

Neutral citation number: [2018] EWHC 3638 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Case No: D31MA096

Courtroom No. 40

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 1GD

Thursday 10th May 2018

Before:
HIS HONOUR JUDGE HODGE QC
Sitting as a Judge of the High Court

B E T W E E N:

THE LORD CHANCELLOR
(as successor to the Legal Services Commission)

Claimant

and

(1) MUNIR FAROOQI
(2) ZEENAT FAROOQI

Defendants

Hearing Dates: 8th – 10th May 2018

MR MUKHTIAR OTWAL (instructed by **Michelmores LLP**, Exeter) appeared on behalf of **the Claimant**

The First Defendant appeared in person (by video-link from prison) on the first day only

MR SEBASTIAN CLEGG (instructed on a direct public access basis) appeared on behalf of **the Second Defendant**

APPROVED JUDGMENT

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JUDGE HODGE QC:

1. This is my extempore judgment in proceedings between the Lord Chancellor (as claimant) in his capacity as successor to the Legal Services Commission and Mr Munir Farooqi and his wife, Mrs Zeenat Farooqi (as defendants), claim number D31MA096
2. This is the hearing of applications for final charging orders over residential properties at 4 Lorne Road Manchester M14 and 10 Brook Road Manchester M14. By an order made by Mr Recorder Allen QC (sitting in the County Court at Manchester, before which these proceedings were then pending) on 7 November 2017, these proceedings were transferred to the Chancery Division of the High Court (now the Business & Property Courts in Manchester), and (by paragraph 2) the court was required to determine if the first defendant had any beneficial interest in the two properties and, if so, the extent of that interest.
3. These proceedings follow on from the arrest of the first defendant on 16 November 2009 on terrorist charges. He was convicted before Mr Justice Henriques, sitting in the Crown Court at Manchester (Crown Square), on 8 September 2011 and was sentenced to four terms of life imprisonment.
4. An appeal to the Criminal Division of the Court of Appeal was determined on 30 September 2013: see [2013] EWCA Crim 1649. The appeal against conviction was dismissed and permission to appeal against sentence was refused. Those proceedings are reported as *R v Farooqi (Munir Ahmed)* [2014] 1 Criminal Appeal Reports 8.
5. On 23 May 2014 Mr Justice Henriques made a recovery of defence costs order. That order, and a transcript of Mr Justice Henriques's ruling, can be found at bundle 6, divider 130. It is, I think, now common ground that whilst expressing the view that the Legal Aid Agency had established that Mr Farooqi had a beneficial interest in the two properties in question, Mr Justice Henriques made no formal finding to that effect capable of giving rise to any issue estoppel; and it is, I think, also common ground – and, if it is not, I so hold - that I am in no way bound by any views expressed by Mr Justice Henriques as to the first defendant's retention of any beneficial interest in the two properties. It is also right to point out that Mr Justice Henriques did make it clear that he had concluded that the totality of the evidence in the case established the innocence of all other members of Mr Farooqi's family; that is clear from page 17H of the transcript of the judge's ruling.
6. On 14 March 2016 the Legal Services Commission was given permission to seek to recover the award of defence costs in proceedings in the County Court at Manchester. The trial of

those proceedings now comes before me.

