



Neutral Citation Number: [2024] EWHC 2239 (Ch)

Case No: PT-2023-000808

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

The Rolls Building, 7 Rolls Buildings,  
Fetter Lane, London EC4A 1NL

Date: 05/09/2024

**Before :**

**DEPUTY MASTER LINWOOD**

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**Between :**

**Claimant**

**MICHAEL PARKER**

**- and -**

**Defendants**

**(1) THOMAS PARKER-BOWYER**

**(2) KIMBERLEY PARKER-BOWYER**

**(3) BRETT WRIGHT**

**Mr Gavin McLeod** (instructed by **Bartons Solicitors**) for the **Claimant**  
**Mr Piers Digby** (instructed by **Blaser Mills Law**) for the **Defendants**

Hearing dates: 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> July 2024

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**JUDGMENT**

This Judgment was handed down remotely at 2.00pm on Thursday 5<sup>th</sup> September 2024. It was sent by email to the parties' legal representatives and to the National Archives.

## **Deputy Master Linwood:**

1. This claim is part of an especially acrimonious father/son dispute. In it, somewhat unusually, I must determine whether the Claimant, on his own case, is now lying about being untruthful in a key document. I adopt the first names of the parties and witnesses for ease of reference and with no disrespect. The father, the Claimant, Mike, claims first against one of his two sons, the First Defendant, Tom, for a declaration that Tom holds a property known as the House on constructive trust for him (“the Trust Claim”). Secondly Mike claims against Tom and the Second Defendant, Tom’s wife Kim, for an order for delivery up or payment of the value of what Mike says are valuable goods left by him in the House (“the Chattels Claim”), and thirdly against all three Defendants for damages for conversion of various of the chattels.
2. Tom counterclaims the reimbursement of electricity supplied by OVO, an injunction to restrain Mike from entering the House or its land and damages for trespass. Below I will set out the factual background to the property and the dispute, in as neutral terms as I can, indicating where the parties differ. I mention the procedural background and then turn to the issues I am to determine, the law, the evidence of fact, my findings of fact and my decisions on the issues. The use of [ ] is to a paragraph in this judgment, unless the context indicates otherwise.

### **BACKGROUND - FACTS**

3. Mike has been involved in a variety of businesses in his long career from which he has made substantial sums of money. He and his immediate family have enjoyed a commensurate lifestyle. In about 2007 he bought a large property (“the Property”) at Bourne End, Buckinghamshire of which the House is a part. It then comprised of one residential building, a swimming pool and stable block on 10 acres of land. He spent about 18 months refurbishing and remodelling it into a luxury 7 bedrooed house which he then moved into with his then second now ex-wife, Barbara, her two children and Tom and Eddie, who also lived with their mother, Jane, Mike’s first wife, at weekends.
4. Mike also built a 6-car garage, converted the former garage into residential accommodation for staff and then constructed what became 3 residential units known as Babs Park, an office building plus various garages and storage areas. The stable block was retained.
5. He places considerable emphasis on ensuring his sons – Tom, 31 and his brother Eddie, 34 – are well provided for and on an equal basis. Mike says as an example he bought two adjoining semi-detached properties in Wooburn Green in November 2006 when the boys were children, at £250,000 each, which were unconditional gifts to his sons; on reaching their majority they could do what they wished with them, albeit that he would have attempted to change their minds if they wanted to do something unwise.
6. Tom says that this was just Mike placing assets in their names to put them beyond reach of HMRC and other creditors such as their mother. But the fact remains these purchases took place. Mike also says he gave his sons large cash sums at Christmas, usually £5,000 each, and Tag Heuer and Rolex watches on their 21<sup>st</sup> and 25<sup>th</sup> birthdays

respectively. He describes Tom as more entrepreneurial than Eddie, and very ambitious, both characteristics that he encouraged.

7. Tom sold one of the Wooburn properties releasing about £252,000 equity which he put towards the purchase in November 2014 of a property at 14 Chenille Drive, High Wycombe, for £250,000, where he went to live. Mike thought it was a good investment so in March 2015 bought a flat, 11 Chesterfield House, (“the Flat”) in that road, for Tom and Eddie, but in the name of a company, Echo Tango (Holdings) Ltd (“ETH”). Tom and Eddie are equal shareholders in and directors of ETH.
8. Also in 2015 Mike says he considered transferring the House and the remainder of the Property (“Babs Park”) to Tom and Eddie respectively, as he thought this would mitigate inheritance tax. As he trusted his sons in his mind to him it made no difference as to whose name was on paper as the owner; he would continue to live, manage and maintain and develop the Property, run his businesses from there and use it for income for his life and in due course for the benefit of his sons.
9. Mike says he discussed these plans from about 2015 on a regular basis with his wider family as well as Tom and Eddie. Tom denies this, asserting that both he and Mike are very private as to their personal financial affairs, with which Kim agrees. Mike maintains that the transfers were conditional on agreement that he would be financially responsible for the Property until at least his death; he would always retain control until then.
10. Mike says Tom sold 14 Chenille Drive in mid-2017 for £320,000 and moved into Babs Park for a short while with Kim, who he had met in 2016. They in February 2018 bought a house called Ashbrook in Ascot for £510,000, funded by the equity from 14 Chenille Drive, Kim and a mortgage, held as tenants in common. At this time, Mike says Tom and Kim wished to develop and improve Ashbrook, sell at a profit and move on to the next development opportunity, as a long-term business, which Mike supported. Not all of this is accepted by Tom.
11. In 2018 Mike divorced Barbara and thought the House with its 7 bedrooms and considerable costs too much for him alone. He therefore decided to refurbish Babs Park as his home with the House being used for special occasions and possible holiday and film location letting. At that time Mike says the two mortgages secured on the Property amounted to about £1.49M and they were to be repaid in 2019.
12. He considered his options were to sell the House; to remortgage the Property; or to transfer to his sons. In the first instance, he decided to sell. Both sons were then working for him, Tom for Smart Medical Clinics Ltd (“SMC”) on a salary of about £75,000 pa. He could not afford to pay the mortgage needed without Mike’s support. Mike says he discussed alternative options with his sons on various occasions and they agreed with his approaches.
13. Mike says he would not sell to Tom at a reduced price and would not have paid a £1.5M mortgage on his behalf and for his benefit, as that would mean him having to give Eddie an asset with a value of £1.5M and the same financial support, which he could not afford. Mike had a buyer in late 2018 but the sale did not proceed. By summer 2019 Mike says he had agreed with Tom that he would transfer the House to him on condition Tom would refinance, clear the existing charges and pay the new

lender from income Mike would provide, and that Mike would have control and use of the whole Property, would be responsible for upkeep and maintenance and could develop it as he saw fit for his lifetime. Tom denies this.

