

Neutral citation number [2023] EWHC 103 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim no. PT-2018-000705

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice

Strand, London WC2A 2LL

Date 25 January 2023

Before:

ANDREW LENON KC
(sitting as a Deputy High Court Judge)

BETWEEN:

PROVINCIAL EQUITY FINANCE LIMITED

Claimant

-and-

HELEN DINES (NÉE BREDA)

Defendant

Simon McLoughlin instructed by Edwin Coe LLP appeared for the Claimant

Edward Hewitt instructed by Kingsley Napley appeared for the Defendant

Hearing dates: 1 – 4, 7 and 8 November 2022

JUDGMENT

INTRODUCTION

1. This case is essentially an inheritance dispute between, on the one hand, the two children of the late Graham Dines (“**Graham**”) by his first marriage, Louise Henry (“**Louise**”) and Elliott Dines (“**Elliott**”), and on the other, Graham Dines’ second wife, the Defendant (“**Helen**”). I will refer to the family members by their first name. No disrespect is intended.

2. The Claimant (“PEF”) is a company that was controlled by Graham from 2002 until his death in June 2016. Under the terms of Graham’s Will dated 21 April 2008, the controlling shareholding in PEF now vests in Louise and Elliott.
3. PEF claims a declaration that eleven properties (all flats in Bournemouth), the legal titles to which are registered in Helen’s name, are held on trust for PEF as beneficial owner and seeks orders requiring Helen to transfer to it the legal titles and to account for the income she has received from those properties. PEF also requires Helen to account to it and/or claims equitable compensation in respect of a twelfth flat which was registered in Helen’s name and which Helen sold. Finally, PEF claims an account and/or equitable compensation in respect of the sum of £130,000 which Helen transferred to herself from a bank account held by Graham shortly before Graham’s death and which PEF claims was its money.
4. Helen’s defence to the claim is, in summary, that PEF has or had no beneficial interest in any of the twelve properties which are or was, in the case of the twelfth flat, beneficially owned by her. As to the £130,000, her case is that the money was not PEF’s and that she was entitled to it as it represented her agreed share of the proceeds of sale of her and Graham’s former matrimonial home.

THE WITNESSES

5. I heard evidence on behalf of PEF from Elliot and Louise, David Arad who was a friend of Graham and PEF’s accountant, Matthew James who was Mr Arad’s assistant and Ronald Sweet an old friend of Graham. Helen gave evidence herself but did not call any other witnesses.
6. The rival accounts given by the witnesses gave rise to many factual issues, most of which were peripheral and of no real assistance in resolving the central issues as to the ownership of the disputed properties and funds.

7. I consider that Elliott and Louise were honest witnesses who gave evidence about Graham and their relationships with him although it was unfortunate that much of their witness statements appeared to have no forensic function other than to cast Helen in a bad light.
8. Mr Arad had clearly “thrown in his lot” with Elliott and Louise in their dispute with Helen and was not purporting to give evidence as an independent professional. Although I did not accept all his evidence concerning Graham’s banking arrangements, I consider that Mr Arad was an honest witness who was seeking to assist the court as was Mr James. Mr Sweet was also a patently honest witness who gave evidence about conversations he had had with Graham.
9. Helen was not a satisfactory witness. She frequently gave the impression during her cross-examination that she was keener to advance her case than to answer the questions put to her or provide the court with a reliable account of the facts. Much of her evidence concerning the properties was implausible. The assertion in her witness statement that from 2007 onwards Graham and she decided to purchase or retain properties for themselves in order to generate long-term rental income was inconsistent with the contemporaneous documentation and the pattern of property transactions that took place. During her cross-examination she claimed that she had agreed with Graham that properties previously owned by PEF would be “taken out” of PEF but this agreement was not mentioned in her Defence or her witness statement. I consider that her explanation for the transfer of the £130,000 was untruthful.

FACTUAL BACKGROUND

PEF

10. Graham was born on 18 April 1947. Until around 1990, Graham ran a business called Grove Motors, which sold car parts and paint. The business had been set up by Graham’s father, and Graham ran it with a business partner called Ian Young. In around 1990/1991, Graham and Mr Young sold the Grove Motors business for around

£1.2m-1.3m with the proceeds split 70:30 as between Graham and Mr Young. However, they retained some of the properties which had been owned by the business, including two valuable sites, Unit E Tomo Industrial Estate, Packet Boat Lane, Uxbridge (“**the Tomo Property**”) and 19-19a Malham Terrace, Dysons Road, Edmonton (“**the Dysons Property**”). These properties were owned 70% by Graham and 30% by Mr Young who rented them out on long leases with the rents paid into a joint account.

11. On the sale of the Grove Motors business, following Mr Arad’s advice and in order to operate an investment business in the most tax efficient way, Graham set up a company called Provincial Equity Finance Limited (“**the Original Company**”). The Original Company carried on an investment business, initially investing in a loan provider, B.M. Samuels Finance Group plc, and subsequently trading in properties in the Bournemouth area which were purchased, refurbished and sold on. The Original Company was dissolved and struck off in around October 2002 as it had failed to keep up with its filing requirements at Companies House. PEF, which had been acquired as an off the shelf company some months previously, took over the Original Company’s name. The single subscriber share in PEF was transferred to Graham. Helen was appointed company secretary and Elliott, who had started working with Graham, viewing potential properties and overseeing refurbishment works, was appointed as director.
12. The reason for Elliott’s appointment as director was that sometime in the late 1990s Graham had taken out a disability insurance policy (“**the Insurance Policy**”), which would make monthly payments to him on various trigger events, including a serious heart attack, until he turned 65. In the event, shortly after the Insurance Policy was incepted, Graham did suffer a serious heart attack and began to receive monthly benefit payments. He did so on condition that he was not receiving income from employment or from a company of which he was a director. This made it necessary for Elliott to be appointed rather than Graham but Graham took all business-related decisions and Elliott had no involvement in the management of the company or its banking arrangements.

