Neutral Citation Number: [2018] EWHC 1904 (Ch)

Case No: HC-2016-002431

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

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

Date: 24/07/2018

Before :

HIS HONOUR JUDGE HACON
(Sitting as a High Court Judge)

- -

Between :

(1) CHRISTIANE DE MULLER **(2) ALICE KAHRMANN** **(As Administrators of the Estate of Rainer Christian Kahrmann)**	**Claimants**
- and -	
HILARY HARRISON-MORGAN	**Defendant**

- -
- -

Ulick Staunton (instructed by **Grosvenor Law**) for the **Claimants**
Clifford Darton and **Faisel Sadiq** (instructed by **Excelsior Solicitors**) for the **Defendant**

Hearing dates: 19-20, 23-24 and 26 April 2018

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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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HIS HONOUR JUDGE HACON

Judge Hacon :

Introduction

1. Rainer Christian Kahrmann died at his home in Cologne on 3 July 2014. He had married the first claimant ("Ms de Muller") in 1972 but some years later the two became estranged. Written terms of separation were agreed on 1 September 1997, although they remained married until Dr Kahrmann's death.

2. In about 1991 Dr Kahrmann entered into a relationship with the defendant ("Ms Harrison-Morgan"). Dr Kahrmann spent much of his time in London and owned properties there. One them was the leasehold of a property in Knightsbridge: Flat 2, 38 Wilton Crescent, London SW1. In 1991 the couple moved into the flat.

3. Dr Kahrmann had four children. Two were daughters with Ms de Muller, Louise and Alice Kahrmann (hereafter "Louise" and "Alice"), both of whom are now in their thirties. Alice is the second claimant. Dr Kahrmann and Ms Harrison-Morgan had twin sons, Maximillian and Frederic Kahrmann ("Max" and "Fred") who were born on 19 October 2001. All four children live in London.

4. Following the enactment of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") leaseholders with sufficient interest became entitled to purchase the freehold of the leased property, a process known as enfranchisement. Dr Kahrmann became aware of the potential financial benefit of buying the freehold of 38 Wilton Crescent ("38 WC") and that of the mews property adjoining at the back, 38 Belgrave Mews North ("38 BMN"). The idea was to offer house and mews jointly on to a buoyant London property market.

5. In co-operation with a business partner, Kim Hawkins, sufficient leasehold interests were acquired. In about 2005 a statutory notice in relation to 38 BMN was served on the freeholders, namely the Sixth Duke of Westminster and two other trustees of the will of the Second Duke. I will call the trustees "Grosvenor". On 13 March 2009 a similar application was made in respect of 38 WC. Both applications were made by companies controlled by Mr Hawkins, namely Cravecrest Limited ("Cravecrest") for the freehold of 38 WC and Themeplace Limited ("Themeplace") for 38 BMN.

6. The acquisition in respect of 38 BMN was relatively straightforward and was completed on 22 September 2006. The application for the freehold of 38 WC was more protracted due to a failure to agree a price with Grosvenor. It resulted in litigation which reached the Court of Appeal (*Cravecrest Ltd v Trustees of the Will of the Second Duke of Westminster* [2013] EWCA Civ 731; [2014] Ch. 301). The Supreme Court gave permission for a further appeal. The dispute was eventually settled before the Supreme Court hearing although not until after Dr Kahrmann's death.

7. On 3 December 2014 a profit of about £8.8 million on the sale of the freeholds and all other interests in 38 WC and 38 BMN was realised. The freehold of 38 WC had still not been transferred from Grosvenor to Cravecrest but a price had been agreed. Cravecrest was in a position to require that upon payment Grosvenor should assign the freehold to Cravecrest's nominee, i.e. the purchaser of the two properties.

8. The sale was effected by a written agreement dated 3 December 2014 ("the Sale Agreement"). The parties to it were Cravecrest, Themeplace, the purchaser of the two freeholds namely 38 Wilton Crescent Limited ("38 WC Ltd"), Ms Harrison-Morgan, Alice, Louise, Mr Hawkins and his company Marlin Securities Limited ("Marlin").

9. Under the terms of the Sale Agreement, Mr Hawkins through his companies received half the profit, about £4.4m. The other £4.4m or so was split equally between, Alice and Louise on the one hand – about £1.1m each – and on the other Ms Harrison-Morgan, who received about £2.2m.

10. The claimants in these proceedings, Ms de Muller and Alice, act as administrators of Dr Kahrmann's English estate ("the Estate"). They say that Ms Harrison-Morgan should not have received any part of the profit. On behalf of the Estate they claim recovery of the £2.2m Ms Harrison-Morgan was paid.

11. There is a secondary claim by the Estate. It is that Ms Harrison-Morgan removed furniture and art belonging to the Estate from 38 WC when she left the flat in May 2015. The various articles were referred to in the pleading and at trial as "the Chattels". The Estate seeks delivery up of the Chattels or payment of their value.

12. Ms Harrison-Morgan has a counterclaim. She says that she and Dr Kahrmann had jointly owned a property known as "Kandili" in Le Cannet, near Cannes. Ms Harrison-Morgan claims from the Estate half the proceeds of the sale of Kandili plus repayment of about £200,000 which she says she lent to Dr Kahrmann.

13. Ulick Staunton appeared for the Estate, Clifford Darton and Faisal Sadiq for Ms Harrison-Morgan.

Applications

14. Two applications were made during the trial.

Amendments to the Particulars of Claim

15. The Estate brought its claim pursuant to the grant of letters of administration *ad colligenda bona* issued by the Birmingham Probate District Registry on 21 July 2015. On 29 June 2016 the *Amstgericht Köln* (District Court of Cologne) granted a *Gemeinschaftlicher Erbschein*, translated as "Joint Certificate of Inheritance", naming Ms de Muller, Louise, Alice, Fred and Max as heirs to Dr Kahrmann's German estate. At the start of the trial I allowed an amendment to the Particulars of Claim pleading reliance on the certificate. The amendment was not resisted and played no part in subsequent arguments.

16. I also allowed amendments to paragraphs 14, 16 and 18 of the Particulars of Claim which set out in more detail the Estate's case in relation to agreements between Dr Kahrmann and Mr Hawkins. These were not resisted either. I did not allow further proposed amendments in which the Estate raised new arguments of estoppel. These would have required an investigation of facts for which Ms Harrison-Morgan's legal team had not prepared. Mr Staunton argued for the Estate that none of the facts or alleged facts relied on was new. Even if that had turned out to be right, the Estate was seeking to rely on such facts for a new purpose. Had the estoppels been pleaded in

good time Ms Harrison-Morgan may have wished to put in further evidence regarding the nature of the alleged representations, whether there had been reliance on the them, or on other related matters. I took the view that it would be unfair to allow the new estoppel arguments to be raised at such a late stage.

Disclosure of an attendance note

17. After signing the Sale Agreement, Alice and Louise sought advice from their current solicitors, Grosvenor Law. There was a conference with Grosvenor Law attended by Alice and Ms de Muller. The advice was relayed to Louise who discussed it in paragraph 71 of her affidavit of 5 May 2017. I quote a section from that paragraph below. In it, 'EBC' is a reference to EBC Asset Management Ltd, a company which had been partly owned by Dr Kahrmann.

> "Grosvenor Law advised that they considered the sale agreement may be an instrument of fraud against creditors of the estate (principally HM Revenue and Customs and EBC) as well as other beneficiaries of the estate (our mother and brothers). They said that Mr Hawkins' claim that payment was 'outside the estate' was a nonsense. They advised that our mother and brothers may have claims in the estate and indirectly on the monies that were to be paid to Alice and me (and Ms Harrison-Morgan pursuant to the sale agreement)."