14. The mortgage was to be reduced to £1.2M with the shortfall of some £300,000 coming from the sale of the Flat owned by ETH, held jointly by Tom and Eddie. Mike said other costs such as stamp duty would be met by him as Tom had no income nor cash to meet them. Mike informed mortgage brokers a) that he would be gifting the equity in the House (about £750,000) to Tom - he did not tell them of the agreement with Tom that he would have control and use of it during his lifetime b) Tom would rent the House to pay the mortgage and upkeep and c) he had taken tax advice and this was to save inheritance tax.
15. I will turn to these matters in my findings of fact but for now observe that Mike set out intending to mislead the brokers and putative lenders as to a) and b) above. Mike endeavours to excuse this by saying that the lender's loan to value ratio and security would be unaffected. I do not agree.
16. In any event, on 12<sup>th</sup> August 2019 Mike emailed Allied Irish Bank, one of his lenders. He said:

“For once I have some positive news. My son, Thomas Parker, applied for a buy-to-let mortgage...[which]...has been approved...He will be borrowing £1.2 million and will be repaying, together with his current savings of £200,000 both AIB's loan (£700,000) and MT Finance's £700,000. The loan/mortgage is being facilitated by Yellow Stone Finance. The contact there is Miranda Khadr...you can call her...to confirm the above. **Please do not inform Yellow Stone that the bank are about to foreclose on the existing mortgage.**” (my emphasis).
17. Mike had told Miranda Khadr in an email dated 17<sup>th</sup> July 2019 that he was gifting the House to Tom “...at the full sales value of £2.65 million” and that “...the confirmed rental figure is £8,500 pcm on a 2 year rental agreement...”. On 14<sup>th</sup> August 2019 he wrote to the proposed lender, Cynergy Bank, and said he would be gifting the House to Tom and that he had “...taken appropriate advice...[and he was...] aware ...he was required to live for 7 years from the date of this occurring to enable it to be tax free.”
18. Mike's father, John, remarried at some point Mary. She died and her funeral took place on 30<sup>th</sup> August 2019, followed by a wake (“the Wake”) attended by all the family witnesses who gave evidence, save Kim. It was at the Wake that those witnesses say they all heard Mike explain his plans for the Property and the separation and gifting of Babs Park to Eddie and the House to Tom, subject to Mike's life interest. This is denied by Tom. Mike says he cannot specifically recall this discussion in those terms but it was entirely likely as the plan for the House was discussed at the Wake and he had by then entered into the agreement with Tom.
19. On 20<sup>th</sup> September 2019 the House was valued at £2,200,000 to include a one bedroom staff/family annex and garage for 6 cars, outdoor swimming pool, paddock and stable, in about 2.1 acres. Market rent was stated to be £66,000 per annum. On 1<sup>st</sup>

October 2019 Tom entered into a tenancy with Smartway Pharmaceuticals Ltd of the House at £8,000 per calendar month to be paid to Tom's personal account with Natwest for a fixed term of 12 months with a deposit of £24,000. Bird & Lovibond, ("B&L"), solicitors instructed jointly by Mike and Tom on 15<sup>th</sup> October 2019 confirmed the terms of the tenancy by providing a report on the same to the lender's solicitors, Priority Law. This tenancy, Mike says, was not a genuine one as it was the cover for his payment of the mortgage and outgoings to Tom in the sum of £8,000 per month.

20. Mike confirmed in his reply to B&L's letter to him and Tom of 28<sup>th</sup> October 2019 that the gift was "...for the purposes of death duties; it is not in any way for avoiding creditors (I don't have any)" and that was also the rationale behind the transfer. B&L said a Statutory Declaration by Mike would be required and that he would have to take independent legal advice, to which he agreed.
21. On 29<sup>th</sup> October 2019 Mike swore a Statutory Declaration before other solicitors. He confirmed he had entered the Transfer of his own free will and that he had received independent legal advice. At paragraph 10 he said, which on his current claim was clearly untrue:

"I confirm I no longer have any further interest in the Property."
22. The transfer moved at some considerable speed; it had to as on 21<sup>st</sup> October 2019 MT Finance's lawyers, Brightstone Law, made a formal demand for repayment as their bridging loan facility expired on 12<sup>th</sup> December 2018. They demanded full repayment of £790,628.13 by 4<sup>th</sup> November 2019 failing which possession proceedings would be commenced or receivers appointed.
23. All the legal formalities were completed in time so that the Transfer of Part ("the Transfer") transferring the House into Tom's sole name, plus discharge of the mortgages in default and their replacement as I have set out above all took place on 4<sup>th</sup> November 2019. Box 11 of the TP1, the Land Registry transfer form, referring to Declaration of Trust was left blank, so there was no mention of the House being held on trust.
24. As of that date the Property consisted of numerous buildings on the 10 acres:
  - (a) the residential property known as "the House"
  - (b) a collection of buildings known as "Babs Park"
  - (c) an outbuilding known as "the Stables"
  - (d) an outbuilding known as "the Annexe"
  - (e) an outbuilding known as "the Gatehouse"
  - (f) the remainder of the surrounding "Land".
25. The above buildings at that time had multiple uses for Mike's businesses which Tom and his brother Eddie were also employed in; Babs Park was offices and residential,

other buildings were used for storage of diverse items such as a marquee, bar and floor for functions in the grounds, refrigerators for storage of medicines and so on.

26. On 26<sup>th</sup> November 2019 the sum of £8,000 was paid by Mike out of a business current account of SMC with the description “On-Line Banking Bill Payment to Smartway Rent Ref Smartwaypharmarent.” The same payment/description appears on 4<sup>th</sup> December, 15<sup>th</sup> January, 10<sup>th</sup> February and 11<sup>th</sup> March 2020. Also in the trial bundle are some personal bank statements of Tom, for the same NatWest account that was nominated on the tenancy agreement dated 1<sup>st</sup> October 2019 I have referred to at [19] above. The first of those statements is for March 2020 and on the 11<sup>th</sup> March is a credit for £8,000 with the description “Pharmacy, Smartwaypharmarent...”. There are no earlier statements in the trial bundle. Mike says he made payments from SMC to Tom every month until February 2023.
27. The sale of the Flat completed on 15<sup>th</sup> November 2019. B&L contacted Eddie who confirmed that the whole of the proceeds could be sent to Tom’s account as opposed to that of ETH. Mike says he then asked B&L to transfer the remainder of the property, i.e. Babs Park, to Eddie. He heard no more and assumed it had been done, and that he was only made aware that it had not happened when he took advice from Bartons Solicitors in June 2023 when he was told he still owned it.
28. Mike continued living at Babs Park, but says he purchased quite a few items to keep the House “...up to date and fresh looking, particularly since [he] was looking to use the House as an “Airbnb” style let or as a filming location.” Further, he said he continued to manage and pay for the maintenance of the House and grounds and employed two housekeepers and a handyman to ensure it was well kept.
29. Tom says his relationship with his father was good until March 2020 when he confronted him over several business decisions he made which included making fraudulent furlough payment claims for SMC staff, breach of Covid regulations and other actions that he described as “...downright illegal.” Tom acknowledges that he had shareholdings and directorships in Mike’s companies but says they were at arm’s length from at least 2020. Tom was working from Babs Park for Mike until he says he was fired on 1<sup>st</sup> April 2020. Mike denies this and says it was Tom that walked out, and that he received salary payments from SMC for April, May and June. These do appear on Tom’s bank statements for his account I refer to above with NatWest.
30. Tom says post 1<sup>st</sup> April 2020 SMC stopped paying rent “...for the use of various outbuildings on my property, the House, between April-August 2020”. In his witness statements he makes no reference to the tenancy agreement with Smartway Pharmaceuticals Ltd. In his oral evidence he said the tenancy did not go ahead, but that Mike (via SMC) had offered to rent the outbuildings instead. Then in September 2020, having reflected on his life he decided to try and repair his relationship with his father and went to see him at Babs Park with an idea of converting the House to a rehabilitation centre for drug addicts.
31. Mike, Tom says, agreed to that plan and asked him to work as a consultant for SMC until it was up and running, on a wage. Mike also, Tom says, agreed to resume the rental payments for his outbuildings, which recommenced in September 2020 and continued to February 2023. Mike denies these payments were rent for outbuildings and maintains they were for the mortgage on the House as agreed prior to transfer.