13. In June 2005 further shares were issued in PEF and divided into 2 classes, with the result that PEF's issued share capital comprised 250,000 ordinary A shares with voting rights, held by Graham, and 1 ordinary B share with no voting rights, held by Elliott who received a salary.
14. In February 2015, Graham instructed Mr Arad to issue 250 B shares to Helen. According to Mr Arad, this was done after Helen had repeatedly asked Graham for shares and was agreed to with reluctance on Graham's part. Graham told Mr Arad at the time that he wanted his children to have the whole company but "for 0.1% anything for a quiet life". Helen did not receive any dividend but she was paid a nominal salary which was credited against Graham's loan account with PEF. There was a peripheral issue between the parties as to how far Helen was involved in the property investment business. I accept Helen's evidence that she had some involvement in viewing prospective properties and in assisting with secretarial work but that she was not involved in the accounting or record keeping which was handled by Mr Arad and Graham.
15. With the exception of one property in Bath, all the properties purchased were flats in Bournemouth which were renovated and then let and/or sold with the proceeds of sale frequently re-invested in the acquisition of further properties. The conveyancing solicitors instructed for the purposes of the property transactions were Messrs. Matthew & Matthew ("**Matthew & Matthew**").

PEF's accounting and tax arrangements

16. Graham appears to have been a shrewd businessman but he was not good with paperwork or with details. Mr Arad's evidence, which was not disputed, was as follows:

"Graham admitted to me regularly over the years that he was very bad with his paperwork and that the way he arranged his affairs was a mess, which it was, with random bits and pieces of paperwork containing his notes and his companies' business conducted through various bank accounts in his own name.

Graham was hopelessly disorganised when dealing with paperwork as was very clear each time I tried to pin him down on the information my firm needed for PEF's accounts and his tax returns."

17. Graham did not have an office after he sold Grove Motors and he worked from home. Between 2002 and 2013 Graham instructed Mr Arad and his firm Scodie Deyong LLP ("**Scodie Deyong**") to prepare PEF's accounts each year and to submit these to Companies House and HMRC. Once or twice a year Mr Arad would organise meetings with Graham to obtain his papers and go through them with him.
18. Mr Arad and Graham would discuss the properties bought and sold each year when preparing the company's accounts. During their meetings, Graham and Mr Arad would go through the accounts together and discuss payments in and out. They would also look at the company stock list which Mr Arad compiled each year and updated it
19. In the period 2007 – 2009, five of the properties which are claimed in these proceedings were purchased, three in Helen's name and two in Elliott's. These were treated in PEF's accounts as PEF's properties. Graham's explanation to Mr Arad for the practice of purchasing a property in the name of a family member which was nevertheless intended to be PEF's was that Graham was worried that if the vendor knew that the purchaser was a limited company, the vendor would assume that the purchaser was a property business and demand a higher price. PEF accounted for tax on rental income received on the properties. When preparing the accounts, Mr Arad's firm would contact Graham's property rental bookkeeper Freda Farmer of J.A. Rose & Company in Bournemouth and Matthew & Matthew to obtain information about rental receipts and the movement of properties.
20. As set out in greater detail later in this judgment, Graham used three bank accounts, two at Royal Bank of Scotland ("**RBS**") and one at Halifax. When Mr Arad came to prepare PEF's accounts and tax returns, he would ask Graham to provide to the necessary bank statements for the two RBS accounts and it was those bank accounts in respect of which nominal ledgers were kept for the purposes of compiling accounts and which informed the calculation of PEF's assets. Mr Arad would then split out those transactions which were to be treated as company expenses from those which

were personal. The personal expenses were treated as drawings from a shareholder loan account which Graham maintained with PEF. One of the conditions of the Insurance Policy referred to above was that he could not receive any other earned income. As a result, he kept his shareholder loan as large as possible, so that he could draw down on the loan account when he needed to.

21. When he had obtained most of the information which he needed, Mr Arad would arrange for draft accounts and Graham's tax returns to be drawn up. He would then arrange for Graham to approve the final accounts and for the tax to be paid on PEF's income.
22. From about 2010 onwards, it became increasingly difficult for Mr Arad to arrange meetings with Graham as he used to spend long periods abroad and had spells of ill health. He would go to Florida during the winter months and return to England for a short period before travelling to Spain in April or May where he would spend the summer months. He would return to England for a few weeks in the autumn before travelling back to Florida. The periods during which Graham was in England were not always the same. This made it difficult for Mr Arad to submit filings at Companies House on time. Mr Arad did not have a proper sit down with Graham to go through PEF's accounts from 2012 onwards although he did have occasional impromptu meetings with Graham and kept in contact with him by telephone and email.
23. Mr Arad's firm had particular difficulties in contacting Graham to obtain the information needed to finalise PEF's accounts for the financial year ended 31 March 2013 although the accounts were eventually finalised. Subsequently Graham did not provide Scodie Deyong with sufficient information to prepare the accounts and so although Scodie Deyong started to prepare accounts for subsequent years they were not put in the position to finalise them. No accounts were prepared by any other professional firm for the following years up until Graham's death. Mr Arad continued to prepare Graham's tax returns up to 2015, emailing Graham about his last tax return on 15 February 2016.

Graham's marriages

24. In 1972, at the age of 25, Graham married Frances. The couple had two children: Louise (born on 2 February 1976) and Elliott (born on 4 May 1980). The marriage appears to have been a difficult one, and it is common ground that Graham had several affairs.
25. In December 1992, Graham met Helen in Florida. They began what was initially a long-distance relationship. At that time, Graham was still married to Frances. In 1995 Helen fell pregnant and moved to the UK and started living with Graham. Sadly in 1996 their baby was still born.
26. In 2000 Graham and Frances divorced and Graham married Helen. Thereafter, Graham and Helen split their time between Bournemouth, Florida and Spain.

Graham's wills

27. Between 2003 and 2008 Graham made four wills. Under the terms of the final one dated 21 April 2008, he appointed Elliott, Louise and Mr Arad and Ian Young his executors. He bequeathed to Helen his interest in the matrimonial property, 34 Branksome Towers or such other property as they jointly owned at the time of this death, the sum of £100,000, a half share in a property in Florida (which was in fact solely owned by Helen) and his pension rights. He bequeathed to Elliott a Rolex watch and a Jaguar sports car. He bequeathed to Louise and Elliott the Tomo and Dysons Properties, his shareholding in PEF, one half of two properties in Spain, his interest in a property in Calne, Wiltshire and his residuary estate.
28. A few days before making the will, on 11 April 2008 Graham met Robert Fielding, a partner in Kiteleys Solicitors. The attendance note of that meeting listed Graham's assets, including the following:

- “3. Provincial Property (Graham said that these were properties owned by Provincial) £700,000 (of which £300,000 of property is in Mrs Dines' name)
4. Provincial Equity Finance Limited cash/loans £450,000”

29. Following this meeting, in an attendance note dated 14 April 2008 Mr Fielding recorded that on no account should communications be sent to Graham's home address and that Graham should be telephoned to tell him that there was a letter or draft document to be picked up from his firm's office. It is to be inferred from this note that Graham did not wish Helen to know about the Will. It is not clear whether Helen found out about the terms of the Will during Graham's lifetime. Helen maintained that she did not although this seems inherently unlikely.