7. The claimant is represented by Mr Mukhtiar Otwal (of counsel) and the second defendant by Mr Sebastian Clegg (also of counsel). Although at one stage represented by solicitors, the first defendant now has no legal representation. He is serving four terms of life imprisonment, and he appeared on the first day of this hearing by video link from prison. Towards the end of that day he indicated that he had no wish to appear further in the proceedings, having previously elected, just after the luncheon adjournment, not to give evidence or to place any reliance upon his witness statement. As a result, he was not cross-examined. He remained a passive observer throughout the first day of the trial via video link from prison, but he took no part in the proceedings. He told me that he had received the seven trial bundles, extending to some 1440 pages of documents, but that he had difficulty in reading and he did not appear to have opened them out before him in the video link room. I am satisfied that the first defendant has participated in the proceedings to the full extent that he wished, and that his ceasing to participate was entirely the result of his own decision. I did indicate to him, before he finally elected not to attend on the second day by video link, that he might find himself the subject of an adverse costs order at the end of the proceedings if they went against him.
8. The trial commenced at about 10.50am on Tuesday 8 May. The trial started a little late (having been listed at 10.30am) due to the initial failure of the video link. I had already received detail written skeleton arguments and chronologies from both counsel, which I had had the opportunity of pre-reading. As a result, there was no need for any formal opening.
9. I first of all heard for about two hours from Ms Catherine McHugh. She had made a number of witness statements in these, and earlier, proceedings. She is an officer with the National Crime Agency. She was cross-examined by Mr Clegg for almost two hours in total. However, as I think Mr Clegg accepted in closing, she contributed very little to the court's knowledge and understanding of the issues that fall for determination in this litigation. Her involvement in the criminal litigation started in late 2008 or early 2009, and Ms McHugh readily accepted that she had not been privy to any discussions between the defendants as to how the beneficial interests in either of the two subject properties should be held. She provided a great deal of documentary material in support of the claimant's case, but she was really unable to contribute little more than the documents themselves.
10. The position was the same with the claimant's only other live witness, Mr Richard Palmer. He is a Special Investigations Unit Manager with the Legal Aid Agency. He had made a

witness statement which was of a purely formal nature relying, essentially, on Ms McHugh's evidence and on the documents themselves. His involvement in the case was even later than that of Ms McHugh, coming in only in 2012, after the first defendant's conviction. He gave evidence for a little more than 10 minutes.

11. The first defendant elected not to give any evidence.
12. I then heard from the second defendant, who took the oath in English from the card but otherwise gave evidence through an interpreter, her language being Urdu. She gave evidence for a total of about four hours on the afternoon of day one and the morning of day two. It is always difficult to assess a witness giving evidence through an interpreter. It was particularly difficult with Mrs Farooqi because she had a tendency not to answer the questions being put to her by Mr Otwal but to embark upon a narrative of events, generally reproducing what was already in her witness statement.
13. The second defendant was subject to criticism by Mr Otwal for having supplemented the original evidence contained in a witness statement dated 6 June 2017 (at bundle 3 divider 84) when she came to make her later witness statement of 18 March 2018 (at divider 87). In particular, she was criticised for expanding upon paragraph 31 of her first witness statement in paragraph 37 of her later statement, and also in adding at paragraphs 32 to 36 of her later witness statement.
14. However, I can see no objection to Mrs Farooqi having sought, in her most recent witness statement, to address points that she knew were being raised against her from the points of claim. I can see nothing wrong in her doing that, and I make no criticism of her for doing so.
15. Early in her evidence the second defendant described herself and her husband as a typical family building a life in England. Initially, she accepted that everything they had, they had shared together. She had married the first defendant, who was a cousin on her mother's side, in June 1979 when he was 22 and she was 18 years of age, and she had joined him to live as a family in England.
16. Certain aspects of the second defendant's witness statement were not correct; for example, paragraph 28 was incorrect: the first Matrimonial Homes Act 1983 charge was not registered until 16 February 1996 and the first defendant had mortgaged 10 Brook Road on 29 April 1992. There were also errors in paragraph 30 of her witness statement.
17. I found the second defendant's evidence about whether she had taken legal advice before putting a Matrimonial Homes Act charge on the register of title to Brook Road confused

and confusing. Her oral evidence on this contradicted paragraph 28 of her witness statement because she said the advice to do so had come from a friend. The impression I formed was that she had been receiving advice both from a friend and from solicitors.