32. Mike says he continued post Transfer with development of the Property. This included re-profiling the land, reconstruction of the stables, remodelling of the swimming pool and interior works to the House. The latter included in August 2020 works to air conditioning in the House for some £6,300 invoiced to a company, Echo Tango Trading Ltd (“ETT”). Another invoice for decking dated 18<sup>th</sup> January 2021 for almost £8,400 is addressed to ETT. A further one for refitting a bathroom at the House for £5,400 dated 7<sup>th</sup> June 2021 is addressed to Mike at ETT.
33. Also on 30<sup>th</sup> September 2020 Ben Welch, Mike’s nephew who had just left the Royal Navy, wanted to buy a property. Mike, he says, accompanied him on a viewing and said he would provide £40,000 to help him buy it, for which he was very grateful. Ben says that Mike told him “technically” the money would need to come through Tom and a written loan agreement (“the Loan Agreement”) between him and Tom would be necessary, to which he agreed. That was arranged and the money transferred, Mike saying that in reality it was unlikely he would expect to be paid back.
34. The House was then used for a family Christmas in 2020. On 16<sup>th</sup> September 2021 an insurance agent, Mr Baigent, emailed Tom and Mike regarding renewal terms for the House. Tom asked if this was a separate policy for the House only. Mr Baigent replied to Tom and Mike the same day saying it was “Yes absolutely 100% Just “The House” in isolation on a Let basis”. Tom replied saying that was fine.
35. Then in November 2021 Mike entered into a short term let agreement with a letting agency, Kate & Tom’s, describing himself as “owner”. In 2022 Mike said he undertook planned development work to the Gatehouse and Annex, part of the House, through what he described as his company, ETT, as he had agreed with Tom and Eddie. Tom says that the stables were extended and the work carried out by ETT, which was his company.
36. An agreed company chronology prepared by solicitors post-trial states that ETH was incorporated in July 2012. Eddie and Tom were and always have been the directors, each holding one share. As to ETT, it was incorporated in 2010 under another name. The directors were Mike and various 3<sup>rd</sup> parties. Gravitas Holdings Ltd held the sole share. In 2012 the position changed; Mike was the sole director and another company, Tango Echo Holdings Ltd held one share. The name was changed to ETT later in 2012. In April 2016 the sole share was transferred to ETH, who still holds it. Mike was allotted 99 shares some time after March 2022. Tom was appointed a director, joining Mike, in November 2016 and his appointment was terminated in November 2021, since when Mike has again been the sole director.
37. In about July 2022 Tom and Kim sold their house in Ascot and came to live at the House, for the first time. Mike says he did not object as it made sense for them to live there pending their next purchase. Mike says the House was furnished and decorated with his belongings. On about 23<sup>rd</sup> December 2022 they had an argument over the air conditioning which Mike says should have been left on as he was paying for it. There was a physical altercation and Mike suffered various injuries. Strong words were said and Tom, Mike says, made it clear he wanted nothing more to do with him.
38. Then, Tom says, Mike on 21<sup>st</sup> February 2023 forced entry to the House and destroyed some of his possessions. The police were called but they would not take any action due to Mike’s claim of a “Life Trust”. Over May-September 2023 Tom says Mike

continually trespassed on his land, intercepted his post, blocked access and then on 7<sup>th</sup> September dug a trench across his land for new cabling for solar panels and a new water supply, both to Babs Park. Mike has apparently been charged with stalking with a trial listed for August 2024.

39. Various emails were exchanged within the family, including Mike and Tom, on 27<sup>th</sup> and 28<sup>th</sup> February 2023. Mike suggested sale of the House with a division of the proceeds once the mortgage had been paid and ETT reimbursed the cost of the refurbishments of about £280,000. Tom took the view he was free to sell as he saw fit with no liability to ETT. Mike continued to demand payment to ETT for the works and asserted that the House contents that belonged to him were worth about £250,000 – the Chattels Claim.
40. On 10<sup>th</sup> March 2023 Eddie emailed a firm of estate agents, Bovingtons, who were marketing the House for Tom. He said:

“This property is subject to a legal boundary dispute which solicitors have been instructed to deal with....

On a separate note my father has instructed solicitors to issue proceedings against my brothers ability to actually sale the property whilst he is alive. I and other members or our family are witnesses to the fact that the title of this particular property were transferred on the understanding certain conditions applied...” (sic)
41. Mike had stopped paying the monthly payments for the mortgage and costs of running the House. Tom could not afford them especially as he had just started a small business of his own. Mike, Tom says, did all he could to disrupt viewings and marketing of the House, and until the imposition of bail conditions, sent him weekly abusive emails with various threats. Tom says his mortgage payments are £11,500 per month. As of April 2024 he owed some £34,000 and the last payment he made was £1,000 in February 2024. The lender is threatening enforcement proceedings.
42. Tom and Kim have been living with her parents since December 2022 as Kim is scared to live in the House. On 9<sup>th</sup> June 2023 Bartons wrote a letter before action to Tom claiming rectification of the title plan to reflect the position of a fence erected by Mike which meant the stable block and other outbuildings were Mike’s property. They also maintained the Chattels Claim. Tom rejected those claims referring to various claims he had against Mike including for damage to his Aston Martin DB9 motor car.
43. Inter solicitor exchanges of correspondence then followed. Bartons next on 7<sup>th</sup> September 2023 wrote to Blaser Mills and said for the first time that the House was held pursuant to a life interest constructive trust by Tom in favour of Mike. Proceedings seeking rectification, a declaration as to the trust and return of chattels were issued on 26<sup>th</sup> September 2023.

## **BACKGROUND – PROCEDURAL MATTERS**



44. On 12<sup>th</sup> December 2023 Tom applied for summary judgment and/or strike out of the rectification and trust claims, which I heard on 22<sup>nd</sup> February 2024. I gave an *ex-tempore* judgment giving summary judgment for Tom on the claim for rectification but not the trust claim. My Order of that date sets out directions for this trial to be heard in the period 1<sup>st</sup> May – 31<sup>st</sup> July. There is no transcript of my judgment but it recognised that Tom had adduced credible contemporaneous evidence in his favour that the boundary was correct as on the TP1 sufficient to warrant summary judgment in his favour. No application was made for permission to appeal.

### **THE AGREED ISSUES**

45. These are:

#### **The Trust Claim**

1. Did the Claimant and the First Defendant agree or have a common intention that the transfer of the House on 4 November 2019 would be subject to certain conditions and/or limitations?
2. If so, what were those conditions and limitations?
3. Did any such agreement or common intention, as regards conditions or limitations to be placed upon the transfer, give rise to a constructive trust in favour of the Claimant?
4. To the extent that any constructive trust does so arise, what remedy is the Claimant entitled to?

#### **The Debt Counterclaim**

5. Is the Claimant liable to pay the First Defendant the sum of £24,000 in respect of an outstanding OVO Energy bill pursuant to a binding agreement made on or about 28 February 2023?

#### **The Trespass Counterclaim**

6. Was the Claimant entitled to carry out works at the House on and around 7 September 2023 to lay cables serving Babs Park either pursuant to:
  - a. Any terms orally agreed between the Claimant and the Defendant associated with the transfer of the House on 4 November 2019;
  - b. The alleged constructive trust; or
  - c. The rights expressly reserved in the TP1 dated 4 November 2019.
7. In the event that the Claimant was not entitled to carry out those works and such works amount to trespass, to what remedy is the First Defendant entitled?