30. On 16 April 2008 Mr Fielding wrote to Graham in connection with the Will, referring to possible claims that Helen might have against his Estate for reasonable financial provision. In an attendance note dated 18 April 2008, Mr Fielding recorded that Graham had explained to him that Helen "...held properties in her name which actually belonged to his company Provincial Equity Finance Limited" and, further as follows:

"I asked Mr Dines to explain what he meant when he said that Mrs Dines held £300,000 worth of property which was actually owned by Provincial Equity Finance Limited.

"He said that he "bought and sold" properties, and it happened that these properties were put in her name; it was possible that when these properties were sold (he appears to "trade" properties) replacement properties would be put in her name. I asked him whether there was any documentation to show that she owned these properties on trust for someone else and not beneficially and he said that there was not."

31. Mr Fielding further recorded in an attendance note dated 21 April 2008 as follows:

"We discussed three properties which Graham says that his wife holds on trust for his company, Provincial Equity Finance Ltd. Graham told me that the company funded 100% of the acquisition costs of these properties and they are held in his wife's name for tax purposes only"

32. By a Letter of Wishes dated 21 April 2008 accompanying the 2008 Will, Graham explained that he had decided not to make further provision for Helen in the 2008 Will and why he felt he had already made reasonable provision for Helen during his lifetime, having regard to the capital assets he had already gifted her. None of the

properties purchased prior to 21 April 2008 were referred to in the 2008 Will or in his Letter of Wishes in which he listed the property interests he had acquired for Helen by that date in order to justify why further provision had not been made for her.

Graham's relationship with his children

33. The relationship between Graham and his children appears to have gone through different phases. After Graham moved out of the family home in 1994, the children had little contact with him for a number of years. They resented his treatment of their mother who was suffering from poor health. By about 2002, relations between Graham and Elliott had improved to the extent that Elliott had started working for Graham. Louise also saw more of Graham. In 2009 Louise's daughter Scarlett was born and Graham would telephone her regularly although he did not get on with Louise's husband.
34. Frances died on 26 February 2013. Elliott and Louise inherited a considerable sum from her estate. Frances' final illness and the devolution of her estate put a strain on the relationship between Graham and his children. Graham considered Frances' estate to be money which he had, in effect, provided to Frances on the divorce, and was angry that Elliott and Louise were not grateful to him for it. Graham's resentment appears to have been exacerbated by the fact that Graham's own mother had disinherited him but left money to Elliott and Louise. An exchange of emails between Graham and Elliott in September 2013 shows the extent of their mutual resentment. In February 2014 Graham and Elliott fell out over Elliott's occupation of one of the investment properties. At about this time Graham told Mr Arad that he and Elliott were not getting on and that Elliott was going off to do his own thing. Thereafter there was sporadic contact between the children and Graham. Louise and Elliott visited Graham when he was ill in hospital in Florida in 2015 and in Lisbon and Poole in 2016. Until 2015, Graham continued to make payments into a trust fund for Scarlett.
35. Although their relationship had its ups and downs, it was common ground that Graham never stopped loving his children, as evidenced by a video recording made

by Graham in which he expressed regret at the difficulties in their relationship, concluding with the following words:

“If you need me I’ll be there but that’s about it. I’ve done my best you know I just find it very very hard. Okay love dad.”

36. On 8 April 2016, some two months before his death, Elliott received an email from Graham stating that he had tried to ring him because he wanted to update his will when he returned and asking Elliott to remind him confidentially to do so. It would appear from this email that Graham was planning to revise his Will in favour of his children but Graham died before any changes could be made.

Property purchases 2007 – 2009

37. As stated above, five properties were purchased in the period 2007 to 2009, three in the name of Helen and two in Elliott’s. Helen’s evidence in her witness statement was that the principal distinction between the properties brought before and after 2007 was that the properties bought from 2007 onwards were intended to be kept for Graham and her personally as rental properties in the longer term. I do not accept her evidence on this point, given that a number of properties were sold in 2011 and 2012 and not retained, that two properties purchased in 2009 were put up for sale in 2014-2015 and that two of the properties were bought in Elliott’s name. Her account is also inconsistent with Graham’s instructions to Mr Fielding when preparing his Will.
38. Helen accepted in cross-examination that, at the time they were purchased, Graham intended that the 2007 properties would be purchased by PEF although she claimed that it was later agreed that they would “come out of” PEF:

“Q: Mrs Dines, what I suggest to you is that, in exactly the same way as Richmond Park Road was purchased for Provincial Equity in 2006 and recorded in the company's accounts, the four properties purchased in 2007 were equally and in exactly the same way purchased for Provincial Equity, this time in your name rather than Elliott's but recorded in the company's accounts in exactly the same way. That is because, I put it to you, they were obviously company properties and that is what Graham intended. That is right, is it not?

A. At the - when he purchased them he intended that but then he said they were

going to come out of the company and be with us, for however long we needed them. They were going to be out, coming through his - the director's loan account.

Q. There is no documentary record of what you just described at all, is there?

A. All right, well, I'm - what he told me, I'm telling you what he told me. That's all.

[Day 3, page 221]

Given that there was no mention of this agreement prior to her cross-examination and no contemporaneous record of it, I do not accept that there was any such agreement.

Property purchases from 2013 onwards

39. On 18 April 2012 (Graham's 65th birthday) the Insurance Policy monthly payments ceased and with them the condition in the Policy preventing Graham from working. On 1 October 2013 Graham was appointed a director of PEF and became its sole director when Elliott resigned on 3 November 2013.

40. It is clear that there was a change in the way property transactions were dealt with from 2013 onwards. Between 2013 and 2014, six properties were purchased in the joint names of Graham and Helen and there were no more purchases in the name of Elliott. In April 2015, at a time when Graham was seriously ill in hospital, Helen arranged for a property at Flat 4 Park Place, Richmond Park Road, which had been purchased in Elliott's name, to be sold. Later that year, she arranged for two other properties previously registered in Elliott's name to be transferred to Graham and herself.

41. It is not clear what prompted the changes to the way in which the ownership of the properties was handled but the most likely explanation is a desire on Helen's part to ensure that she was made a joint owner of the properties for the sake of her financial security. The changes also coincided with the deterioration in the relationship between Graham and Elliott.

