that loan was at a variable rate, with repayments starting at £10,611.43 per month. Under the alleged agreement he was making himself personally liable to pay very high interest for the jointly owned businesses' borrowing. As noted above, he would be paying approximately 32.4% interest. Such an arrangement makes no business sense.

129. Having taken into account the evidence referred to above, and the parties' submissions, I find on the balance of probabilities that Suman and Deepak did not reach the alleged agreement, in late 2006 or early 2007, regarding the purchase of the property, the taking out and repayment of the mortgage, and the legal and beneficial ownership of the Property.

130. For the same reasons, I find there was no common intention or outward expression of accord. I find that Suman and Deepak did not understand each other, expressly or tacitly, to have a shared intention that Suman would own the Property.

4. Did Suman provide all the money for the deposit (and associated costs) for the purchase of the Property?

131. See paragraphs 124-5 above for my conclusions on this issue.

5. Did Suman and/or Deepak understand, and/or receive any legal advice in relation to, the statement that "The Transferees are to hold the property on trust for themselves as joint tenants"?

132. Simon & Co wrote to Deepak on 28 September 2006 enclosing an early draft TR1. On that letter, Deepak wrote "*Do not send until we get further info re: holding of property*". This can only mean that Deepak wanted information from his solicitors about how the Property would be held. I infer from this that advice was probably given about the difference between joint and sole ownership.

133. Further, Suman and Deepak signed a "Purchase Leasehold Questionnaire". That is the document referred to in paragraph 29 above. Question 2 asked whether they wished to hold the property "*as a Joint Tenancy or a Tenancy-In-Common.*" The question continued: "*See attached leaflet.*" I infer from this that advice was probably given in such a leaflet to Suman and Deepak about the different types of joint ownership.

134. I doubt that Suman or Deepak had a lawyer's understanding of the statement "*The Transferees are to hold the property on trust for themselves as joint tenants*". Nevertheless, I do believe that they understood the concept of joint ownership, because:

    i) Advice was, probably, given by Simon & Co;

    ii) Further, Suman and Deepak had co-owned property before: Suman co-owned 9 Harwell Close initially with her late husband and later with Deepak;

    iii) Further, they had dealt with Sudesh's estate, which had the unusual feature of the family home being owned in common rather than jointly. That meant that Sudesh's share had to be administered as part of the estate, rather than passing to Suman by survivorship.

6. Did Suman and Deepak each understand, and communicate such understanding to each other, that the Property would wholly belong to Suman?

135. I do not accept Suman and Deepak's evidence they understood and communicated to each other an intention that the Property would wholly belong to Suman, for the reasons set out under Issue 3 above.

7. When Suman and Deepak signed the TR1 form and sent it to the solicitor, was the declaration of trust left blank?

136. As set out above, there are two versions of the TR1 that was eventually signed and witnessed. One has the declaration of trust in box 11 left blank (I will call this version 1), and the other has it ticked (version 2). Versions 1 and 2 are otherwise identical, including the signatures. Logically, either the TR1 was signed (and photocopied) while box 11 was still blank, with the tick therefore coming after the signature; or the tick in box 11 was erased after the form was signed and photocopied. No one has suggested the latter.

137. In my judgment, it is most likely that the TR1 was signed, and photocopied, before being sent to the solicitor. This is consistent with Joti's evidence that she found "version 1" alongside the "Purchase Leasehold Questionnaire" which is marked "Sent by cab 21/11/07". It is possible that box 11 was ticked by Deepak or Suman before the form was sent back to the solicitor, but in my judgment it is more likely that it was ticked after being sent to the solicitor.

8. Was the declaration of trust box on the TR1 form completed by mistake (in the sense that it was not authorised by and/or did not give effect to the intentions of Suman and Deepak)?

138. I consider it more likely than not that Mr Dhaliwal or a member of his staff ticked the box on the TR1. This is consistent with Suman's pleaded case, that "*Deepak has subsequently informed [Suman] that (i) The form was signed by himself and [Suman] when it was still blank in certain respects, with the details completed by Mr Dhaliwal or his staff subsequently.*" The alternative, that the seller's solicitor declared the trust on which the buyers would hold the Property, is obviously inherently unlikely.

139. I do not find that the box was completed by mistake:

i) The burden of proving this mistake is on Suman. As set out above, convincing proof is required to displace the natural presumption that the TR1 is an accurate record of what the parties agreed. For the reasons set out above, I do not consider that she has discharged this burden with her evidence or that of Deepak and Joti.

ii) I have, for the reasons above, rejected the alleged agreement or common intention that the property would be beneficially owned by Suman alone. I

have found that no such agreement was reached. There was no alternative agreement pleaded, and no evidence supporting any alternative agreement. The parties agree that in the absence of an express agreement, the presumptions in *Stack v Dowden* and *Jones v Kernott* apply (see paragraph 55 above). Suman and Deepak were to occupy the Property together and were jointly responsible for the mortgage. The presumption is that the beneficial interests coincided with the legal estate (i.e., that they would be beneficial joint tenants).

iii) It seems more likely than not that Mr Dhaliwal would have taken instructions from Suman, Deepak or Mr Jain concerning how the Property would be beneficially owned, rather than ticking the box entirely independently. Even if the box was ticked without instructions, however, it reflected the presumption of the parties' common intention.

9. If the claim for rectification is otherwise made out, should the Court refuse relief in the exercise of its discretion by reason of any delay by the Claimant causing prejudice to the Liquidator, or otherwise?

140. This issue does not arise. If I had accepted the evidence that there had been a mistake which was discovered in about 2022 (see paragraph 118(vii) above), I would not have considered the delay sufficient to give rise to the equitable defence of laches. I was also unpersuaded that the liquidator relied on the TR1 in any meaningful way, or that Suman did not come to court with clean hands (which could have been a bar to rectification).

10. If the Rectification Claim fails should the Court make an order for sale, and if so, what further directions should the Court give?

141. This issue has been overtaken by events, as The Mortgage Business already has a possession order concerning the Property. Nevertheless, I would have considered it appropriate to make an order for sale, taking into account all of the circumstances. I have in mind in particular the size of the debt owed by Deepak to the liquidator, which makes an order for sale proportionate. I also have in mind the evidence from Suman and Joti that they have considerable wealth, which will enable them to be rehoused. If an order for sale is still sought, I will consider the appropriate form of order at the hearing following judgment.

Conclusion

142. For all these reasons, Suman's Rectification Claim is dismissed, and (subject to paragraph 141 above) the Sale Application succeeds.