18. It was suggested to Mrs Farooqi by Mr Otwal that the property at 4 Lorne Road had been transferred to her because, at the time, the parties had been contemplating a divorce with a clean break. However, Mrs Farooqi was adamant in her evidence that 4 Lorne Road was always her own property. In the course of her evidence about the Lorne Road property, Mrs Farooqi was asked if she had had any conversation with her husband at the time of purchase as to who the true owner was to be. Her answer was: 'Yes, I told him I would be the true owner.' In her evidence in relation to 10 Brook Road, she was asked whether she had had discussions with her husband about who the true owner was to be. Her answer was: 'I told him that I want this house at any cost. He knew that I was the true owner because I had given him the money for the deposit.' I asked Mrs Farooqi whether she had actually had a discussion with her husband and she said that she had; her reply was that it was her home and he had agreed to it. She then added: 'He said, it's your home.'
19. In re-examination the second defendant was asked by Mr Clegg: 'Did you discuss who would own 10 Brook Road before buying?' Her reply was that her husband knew from the beginning that she would be the owner; he did not contribute a single penny towards it. The mortgage payments were made out of the rents from 4 Lorne Road. She was asked whether there had been an actual conversation, and her response was: 'He said that it's your home.' This was originally, she said, when she came back from Pakistan in around 1995, but then she said that she had become confused about the dates and she added: "When I came back from Pakistan, he said 'It's your house, I've purchased it for you'." I will need to consider whether I can accept those statements later in this judgment.
20. The second defendant called four other witnesses, all of whom were fairly short.
21. There was Mrs Talat Farooqi, who is the second defendant's sister and is married to a brother of the first defendant. She gave evidence through an interpreter for about 15 minutes.
22. I then heard from the defendants' adult daughter, Zulaikha Farooqi, who gave evidence in English for about 25 minutes. She was the second defendant's other principal witness. I found her evidence about the beneficial ownership of the two properties, 4 Lorne Road and 10 Brook Road, between the transfer of those properties into her sole name on 29 April 2010 from her mother and the deed of trust in respect of those properties dated

26 May 2014 (by which Zulaikha declared that she held them on trust for her mother), to have been both confused and confusing. It was not entirely clear from Zulaikha's evidence whether she accepted that she was holding the properties upon trust for her mother during that period of about one month or not.

23. Zulaikha Farooqi was also pressed about evidence contained in her response to a request for information from the Special Investigations Unit, sent under cover of the letter from her solicitors (Robert Lizar Solicitors) dated 21 June 2012. In that response, sent by her solicitors but not apparently signed by her, she had expressly stated that no one else had any interest in either of the two properties, 10 Brook Road and 4 Lorne Road. In addition, in the case of the former property, she had expressly stated that she was the sole legal owner, with full legal title. Zulaikha Farooqi told me that her solicitor had been aware of the declaration of trust in favour of her mother in respect of those two properties. I find it difficult to accept that any solicitor - even a criminal solicitor with no knowledge of conveyancing or property law - could have allowed his client to have put forward that response if the solicitor had, in fact, seen the declaration of trust. I am not satisfied that I can accept Ms Farooqi's evidence that she had provided the declaration of trust to her solicitor. In my assessment, Ms Farooqi's evidence, in that response, was misleading, and deliberately so. I find that she was deliberately attempting to distance her mother from the ownership of the two properties. I accept that at the time, in view of the situation affecting her father, and also her adult brother (who had also been arrested), Zulaikha Farooqi was suffering from a great deal of stress; and she was then only 22 years of age.
24. Towards the conclusion of her cross-examination Zulaikha Farooqi said that the whole purpose of what had been done at that time - taking the ownership of the properties into her name - had been to help her mother, to release the strain upon her. She explained that she was not legally learned, and that at that time she had not even known what Legal Aid was. I have some sympathy for Zulaikha Farooqi's position; but it means that I cannot accept her evidence as entirely reliable.
25. At the end of her cross-examination, Zulaikha Farooqi was asked whether the deed of trust had been prepared after the date it bears on its face and had been backdated. Her response was: 'No, of course not.' I do accept that evidence. I am satisfied that the trust deed was executed on the date it bears. If it had been intended to backdate it, there is no reason why it would have been backdated to 26 May; it would have been backdated to the date of the transfers of the properties from Mrs Farooqi to her daughter Zulaikha on 29 April 2010. So,

I do find that the trust deed was not backdated.