42. At around this time, Graham and Mr Young sold the Tomo Property and the Dysons Property (in May 2012 and February 2013 respectively). Graham received around half a million pounds in total from the sales.
43. In 2014, Graham and Helen decided to move home. The purchase of their new home, 25 Blake Hill Avenue, Poole, was completed in September 2014 at a price of £804,000. The sale of their previous matrimonial home, 34 Branksome Towers, Poole, at a price of £660,000, was completed in September 2015.

Graham's death

44. On 2 April 2015, whilst in Boca Raton, Florida, Graham suffered from a seizure, caused by a bleed on his brain and was hospitalised for forty nights, during which period he suffered further seizures which appeared to affect his cognitive capacity and speech. He made a partial recovery and in May 2015 he was discharged from hospital and returned to the UK where he stayed at a convalescent home.
45. In December 2015 Graham and Helen returned to Florida (by boat), where they remained for the winter. In April 2016 Graham and Helen began a cruise from Fort Lauderdale, Florida to Southampton, with a scheduled stop in Lisbon, Portugal. While in Lisbon on 19 April 2016, Graham suffered a stroke or cerebral haemorrhage following a fall and was hospitalised. Following two operations to stop bleeds on his brain, Graham was admitted into intensive care and fell into a coma. Graham remained in a coma until his death on 5 June 2016, aged 69.
46. On 29 April 2016, Helen transferred £130,000 from Graham's Account 9778 at RBS to her own bank account.
47. On 1 May 2016, Helen signed a form terminating Graham's appointment as director and appointing herself as a director in his place. Her evidence is that she did this on advice from Companies House. The form also changed PEF's registered office from Mr Arad's office to her home address. In July 2016 Helen resigned as a director and company secretary and Elliott was reappointed.

48. Probate of Graham's Will was granted to Elliott, Louise and Mr Arad on 25 February 2019.
49. In 2019, after these proceedings were issued and the 2008 Will admitted to Probate, Helen issued a claim under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975. That claim is stayed pending the outcome of these proceedings.

THE CLAIM TO THE PROPERTIES

50. PEF's claim relates to the following 12 properties:
 - (i) **Flat 1, 252 Holdenhurst Road**, Bournemouth BH8 8AY;
 - (ii) **Flat 34, Carlton Grange**, 28 Braidley Road, Bournemouth, BH2 6JX;
 - (iii) **Flat 1, 15 Queen's Road**, Bournemouth, BH2 6BA;
 - (iv) **Flat 2, 15 Queen's Road**, Bournemouth, BH2 6BA;
 - (v) **Flat 3, 49 Surrey Road**, Bournemouth, BH4 9HR;
 - (vi) **Flat 7, Hannah Grange**, 46 Northcote Road, Bournemouth, BH1 4SQ;
 - (vii) **Flat 4 Carlton Court**, 428 Christchurch Road, Bournemouth, BH1 4AY;
 - (viii) **Flat 1 Cresta Court**, 3 Crescent Road, Bournemouth, BH2 5SS;
 - (ix) **Flat 12 Knole Hall**, 60/64 Knyveton Road, Bournemouth, BH1 3QX;
 - (x) **Flat 9 Caranton**, 5a Percy Road, Bournemouth, BH5 1JF;
 - (xi) **Flat 6, 7 Holdenhurst Road**, Bournemouth, BH8 8EH; and
 - (xii) **Flat 3, Cecil Lodge**, 7 Cecil Road, Bournemouth, BH5 1DU.
51. PEF's case was that it advanced the purchase monies for the purchase of all the properties in dispute and that they are presumed to be held on resulting trust for it. PEF contends that the evidence in the case does not rebut the presumption and that, on the contrary, it confirms PEF's intention that the properties were and would remain beneficially owned by it.
52. Save in respect of property no (ix) Flat 9 Caranton, which Helen says she and Graham held as tenants in common in equal shares and in which she claims a 50% beneficial

interest, Helen contends that she is the sole beneficial owner of all the properties save for property no (vi) Flat 7 Hannah Grange, which she sold on 25 May 2018 and in relation to which she claims to have been the sole beneficial owner before its sale. Helen's case is that she was always the sole beneficial owner of the four properties registered in her sole name (nos (i), (ii), (iii) and (v)) and that, since Graham's death, she has been the sole beneficial owner of the remaining seven properties registered in her and Graham's joint names as the surviving beneficial joint tenant. In each case, Helen says that Graham gifted her her interest.

53. Helen denies that any of the properties were purchased using PEF's funds. Her case is that the funds used were Graham's. In addition, with regard to the eight properties in joint names, she relies on express declarations of trust entered into by Graham and her at the time of purchase which she contends are conclusive as to the beneficial interests.
54. It is important to understand that the sole basis of PEF's claim to beneficial ownership of the properties is that PEF paid for them and that they are (or, in the case of Flat 7 Hannah Grange, it was) consequently held on resulting trust for PEF. No claim was advanced on any wider constructive trust, agreement or estoppel basis. It follows that unless PEF can establish that it provided the funds for the properties, evidence of an intention or understanding on the part of Graham or on the part of anyone else that the properties would belong to PEF or that they would be bequeathed to Graham's children, does not assist PEF's case.

Legal principles

55. The principles governing the law of resulting trusts are not in dispute. As stated by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v. Islington LBC* [1996] AC 669, (pages 708-9):

“[W]here A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money)....”

56. PEF accepts that, in order to rely on the presumption of a resulting trust, it bears the burden of proving that it provided the purchase moneys for the properties; *Constandas v. Lysandrou* [2018] EWCA Civ 613 at [31] (per Rose J).

57. PEF relies on an observation of Megarry J in *Re Kayford Ltd* [1975] 1 WLR 279 in support of the proposition that the absence of a separate bank account is not fatal to the existence of a trust. In that case, deposits paid by customers of a mail-order business were held to be subject to a trust in their favour. Megarry J referred in the following passage to the essential requirements for the creation of a trust (page 282A-B):

“There is no doubt about the so-called " three certainties " of a trust. The subject-matter to be held on trust is clear, and so are the beneficial interests therein, as well as the beneficiaries. As for the requisite certainty of words, it is well settled that a trust can be created without using the words " trust" or " confidence " or the like: the question is whether in substance a sufficient intention to create a trust has been manifested.”