18. Mr Darton argued on behalf of Ms Hillary-Morgan that privilege had been waived in relation to the advice given by Grosvenor Law. He sought an order for disclosure of the attendance note taken of the conference. I agreed and ordered disclosure. My reasons were as follows.

19. Mr Darton referred me to *D (A Child)* [2011] EWCA Civ 684; [2011] 4 All ER 434. This was a case concerning injuries to a child. An application was made for disclosure of advice given by counsel and solicitors to the child's mother. Ward LJ (with whom Rimer and Elias LJJ agreed) said:

> "[12] … There was no dispute that conferences between a client and counsel and meetings between a client and his solicitors are confidential and as such attract legal professional privilege. This confers on the client a substantive absolute right of fundamental importance to the administration of justice as a whole. It can only be waived by the person, the client, entitled to it."

20. He continued:

> "[13] Fairness lies at the heart of waiver and its consequences. It mattered not whether the mother intended to waive privilege: viewed objectively she clearly did so in respect of the matters contained in her statement of 23rd February. As the judge eloquently put it:
>
> > 'She need not have mentioned anything beyond the fact that conferences were held on particular dates. However, not only has the mother taken the other parties and the Court to the doors of the conference room, she has taken the reader of her statement into that room. And the journey has been undertaken more than once.'

> [14] For the judge the real issue was, therefore, whether as a consequence of that waiver, the application of the principle of fairness demanded disclosure of the material which the father sought so as to prevent the court and the party's adversary being given only a partial picture: the court should not allow cherry picking."

21. Having emphasised the importance of fairness in an application alleging waiver of privilege, Ward LJ indicated that by the time of the appeal hearing this was the only issue left since the mother's counsel had conceded before the Court of Appeal that privilege had been waived (see [17]). This concession was not, however, decisive of whether disclosure should be ordered:

> "[19] Thus the appeal turns on the 'fundamental question', as my Lord, then Elias J, expressed it in *Brennan v Sunderland Council* [2009] I.C.R. 479 at [63]:
>
> > 'whether, in the light of what has been disclosed and the context in which disclosure has occurred, it would be unfair to allow the party making disclosure not to reveal the whole of the relevant information because it would risk the court and the other party only having a partial and potentially misleading understanding of the material.'"

22. Ward LJ concluded:

> "[24] … To say no more than that 'I am acting on the advice of my solicitors and counsel' will not ordinarily justify further disclosure of the advice or of the circumstances in which any new witness statement came to be drafted. Counsel and solicitors will be aware (or ought to be aware) of the fact that advice may have been given to prompt the change of heart or change of attitude and they should be on guard to protect their client from revealing that advice either in the written evidence or when giving oral evidence to the court. Judges must also be astute to anticipate an unintentional observation which results in privilege being waived and must be ready to warn a witness of any such danger."

23. Resisting disclosure in the present case, Mr Staunton emphasised the distinction in law between a reference to the effect of a document, or in this case of advice given, and a reference to its contents, see the judgment of Lawton LJ in *Marubeni Corporation v Alafouzos* (Court of Appeal 6 November 1986, unrep.).

24. It seemed to me that paragraph 71 of Louise's affidavit went materially further than referring to the advice given and stating its effect by identifying acts taken in response to it. Louise identified specific advice given in respect of one claim by Mr Hawkins and a recommendation given of one possible course of action that Louise, Alice and Ms de Muller could pursue in law. In my view, privilege had been waived. It was also possible that advice given in the conference had been broader than Louise suggested and/or had been hedged with caveats which Louise had not mentioned. Fairness required disclosure of the conference note taken.

25. Following my order for disclosure, it was given in the form of one document, a manuscript attendance note taken by Grosvenor Law dated 22 April 2015. This generated more heat than light. Mr Darton submitted that it appears to relate to a

conference other than the one referred to in paragraph 71 of Louise's affidavit. That may be the case.

26. On 27 May 2015 Alice sent an email to Paul Bastin, Mr Hawkins and Ms Harrison-Morgan. (Mr Bastin had been Dr Kahrmann's employee and assistant). It included this:

> "*Louise was given a statement to sign last week by Kim and Paul relating to the EBC liquidation. She explained to Paul and Kim at the time that we would need to take legal advice before signing. We have now taken that advice and explained to our lawyers all of the background to our involvement. What they have said to us is quite horrifying.*
>
> *We are told that the sale agreement may be a fraud on my father's creditors and on the estate generally. We are told that we may all have personal liabilities in this respect and that these liabilities may be monetary or criminal. This seems to be confirmed by your comments made last week.*"

27. This email indicates that Alice and Louise consulted solicitors before 27 May 2015, no more than a week or so beforehand. The reported advice is not consistent with the date of the attendance note disclosed: 22 April 2015. It is of course possible that the writer of the attendance note wrongly dated it 22 April 2015 when in fact it the conference was on 22 May 2015, a working day. However, the note does not appear to deal with the EBC liquidation even though, according to Alice's email, the EBC liquidation was the cause for taking advice and would presumably have been the main topic for discussion. Also, although the note disclosed records someone having said "looks like a fraud", there is no clear record of the advice which both Alice and Louise report has having been given.

28. I was told that according to Grosvenor Law, there are no other attendance notes of any conference with Alice and Louise. I am nonetheless left with the impression that there may have been a conference with Grosvenor Law in the week before 27 May 2015, that this was the conference referred to by Louise in paragraph 71 of her affidavit and yet the note of that conference has not been disclosed. If so, that would be a serious matter, but it is fair to say that it was not explored to an extent such that I can draw a firm conclusion.

29. I did not find the disclosed attendance note of 22 April 2015 of any real assistance in resolving the matters at issue in this case.

The witnesses

30. Louise and Alice gave evidence. Both, particularly Alice, were quite often emotional in cross-examination, giving some long answers which were not always to the point. However, I think that each was doing her best to explain events as she saw them.

31. For the claimants I also heard evidence from Jeremy Rhodes and Bettina Witte. Mr Rhodes is a company secretary who knew Ms Harrison-Morgan, Alice and Louise socially and was a lodger with Ms Harrison-Morgan for six months. He described Ms Harrison-Morgan as "conniving and manipulative", suggesting that the six months did not end well. He gave further unflattering evidence in cross-examination. I found Mr

Rhodes to be generally a good witness, but I give no weight to his estimation of Ms Harrison-Morgan's character. Ms Witte had been a friend of Dr Kahrmann's. She gave brief evidence about his relationship with Ms Harrison-Morgan, which again was not intended to put Ms Harrison-Morgan in a good light. In cross-examination Ms Witte gave direct and clear answers.

32. During Ms Harrison-Morgan's cross-examination I formed the view that her evidence was not always reliable. She made allegations that had not been mentioned in her witness statements and which were not supported by any documentary evidence. She was sometimes reluctant to give a clear answer to a straightforward question.

33. There were two brief unchallenged witness statements filed on behalf of Ms Harrison-Morgan. One was from Gudrun Bjarnadottier and the other from Rudolf von Borries. Both knew Dr Kahrmann and through him, Ms Harrison-Morgan, and gave their impressions about the relationship between the two of them and with Max and Fred.

34. There was neither written nor oral evidence from a key player in the various events: Dr Kahrmann's business associate, Mr Hawkins.