26. After Zulaikha, I heard from Mr Nasir Farooqi, a brother of the first defendant and brother in law of the second defendant. He gave evidence for less than 10 minutes. I derived little assistance from his evidence. He made it clear that it was his view that as long as he was paying a mortgage and had paid the deposit for a property, it was his house, even if it was a family property. His view was that if he was working and paying the mortgage and had paid the deposit, then the property was his.
27. Finally, by way of live witnesses, I heard from the defendant's adult son, Harris Farooqi. He is now some 34 years of age. He gave evidence for less than 10 minutes. He concluded his evidence by saying that his mother has been 'a backbone for Father. My mother has always had the final say in things most of the time.' Mr Otwal submits that that is not consistent with the view of Mr Justice Henriques, derived after a lengthy criminal trial, that in fact the first defendant was the head of the family.
28. There were witness statements from two further witnesses: Jahanara Khan, a family friend, whose evidence was agreed and really adds nothing to my knowledge in relation to relevant matters; and, finally, from an estate agent, Mr Mohammed Akram, who was giving evidence of events over 20 years ago. He was said not to be in the country, and I was asked to have regard to his evidence as hearsay. I see no reason not to accept what he says, even though it was not capable of being challenged in cross-examination; but it really takes the defence case very little further.
29. After the conclusion of the evidence (at about 3.10pm), I heard from Mr Clegg for about an hour and 10 minutes, I then heard from Mr Otwal for about an hour yesterday, and for about a further 50 minutes this morning. Mr Clegg then briefly replied; and I started delivering this extemporary judgment at about 11.40am.
30. There was no dispute between counsel as to the applicable legal principles. I was taken to a number of authorities. First, *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432. In my judgment, a helpful summary of the law is to be found at holding one of the headnote in the official law report, which should be treated as incorporated into this judgment. I was also referred to, and have read, paragraphs 69 to 70 of the judgment of Baroness Hale.
31. Secondly, I was taken to *Jones v Kernott* [2011] UKSC 52, [2012] 1 AC 776. A useful summary of the decision is to be found in holding one of the headnote and in the two paragraphs of the *per curiam* observations. Again, they should be treated as incorporated into this judgment; and I have had regard to, and applied, those principles. I was expressly

referred to paragraphs 51 and 52 of the joint judgment of Lord Walker and Baroness Hale (with which Lord Collins expressly agreed). Paragraph 51 it seems to me is an incomplete analysis of the law because, as Mr Clegg pointed out in his brief reply, it does not address the situation where there is express agreement as to the beneficial ownership of and entitlement to property.

32. I was next (in chronological order) taken to *Crown Prosecution Service v Piper* [2011] EWHC 3570 (Admin), a decision of Holman J. I was referred, by way of background and the proper approach to the evidence in cases of the present kind, to paragraphs 1 to 6; and then I was taken to paragraphs 7 to 14 for the legal framework. I have read those paragraphs (which were cited by Mr Otwal).
33. Mr Clegg relied upon the decision of Dobbs J in *Re Ali* [2012] EWHC 2302 (Admin), reported at [2013] 1 FLR 1061. Mr Clegg invited me to have regard to paragraphs 102 to 107 in that judgment. He also took me to paragraph 16 of the leading judgment of Sales LJ in the case of *Capethorn v Harris and Another* [2015] EWCA Civ 955, reported at [2016] HLR 1. Finally, Mr Clegg took me to the case of *AI & Anor v Crown Prosecution Service* [2015] EWFC B180, decided on 10 November 2015 by HHJ Wildbood QC, sitting in the Family Court at Bristol. Mr Clegg took me to paragraph 61 of that judgment.
34. On the issue of equitable accounting, I was taken to two authorities: *Re Pavlou (A Bankrupt)* [1993] 1 WLR 1046. I was referred specifically to page 1048 letters G to H in the judgment of Millett J. There Millett J emphasised that the guiding principle of a court of equity is that the proportions in which the property should be divided between former co-owners must have regard to any increase in the value of the property which has been brought about by means of any expenditure by only one of them.
35. On the issue of equitable accounting, I was also taken to the judgment of Jonathan Parker LJ in the case of *Wilcox v Tate* [2006] EWCA Civ 1867, and reported at [2007] BPIR 262, at paragraphs 62 to 66 and paragraph 75. The emphasis of that judgment was on the fact-sensitive nature of any equitable account.
36. I have to decide whether the first defendant has any, and if so what, beneficial interest in the two properties in question. Mr Otwal emphasises that in doing so I have to have regard to the domestic context of a marriage between the two defendants and its history. As I have already indicated, the parties were married in June 1979 when Mr Farooqi was 22 and Mrs Farooqi was 18. They were cousins on the second defendant's mother's side. It was apparently an arranged marriage. A son was born to that marriage on 1 July 1983; that son

was Harris. At that time the parties were living in rented accommodation.