### **THE LAW**

46. There is little difference between counsel as to the law so I will address it briefly. By s.53(1)(b) of the Law of Property Act 1925 a declaration of trust as to land or an interest in land must be manifested and proved in writing, which is agreed as not applicable here. Mike can however rely on s.53(2) of that Act which states the section "...does not affect the creation or operation of resulting, implied or constructive trusts."
47. Here, two forms of constructive trust are potentially present; first a common intention constructive trust and secondly one on the principles in *Rochefoucauld v Boustead* [1898] 1 Ch at 550. The former obtains when it would be inequitable for the legal owner to claim sole beneficial ownership or a particular division – *Grant v Edwards* [1986] Ch 638 at 654D-656C.
48. As Mr Digby put it in his skeleton argument the following conditions must be satisfied:
  - “(a) there was a common intention shared by both the legal owner and the claimant that the claimant should also have had a beneficial interest; (b) the claimant has acted in reliance on that common intention; (c) the claimant has suffered detriment as a result of that reliance (endorsed, albeit obiter, in *Hudson v Hathway* [2022] EWCA Civ 1648; [2023] K.B. 345 at [74]-[76])”.
49. The *Rochefoucauld* form does not require proof of detriment, as the inequity arises by the action of using the formalities of the statute to deny the actuality of the transfer. It arises when it would be inequitable for the legal owner to deny or refuse to carry out the agreement to hold the property concerned when that agreement was the sole basis on which the property was transferred.
50. Mr McLeod cited the principle as set out in *Mergarry and Wade, The Law of Real Property 10<sup>th</sup> edn 2024* at [10-023]:
  - “Where a person acquires land in circumstances in which it would be inequitable to deny the claimant an interest in the property, a constructive trust will be imposed ... This can arise where a person acquires the land by fraud, but also where the person who acquires title is a purchaser. Such trusts have been imposed upon a purchaser who: (i) reneged on an informal promise to allow the vendor to remain in a cottage rent-free...”.
51. The reference at (i) above is to *Bannister v Bannister* [1948] 2 All ER 133 which Mr McLeod made extensive submissions upon, drawing upon the similarities he submits are analogous to the position here. In *Bannister* informal exchanges between a brother and sister-in-law involved a sale to the brother in law at 5/8 of market value, but whilst the new owner had been paying the expenses of the property the transferor had not agreed to help defray them. Mr McLeod emphasised that it is not necessary for there to be an oral agreement of a trust or that the parties need understand that they are agreeing to a trust.
52. Lord Justice Scott in *Bannister* said at p136A:

“We, therefore, see no reason why the words of the undertaking should not be given the most favourable construction, from the defendant’s point of view, of which they are properly capable.”

That, Mr McLeod submits, is logic which should apply here.

53. Then at p136 C-D:

“The fraud which brings the principle into play arises as soon as the absolute character of the conveyance is raised ... for the purpose of defeating a beneficial interest ... Nor is it necessary that the bargain on which the absolute conveyance is made should include any express stipulation that the grantee is in so many words a trustee. It is enough that the bargain should have included a stipulation under which some sufficiently defined beneficial interest ... was to be taken by another ... We see no distinction in principle between a case in which property is conveyed to a purchaser on terms that the entire beneficial interest [or] some part of it is to be retained by the vendor ... and a case, such as the present, in which property is conveyed to a purchaser on terms that a limited beneficial interest is to be retained by the vendor”.

54. Mr McLeod also cited the suggestion put forward by Mr Justice Fancourt in *Archibald v Alexander* [2020] EWHC 1621 (Ch) at [37] that:

“It is perhaps instructive to ask oneself what would have happened if Patsy [the Defendant, in the like position of Tom] had refused to agree to hold the House on trust for the children [the Claimants, in the like position of Mike] in equal shares.”

55. Fancourt J upheld a trust operating by succession of life interests and then in remainder. I was referred to [30-35]. At [31] he said:

“Patsy is the gratuitous transferee of the House on the basis of her agreement with Mother and her siblings that she would hold the House on trust for Mother during her life and then for the children equally. The House was only transferred to her on the basis of that agreement. Patsy is bound in conscience to give effect to the terms agreed with her siblings, pursuant to which Mother conferred on her a benefit by putting the House into her name. The House was from that time held on constructive trust, for Mother during her life and for the children after her death. That did not depend on anything other than Patsy’s agreement and the transfer of the House into her name”.

56. Mr Digby referred me to the principle in *Goodman v Gallant* [1986] Family 106 at 110F – 111A:

“ In a case where the legal estate in property is conveyed to two or more persons as joint tenants, but neither the conveyance nor

any other written document contains any express declaration of trust concerning the beneficial interests in the property (as would be required for an express declaration of this nature by virtue of section 53(1)(b) of the Law of Property Act 1925), the way is open for persons claiming a beneficial interest in it or its proceeds of sale to rely on the doctrine of "resulting, implied or constructive trusts"... 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."

57. The principle Mr Digby relies upon, as his skeleton argument puts it, is "...that where there has been an express declaration of the beneficial interests in a property by those beneficiaries ...no constructive trust can arise."
58. I now turn to the law as to evidence. Mr Digby cited *Yalcinkaya v Hassan* [2022] EWHC 2516 (Ch) which concerned a common intention constructive trust. At [87] Mr David Holland KC sitting as a Deputy High Court Judge in assessing the oral evidence reminded himself of the well-known words of Leggatt J (as he then was) as to weight to be placed upon documentary evidence and the fallibility of oral evidence in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15-23] and especially at [22]. I also note [88] as to lack of documentary evidence.
59. Mr McLeod in referring me to *Gestmin* submitted I should be careful in a family situation such as this in drawing conclusions in the absence of contemporaneous documentation to evidence the trust. I said during trial that as to my assessment of the written and oral evidence I would bear in mind the thirteen axioms of fact finding set out by Dexter Dias KC in *Powell v University Hospitals Sussex NHS Foundation Trust* [2023] EWHC 736 (KB) at [25].
60. In *Ashburn Anstalt v Arnold* [1989] Ch 1, which concerned a *Rochefoucauld* trust, at p26E Lord Justice Fox said:

"In matters relating to the title to land, certainty is of prime importance. We do not think it desirable that constructive trusts of land should be imposed in reliance on inferences from slender materials."
61. Going back to the underlying principles, in *Ashburn* the Court of Appeal agreed with certain observations of Dillon J (as he then was) in *Lys v Prowsa Developments Ltd* [1982] 1 WLR 1044. At 1054-55 he had said:

"It seems to me that the fraud on the part of the defendants in the present case lies not just in relying on the legal rights conferred by an Act of Parliament, but in the first defendant reneging on a positive stipulation in favour of the plaintiffs in the bargain under which the first defendant acquired the land. That makes, as it seems to me, all the difference. It has long

since been held, for instance in *Rochefoucauld v Boustead* [1897] 1 Ch 196, that the provisions ... now incorporated in certain sections of the Law of Property Act 1925, cannot be used as an instrument of fraud, and that it is fraud for a person to whom land is agreed to be conveyed as trustee ... to deny the trust and relying on the terms of the statute to claim the land for himself. *Rochefoucauld v Boustead* was one of the authorities on which ... *Bannister v Bannister* [1948] 2 All ER 133 was founded”