The claim by the Estate for recovery of £2.2m from Ms Harrison-Morgan

Background facts in more detail

35. Dr Kahrmann and Ms Harrison-Morgan lived in Flat 2, 38 WC from late 1991. Following the birth of Max and Fred in 2001, the four of them lived in that property. From 2003 Dr Kahrmann increasingly spent time in Germany. Sometime between 2003 and 2005 he became permanently based there. Ms Harrison-Morgan alleged that it was because his financial affairs were being investigated by the Swiss authorities and that he was required, or thought it better, to remain in Germany. This was disputed. The Swiss investigation has no direct relevance to these proceedings. Despite being separated from Ms Harrison-Morgan and the twins, Dr Kahrmann continued to provide for them.

36. Probably while he was still in London Dr Kahrmann saw the potential financial advantage of acquiring the freehold of 38 WC, better still together with the freehold of 38 BMN which could then be offered to a purchaser as a combined unit. Dr Kahrmann discussed with Mr Hawkins how this might best be done. The matter appears to have been considered in stages, 38 BMN being first. In a letter dated 22 June 2005 from Mr Hawkins to Dr Kahrmann at his address in Cologne, Mr Hawkins set out what had been agreed, referring also to a proposed loan to Dr Kahrmann of £75,000:

> "*Dear Rainer,*
>
> *Re: Loan of £75,000 (seventy five thousand pounds Sterling) and No.38 Belgrave Mews North, London SW1.*
>
> *I have set out below the final agreed terms in respect of the above I would be most grateful if you could sign and have witnessed your copy and I will do similar on behalf of Marlin Securities Limited. We can then exchange agreements which must happen before the loan of £75,000 is transferred.*

> *1. Marlin Securities Limited to loan you £75,000 (seventy five thousand pounds sterling).*
>
> *2. A legal charge to be taken by Marlin Securities Limited over the head lease of No.38 Wilton Crescent and No.38 Belgrave Mews North, London SW1.*
>
> *3. The loan will be at nil interest and repayable on the earlier of the following two events, the enfranchisement (transfer of freehold title) of No.38 Belgrave Mews North, London SW1 or the expiry of the head lease of No.38 Wilton Crescent and No.38 Belgrave Mews North, London SW1 in March 2009.*
>
> *4. You may undertake to serve notice to enfranchise the freehold of No.38 Belgrave Mews North, London SW1 and not to delay on this.*
>
> *5. The benefit of the notice of claim for the freehold of No.38 Belgrave Mews North, London SW1 to then be assigned by you to a new UK 'off the shelf' £100 company*
>
> *The equitable interest of the property to be owned 50% by Rainer Kahrmann and 50% Marlin Securities Limited.*
>
> *…*
>
> *9. On the repayment by Rainer Kahrmann of the loan of £75,000 to Marlin Securities Limited, this money will be lent back immediately by Marlin Securities to the new company at nil interest in order to help complete the purchase of the freehold of No.38 Belgrave Mews North, London SW1.*"

37. The copy of this agreement available at the trial was signed by Dr Kahrmann, although not witnessed as required. It was anyway not in dispute that Dr Kahrmann and Mr Hawkins had reached an agreement. Of most significance was the notice of claim to acquire the freehold of 38 BMN was to be assigned to a new company (which would be Themeplace) and that the equitable interest in that property was to be held in equal shares by Dr Kahrmann and Marlin.

38. A few months later, on 22 September 2005, Dr Kahrmann assigned to Mr Hawkins the beneficial interests he held in the houses at 37, 38 and 39 Wilton Crescent including, in relation to No. 38, (i) the headlease, (ii) the lease of the ground and lower ground flat (flat 1) and (iii) the lease of the first floor flat (flat 2).

39. The reason for these assignments was not made clear. It was suggested by Ms Harrison-Morgan that Dr Kahrmann was intent on divesting himself of assets in response to the Swiss investigation. There was no documentary support for this and it makes no obvious sense. A more likely alternative reason is that the assignments were done so that Mr Hawkins could arrange (and pay for) the application for the freehold of 38 WC, later done through his nominee company Cravecrest. Dr Kahrmann would be protected if there was also an agreement by which he retained an interest in the freehold once acquired and/or the proceeds derived from its sale.

40. The entirety of Dr Kahrmann's beneficial interests in 38 WC appears to have been assigned to Mr Hawkins. In *Cravecrest* Sir Terence Etherton described (at [6]) the leasehold arrangements as of 13 March 2009 as being rather complicated. However, he identified the rights held by the participating tenant of Flats 1 and 2 (Dr Kahrmann on 22 September 2005 and Cravecrest by 13 March 2009) as an underlease expiring on 15 March 2009 (at [7]). The beneficial interest in both these rights were assigned by Dr Kahrmann to Mr Hawkins on 22 September 2005. The headlease assigned on the same date is not referred to in Sir Terence Etherton's judgment and it is not certain what it was. Whatever it was, if anything, the beneficial interest in it went to Mr Hawkins. Mr Hawkins subsequently assigned these interests to Cravecrest so that by the time of the *Cravecrest* judgment that company was stated (at [1]) to be the nominee purchaser of the freehold for the participating tenants.

41. The application by Themeplace to acquire the freehold of 38 BMN went ahead early and happened quickly. I was shown a copy of the Land Registry dated 29 May 2015 relating to 38 WC and 38 BMN. This indicates that the transfer of the freehold of 38 BMN was done on 22 September 2006.

42. The statutory notice by Cravecrest to acquire the 38 WC freehold was not made until 13 March 2009 and then became bogged down over the price to be paid to Grosvenor.

43. There were discussions between Dr Kahrmann and Mr Hawkins regarding 38 WC, recorded in a letter dated 6 March 2012 from Mr Hawkins to Dr Kahrmann signed by each of them on 4 May 2012:

> "*Dear Rainer,*
>
> *Re: No.38 Wilton Crescent, London SW1.*
>
> *It appears sensible to notarise our verbal agreement of some long standing in respect of the above just in case one of us or even both of us get 'run over by a bus'.*
>
> *The agreement is as follows:-*
>
> *1. Marlin Securities Limited is to fund all legal and professional costs etc. to enfranchise the property.*
>
> *2. Marlin Securities Limited is to fully fund the purchase of the property subject to 50% bank finance.*
>
> *…*
>
> *5. If the property is purchased and not 'back to back' sold, on completion of the purchase a lease of flats 1 and 2 must be entered into by the current occupier, Hilary Harrison-Morgan and yourself, terminable on the sale of the property, the rent being a peppercorn.*
>
> *6. To be clear, the profit God willing, is to be calculated as follows:*
>
> *The net profit is to be calculated by deducting the following from the gross Profit*

> *1) All legal and valuation costs etc. of the enfranchisement.*
>
> *2) All bank financing costs including arrangement fees, interest and legal fees etc.*
>
> *3) All interest charges on the equity provided by Marlin Securities Limited*
>
> *4) All architectural and historic building reports, survey reports and planning costs etc.*
>
> *5) All sales costs including estate agents, legal costs, etc*
>
> *The net profit is to be split 50:50 between Marlin Securities Limited and Rainer C. Kahrmann*
>
> *Finally, for good order this agreement must be read in conjunction with our agreement dated 22nd June 2005 in respect of No.38 Belgrave Mews North as it is very possible both properties will be sold at the same time to the same purchaser*."