37. On 12 April 1985 the first of the two properties with which I am concerned, 4 Lorne Road, was transferred from Michael Monaghan into the joint names of both defendants. Mr Farooqi was then aged 28 and Mrs Farooqi 24. This was their first matrimonial home. It was purchased with the assistance of a mortgage from the Manchester Building Society. There is some suggestion in the second defendant's witness statement that the mortgage was in the sole name of her husband but I am entirely satisfied, from the fact that the mortgage was registered on the charges register of the title to the property at the Land Registry, that in fact the mortgage was a joint mortgage in the names of both registered proprietors, otherwise it would not have appeared on the charges register as a legal charge. The purchase price was £13,800.
38. I am satisfied that it was the second defendant who provided the deposit of some £4,000. She later discharged the outstanding mortgage of about £5,000 from money which she had borrowed from Richard Hargest, her sister's father in law. The property was then transferred into the sole name of the second defendant and no mortgage appears on the register of title. Unfortunately, no copy of the transfer from Mr and Mrs Farooqi to Mrs Farooqi alone is available.
39. In the meantime, in December 1989, the defendants' second child, their daughter Zulaikha, was born. It may be that which led to the decision to purchase a second property, 10 Brook Road. That was transferred to the sole name of Mr Farooqi, who was then aged 33, for £71,000 on 9 November 1990. There was a legal charge granted over the property by Mr Farooqi in favour of Scotlife Home Loans (No. 3) Limited. The mortgage records an advance of £71,000 but I am entirely satisfied, from the terms of the renewed mortgage offer (at bundle four divider 99 page 683) and also from the Securities Checklist (at page 684), that the mortgage advance was not £71,000 but was the sum of £56,800. There was, in addition to the £71,000 purchase price, stamp duty payable of £710, and there would have been legal fees for the purchase.
40. I accept Mrs Farooqi's evidence that she provided a total of £15,000 towards the purchase price, using £7,000 which she had received from her father and £8,000 borrowed from family and friends. In her witness statement, Mrs Farooqi does not suggest that the reason why the transfer was taken into her husband's sole name was because she was abroad in Pakistan (to which she had had to make a number of visits during 1989 and 1990 because of the poor state of health of her father). Indeed, I find it difficult to accept that her absence in

Pakistan was any reason for the transfer being taken into her husband's sole name because Mrs Farooqi signed the usual letter of waiver in favour of the mortgagee; it is dated 9 November 1990 (although I accept that that may not be the date it was actually signed) and can be found at bundle four divider 98. In evidence, Mrs Farooqi did tell me that she was in Pakistan at the time the purchase completed.