58. As well as denying that PEF provided the purchase monies for any of the properties, and hence that any resulting trust could arise in PEF’s favour, Helen relies, in relation to the eight jointly owned properties, on the principle that where there is an express declaration of trust, such a declaration is conclusive as to beneficial interests unless the validity of the declaration itself is impugned, e.g. on the grounds of fraud, mistake or undue influence. In *Pettitt v Pettitt* [1970] AC 777 Lord Upjohn held as follows (at page 813E):

“... the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of its acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction the parties cannot go behind it at any time thereafter even on death or the break-up of the marriage.”

59. In *Goodman v Gallant* [1986] Fam 106 a unanimous Court of Appeal (Slade and Purchase LJ and Sir Roualeyn Cumming-Bruce) held as follows (pages 110H – 111A):

“If, however, the relevant conveyance contains an express declaration of trust which comprehensively declares the beneficial interests in the property or its proceeds of sale, there is no room for the application of the doctrine of resulting implied or constructive trusts unless and until the conveyance is set aside or rectified; until that event the declaration contained in the document speaks for itself.”

60. In *Turton v Turton* [1988] Ch 542 Nourse LJ (with whom Kerr LJ agreed) held as follows (page 546F):

“Although the plaintiff contributed nothing to the purchase, the defendant now accepts that the express declaration of trust contained in the conveyance conclusively defined the parties' respective beneficial interests in the property at the date of its acquisition. Any lingering doubts which there may have been on that score have finally been dispelled by the recent decision of this court in *Goodman v. Gallant* [1986] Fam. 106.”

61. For PEF, it was submitted in response that these authorities establish that a declaration of trust is binding on the parties to the declaration but they do not establish that a declaration of trust is binding on third parties. PEF contended that, if a declaration of trust were binding on third parties, it would mean that in any case in which X provides monies to Y and Z for the purchase of a property (with no intention of gifting that property to Y and Z), Y and Z could defeat the resulting trust that would otherwise arise simply by executing an express declaration of trust as between themselves thereby ‘comprehensively declaring’ the beneficial ownership including as against X (who intended nothing of the sort). PEF was not a party to the declarations of trust. It was submitted that the declarations of trust are therefore not conclusive of PEF’s beneficial interest. Whilst the fact that Graham signed the declarations of trust could be treated as evidence of PEF’s intention, the evidence in the round showed that it was PEF’s consistent intention that the properties in joint names would remain PEF’s.

Did PEF provide the purchase monies for the properties?

62. The primary issue in the case is whether or not PEF provided the purchase monies for the properties. Unless PEF succeeds on that issue, the other issues as to whether a resulting trust is to be presumed or any presumption is rebutted and any issue as to the effect of the declarations of trust do not arise.
63. As noted above, PEF did not have its own bank account. The funds used to purchase the properties came from accounts in Graham's name. PEF's case is that Graham intended that the funds were beneficially owned by PEF; that is to say, the funds in the accounts were held by him as bare trustee for PEF. In the absence of evidence from Graham himself, the Court must make inferences as to his intentions from the documents and the surrounding circumstances.
64. All the properties with the exception of Flat 6, 7 Holdenhurst Road, were funded from one or other of three bank accounts. The relevant accounts were as follows:
 - (1) RBS Account no. 10109778, named 'Graham Dines Provincial Equity Finance Re Hendon No. 3 Business Current Account' ("**Account 9778**"); together with
 - (2) RBS Account no. 10057406 (business interest-paying current account) ("**Account 7406**"); and, more latterly,
 - (3) Halifax Account no. 26412254 'Graham Dines' ("**the Halifax Account**").

Account 9778

65. Account 9778 was set up following an introduction of Graham to a bank manager at RBS. The account was named 'Graham Dines Provincial Equity Finance Re Hendon Number 3 Business Current Account' and this name appears on the account statements. Helen was a joint signatory on the account.

The parties' cases

66. PEF's case was that, whilst Graham sometimes used Account 9778 for non-company transactions, the account was essentially PEF's and the funds in it were intended by Graham to be PEF's.

67. Mr Arad's evidence in his witness statement, referring to Account 9778, was as follows:

“The one thing that Graham always ensured was that he used this Main RBS Account as the main PEF bank account and the funds in this account were used to buy and sell PEF's Bournemouth properties. Whilst the bank account was not in PEF's name, as can be seen, PEF does appear in the name of the bank account. From my discussions with Graham when we went through his finances, it was always his intention that the properties purchased using funds from this bank account would be treated as PEF's properties and this account was used as the PEF bank account.”

68. As set out above, any non-company transactions paid for from Account 9778 were in due course identified by Scodie Deyong and incorporated into the calculations of Graham's shareholder loan account from time to time and of PEF's (separate) assets respectively for the years up to and ending 31 March 2013. The evidence of Mr Arad was as follows:

“..it took a lot of working through each to work out the difference between company and personal matters to decide which transactions should go in the company accounts which had to be picked up in his tax returns.”

69. Thus, according to PEF, it is clear that at all material times Graham considered that there was a distinction between his personal assets and those belonging to PEF which supports the inference that he held the money in Account 9778 on trust for PEF.

70. On behalf of Helen, it was submitted that the starting-point when considering the issue of ownership of any of the funds in this case was that all the money which Graham used to fund his various business interests came from his share of the proceeds of sale of Grove Motors. There were no external investors and no third party with a financial

interest in the business. All business-related decisions were at all material times taken by Graham and no one else. Until Graham's 65th birthday and the cessation of payment under the Insurance Policy, Elliott was a nominal director of PEF but in practice Graham was in control and could take whatever decisions he wanted in relation to the business. It was submitted that PEF was set up by Mr Arad as a tax-saving device.

71. It was further submitted on behalf of Helen that the clearest and most instructive evidence as to Graham's intention in relation to this account is the wording of his codicil dated 21 May 2004, his Will dated 20 October 2005 and his Will dated 13 July 2006. His instructions were that a legacy for Helen was to come so far as possible from:

“... monies held by me on deposit account in my sole name at Royal Bank of Scotland Bournemouth such monies currently on deposit belong partly to Provincial Equity Finance Limited after deduction of [Helen's legacy] the balance of such monies on such deposit account which belong to me rather than the company are to be divided equally between [Elliott and Louise]”

72. It was submitted that these instructions show that Graham regarded funds in the account as at least in part his own money rather than money held on trust for PEF. If the money was PEF's, it was not Graham's to give away in the way he told his solicitors that he wanted to. It was further submitted on behalf of Helen that these instructions were consistent with the way that Graham used the account, which is to say that he used it freely however he wanted to. Helen's oral evidence was as follows:

“It was Graham's money. It was all his money. He was in control of the money. He was in control of the company. It's all him. ...”