44. Dr Kahrmann's signature is accompanied by a lengthy manuscript note by him which includes the statement that his signature is subject to the letter of 22 June 2005 referred to above, together with another letter, dated 4 May 2012, from Mr Hawkins to Dr Kahrmann. The letter of 4 May referred to a meeting between Dr Kahrmann and Mr Hawkins in Cologne on 18 April 2012. It included this:

> "*It was agreed that I would arrange to provide £140,000 (pounds sterling) to be secured by your interest in No.38 Belgrave Mews North. … It was further agreed that repayment would be made within six months out of the refinancing of your own properties in England and France*."

45. So, unlike the agreement of 2005 in respect of 38 BMN, Dr Kahrmann and Mr Hawkins did not agree to share the equitable interest in the freehold of 38 WC. Instead, they agreed to share equally the profit made from the sale of the freehold, net after deducting Marlin's expenses. There was also express acknowledgment that the two agreements were to be read together, suggesting that they were intended to be compatible. It is also to be noted that Dr Kahrmann and Mr Hawkins contemplated the possibility that the freehold in 38 WC might be acquired and not immediately resold. In that event, the position of Ms Harrison-Morgan and the twins was to be protected by the grant to them of a lease of Flats 1 and 2 at a peppercorn rent, but terminable upon the sale of the freehold. This implied an expectation that the purchaser of the freehold would obtain the property free of tenants.

46. The *Cravecrest* judgment shows the applicant to buy the freehold of 38 WC, Cravecrest, had the possibility of acquiring the remaining leases in 38 WC. Two such leases are identified in the judgment, held by parties other than those in this litigation. The argument in the *Cravecrest* litigation centred on how much extra Cravecrest should pay for the prospect of acquiring those two remaining leases and in so doing unlocking the property's obvious development value. The point is that by March 2009 and probably all along, Dr Kahrmann and Mr Hawkins intended that the freehold of 38 WC would

ultimately be sold, if possible, free from any leasehold interests held by third parties. This would very likely increase the profit to be made on the sale.

47. On 29 March 2011, so about a year before receiving Mr Hawkins' summary of their arrangement regarding 38 WC, Dr Kahrmann signed three wills containing bequests of property, mostly real property, in Germany, France and England, plus a clock collection in New York. The wills were respectively stated to be governed by German, French and UK law. It is apparent that none of them was professionally drafted. All three wills were subsequently found to be invalid, so Dr Kahrmann died intestate. Among the real property listed in his English will was:

> "*38, Wilton Crescent, SW1*
>
> *Two leases and interest in Mews House*
>
> *…*
>
> *All the above shall go undivided to Hilary Morgan on behalf of my children Fred and Max Kahrmann, Hilary Morgan having the usage*."

48. By this date at least the beneficial interests in the two leases and in the mews had passed to Mr Hawkins and from him to Cravecrest. There was a plan to sell 38 WC, along with 38 BMN, if possible free of leases to other parties. It is not at all clear what Dr Kahrmann had in mind when he made this will. As things turned out it didn't matter because it was invalid.

49. Sometime before July 2014 a potential purchaser of 38 WC and 38 BMN was found, interested in acquiring the properties jointly and stipulating vacant possession. The substantive purchaser was not identified; whoever it was set up 38 WC Ltd as a nominee purchaser. An agreement was going to be drawn up with Cravecrest and Themeplace being the vendors, 38 WC Ltd the purchaser and with Dr Kahrmann also a party, apparently for reasons of ensuring vacant possession.

50. On 3 July 2014 Dr Kahrmann died. A draft sale agreement was prepared afterwards and dated 14 July 2014, though never signed. Recital (F) states:

> "*(F) It was intended that Rainer Christian Kahrmann would enter into this Agreement but he died on the 3 July 2014 and therefore this Agreement makes provisions to deal with the consequences thereof*."

51. The parties were Cravecrest, Themeplace and 38 WL Ltd. Undertakings or warranties to 38 WC Ltd that would have been made by Dr Kahrmann became proposed commitments by the Estate. The draft contained a term that Cravecrest would obtain such commitments from the Estate by 31 October 2015, in default of which 38 WL Ltd could rescind the agreement. Rescission was also made available if, by the same date, 38 WL Ltd was not satisfied that 38 WC could be sold free of any rights of occupation by Ms Harrison-Morgan. There was also a right of rescission in the event of a delay in settling a satisfactory price for the freehold with Grosvenor.

52. The completion date for the transfer of the freehold to 38 WC Ltd was set in the draft to be 15 August 2015. Cravecrest warranted that it had granted a lease to Ms Harrison-

Morgan in respect of Flats 1 and 2 of 38 WC, a draft of which was annexed with provision for it to be signed by Ms Harrison-Morgan. The proposed lease was to be at nil rent and was to expire on 15 August 2015. The draft agreement contained a warranty by Cravecrest that after the completion date Ms Harrison-Morgan and her issue would have no right of occupation.

53. The entirety of the payment by 38 WC Ltd was to be made to Mr Hawkins via his solicitors, Maxwell Winward. There was no provision in the draft for half the profit to go to Dr Kahrmann's estate. On the other hand, absent the Estate's commitments to 38 WC Ltd, 38 WC Ltd would have had the right to rescind. In effect, the Estate had the right to veto the proposed agreement. It is possible that at this stage Mr Hawkins expected to agree a split in the profits with the Estate before the Estate's approval was given. Of course, no approval could be forthcoming until letters of administration of the Estate had been granted.

54. There was an email exchange between Louise and Mr Hawkins in late July 2014 regarding the obtaining of letters of administration. In an email dated 24 July 2014 Mr Hawkins said:

> "*As to the claim for the freehold at No.38 Wilton Crescent, this is owned by my company through a nominee with a profit share agreement to your father's family, as you know*."

55. Mr Hawkins here clearly acknowledged the profit sharing agreement with Dr Kahrmann. He had every reason to push for a sale of the freehold in 38 WC and 38 BMN as soon as was possible. An email dated 1 August 2014 sent by him to Ms Harrison-Morgan indicates that in his view a sale could be agreed with 38 WL Ltd at a price which would enable a successful offer for the freehold to be made to Grosvenor, obviating the need for the cost of a hearing before the Supreme Court. He apparently believed that this would leave a satisfactory profit.

56. The terms of the draft of 14 July 2014 show that Mr Hawkins had taken the view that the sale to 38 WL Ltd could not go ahead without both (a) the agreement of Ms Harrison-Morgan that she and the twins would vacate Flats 1 and 2 by 15 August 2015 or some other date to which 38 WC Ltd might consent and (b) the agreement of the administrators of the Estate, once they had been appointed.

57. As to the first, it was never made clear whether Ms Harrison-Morgan was anything more than a tenant at will at 38 WC who could be evicted by the Estate at any time. It is possible that Ms Harrison-Morgan's rights were potentially stronger than this. It makes no difference. What mattered was that 38 WC Ltd wanted certainty with regard to obtaining vacant possession. No doubt Mr Hawkins felt obliged to provide certainty, never mind what Ms Harrison-Morgan's true rights were.

58. As to the second, an email sent by Mr Hawkins to Louise on 21 August 2014 confirms that he believed he needed the Estate to agree to the sale of the freehold:

> "*… the buyer of No.38 asked me yesterday what progress had been made in respect of your late father's estate.*

> *Part of the deal is that the estate under the contract for sale will sign off on various items. (I can explain more fully if you require).*"

59. An email dated 28 August 2014 from Mr Hawkins to Louise, copied to Alice, shows that Mr Hawkins was by now becoming frustrated by payments to lawyers relating to the dispute with Grosvenor, listed to be heard by the Supreme Court on 19 January 2015, along with payments to other lawyers dealing with 38 WC Ltd. These payments were continuing without progress in obtaining Ms Harrison-Morgan's agreement to leave 38 WC:

> "*This is my 'hard earnt' going out the door.*
>
> *If Hilary will not respond then I might as well call it a day – then instead just stand in Fulham Broadway and give away fifty pound notes – I think I would prefer this.*
>
> *I always have the other option of making Grosvenor my partner by just buying the top flat and letting Grosvenor put Hilary eventually on the street – it would produce almost the same result for me with less stress*."