41. In 1992 the parties emigrated for a short period to Dubai. During that time there was an attempt by Mr Farooqi to sell Lorne Road - in the joint names of himself and his wife - behind his wife's back, but his wife discovered the attempt and she effectively stopped it. At about the same time, on 29 April 1992, the first defendant executed an all-monies legal charge in respect of 10 Brook Road in favour of National Westminster Bank. This was registered on 18 May 1992. Mrs Farooqi told me, and I accept, that she knew nothing about that at the time.
42. The stay in Dubai proved unsuccessful. The parties returned to the UK and, because they had let out both Lorne Road and Brook Road, the family occupied rented accommodation.
43. In 1994 the parties separated. On 16 February 1996 Mrs Farooqi registered her first notice of Matrimonial Homes Act rights of occupation against the title to 10 Brook Road.
44. At some stage between 16 February 1996 and 6 February 1997 the NatWest charge was removed from the register of title to 10 Brook Road. Mrs Farooqi's rights of occupation were removed from register of title at some time between 6 and 26 February 1997. Mrs Farooqi says that this was because there had been a reconciliation with her husband although he then, apparently, tried to remortgage the property yet again; and she reinstated the Matrimonial Homes Act registration on 22 July 1997 and it remained on the title thereafter until the property was transferred into her sole name.
45. It is an important part of Mr Otwal's case for the claimant that during the period 1996 to 1997 the parties were contemplating a divorce with a clean break. It is the claimant's case that it is for that reason that 4 Lorne Road was transferred into the sole name of the second defendant. That was, as I have indicated, done on 9 April 1996. The parties were, however, reconciled, and so no divorce, and no clean break, ever took place. The parties resumed cohabitation, although Mrs Farooqi, as I have mentioned, felt it necessary to reinstate the notice of rights of occupation in July 1997.
46. In the following year, on 11 September 1998, Mrs Farooqi purchased, in her sole name, the property 17 Fleeson Street, which the family had been renting from Mrs Farooqi's brother in law. That was purchased with the assistance of a mortgage from

Preferred Mortgages Limited. That mortgage had been discharged by April 2004, and the property was eventually sold and the present family home at 6 Victoria Terrace was purchased, free of mortgage, and registered in the sole name of the second defendant on 15 December 2006. By then, in July 2003, a third child, Kadisha, a daughter, had been born to the defendants.

47. On 4 September 2003 the first defendant was stopped on his way back to this country from a visit that he had made to Karachi, returning via Dubai. He was interviewed and in the course of his interview he stated that he had stayed in the UK and married the second defendant, a cousin, in an arranged marriage. They had initially rented accommodation before buying houses at 4 Lorne Road and then 10 Brook Road. Those properties were then said to be let to students.
48. As I read that information provided by the first defendant, he was telling the Home Office security officers that he jointly owned 4 Lorne Road and 10 Brook Road with his wife. Mr Otwal points out that the first defendant would have been unlikely to do that unless it was true because the Home Office officials might well have made enquiries of his wife by way of verification.
49. In March 2005 the mortgage used to purchase 10 Brook Road had been discharged. I accept the second defendant's evidence in this case that it was she who discharged the outstanding mortgage. She had received some £42,830 odd from monies which she had inherited from the sale of her mother's property. Those were paid into an account at the HSBC Bank, and on 17 March 2005 £29,813.41 was paid out of that account. I am satisfied that that money was used to discharge the mortgage, which had disappeared from the register of title by 23 March 2005. I am satisfied that those monies were provided by the second defendant alone.
50. What is perhaps surprising is that despite the fact that 16 Victoria Terrace was later purchased in the sole name of the second defendant, no steps were ever taken to effect any transfer of 10 Brook Road from Mr Farooqi into the sole name of his wife, or into their joint names. Mrs Farooqi says that was because her interest in 10 Brook Road was sufficiently protected by the continuing registration of the Matrimonial Homes Act charge.
51. The family continued to live together at 6 Victoria Terrace, with 4 Lorne Road and 10 Brook Road being rented out and the rents, apparently, being shared equally between the two defendants. At paragraph 48 of her witness statement the defendant explains that the properties were put in Munir's name - in the case of 4 Lorne Road, I interpose to add,

jointly with the second defendant – because (1) she could not get a mortgage as she had no accounts to show and (2) her husband was in a bad place mentally because of what had happened to him as a child, and his wife felt that it would enable him to retain dignity and make him a better husband and father. She says that he never contributed any money to anything, any mortgage payments he made coming from rent from the properties, and it was a long time before she got Lorne Road into her name when she had been its sole beneficial owner all along. She explains that she did not put Brook Road into her own name as her husband was being pleasant with her; when she paid off the mortgage, she had the charge on the property and she did not see the need, even though she was the sole beneficial owner. With hindsight, she says it seems it would have been better if she had simply put the properties in her name from the outset, but that would not have been an option as she could not have obtained any mortgage. She was only able to get a mortgage on Fleeson Street because, by then, she could show rent accounts.