62. Mr Digby emphasised, following *Asburn Anstalt* above, that “The hardest rules need the worthiest exceptions” and that *Rochefoucauld* constructive trusts are an exception born from fraud, so the evidence to establish them must be exacting. He submits that Mike must prove on the basis of more than merely slender material that there was a sufficiently defined agreement shared between Mike and Tom that Mike had a sufficiently defined beneficial interest.
63. This is, he submits, distinguishable from the position in *Archibald* where the nature of the interest and the fact it formed the essence of the transfer was absolutely clear and simple in that the property was to be held on trust for the mother for life and thereafter for the three siblings, with no issues as to mortgages, redevelopment and so on.
64. Turning back to the law as to evidence, Mr Digby referred to *Powell* at [25 (8)(c)]:

“There are important and recognised limits on the reliability of human memory: (a) our memory is a notoriously imperfect and fallible recording device; (b) the more confident a witness appears does not necessarily translate to a correspondingly more accurate recollection; (c) the process of civil litigation subjects the memory to “powerful biases”, particularly where a witness has a “tie of loyalty” to a party...; and the court should be wary of “story-creep”, as memory fades and accounts are repeated over steadily elapsing time.”
65. He submits in addition to the clear “ties of loyalty” there has been extensive “story-creep” here, with the claim commencing as merely one for rectification as seen in Barton’s letter of 9<sup>th</sup> June 2023 (see [42] above). Mr Digby in his closing submissions submits that there is not one single piece of correspondence that even in passing or in the vaguest of references mentions the supposed agreement.
66. Accordingly, the proper and natural inference I should draw is that there was no such agreement; indeed, the contemporary documentation goes the other way, commencing with the Statutory Declaration and including the instructions to B&L. I also note in this respect Mike’s email of 18<sup>th</sup> July 2019 stating he was gifting the House to Tom at the full sales value – see [17] above. But during trial Blaser Mills Law made an application to put certain documents before me, including the email from Eddie dated 10<sup>th</sup> March 2023 to the estate agents instructed by Tom that I set out at [40] above. Unsurprisingly, Bartons agreed. That email refers to Tom not being able to sell the House whilst Mike was alive and that the family were aware the title was transferred subject to conditions. This appears to be the earliest reference to a possible trust arrangement.

## THE WITNESS EVIDENCE

67. I have approached the evidence of the witnesses with considerable caution given that they are all family members, some of whom have a financial interest in the outcome of this claim, and others have or have had financial dealings with Mike – the “tie of loyalty” referred to in *Powell* at [25(8)]. Some of the witnesses may well have financial expectations from Mike in the future, too. Below I set out my view of the oral evidence, in the order in which the witnesses appeared.

### Mike Parker

68. Mike is clearly experienced in giving evidence. Being in the witness box was not in any sense an issue for him. He appeared to have a good recollection of events and gave in the main detailed answers. He accepted where he was wrong and was direct, unequivocal and certain. Sometimes his answers did ramble a little and he would occasionally argue points. He is clearly driven, successful and knowledgeable as to business and property.
69. The above are all attributes that may be found in an honest witness seeking to assist the court and whose evidence on the face of it will be accepted. But here there are certain important factors that militate against that.
70. First, I have in mind the submissions of Mr Digby in his skeleton argument prepared for the summary judgment hearing at [46 – 47] in which he sets out two instances before this court where Mike’s evidence has been substantially criticised for its lack on honesty and attempts to mislead the court:

“46. In its evaluation of the realism of the Claimant’s prospects following *King v Steifel*, the court is asked to bear in mind the general attitude of the Claimant towards litigation. In *Parker v National Farmers Union Mutual Insurance Society* [2012] EWHC 2516 (Comm), Mr Justice Teare noted at [155]-[157] that on the balance of probabilities, the Claimant had set fire to a property for the purposes of an insurance claim. It is a necessary corollary of that observation that on the balance of probabilities the Claimant had misled the court, since the Claimant had denied this in the witness box.

47. In *Cooke v Parker* (2018) case no. WD15D30330 (unreported) concerning the divorce proceedings between the Claimant and his former wife, Mr Justice Teare’s judgement was described as a “damning assessment of [the Claimant]’s honesty” by Mr Justice Cohen, and he further considered the claimant to have misrepresented Mr Justice Teare’s judgment whilst giving his evidence in the matter before Mr Justice Cohen.”

71. The above paragraphs also appear in the Defence at [47-48] albeit somewhat truncated. There is no specific response to these paragraphs in the Reply. Put another way, they are not contested and indeed I do not think they could be.

72. Those events were some time ago. However, secondly, I did not accept Mike's evidence when I granted summary judgment against him on his claim for rectification. That is contemporaneous with this claim and arises out of the very same facts and circumstances. Whilst I did not hear oral evidence when determining that application made by Tom in certain respects as my judgment was not challenged on appeal Mike's failure on paper evidence supports the exercise of substantial caution as to his current claim.
73. Thirdly, when cross examined about his making the Statutory Declaration and his answer to question 10 namely "I confirm I no longer have any further interest in the Property" he endeavoured to explain this by saying "I was trying to help my son...I'd cut my arm off...I'd sign anything to assist him get a mortgage.". Then when asked if he'd "...sign q.10 even if it was untrue?" he replied "Yes. I didn't realise the consequences at the time."
74. Mike was then asked if he had lied on the Statutory Declaration. He replied "No. I'm not lying. It doesn't say other conditions...". But in my judgment he was lying and knew exactly what he was doing. This was all part of his scheme, in which Tom was involved, to mislead the lender, as I will turn to further below. But in summary Mike condemns his own evidence – as he must to maintain his claim.
75. Fourthly, I find Mike's evidence that he was unaware of the fact that on his account drawing income and having rights over the House amounted to a reservation of benefit which defeated the 7 year IHT exemption implausible for these reasons: (a) he was and is very experienced with property (b) he is well aware of tax generally and (c) whilst he may not have discussed it with his then tax advisor due to her bereavement, on the balance of probabilities he would in my judgment not have left that obvious question open.
76. In summary, Mike was open and direct when it suited him but would have no hesitation in advancing facts which he knew to be untrue if it suited his aims.

### **Eddie Parker**

77. Eddie in his witness statement described how he and Tom had been fortunate to enjoy a "...very comfortable, and at times, lavish lifestyle" due to their father. He emphasised how they were treated equally and gave examples which included Tag Heuer watches on their 21<sup>st</sup> birthdays and Rolex Submariner watches for their 25<sup>th</sup> birthdays, plus Jaguar cars provided through one of their father's businesses and expensive luxury holidays. He then described gifts of property to them both from their father and said that "As a family we have always discussed money and property very openly."
78. In particular Eddie said their father wanted to protect his assets for his sons in the event of his death or remarriage. He said that this involved splitting the Property in two but that "...there was never any suggestion that once the properties were transferred to us, we would be free to do with them as we pleased. To the contrary, I always understood my Dad would retain complete control over the properties and responsibility for their upkeep...Neither Tom or I had the independent financial resources to pay for the upkeep...".

79. Eddie said that he could not recall the detail of each occasion when their dad spoke to him and Tom "...about these matters because they were part of an open and ongoing discussion which took place informally. Tom, dad and I would ordinarily speak several times a day, whether in person, in the family office or on the phone."
80. Eddie came across as a combative witness. He was asked why there was no correspondence showing the transfer of Babs Park to him by his father and on the same basis as the transfer of the House to his brother. His response was that he "... was never asked for the information. That doesn't mean it doesn't exist". But the fact is there is none which would have supported his and his father's evidence.
81. He was then cross examined over the instruction of B&L to transfer Babs Park to him. He replied it was at the same time when the House was being transferred to Tom in 2019 and he did not know the exact date but postulated it may have been the summer. It was put to him that conflicted with his father's evidence. His response was "I can't say. That is my recollection." But it appeared to me he really didn't know about the transfer. I also found him somewhat evasive when questioned for example as to the ownership of ETH, although that could be explained by the over arching influence of Mike in all the businesses and properties, no matter whose name they were in.
82. Overall, whilst Eddie gave careful and thoughtful evidence, I was not convinced that he was a master of the detail, probably because he was not that close to it. He was supportive of his father. He did not make a witness statement for the purpose of the rectification claim, which is somewhat odd in that Mr Field in his witness statement of 15<sup>th</sup> February 2024 I refer to further to at [101] below said he would be giving evidence relevant to the rectification claim (albeit not specifically for the summary judgment hearing).