60. Louise and Alice gave evidence of a meeting at 38 WC at the end of August 2014 attended by Mr Hawkins, Ms Harrison-Morgan, Louise, Alice and Mr Bastin. The exchanges at the meeting were said to have been mainly between Mr Hawkins and Ms Harrison-Morgan, during which Mr Hawkins tried to persuade Ms Harrison-Morgan to sign tenancy documents. Ms Harrison-Morgan refused. Alice described the meeting as heated, nasty and confrontational. Ms Harrison-Morgan said nothing about it.

61. Alice stated that she met Mr Hawkins shortly afterwards, on about 1 or 2 September 2014, at a café in Parsons Green. Mr Hawkins said that he could tear up the agreement he had had with Dr Kahrmann splitting the proceeds 50:50 and replace it with a new agreement whereby a share of the profits would go to Ms Harrison-Morgan, Alice and Louise. Alice asked Mr Hawkins whether this was fraud. Mr Hawkins had replied yes, but it was a technicality and they had no other choice. Alice said that she told Mr Hawkins that she would do nothing illegal. Mr Hawkins is reported as having replied that he would consult a lawyer, naming Clive Levontine of Maxwell Winward, and find a legal solution. An email exchange dated 2 September 2014 between Alice and Mr Hawkins confirms at least that the meeting took place.

62. There was by now further pressure on Mr Hawkins to arrange a quick sale. The Chancellor of the Exchequer was due to give his autumn statement on 3 December 2014. It was expected that from midnight on that day the stamp duty paid by purchasers of high value residential properties would significantly increase, as happened. If the purchase by 38 WL Ltd was left until after 3 December 2014 it might not have been prepared to pay the higher overall price.

63. Louise and Alice said that there was another meeting on 24 October 2014, again attended by Mr Hawkins, Ms Harrison-Morgan, Alice, Louise and Mr Bastin. According to Louise and Alice, at this meeting Mr Hawkins said that it was for Ms Harrison-Morgan, Alice and Louise to decide how to split Dr Kahrmann's share of the profits. He told them that he had discussed this with his lawyers, presumably Maxwell Winward, and they had confirmed that it was perfectly legitimate. Louise, Alice and

Ms Harrison-Morgan all queried the legality of taking and splitting their father's share of the profits. Ms Harrison-Morgan seemed to know about the profit sharing agreement between Dr Kahrmann and Mr Hawkins. The meeting did not go well. According to Alice, Ms Harrison-Morgan stormed out when Alice suggested that any payment made to Ms Harrison-Morgan should be held on trust for the twins.

64. Mr Hawkins continued to put Ms Harrison-Morgan, Alice and Louise under pressure to agree to the sale of 38 WC and 38 BMN. The expected change in stamp duty on 3 December 2014 was approaching.

65. On 16 November 2014 Ms Harrison-Morgan sent an email to Mr Hawkins saying that she wanted to meet Louise the next day, Monday 17 November, in Paris (where Louise lived). Mr Hawkins' reply included this:

> "*Monday first thing is my deadline.*
>
> *From that moment on we will continue to prepare for the Supreme Court case and I will insist that the 'Kahrmann' half of the proceeds go into the 'Kahrmann Estate' with the resultant consequences. There will be no going back.*"

66. Louise said that Ms Harrison-Morgan contacted her at 08.40 on the morning of Monday 17 November 2014 saying that she would not accept less than half the share of profit due to Dr Kahrmann.

67. On 17 November 2014 Louise emailed Mr Hawkins with good news, copied to Ms Harrison-Morgan, Alice and Mr Bastin:

> "*As promised to you, an amicable agreement has been reached with Hilary and we agree on 50/50. She will write or call you as well to confirm this.*
>
> *With regard to my share it is to be written into the contract as will be done for Hilary, in return for official services rendered*."

68. Mr Hawkins' email response on the same day indicated relief:

> "*Sense has prevailed. … Thank you*".

However he was concerned about that there should be consideration for Louise and Alice each receiving a share of the profit:

> "*…what is the consideration for this? Hilary is providing consideration for her 50% by signing a tenancy agreement and vacating – our solicitor will wish to know what the consideration is*."

69. The fiction adopted was that Alice and Louise lived with Ms Harrison-Morgan in Flats 1 and 2 at 38 WC and in consideration of the money paid to them they would give vacant possession of 38 WC. This later appeared in recitals (H) and (I) of the Sale Agreement. In reality Alice and Louise never lived at 38 WC.

70. Despite having agreed a 50:50 split of half the profit, Alice and Louise at one point wished to take their own legal advice about the proposed sale of the freehold. In an

email to Mr Hawkins dated 18 November 2014 Louise said that she and Alice wanted to use their father's lawyer. Mr Hawkins responded on the same day:

> "*Our solicitor, Clive Levontine has said previously said that you (Hilary, Alice and yourself) should ideally use one lawyer.*
>
> *I will not argue with you however if you decide to be separately represented. What I would say is if there is yet another solicitor involved it will add a further cost layer for you and further time for all.*
>
> *I cannot stop you, however both Clive and I feel it unwise.*
>
> *As an aside your father had previously used James Bryce which I believe is whom Hilary is proposing to use*."

71. Leaving the chronology of events for a moment, Louise and Alice both contended in their evidence that between July and December 2014 Mr Hawkins had put them under considerable pressure to agree to the sale of the properties, as seems to have been the case. Mr Hawkins's was described as being aggressive on occasion. In cross-examination Alice took this further by describing the effect which the pressure from Mr Hawkins had had on both of them. Alice likened her and her sister's behaviour during this period to Stockholm syndrome, going along with anything Mr Hawkins wanted.

72. Yet Mr Hawkins' email of 18 November 2014 seems somewhere between accepting and encouraging with regard Alice and Louise's wish to obtain their own legal advice. He was apparently not in favour of their obtaining advice separately from Ms Harrison-Morgan because of the expense, but did not actively oppose that either.

73. Mr Hawkins' email exchanges with Alice and Louise between July and December 2014 are certainly consistent with Mr Hawkins becoming increasingly anxious about obtaining a sale of the properties and his exerting correspondingly increasing pressure on Louise and Alice to agree. But the emails suggest that they remained on good terms. After a meeting between Mr Hawkins and Alice on 1 September 2014, she sent to him this email on 2 September:

> "*I just wanted to say thank you for taking the time out of your day to meet me. I feel 100% better about everything. THANK YOU. It really helped to talk*."

74. Ms Harrison-Morgan's evidence was less detailed about the period between July and December 2014 than that of Alice and Louise. In her version, it was she who first told Dr Kahrmann about the possibility of buying the freeholds, that she had assisted in finding a buyer. She also said that she had understood that she would share in the profit from the sale. There was no documentary evidence of any of this.