52. Despite what Mrs Farooqi has told me I do not accept that there was any conversation with her husband at the time of the purchase of 4 Lorne Road whereby she told him that she would be the true owner. This was a young married couple with a young son (having had two previous daughters stillborn or not surviving), and they were in the course of purchasing their first matrimonial home at the ages of 28 and 24. I do not accept that there was any express discussion that the property would be Mrs Farooqi's alone. That is consistent with the whole of the evidence in the case.
53. Since the property was acquired in joint names, the presumption is that the beneficial interest was owned by them, equally; and I am not satisfied that the second defendant, even with the support of her husband's evidence (to the extent I can have regard to it), has displaced the burden of showing that it was not a jointly owned property from the outset. There is nothing in the objective evidence to indicate that anything other than joint ownership was intended.
54. However, I am satisfied that at the time Mrs Farooqi came to pay off the mortgage she did acquire the entire beneficial interest in the property. Mr Otwal relies heavily upon the first defendant's counsel's reply to the forfeiture application dated 5 January 2012 (at bundle six, divider 131 at page 1127) at paragraph 14. I quote:

“There is a sensitive personal matter which has a bearing upon the issue of the ownership of 6 Victoria Terrace. In 1995 Zeenat Farooqi separated from Munir as a result of his unreasonable behaviour. Solicitors became involved and uncontested divorce proceedings were

contemplated. In 1996 a clean break was anticipated and the property at 4 Lorne Road was transferred into Zeenat Farooqi's sole name as a result. In early 1997 Zeenat Farooqi learned that Munir was planning to sell 10 Brook Road which, at that time, was in his sole name. In order to protect her interest in this property, Zeenat arranged for a charge in her favour to be put on 10 Brook Road. The deposit which had allowed the original purchase of Brook Road had come from Zeenat's father in Pakistan."

The chronology there is inaccurate. It was not in early 1997 that Mrs Farooqi learned that her husband was planning to sell Brook Road and had protected her interests by putting a charge on the property. The charge had first been placed on the property in February 1996. It had then been removed in February 1997 and had been reinstated in July 1997. Nothing is said, in that paragraph, about the discharge by Mrs Farooqi of the outstanding mortgage on 4 Lorne Road. It may be that Mr Farooqi viewed the transfer as associated with a clean break in divorce proceedings, but I am entirely satisfied that Mrs Farooqi took the view that the transfer was because she had paid off the outstanding mortgage on 4 Lorne Road.

55. In any event, I am satisfied that although the transfer is not in evidence, it must have transferred the whole of the legal and beneficial interest in the property to Mrs Farooqi. Mr Otwal submits that Mr Farooqi was only ever intending to transfer the bare legal estate. His evidence in the case was that he had no beneficial interest to transfer. It seems to me clear that Mr Farooqi was intending to divest himself by the transfer of **all** of his interest in the property; and, in my judgment, the transfer did just that. I therefore find that Mr Farooqi has, since the transfer of 4 Lorne Road in April 1996, had no beneficial interest in that property.
56. Had I found otherwise, I would have ordered, by way of equitable accounting, that Mrs Farooqi should be given credit for the sum used to pay off the outstanding mortgage, together with interest at the proposed rate of 2.5% above base rate on a simple interest basis since 9 April 1996. In the event, it is unnecessary for me to do so.
57. Turning to 10 Brook Road. That property was purchased in November 1990, just under a year after the birth of the parties' second child, Zulaikha. I accept that Mrs Farooqi may have been the moving force behind the purchase of that property. I also accept, and find, that, apart from the mortgage - which I find to have been £56,800 - Mrs Farooqi provided the whole of the balance of the purchase price. The property was placed into the sole name of her husband. The claimant concedes that the second defendant has a beneficial half share in that property, and it seems to me that that is consistent with her contribution of all of the

balance of the purchase price from her own funds, derived from her family and borrowed from family and friends.