### **Jackie Welch**

83. Jackie is Mike's sister and is a specialist nurse. She described how she and Mike grew up in Cornwall until he left home aged 16 to start what she describes as a varied and exciting career. She considers him a workaholic who is more aware of and concerned about his own mortality than many others. That she considers is understandable as "... he has had periods of ill health and near death experiences several times in his life." This can result in some morbid conversations as he always speaks openly and frankly as to his intentions and what should happen to his business and property interests when he dies.
84. She says Mike has always been very generous to the family – paying for nice meals and expensive holidays. In 2001, she, Mike, and her husband Andrew set up a care home business in Cornwall which Mike financed. It was sold 6 years later and after Mike recouped his investment they all shared the profit.
85. As to Mike's gifts to his sons, Jackie says that at times she thought he was too generous, and he always treated them "...equally and equivalently". He also was generous to her son, Ben, giving him a Rolex watch one birthday, and providing a loan, which Mike said he was unlikely to require repayment of, of £40,000 so Ben could buy his first house that I set out at [33] above. That loan she knew was in Tom's name, which she thought was the way he "...ran the family finances."



86. Jackie then described two occasions where she was present with Mike and Tom concerning the transfer of the House to Tom. The first she said in her statement was in December 2018, at a family meal, when Tom told her Mike was going to transfer the House to him so he could use it as collateral for a property development business he was planning, but that Mike would still be paying for everything to do with the House. In oral evidence in chief she corrected this to December 2019, therefore after the Transfer had happened. Mr Digby understandably made substantial criticisms of her evidence in this respect, submitting it was either "...fading memory or purposeful fabrication." This had even more force as her son Ben made the same error in his evidence and corrected it in the like manner.
87. The other time was on 30<sup>th</sup> August 2019 at the Wake held after the funeral of her stepmother, Mary. She says she asked Tom how he would fund his property development plans, already knowing Mike would. He told her Mike was going to give him the House. Her statement continues:

"I said that there aren't many Dads who would do that. Tom just smiled and said "That's Dad". I looked at Mike who smiled and nodded. I asked Mike if he was sure he was doing the right thing by giving the House to Tom. It would have been a very extravagant gift, even by Mike's standards...Mike explained he was transferring the House to Tom and Babs Park to Eddie...he was arranging a mortgage...but would be giving Tom the money to pay [it] and bills. He said that although Tom and Eddie would legally own the House and Babs Park, they had all agreed that Mike would still have control over the Property until he died...the main reason was to try and save on inheritance tax."

88. Next she said that:

"Tom was present throughout this discussion and at no point did he ever express any concerns, dissatisfaction or expressions of any uncertainty or unease with the arrangement which Mike was describing. To the contrary, he was completely comfortable and fully in agreement with what was being said."

89. I found Jackie to be measured and direct in her oral evidence. She described how she knew the House was not a gift to Tom as "...we had discussions about it. Everyone always knows where they are with my brother. He doesn't mince his words." She was steadfast under cross examination. I found her to be a truthful witness albeit confused over certain dates. Overall, however, that does not detract from the veracity of her key evidence.

### **Andrew Welch**

90. Andrew is a dog groomer. In his statement he says he has known Tom for most of his life; sometimes both families, including their son Ben, would holiday together and after the care home sale in 2007 Jackie and he lived with Mike at the House for about 6 months. His statement is short and to the point. In [6] he says

“It is a funny old family and, whilst the conversation does not always centre on money, it often does. Because the topic of the Property came up so often, it is difficult for me to recall specific conversations which took place on specific occasions.”

91. That accords with Mike being at the centre of the family with his wealth and generosity. Andrew says that he was of the understanding, from being at various discussions between Mike, Eddie and Tom that during Mike’s life he would transfer the House to Tom and Babs Park to Eddie, to reduce inheritance tax. From the conversations he was party to:

“...I understood the transfer was going to be on paper only and that there would be no change in the way the Property would be used and managed after the Transfer. I understood there was a proviso that Mike would still stay there and manage the Property for the rest of his life and that it was agreed Mike would continue to pay for the maintenance and upkeep of the Property. Mike employed housekeepers to do this.”

92. Andrew goes on to say how the topic of the Property came up at the Wake and:

“As we were sitting and talking, the conversation came round to the Property, as it often does. There was nothing particularly unusual about this conversation, and so as best I can recall, we covered the same ground as is usually discussed, as I summarise above.”

93. Andrew was not at the December 2019 birthday party that Jackie and Ben attended, so that error does not appear in his account. That does seem to detract somewhat from Mr Digby’s submission at one extreme that this was a purposeful fabrication as, if so, Andrew would have been included in it.

94. In giving oral evidence Andrew was a little nervous, but in the main certain, careful and deliberate. He did his best to assist the court. He was an honest witness and readily accepted if he could not recall a specific person being present at a family gathering or not. I accept his evidence.

### **Ben Welch**

95. Ben is a self-employed electrical engineer. In his witness statement he explains how he is younger than Eddie and Tom by about 10 and 5 years respectively. He says Mike has been very generous to him over the years, assisting with private school fees and giving him a Rolex watch on his 21<sup>st</sup> birthday. Ben was a marine engineer in the Royal Navy until he left in October 2020. He sets out the loan by Mike via Tom to help him buy his first house after he left the Navy.

96. Ben says he “...was aware of Mike’s intention to transfer the House to Tom for a long time before it happened.” He continued:

“Mike would often talk at family events...about what he wanted to happen with his property and business interests when

he died...He wanted everyone to know who would get what and how it was going to be. I knew from these conversations that Mike intended Tom should get the House and Eddie should get Babs Park.”

97. Ben made the same error as to the birthday meal date as his mother did. But he did not say the transfer was conditional. He then turned to the wake and recounted how Mike said he:

“...would give the House and Babs Park to Tom and Eddie respectively whilst he was still alive...to save on inheritance tax. [Mike] would still be managing the Property and it would be business as usual. There was no suggestion Tom would be moving into the House or that Tom would be paying for the upkeep. To the contrary, Mike talked about the fact he still intended to convert the Gatehouse and large garage so they could be rented out and give him an income. He said that after he died, Tom could use this money to put his own children through school, if he had any...Tom was present throughout this conversation and was taking part. He was nodding, smiling and agreeing.”