75. Ms Harrison-Morgan said that she knew nothing about any arrangement that Dr Kahrmann may have made with Mr Hawkins regarding 38 WC and 38 BMN. This was not consistent with the email exchanges with Mr Hawkins and Louise on 16 and 17 November 2014 or the evidence of Alice and Louise. It was also inconsistent with her pleaded case relating to Kandili, the villa near Cannes. Part of her case was that Dr Kahrmann, who had kept all the proceeds from the sale of Kandili in 2010, had promised that when 38 WC and 38 BMN were sold, he would repay her half of the

Kandili money from the proceeds of sale of 38 WC and 38 BMN. Ms Harrison-Morgan knew that Dr Kahrmann expected to get part of those proceeds.

76. Ms Harrison-Morgan's explanation of why she entered the Sale Contract was simple. She said this in her witness statement and maintained her position in cross-examination:

> "Mr Hawkins needed to get me out of 38 Wilton Crescent if he was to sell the Properties before the deadline for the Stamp Duty increase came into force. Through my efforts Mr Hawkins had secured a buyer who he knew would be lost if contracts were not exchanged on 3 December 2014, and at all time up to exchange of contracts I could have frustrated the sale by refusing to leave 38 Wilton Crescent. I and the twins were in occupation and had been in occupation for many years and I had absolutely no intention of leaving unless I was properly compensated."

77. I return to the chronology. At the end of November 2014 Mr Hawkins' solicitors drew up the proposed agreement of sale of the freeholds of 38 WC and 38 BMN to 38 WC Ltd. Ms Harrison-Morgan, Alice and Louise agreed to be parties. They instructed a solicitor, James Brice of Brice, Droogleever & Co, to advise them on the draft (the individual whom Mr Hawkins had recommended). Mr Brice did not receive the draft until 1 December 2014. In the event neither Alice nor Louise chose to consult Mr Brice about the proposed sale. The sisters were in contact with another law firm, Streathers, regarding the letters of administration of the Estate, but seem not to have asked them either about the proposed sale of the properties.

78. In a witness statement filed by Ms Harrison-Morgan at trial, her third, she said at paragraph 37 that she took her own legal advice. She referred to her second witness statement, which was not one of the documents lodged at trial. I do not know when or from whom Ms Harrison-Morgan took advice or what it may have been.

79. On 3 December 2014 the agreement for the sale of 38 WC and 38 BMN ("the Sale Agreement") was signed by Mr Hawkins on behalf of Cravecrest, Themeplace and on his own behalf, by Mark Hogan on behalf of 38 WC Ltd, and by Ms Harrison-Morgan, Louise and Alice. It was executed almost literally at the last minute having regard to the increase in stamp duty, recorded in manuscript as having been done at 11.58pm.

80. Louise and Alice both said that they signed the Sale Agreement under duress. Louise said that on the evening of 3 December Mr Hawkins had been unpleasant in order to get the document signed. According to Alice they would have put their name to anything.

81. On the other hand, there was a manuscript amendment made at Louise's insistence immediately before signing. This was to recital (R):

> "*(R) [Ms Harrison-Morgan] and the Kahrmann Sisters acknowledge and agree that they have entered the Tenancy ~~acting independently and having taken all appropriate advice~~ willingly*."

82. Under the Sale Agreement Cravecrest and Themeplace agreed to sell and 38 WC Ltd to buy the properties; completion was to be on 31 May 2015; Ms Harrison-Morgan,

Alice and Louise were to vacate 38 WC by that date under what was defined as 'the Tenancy'.

83. 38 WC Ltd paid £16m: £14m for 38 WC and £2m for 38 BMN. None of the money went to Dr Kahrmann's estate.

84. By 6 March 2015 a large proportion of the purchase price, identified as 'the Completion Sum', was to be paid to Maxwell Winward and released to Themeplace and Cravecrest on the completion date. The Completion Sum is identified in a way which implies that it consists of costs incurred in obtaining the freeholds from Grosvenor and other expenses.

85. Payment of the remaining money, in effect the profit, was to be divided as had been agreed. By 31 May 2015, or alternatively on the date that Ms Harrison-Morgan and the Kahrmann sisters gave vacant possession of the flats at 38 WC, 38 WC Ltd was to pay the remaining portion of the purchase price to Maxwell Winward (taking the share of the profit due to Cravecrest and Themeplace), to solicitors to be nominated by Ms Harrison-Morgan and to solicitors to be nominated by Louise and Alice. As had been foreshadowed, Ms Harrison-Morgan was to receive about £2.2m, Louise and Alice £2.2m between them.

86. The Land Registry entry for 38 WC as of 29 May 2015 (Title number NGL48348), which also shows 38 BMN (NGL870977), lists only one lease remaining for 38 WC, the first floor flat (NGL403610). Schedule 1 to the Sale Agreement indicates that for its £16m 38 WL Ltd took ownership of the freehold and all other interests in 38 WC and 38 BMN.

87. The Sale Agreement included the following recital, in which 'HHM' is Ms Harrison-Morgan and 'the Kahrmann Sisters' are Louise and Alice:

> "*(N) HHM and the Kahrmann Sisters acknowledge and agree that to the best of their knowledge and belief the Kahrmann Estate has no legal or beneficial interest in any part of the House or Flat save the right to receive the premium of £1 referred to in the Enfranchisement Transfer*."

88. Ms Harrison-Morgan left 38 WC on 29 May 2015. Alice and Louise had never lived there. The sale of the freeholds was thus completed on 29 May 2015. Ms Harrison-Morgan, Alice and Louise received their shares of the profit in the proportions agreed, with the remainder being paid by 38 WC Ltd to Maxwell Winward for Cravecrest and Themeplace – in effect, for Mr Hawkins.

89. Alice and Louise said that they continued to entertain misgivings about entering the Sale Agreement, both having in mind the agreement which their father had reached to split the profit from sale of the freeholds 50:50 between them. They found correspondence sent to her father, including Mr Hawkins' letter of 4 May 2012. They and Ms de Muller finally took advice, from Grosvenor Law. I refer above to an attendance note dated 22 April 2015 recording at least one conference with Grosvenor Law.

90. On 27 May 2015 Grosvenor Law wrote to Mr Hawkins' solicitors, Maxwell Winward, alleging that the purported effect of the Sale Agreement may have been to deprive Dr Kahrmann's estate of assets to which it had been entitled.

91. Maxwell Winward responded on 28 May 2015. Mr Hawkins' position was that he and Dr Kahrmann had indeed agreed to share the profit realised but that the agreement had been terminated. At the start of the letter Maxell Winward defined 'the property' as 38 WC and 38 BMN. Later they said:

> "*Mr Hawkins acknowledges that he entered into an agreement with the late Dr Kahrmann that the net profits of the sale of the property following enfranchisement would be shared equally.*
>
> *However, in May 2012 Mr Hawkins also lent £140,000 [to] Dr Kahrmann to be repaid within six months. Dr Kahrmann not only failed to repay that loan but he was also abusive to Mr Hawkins whenever he requested payment. … In the course of conversations it was discussed that Dr Kahrmann should forego his interest in the collective enfranchisement unless the loan was repaid. It was not repaid and, therefore, Mr Hawkins considered that he was not bound by any profit sharing agreement at the time of Dr Kahrmann's death.*
>
> *Notwithstanding that understanding, after Dr Kahrmann's death, Mr Hawkins informed the Kahrmann Sisters, Miss Harrison-Morgan and Mr Bastin that he intended to honour the spirit of the agreement and share the profits with the family (the Family Net Proceeds) on condition that the loan was deducted from those net proceeds. For the avoidance of doubt, he considered that he was paying the Family Net Proceeds voluntarily and not pursuant to any binding agreement with Dr Kahrmann*."