58. Despite what Mrs Farooqi has told me about the discussions with her husband as to who the true owner should be, I cannot accept that there was any agreement that the property would be her sole property. I can see no reason why, if that were the case, the property should not have been put into, at the very least, the joint names of the parties, as had been done with 4 Lorne Road. Mrs Farooqi signed a waiver in favour of the mortgagee. I cannot see why she could not have joined in taking a transfer of the property if she was able to provide that document. Moreover, that view is reinforced by the fact that, when - as I find - she discharged the outstanding mortgage by paying £29,813.41, again derived from her own family and not from joint resources with her husband, the property was never transferred into her sole name.
59. I am not satisfied that Mrs Farooqi has discharged the burden of showing that she was the sole beneficial owner of that property from the outset, or that anything changed when she discharged the mortgage. If necessary, I would find that she was entitled, by way of equitable accounting, to credit for the £29,813 odd as from the discharge of the mortgage on 29 March 2005, together with interest (as previously stated) since then.
60. Once again, however, it seems to me unnecessary for me to do that. Whilst I am satisfied that there was no change in the beneficial interest in 10 Brook Road until after the time of Mr Farooqi's arrest, I am also satisfied that when he came to transfer 10 Brook Road to his wife on 22 January 2010, that transfer was effective to pass his entire legal estate and beneficial interest in the property to Mrs Farooqi.
61. I have no doubt that the motivation for that transfer was the wish to ensure that the property should be free from any potential claims for the recovery of defence costs. Mr Farooqi had provided a statement of means for his right to representation in criminal proceedings in the Crown Court on 14 January 2010. Just above his signature, declaration number six expresses his understanding that the court, and the Legal Services Commission, could provide a report on his financial position to the trial judge, and his representative, with a view to a recovery of defence costs order being made for up to the full amount of the costs incurred in defending him in the proceedings in that and any other court. I am satisfied that the transfer was executed, just over a week later, with the express object of ensuring that 10 Brook Road could be saved for his wife and their children, and that it should be immune from any claim for the recovery of defence costs.

62. I am also satisfied that, to further cloud the issue, Mrs Farooqi then transferred both 4 Lorne Road and 10 Brook Road to her daughter Zulaikha on the basis that Mrs Farooqi would retain the beneficial interest in the property for the benefit of the family. Zulaikha was one of only three children, but her younger sister was under age and her elder brother was, at that time, the subject of criminal arrest and charges. Zulaikha was put forward to try and preserve the property for the family.
63. However, none of that affects the fact that there was, in my judgment, a valid transfer of the beneficial interest in 10 Brook Road to Mrs Farooqi alone by the transfer of 22 January 2010; and that transfer (which is at bundle five, divider 121 page 934) simply transfers the property to the transferee.
64. Mr Otwal submits that Mr Farooqi's evidence in the case is that he had no beneficial interest to transfer, and that the transfer was therefore directed to the bare legal estate and that the beneficial interest was retained by Mr Farooqi. Again, I simply cannot accept that. Mr Farooqi was intending to divest himself of **all** interest in the property so that it should be immune from any claim for recovery of defence costs. In my judgment, the transfer did what it said upon its face: it transferred the property to Mrs Farooqi. In my judgment it did so free from any beneficial interest of the first defendant.
65. It may well be that, had the first defendant been made bankrupt within the appropriate period of time, the transaction could have been attacked as a transaction at an undervalue - indeed for nil value. It may be that the transaction could still be set aside under section 423 of the Insolvency Act; but there is no such claim in the present proceedings. I am merely asked to identify and declare the extent of any beneficial interest of the first defendant in the two properties. In my judgment, for the reasons I have given, I am satisfied that Mr Farooqi had deliberately divested himself of his beneficial interest in 10 Brook Road in January 2010. He had divested himself of his interest in 4 Lorne Road many years before, in 1996, long before the criminal activities which led to his arrest and conviction.
66. Therefore, for those reasons, I would propose to declare and determine that the first defendant has no beneficial interest in either of the two properties; and, on that footing, I must refuse to make the charging orders final; and I will discharge the interim charging orders if that is necessary.
67. So that concludes this extemporary judgment.

End of Judgment

Transcript from a recording by Ubiquis
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