98. Ben also said after the Transfer nothing changed – Mike continued doing works to the House and Property which he, Ben, was involved in as he was working for the company carrying out the works, DMO Maintenance Ltd. Ben said he was Mike’s main point of contact with that company and Tom was not involved in planning works across the House and outbuildings – it was all Mike. Ben added that he got the impression from speaking with Tom that he never had any real involvement with the House or the works carried out, whereas Tom did discuss with him the works and plans for his house in Ascot.
99. Ben was direct, clear, certain and thoughtful when he gave oral evidence. I accept his evidence in the main, notwithstanding concerns I had over the mistaken year of the birthday party as I have set out in my summary of Jackie’s evidence.
100. Finally, Ben referred in his statement to an email he received from Tom on 7<sup>th</sup> March 2024, referring to the £40,000 loan he received from Mike but in Tom’s name. Tom states “I personally loaned you £40,000...due to my change of circumstances, I now require repayment of my loan in full immediately...if you are unable to repay me I will have no other choice but to commence legal proceedings against you.”
101. Ben said he found this very strange especially as it was just before he was to speak to Mike’s solicitor, who is Mr James Field. I note in the summary judgment application Mr Field made a statement dated 15<sup>th</sup> February 2024 in which he listed all of Mike’s witnesses, including Ben, and said he held draft statements for each of them confirming they were witnesses to the discussion at the Wake that Mike relies on to evidence the trust. Tom must have been aware that Ben was to give evidence of the same.

### **John Parker**

102. John is Mike's father and grandfather to Eddie and Tom. He is now retired. In his statement he says he was estranged from Mike until around 2004, when he established a close relationship with him, Eddie and Tom. He set out two occasions when the transfer of the House was mentioned to him or in his presence.
103. As to the first, he said "I do not recall who said what to who, but I was left with the firm impression that the arrangement they had all agreed was that the Property would remain in Mike's control for the rest of his life and then the boys would take it over on Mike's death." The second was the Wake. As to this he states "I struggle to remember the detail of what was said but I remember it was in accordance with what I had already understood about their plans...".
104. John in his oral evidence said his "...short term memory was not as good as it was. I do keep most of the salient facts." I have to say that whilst I have no doubt as to his honesty and that he did his best to assist the court his memory was poor and he was confused on certain matters. I therefore was not especially assisted by his evidence and place little weight upon it.

### **Tom Parker-Bowyer**

105. Tom has made three witness statements. From the outset he denied the alleged trust relying on the correspondence I set out at [16-17] above to show the Transfer was a gift. He placed considerable emphasis on there being no mention of any form of trust in the Letter before Claim of 9<sup>th</sup> June 2023. That point now has little weight due to the disclosure during trial of Eddie's email of 10th March 2023 referring to the basis for the trust.
106. Much of his first and second statements concern the rectification claim and what he regarded as an attempt to overcomplicate matters to lead to a trial. To that end he said "I bought the Property, [Mike] sold it to me and then changed his mind due to his own personal grievances." Next, responding to Mr Field's statement I mention at [101] above, he makes the categorical assertion that:

"I note the attempt to introduce individuals to provide evidence in support of [Mike's] case however, I am a private individual, I saw the purchase from my father as a matter of business and I am not inclined to discuss business with close family. I have not and would not discuss the transfer of the House with any family members so it strikes me that there is nothing significant any of these individuals can add."
107. Then as to the Wake, which he referred to as "...the funeral dinner", he ended his second statement by asserting Mike "...was drunk, emotional and not in any fit state to discuss the House or any other matter." He provides a far more detailed account in his third statement but maintained as to the family discussion over the Property that he was "...a very private individual and at no time in my life have I discussed such matters with anyone other than my father who was my mentor and business partner at this time."

108. Next he referred to Mike "...had always portrayed a lifestyle of extreme wealth, [but] need[ed] me...to bail him out..." followed by "Mike is an extremely private individual and there is no way that he would ever discuss financial matters with anyone. That includes me..."
109. I found Tom to be an unsatisfactory witness. For example, he endeavoured to dispute matters such as the Smartway Pharmaceuticals Ltd purported tenancy of the House that I mention in [19] above, entered into between Tom and that company on 1<sup>st</sup> October 2019. Mike said this was not a genuine lease but cover for his payment of the mortgage and outgoings to Tom at £8,000 per month.
110. It was put to Tom that as a pharmaceutical company Smartway Pharmaceuticals Limited were never going to rent the House. His reply was that "At the time they were". Then it was put to him this was ludicrous and he said "I agree that's why we didn't go ahead with it. It was signed by me and the CEO." Next he was asked if it was a device to obtain the loan; he replied "Not true". Tom's answers in my judgment are first contradictory and then simply and deliberately untrue; he had no means of paying the loan without that income, so the lease was set up between a genuine company, run by a then associate of Mike's, a Mr Patel, to convince the lender to proceed; hence the report on title prepared by B&L to the lender's solicitors. That would not have happened had it not been part of Mike and Tom's plan to mislead the lender. What is common ground is no monies were paid by that company whether by rent nor the deposit of £24,000 and the lease never proceeded. It was a smokescreen.
111. Tom was also evasive in some of his answers. For example, when cross examined as to the payments made to him of £8,000 per month to satisfy his lender, being a scheme set up by him and his father, his reply was "No and my mortgage agreement doesn't refer to terms and conditions in place."
112. He tried to avoid giving direct answers to direct questions. For example, when asked about the alleged rental of outbuildings of the House by him to Mike for £8,000 per month he asserted this was a commercial agreement. Mr McLeod put to him on the basis that Mike was successful and knew a good deal when he saw it would he really enter into such an agreement? Tom's response was "I can't speak for him." That was a sentence he deployed frequently when asked questions he did not want to answer.
113. The valuation report by Alexander Lawson, Chartered Surveyors, addressed to the lender with Tom as the borrower, dated 20<sup>th</sup> September 2019, sets a market rent for the House to include the outbuildings of £66,000 per annum. It is commercially unrealistic and unviable that Mike, a party to all this, would pay so much for such a small part of the whole unless it was part of the scheme for him to provide Tom with sufficient monies to pay the mortgage. But Tom would not accept that. In fact, when that was put to him, he denied it. That was simply untrue. Tom at times defied commercial logic and some of his answers beggared belief.
114. Tom's grasp of some of the facts was shown to be wanting at times. For example, he maintained he was sacked by Mike from his employment with one of Mike's companies. After being taken through his own bank statements showing monthly payments from that company he eventually accepted he had not been sacked but placed on furlough.

115. Although in no sense does it justify some of the deficiencies in his evidence I recognise that the events over the past five or so years have been traumatic for Tom in his estrangement from his father who has been such a major part of his life, income and lifestyle for so many years. They had a physical altercation at one point and I accept without reservation Tom's evidence as to how difficult matters have been for him (and also Kim) with what must seem like the whole of the family against him and insufficient monies to pay the loan on the House. But in any event, I have had to approach his evidence with considerable caution in view of all I have set out above.

### **Kim Parker-Bowyer**

116. Kim's statement concentrates on her relationships with Mike and Tom. She was not at the Wake and says Tom did not mention anything about the House or any sort of trust to her. In her oral evidence she explained how Tom was not in her view close to his wider family. Her evidence did not go to the underlying facts as she simply was not present.