92. At about this time what at one time had threatened to become a major problem for the estate was resolved. Dr Kahrmann had been part owner of EBC. EBC had gone into liquidation on 10 January 2007 with Dr Kahrmann owing the company £8.7m. This was a sum which the liquidators of EBC could potentially claim from the Estate, significantly diminishing the assets to be distributed. However, on 14 May 2015 the solicitors acting for the liquidators stated that the liquidators would not take any action to pursue the outstanding loan if Dr Kahrmann's family members assisted in the transfer to EBC of a property in France known as 'St Bernard'. The property was held in the name of Dr Kahrmann but the beneficial interest was held by EBC. The deal was done and the claim for £8.7m withdrawn.

93. It was put to Louise in cross-examination that she and Alice had waited until the deal with the liquidators had been settled before making the claim against Ms Harrison-Morgan. Only then were they certain that if they had to relinquish their share of the profit back to the Estate, consistently with the Estate's claim to recover Ms Harrison-Morgan's share, there would be enough left in the Estate for them to recover as beneficiaries. Louise denied the suggestion, claiming that there had just been delay in seeking advice and arranging for the Estate's claim to be filed.

94. In order to file the claim, Ms de Muller and Alice obtained letters of administration *ad colligenda bona* on 21 July 2015.

95. Louise and Alice received their agreed share of the profits on 1 July 2015. At a later date, not identified, but before beginning this action they arranged for the money to be held to the order of Ms de Muller and Alice as administrators of the Estate.

96. On 19 August 2016 the present proceedings were started.

Findings of fact

97. I make the following findings.

98. First, there was an agreement between Dr Kahrmann and Mr Hawkins regarding 38 BMN. The letter of 22 June 2005 records the terms of the agreement which include the joint intention that the equitable interest in the freehold of that property, if and when acquired, would be held equally by Dr Kahrmann and Marlin.

99. Second, on 22 September 2005 Dr Kahrmann assigned to Mr Hawkins his interests held in 38 WC and 38 BMN (along with his interests in flats at 37 and 39 Wilton Crescent). Use of the word 'beneficial' in what seem to have been informally drafted assignments might be taken at face value to suggest that Dr Kahrmann retained the legal interests. If so, Mr Hawkins or his companies could have called on the assignment of the legal interests relating to 38 WC. If that never happened, it may be that after 29 May 2015 38 WC Ltd could have called on such an assignment. I think the better view is that Dr Kahrmann and Mr Hawkins intended that all legal and beneficial interests held by Dr Kahrmann in 38 WC and 38 BMN were to be assigned to Mr Hawkins.

100. Third, there was an agreement between Dr Kahrmann and Mr Hawkins regarding 38 WC. The terms are recorded in the letter dated 6 March 2012. The terms included the division of the net profit made from the sale of the freehold of 38 WC, following its acquisition from Grosvenor. The net profit was to be divided equally between Dr Kahrmann and Mr Hawkins.

101. Fourth, Dr Kahrmann and Mr Hawkins decided to amend their agreement regarding 38 BMN. Instead of the equitable interest in the freehold of 38 BMN being held jointly by them, they would split the profit made from the sale of the freehold.

102. There are pointers to this change of arrangement. The freehold of 38 BMN was acquired by Themeplace on 22 September 2006. Dr Kahrmann and Mr Hawkins recognised the potential value in Themeplace selling to the same purchaser the freehold in 38 BMN jointly with the freehold in 38 WC, once acquired. The letter of 6 March 2012 expressly records such a possibility and that the agreement relating to 38 WC should be read in conjunction with that relating to 38 BMN. The same arrangement for both freeholds made sense.

103. Dr Kahrmann assigned his interests in 38 WC and 38 BMN in September 2005. Neither side offered any explanation for these assignments, save for Ms Harrison-Morgan's implausible theory. The assignment of the interest in 38 BMN to Mr Hawkins is not consistent with an intention to own the beneficial interest in that property jointly. On the other hand, it makes sense if Dr Kahrmann and Mr Hawkins had agreed that Mr Hawkins would arrange for the purchase of both freeholds through Mr Hawkins' nominee companies (at Mr Hawkins' expense). It is not credible that Dr Kahrmann would seek to assign his interests in 38 WC and 38 BMN without consideration. He

certainly received consideration in relation to 38 WC: a half share in the profit realised from the sale of that property. It seems to me likely that he and Mr Hawkins agreed that Dr Kahrmann would likewise receive half the profit from the sale of 38 BMN.

104. An alignment of the agreements relating to the two properties is also consistent with Mr Hawkins' apparent view that there had been an agreement to share the profit from the sale of both properties, reflected for instance in Maxwell Winward's letter of 28 May 2015.

105. Fifth, the profit share agreement between Dr Kahrmann and Mr Hawkins was not terminated by Mr Hawkins. Although the letter of 28 May 2015 argues that Mr Hawkins was entitled to terminate the agreement because Dr Kahrmann had not repaid a loan of £140,000, this improbable contention was not repeated at the trial.

106. Sixth, the agreement between Dr Kahrmann and Mr Hawkins that they would share the profit from the sale of 38 WC and 38 BMN was known to Louise, Alice and Ms Harrison-Morgan before they signed the Sale Agreement. None of them was in a position to know whether this had been an agreement binding in law. Nor could they know whether the Sale Agreement was lawful, specifically with regard to the lack of payment to the Estate. They were probably told by Mr Hawkins' solicitors, Maxwell Winward, that the Sale Agreement was lawful.

107. In the months leading up to the evening of 3 December 2014 all three had been under pressure, sometimes considerable pressure from Mr Hawkins to agree to the sale. Louise and Alice could have taken their own legal advice about it but chose not to. I do not believe that they were in awe of Mr Hawkins – or suffering from Stockholm syndrome, as Alice put it – such that they had lost the ability to seek independent legal advice had they wanted to. Mr Hawkins accepted that they could do so. Ms Harrison-Morgan took advice about the Sale Agreement, but I do not know what that advice was.

108. Seventh, Ms Harrison-Morgan, Louise and Alice all had a sufficient understanding of the terms of the Sale Agreement to know that the Estate was not going to be paid any part of the profit from the sale of 38 WC and 38 BMN and that instead they were going to be paid half.

109. Eighth, I do not doubt that Louise and Alice retained genuine misgivings about signing the Sale Agreement on the evening of 3 December 2014. However, they overcame their doubts, signed the Sale Agreement and took the money. Subsequently it was held to the order of the administrators of the Estate.

Arguments

110. The Estate's first argument was that there was an agreement between Dr Kahrmann and Mr Hawkins that they should share the beneficial interest in both 38 BMN and 38 WC. The arrangement for both was aligned, but in accordance with what had been agreed for 38 BMN. Equity imposed a constructive trust on the properties. Immediately prior to the Sale Agreement Cravecrest and Themeplace had held the properties on trust for the Estate and Mr Hawkins in equal shares. After the sale the profit retained was likewise held on constructive trust for the Estate and Mr Hawkins. In breach of trust, Cravecrest and Themeplace had paid half the proceeds to Ms Harrison-Morgan, Alice and Louise, rather than to the Estate. Ms Harrison-Morgan knew or ought to have

known that her share, along with the share paid to Louise and Alice, should have gone to the Estate. Consequently Ms Harrison-Morgan held the money on constructive trust for the Estate and should now be required to pay the money to the Estate together with interest.