“It was used for company business but it was also used for personal business. Our insurance was out of it. Our cars were out of it. My maintenance where I spent for my food every week was out of it. I mean, I can name you many, many things, but they were used for personal business. Graham kept all these accounts flowing as his own.”

[Day 3, page 117/20-23, page 147/19-20]

73. It was further submitted on behalf of Helen that undue weight should not be given to the accounting treatment of Account 9778 as a guide to Graham's intentions. Graham was not good at paperwork and the use of a corporate vehicle was a matter of tax-saving which was left to Mr Arad. The fact that Mr Arad treated the account as a company account does not mean that this reflected Graham's understanding or intention.

74. It was, nevertheless accepted by Helen in her evidence that Account 9778, which she referred to in her witness statement as "the RBS Company Account", was used for PEF's purposes. Her witness statement read as follows:

"41. The RBS Company Account was held by Graham personally, not in the name of PEFL however this was used for the purposes of PEFL. ...

42. I would only make transfers out of the RBS Company Account before Graham's death with this knowledge and approval. Any transfers that were made, which I cannot recall the details of now, would have related to the business of PEFL."

75. When it was put to Helen in cross examination that Account 7406 was also a company account, in addition to Account 9778, her response was clear:

"Okay. I want that to be out there, that there's a 9778 account which is *the* company account for Provincial Equity and then there's this account. So, the other one is *the* account and this money does not come for those three properties from *the* Provincial Equity account." [Day 3 page 216/16-21]

Discussion

76. Account 9778 was a personal account of Graham, albeit one which included PEF's name. Graham did not open a business account for PEF itself as he could have done and was advised to do by Mr Arad. The use of a personal account would in itself suggest that Graham intended that the funds in the account would belong to him rather than to PEF, a company in which he was not until 2013 a director. Elliott was a director of PEF but was a not a signatory on the account.

77. I accept nevertheless that the fact that Graham operated two accounts at RBS Bournemouth, one with PEF's name included in the name of the account, and the other not, provides some support for the inference that Graham intended that the funds held in account 9778, would belong to PEF, in contradistinction to Account 7406 which, as it did not include PEF's name, might be considered his personal account.
78. Had Graham consistently and systematically used Account 9778 for corporate business, in particular the funding of the purchase of properties which were later treated as PEF's assets in PEF's accounts, as Mr Arad's witness statement claimed that he did, this would have provided further support for the inference that Graham intended the funds in the account to be PEF's. But that is not in fact what happened. Mr Arad's assertion that Account 9778 was the account used for PEF's property purchases is incorrect. According to the Schedule prepared on behalf of PEF for the trial, funds from Account 9778 were used to purchase only three of the properties (nos (v), (vi) and (xii) in the list above). The other properties were purchased with funds from the other accounts. Graham used both Account 9778 and Account 7406 indiscriminately to purchase properties that were treated as PEF's properties. Both bank accounts were treated in the same way when it came to preparing PEF's financial statements. It therefore did not follow from the inclusion of the name PEF in the account documentation that Graham operated the account any differently from Account 9704.
79. Graham appears to have used the Account 9778 freely however he wanted for day-to-day expenditure, including matters such as maintenance payments for Helen and BUPA payments, as Mr Arad confirmed. It was also used to fund the purchase of Helen and Graham's matrimonial home, 25 Blake Hill Avenue, which was not alleged to be a PEF property. The routine use of the account for personal transactions is not in itself fatal to the claim that the funds in the account were held on trust for PEF; as noted above, for the purpose of preparing PEF's accounts, Scodie Deyong segregated the company and the business transactions. But the fact that the account was used in this way does not provide support for, and if anything undermines, the inference that Graham intended the funds in the account to be PEF's.

80. Furthermore, I accept the submission on behalf of Helen that the wording of Graham's codicil dated 21 May 2004, his Will dated 20 October 2005 and his Will dated 13 July 2006 are inconsistent with an intention on Graham's part that the funds in Account 9778 were PEF's. That wording presupposed that Graham owned a part, and PEF a part, of the money in the account. There was, however, no means of identifying which part was Graham's and which part was PEF's. Unlike in *Re Kayford*, there was therefore no certainty of subject-matter which is essential to the creation of a trust.
81. Overall, I am not satisfied on the evidence that Graham intended that the funds in Account 9778 were PEF's. In my view, the funds were intended to be his personal funds. Any resulting trust arising from the provision of funds from Account 9778 for the purchase of properties would therefore have been in favour of Graham, not PEF.

Account 7406

82. Account 7406 was an account in Graham's name with no reference in the bank documentation to PEF. Helen was made a joint account holder at some point between October 2014 and October 2015. The exact date on which she became an account holder was unclear. It is possible that this happened at a time when Graham was seriously ill. Helen produced a bank statement dated October 2015 shortly before the hearing but said that she could not find any other statements which would have established exactly when in 2014 she was made a signatory.

The parties' cases

83. In support of its claim that the funds in Account 7406 were intended by Graham to be PEF's, PEF relies on (i) the fact that details of transactions on Account 7406 were required by Scodie Deyong to prepare PEF's accounts up to 2013, (ii) Mr Arad's oral evidence that Account 7406 was regarded as a company account, (iii) Helen's acceptance that the properties purchased in 2007 with funds from Account 7406 were acquired by PEF, (iv) the fact that Account 7406 was known as the Rental Account and (v) the fact that it was generally the account into which rent monies from properties were paid, on which PEF paid tax.

84. Account 7406 was not expressly referred to in the Particulars of Claim which only referred to Account 9778. Nor was it mentioned in Mr Arad's witness statement. The first occasion on which Account 7406 was mentioned as one of the sources of monies used to buy properties, and therefore the first time that PEF suggested that Account 7406 was also an account which Graham held on bare trust for PEF, was in PEF's Counsel's skeleton argument for the trial.
85. On behalf of Helen, it was submitted that the absence of any reference to PEF in the account name is an indication that it was not intended to be other than a personal account. In support of her case that the funds in the account were Graham's not PEF's reference was also made to (i) two emails from Jason Wilmot, a manager with RBS, to Graham in 2007 in which Account 7406 was described as Graham's "personal account"; (ii) the fact that Helen was made a joint account holder.
86. When asked in cross examination about Account 7406, Mr Arad said that he did not know that some of the disputed properties had been purchased using money from Account 7406 and that he did not know until after Graham's death that Graham had added Helen as a joint holder to Account 7406. When asked whether Graham thought of Account 7406 as his personal account, Mr Arad said that he was "not sure" because he could not recall the account numbers and he did not tend to look at individual bank statements as he left that to staff who would bring him the "global picture".