111. The second and alternative argument was that Dr Kahrmann and Mr Hawkins had agreed to split the profit from the sale of the properties. The Estate's half share of the profit included the payment to Ms Harrison-Morgan. Accordingly she had no entitlement to receive the payment or any part of the profit. Ms Harrison-Morgan took £2.2m as money had and received without consideration. She should pay the money to the Estate.

Discussion

112. I reject the first argument. For the reasons given above, the agreement between Dr Kahrmann and Mr Hawkins by the time of his death (and for some time beforehand) was that they would share the profit to be made from the acquisition of the freeholds of 38 WC and 38 BMN and subsequent sale of the freeholds to a purchaser, this to be done if possible as a joint sale free of leasehold interests to maximise the profit. The entirety of Dr Kahrmann's interests in the properties, and with it the right to apply for the freeholds, was assigned to Mr Hawkins in September 2005 in return for half the profit from the sale of the properties when that happened. The properties were never held on trust by Cravecrest and Themeplace for the Estate. The sole interest the Estate could claim in relation to 38 WC and 38 BMN was a right to claim half the profit from their sale.

113. I also reject the second argument. The Estate's case rests on Ms Harrison-Morgan having no entitlement to the payment of £2.2m. The payment was made by 38 WC Ltd. As between those two parties there was plainly consideration for the payment, namely that Ms Harrison-Morgan guaranteed that by the completion date 38 WC Ltd would acquire 38 WC with vacant possession, at least so far as she was concerned. It is possible that Ms Harrison-Morgan had no right in law to remain living at 38 WC, despite her claim to the contrary. Any doubt over that could only go to the value of the consideration she was providing. But as is well established, the law does not inquire into the adequacy of consideration.

114. The Estate argues that the payment came from its share of the profit from the sale of the properties. That in my view is to treat the profit as if it consisted of materials indelibly marked: half to go only to the Estate and the other half to go only to Mr Hawkins. The Estate's claim to half the £8.8m profit was not inconsistent with Ms Harrison-Morgan being paid £2.2m by 38 WC Ltd. Also, while it is true that Ms Harrison-Morgan could have vetoed the Sale Agreement, it does not follow that if she had, the Estate would then have received half the profit. This was a matter solely in the control of 38 WC Ltd and Mr Hawkins – in practice probably just Mr Hawkins since it is likely that 38 WC Ltd would have agreed to distribute the £16m in whichever way Mr Hawkins suggested.

115. I have found that Ms Harrison-Morgan, like Louise and Alice, had a sufficient understanding of the Sale Agreement when it was signed on 3 December 2015 to know that the Estate was not going to be paid half the profit and that instead she, Louise and Alice would receive half the profit between them. In my view that does not assist the

Estate. Ms Harrison-Morgan was not in a position to know whether a failure to pay sums to the Estate would result in a breach of an agreement between Dr Kahrmann and Mr Hawkins. But if there was such a breach, this was a matter for the Estate and Mr Hawkins, not Ms Harrison-Morgan. Either way, Ms Harrison-Morgan was entitled as a separate matter to agree to vacate 38 WC in return for a payment of a little over £2.2m by 38 WC Ltd.

116. The Estate's real complaint is that there was a binding profit share agreement between Dr Kahrmann and Mr Hawkins, to which the Estate had become party, yet it received none of the profit. The Estate may or may not have had a sound cause of action against Mr Hawkins for breach of contract. Mr Hawkins was not a defendant and I was not required to decide whether he was in breach of the agreement. I state no view.

117. There were satellite arguments from each side, but these were all based on the assumption that the Estate's two main arguments set out above had a sound basis in fact. There followed satellite counter-arguments. It is not necessary to explore these. For the reasons I have given, I take the view that the Estate's pleaded case has no foundation on the facts.

The Chattels

118. The Estate claimed a list of items which Louise and Alice said had belonged to their father and which, according to them, had been taken by Ms Harrison-Morgan from 38 WC after his death. Ms Harrison-Morgan's response was that some of these had been gifted to her by Dr Kahrmann.

119. Schedule 3 to the Amended Particulars of Claim illustrated 39 items, mostly paintings, that were in dispute. In cross-examination Ms Harrison-Morgan said that items 9, 19 and 37 had been given to her by Dr Kahrmann as a gift. So far as the others were concerned, Ms Harrison-Morgan claimed that when Dr Kahrmann left for Germany he said that all of them were hers.

120. In closing the Estate did not press its claim to items 9, 19 and 37. While I found Ms Harrison-Morgan convincing when she was identifying the three items which she said were given to her by Dr Kahrmann, I found her assertion that Dr Kahrmann said that she could have all the others vague and much less convincing. No email or other document confirming this gift was put forward. On balance I reject this part of Ms Harrison-Morgan's case. The Estate is entitled to reclaim the remaining 36 items identified in Schedule 3 to the Amended Particulars of Claim.

The Counterclaim

121. There were two parts to the counterclaim. In the first Ms Harrison-Morgan said that she had been joint owner of Kandili, a villa near Cannes. Kandili was sold in 2010 at the behest of Dr Kahrmann, who kept all the proceeds of sale in return for an oral promise that he would buy Ms Harrison-Morgan another property near Cannes once he had settled debts arising from the investigation by the Swiss authorities. Alternatively, if that had not been done by the time that 38 WC and 38 BMN were sold, Ms Harrison-Morgan would be paid her half share of the proceeds from the sale of Kandili from Mr Kahrmann's share of the proceeds from the sale of 38 WC and 38 BMN.

122. The second part of the counterclaim was that Ms Harrison-Morgan had re-mortgaged her flat at 37 Wilton Crescent in 2012 and given £200,000 to Dr Kahrmann who was at that time in need of the money. Dr Kahrmann had orally promised to repay this sum.

123. Mr Staunton pointed out how the counterclaim had been pleaded:

> "45. If, as alleged in the Particulars of Claim, the Defendant is not entitled to retain the sum of £2,203,344.51 from the proceeds of sale of the Properties then the Defendant is entitled to and claims to recover:
>
> (i) One half of the net proceeds of sale of Kandili together with an account as to the amount that is due;
>
> (ii) Her 2012 advance of (circa) £200,000 to the Deceased."

124. Ms Harrison-Morgan's pleaded position was thus that if she kept the £2.2m she would feel herself to have been adequately compensated for her half share in Kandili and the loan of £200,000.

125. Since I have found that the Estate's claim main claim fails, Ms Harrison-Morgan's counterclaim falls away.

126. It was also accepted that Dr Kahrmann had repaid part of Ms Harrison-Morgan's half of the net proceeds from the sale of Kandili. By the start of the trial this part of her claim had been reduced to £325,950.

127. Aside from the way the counterclaim was put, Ms Harrison-Morgan's difficulty, as I see it, is that in any personal partnership one partner from time to time is likely to help out the other, whether by providing money, accommodation, or whatever it may be. Dr Kahrmann undoubtedly helped Ms Harrison-Morgan in this way without expecting repayment. Where there is a transfer of funds between partners it does not necessarily follow that there is an intention to create a binding contract between them, in the form of a debt the repayment of which is enforceable in law. There was no evidence of any kind about Ms Harrison-Morgan's claims except assertions from her. I was not satisfied that she had established a binding contract with regard either to the funds from the sale of Kandili or the £200,000 provided to Dr Kahrmann.

Conclusion

128. The Estate's claim to recover the payment of approximately £2.2m by 38 WC Ltd to Ms Harrison-Morgan is dismissed. The Estate's claim to recover the chattels identified in Schedule 3 to the Amended Particulars of Claim succeeds, save in relation to items 9, 19 and 37. The counterclaim is dismissed.