"No, all that would happen is if it was not reflected my staff would have prepared the accounts. If money went into a different account which Graham might have had or not had, I can't comment on that, we would create the entry that the rent belongs to the company and in essence they would credit the loan account probably. Or possibly even treat that other account as a company account. I'm not sure at the moment, to be honest." [Day 2 page 33/10-20]

87. It was submitted that this showed Scodie Deyong approaching their task of preparing accounts from a starting assumption that rental income from the properties was beneficially owned by PEF, which was necessary in order achieve the tax saving for which PEF was designed but this was not a reflection of Graham's true intention.

Reference was also made to the description given by Mr Arad in re-examination of rental income from the properties as being “Graham’s rental”.

Discussion

88. PEF’s case in relation to Account 7406 is weaker than its case in relation to Account 9778. There was no reference to PEF in the account documentation. RBS appears to have considered the account to be Graham’s personal account. Mr Arad did not identify Account 7406 as being PEF’s account in his witness statement. Helen was, at least from 2014 onwards, a joint account holder.
89. As with Account 9778, Account 7406 was freely used by Graham for his personal purposes as well as company purposes. Given the similar way in which both accounts were operated, the references in Graham’s 2004 codicil and 2005 and 2006 Wills to monies on deposit at RBS belonging partly to him and partly to PEF may well have been references to the money in Account 7406 as well as Account 9778.
90. Against this background, the fact that transactions on Account 7406 were identified and treated as PEF’s transactions in PEF’s accounts, the fact that funds from Account 7406 were used to fund the purchase of certain of the properties which were treated as PEF’s (nos (i) to (iv) in the list above) and the fact that rental monies were paid to Account 7406 is not, in my judgment, sufficient to establish the relevant intention on Graham’s part that the funds in the account were PEF’s funds rather than his own funds.

The Halifax Account

91. The Halifax Account was opened by Graham as a personal account with no reference to PEF in about 2012. It is common ground that the funds in this account were introduced from the sale of the Tomo and Dysons Properties. The Tomo Property was sold on 2 May 2013 for £325,000 of which Graham’s share was £218,980.25. This was transferred by Matthew & Matthew to Account 9778 on 2 May 2012. On the same day, Graham transferred £219,000 from Account 9778 to the Halifax Account.

The Dysons Property was sold on 26 February 2013 for £382,000. On 27 February 2013 Matthew & Matthew transferred Graham's share of the proceeds of sale to the Halifax Account.

92. The funds in the Halifax Account were used to pay for the four properties purchased in Graham's and Helen's joint names with declarations of trust (properties (vii), (viii), (ix) and (x)).
93. Mr Arad was given the figures for the interest received on the Halifax Account for the purpose of preparing Graham's tax return but was not shown the bank statements and did not see them until after Graham's death.

The parties' cases

94. PEF's case, based on Mr Arad's evidence, was that it is to be inferred that Graham intended the funds in the Halifax Account to be PEF's because under the 2008 Will the Tomo and Dysons Properties were to be left to Louise and Elliott, together with his shareholding in PEF, and it was Mr Arad's evidence that Graham repeatedly told Mr Arad as late as February 2015 that this was what he intended.
95. PEF also relies on the fact that the net sale proceeds from the Tomo Property were in the first instance paid into Account 9778 in accordance with Graham's instructions to Sue Roberts at Matthew & Matthew that the sale proceeds were to be sent to "my PEFL Account 10109778 as normal". It was further submitted that the proceeds of properties purchased using funds from the Halifax account ended up in Account 9778. According to PEF, the inference to be drawn from these circumstances is that the sums held in the Halifax Account belonged beneficially to PEF.
96. For Helen, reliance was placed on the fact Mr Arad was unaware of the Halifax Account when Mr James prepared the PEF accounts in 2013 and first saw bank statements relating to the Halifax account after Graham's death. The only knowledge Mr Arad said that he had in relation to the Halifax account concerned the interest which had been earned on the account which Graham gave him for the purposes of his personal income tax return. Consistently with this, those interest figures were

declared as Graham's personal income in his tax returns for 2012/13, 2013/14 and 2014/15. It was common ground that the 70% beneficial interest in the Tomo and Dysons Properties had always been treated by Graham as his personally and he had always paid tax on the rental income from those two properties.

97. It was further submitted on behalf of Helen that Mr Arad had been forced to recognise in cross-examination that Graham's actions in transferring the money to the Halifax Account indicated that he did not intend the money to go into PEF,

“Q. The truth is that Graham took steps to make sure that the proceeds of sale of both Tomo and Dysons ended up in his personal Halifax account, did he not?

A. I can't comment on the reason why he put them there but he did.

Q. If we look at page 193 of your witness statement and paragraph 104 you tell his Lordship in paragraph 104 that when the Tomo and Dysons -- the Tomo property and Dysons, the remaining two properties that Graham retained from the sale of Grove Motors was sold, "I am sure that Graham intended his share of the sale proceeds to be introduced into his loan account in the company in the same way as he did with the proceeds of sale of the previous Grove Motor properties." Mr Arad, you cannot possibly be sure about that and all the evidence we have points to the opposite conclusion, does it not?

A. It does.

Q. Do you accept that you cannot possibly be sure about that?

A. I am sure what Graham told me and the transfer of monies may be contradicts that but Graham did tell me that that is what he wanted.

Q. And then changed his mind and did the opposite, did he not, Mr Arad?

A. On the face of these transfers, yes. [Day 2 pages 77/11 – 78/15]

98. It was further submitted on behalf of Helen that Mr James's evidence was consistent with Graham treating the Halifax Account and the proceeds of sale of the Tomo and Dysons Properties, which were paid into the Halifax Account, as his own personal property. Mr James explained that his understanding from a telephone conversation he had with Graham on 6 March 2013 was that the Tomo Property was a personal asset of Graham's. Consistently with this understanding, when preparing the update to Graham's shareholder loan account for the year ended 31 March 2013, Mr James recorded both a credit of £218,980.25 described as "*Proceeds received re sale of Unit E*" and a debit of £219,000 described as "*Transfer to Halifax*". These entries indicated that the proceeds of sale were paid into PEF and immediately taken out. This is inconsistent with the Halifax Account being an account held on trust for PEF. If it had

been, there would have been no payment out recorded in the shareholder loan account because the transfer from Account 9778 to the Halifax Account would have been a transfer from one PEF account to another but the money would have remained 'in' PEF. With regard to the Dysons Property, Mr James' oral evidence was that there was no transaction relating to it in any of the documentation he was considering. He was struggling to get instructions from Graham who he had the impression had "lost interest". He had several other questions to ask Graham so he thought "if it's nothing to do with the company I'll move on and get to some more queries."

Discussion

99. The absence of any reference to PEF in the bank account documentation, the fact that Graham did not show statements from the Halifax Account to Mr Arad for the purpose of preparing PEF's accounts, the fact that interest on the Halifax Account was treated for tax purposes as Graham's and Mr James' evidence about his conversation with Graham leading to the Tomo Property being treated as a personal asset all indicate that the funds in the Halifax Account were understood and intended by Graham to be his own personal funds, not PEF's.
100. Contrary to PEF's case, the fact that the proceeds of sale of the Tomo Property were initially paid into Account 9778 does not support the inference that Graham intended funds in the Halifax Account to be PEF's, given my finding that the funds in Account 9778 were not PEF's.
101. I do not accept Mr Arad's evidence that he was told by Graham as late as February 2015 that Graham intended to leave the Dysons and Tomo Properties to his children. By February 2015 the properties had been sold two years previously and the proceeds of sale spent on other properties bought in Graham and Helen's joint names.
102. For these reasons, I consider that the funds in the Halifax Account were Graham's own funds, not PEF's.

Flat 6, 7 Holdenhurst Road

103. This property was not funded directly by a payment from any of the bank accounts but from the proceeds of sale of a property called 26 Bourne Pines (“**Bourne Pines**”). Mr James explained in his evidence that Graham had confirmed to him during a telephone conversation on 6 March 2013 that Bourne Pines should be “taken out” of PEF. Mr James achieved this by adjusting the PEF stock list for the year ended 31 March 2013 and by adding a debit entry of £130,291.51 to Graham’s shareholder loan account labelled “Removal of Bourne Pines - E Dines”. Thus, on Graham’s express instructions to Mr James, Bourne Pines had been “taken out” of PEF and was Graham’s personal property.
104. The purchase of Flat 6, 7 Holdenhurst Road was funded directly from the proceeds of sale of Bourne Pines. It follows that there are no grounds for inferring that it was funded by PEF rather than Graham.

Conclusion in relation to the primary issue

105. PEF has failed to establish that it, rather than Graham personally, provided the purchase monies for any of the properties. The claim to beneficial ownership of the properties based on a resulting trust in its favour must therefore fail.

Other issues relating to the properties

106. Given my conclusion that PEF did not provide the funds to purchase any of the twelve properties, issues raised by Helen as to whether any presumption of a resulting trust was rebutted and issues as to the effect of the declarations of trust entered into in relation to the jointly owned properties fall away.
107. If I had concluded that PEF had provided the purchase monies for the properties, I would have found that a resulting trust arose in PEF’s favour in relation to the four sole named properties, which were all purchased in the period 2007 - 2009. The terms of Graham’s 2008 Will and the treatment of the properties in PEF’s accounts between

2007 and 2013, prepared by Scodie Deyong with Graham's input and approval, were consistent with an intention on Graham's part that PEF was the beneficial owner of the properties. Helen accepted in her evidence that the properties purchased in 2007 were PEF's properties. I reject Helen's evidence that Graham had decided to purchase these properties as long-term investments for Helen and him personally.

108. With regard to the four jointly owned properties, I would have concluded that the declarations of trust rebutted any presumption of a resulting trust. Although the declarations were signed by Graham in a personal capacity rather than on behalf of PEF, I accept the submission on behalf of Helen that it would be artificial to differentiate between Graham's intention and PEF's in this context, given that Graham was PEF's decision maker and (from 2013 onwards) its sole director. It would have been unnecessary to consider whether a declaration of trust is in principle binding on a third-party provider of finance.

THE CLAIM TO £130,000

109. PEF claims an account or equitable compensation in respect of the sum of £130,000 transferred by Helen from Account 9778 to her bank account on 29 April 2016, after Graham fell into a coma, on the basis that the money belonged to PEF and was transferred without authority and in the knowledge that it was company money.
110. Helen's case is that the funds in Account 9778 belonged to Graham and that she had been authorised by him to make the transfer. Her explanation for the transfer was that the £130,000 represented her half share of the net proceeds of sale of their jointly owned matrimonial home, 34 Branksome Towers (£280,829.98), which had been sold in September 2015. She claimed that her entitlement to the money had been agreed with Graham in Florida in around December 2015 or January 2016. She said that Matthew & Matthew had made an error in not paying her half the proceeds of sale in the first place.

111. Helen's explanation was, for a number of reasons, not credible. First, by April 2016 any interest that Helen had in the jointly owned matrimonial property at Branksome Towers had already been transferred to the jointly owned matrimonial property at 25 Blake Hill Avenue which had been purchased on 12 September 2014 and which was left to Helen in Graham's Will. There was no reason for Graham to agree to pay her any further sum.
112. Second, if Helen's evidence that she was entitled to 50% of the net proceeds of sale of 34 Branksome Towers were true, she would have been entitled to, and presumably taken, £140,415, not £130,000. The explanation for the discrepancy in her witness statement was that there were insufficient funds in Account 9778 but the balance in the account at the time was £142,808.85.
113. Third, there was no documentary evidence of any instructions to Matthew & Matthew to pay her half the proceeds of sale of Branksome Towers and no record of any mistake having been made by Matthew & Matthew and no record of any complaint being made by Helen about any mistake, as would be expected, if Helen's evidence were true.
114. Given my conclusion that the funds in Account 9778 belonged to Graham not PEF, however, PEF's claim in respect of the transfer of £130,000 necessarily fails.

CONCLUSION

115. I appreciate that my decision with regard to the ownership of the properties and the £130,000 may come as a great disappointment to Elliott and Louise who may feel that it is not the outcome of the case that Graham would have wished for. If the outcome differs from what Graham would have wished for, that may be seen as a consequence of what Mr Arad referred to as Graham's hopeless disorganisation when dealing with paperwork and his failure over many years to organise and document his business finances and transactions with greater rigour.
116. For the reasons set out above, the claim is dismissed.