### **FINDINGS OF FACT**

117. At some point, probably in 2015 or thereafter, Mike decided to transfer the House and Babs Park to Tom and Eddie respectively, to avoid inheritance tax. These properties with their extensive grounds and outbuildings were very important to Mike as they represented the centre of his wealth which he liked to display. For example, in the evidence is a copy of the May 2008 edition of "Beautiful Kitchens" which features on its front page and inside the kitchen in the House described in lavish terms, referring to Tom and Eddie in the text and with a photograph of Mike. Also in evidence is a few pages from an undated "Fine Homes in Buckinghamshire" brochure featuring the House prepared for Christmas with a price of £8,500,000.
118. Mike says he discussed this with his sons, which I accept as he involves them with his businesses, and they were for a considerable period of time working together in them. Tom in his third statement at [62] sets out his ordeal as to his financial commitments and then states that "...Mike has recently sold **our** family business for £3.2 million" (my emphasis). That was in the context of Tom alleging Mike whilst very generous to them used him and Eddie as "...hiding places for assets, and purchase of supercars, businesses and properties." The latter is evidenced by the purchase of properties as I set out at [5] and [7] above.
119. I also find that Mike did discuss the properties and money with his wider family as I accept his evidence in this respect as it is supported by Eddie, Ben, Jackie and Andrew. In particular, I accept Andrew's evidence that the Parkers are "...a funny old family..." as I set out at [90] above to have the ring of truth to it, going on as he does to state that family conversations often turned to the Property and to money.
120. I do not accept Tom's evidence that Mike is reticent as to his private financial affairs for the above reasons. Nor do I accept Tom's evidence that he is very private when it comes to his own financial matters. First, he has lived an ostentatious lifestyle, driving an Aston Martin DB9 and like cars, and with a personal registration plate of 1TCP and possessing expensive watches. Whilst ownership of such cars and personal plates does not represent discussion of financial affairs they are an outwards manifestation of wealth that anyone wishing to maintain a discreet silence is unlikely to engage in.

121. Secondly, whilst it was post issue of this claim, Tom did give an interview to the Daily Mail in March 2024 in which he gave the readers a breakdown of his financial affairs. Thirdly, I consider Tom only advanced this privacy point when faced with the knowledge his wider family would give evidence as to the Transfer, as set out by Mr Field in [101] above. Otherwise, he would have no answer to their evidence which he knew from that of Mr Field would be that the Transfer was discussed before all of them. I also find he attempted to dissuade Ben from giving evidence as to the Wake and generally by the request for repayment of the £40,000 loan in circumstances when he had no legal basis to do so.
122. Mike I find therefore made his plans known to his father, Eddie, Ben, Jackie, and Andrew, and in front of and involving Tom, contrary to what Tom says. Those plans included Mike retaining control over each property during his lifetime for him to do as he saw fit; whether renting, renovating or developing the properties, outbuildings and grounds. I find it unlikely verging on the impossible that Mike would have handed over the House without such a reservation of his continuing rights for these reasons:
- (1) his overall persona from the documents and his oral evidence was that of a man in control of everything, no matter in whose name he had placed assets. For example, when the Flat was sold, the proceeds were for ETH (ie Tom and Eddie jointly) but Eddie confirmed they could be transferred to Tom in their entirety, so as to show how Mike's plans were being put into effect by Eddie ;
  - (2) The Property was the centre of his wealth and whilst he had been very generous to his sons, and recognised his possibly limited longevity, it was not something he would transfer absolutely;
  - (3) To continue with equality between his sons he would have to do the same for Eddie with Babs Park;
  - (4) He would have to service the outstanding mortgages for each property as his sons did not earn sufficient to do so;
  - (5) Likewise income generation from the properties was best dealt with by him as well as redevelopment for capital gain, enhancement and enjoyment.
123. I therefore accept Mike's evidence that he did not discuss nor did he contemplate an outright sale to Tom at a reduced price which would be affordable to Tom, nor for that matter at full value. As Mike put it, he wanted to obtain the maximum value if he sold the House or keep the income/redevelopment potential. I reject Tom's account that this was a commercial arm's length transaction in which he was helping out his father.
124. Mike did in 2018 try to sell the House, but a sale never materialised. A sales brochure by estate agents, Baker Stone, dated February 2019 stated a selling price of £2.2M. With the House still unsold, Mike decided by the summer of 2019 to transfer it to Tom. He agreed with Tom to transfer the House to him subject to a life interest for Mike and other conditions namely 1) he would arrange replacement financing to remove the existing charges 2) the replacement financing would be in Tom's sole name 3) Mike would provide Tom with sufficient income to service the loan and pay

the substantial costs to maintain the House 4) Mike would continue to develop the Property including the House as he saw fit to produce income and/or capital gain and 5) likewise Mike would be responsible for the upkeep and 6) generally have control over and use of the House and profit from any income for the remainder of his life (“the Conditions”).

125. The reason for the transfer of the House, namely IHT saving, was known to the wider family, as were the Conditions in the general sense. For example, the way Andrew put it was that the transfer would be on paper only, with no change in the way the House would be managed or paid for. Ben likewise said there would be no change as this was part of IHT planning but it would be “...business as usual”, and Tom would not be moving into the House.
126. Mike set about arranging the finance for Tom. The first piece of documentary evidence in that respect is his email dated 17<sup>th</sup> July 2019 to the mortgage broker I set out at [17] above saying he is gifting the House to Tom at the full value of £2.65M. That email also records the rental of the House at £8,500 pcm. After answering a query, Mike then on 18<sup>th</sup> July 2019 set out the whole basis of the transaction, enclosing six months of Tom’s bank statements plus his savings account and confirmed his current salary. Mike sending in Tom’s confidential financial documents shows how in control Mike was and how Tom co-operated with him. Tom was copied in on the latter, but not the former, emails.
127. Mike then on 12<sup>th</sup> August 2019 emailed his lenders, Allied Irish Bank and explained the transfer to Tom, as appears at [16] above, Tom again being copied in. Two days later Mike wrote to Cynergy Bank referring to them arranging a “...buy to let mortgage for my son... I will be gifting my son this property...”. It is clear beyond any doubt that Mike was in the driving seat as far as arranging the refinancing was concerned as at that time, but there was no mention of the Conditions; I consider it a reasonable assumption that Mike knew it would scupper the transfer as far as any lender was concerned as it could adversely prejudice the lender’s security.
128. As I have mentioned the valuation for Together Commercial Finance was carried out on 20<sup>th</sup> September 2019 and is addressed to Tom. B&L were instructed by Mike as an existing client and Tom added in manuscript on 8<sup>th</sup> October 2019. I describe the salient details of the conveyancing at [20-23] above. As part of that Tom entered into the lease of the House as set out at [19].
129. As I have found, this was a sham lease created as part of Mike and Tom’s intention to mislead or deceive any lender into granting a loan on the security of what appeared to be an arm’s length commercially viable lease to an unconnected party. The reality was that Mike would be paying the “rent” in accordance with the Conditions. Again, I doubt the lender would have proceeded had they been informed of Mike providing the monthly payments to Tom.
130. The discussions until then as to the transfer to Tom involved individual family members. As this was part of general conversations over a period of time understandably no one could point to a specific date until the family gathered at the Wake on 30<sup>th</sup> August 2019. There, Mike set out his plans for transfer of the House. He explained the Conditions. I accept the evidence of Mike, Eddie, Jackie, Ben and Andrew as to what was said at the Wake.



131. It is inherently improbable in my judgment that all of Jackie, Ben and Andrew would have given concocted, orchestrated accounts of what was said both before and at the Wake, notwithstanding their relationship with Mike. I also accept the evidence of Mike and Eddie in this respect. Consequently, I reject Tom's overall account of the Transfer, as it is inherently improbable in the circumstances which obtained, including especially his lack of finance in the absence of a genuine tenancy and Mike's intent to remain in control for the remainder of his life, as well as the other circumstances I have set out above.
132. Tom was there and took no issue with what was said by Mike, accepting the Conditions and supporting them, as would be expected by someone in his position, being gifted the equity of then about £750,000, subject to the Conditions, and when Mike would in any event procure or arrange the financing for Tom's benefit. Most importantly, the transfer process had already commenced in accordance with those Conditions, as Tom was well aware having been copied in on certain emails with the brokers, lender and solicitors.
133. I do not accept Tom's account that Mike was drunk at the Wake. I think that evidence, like his evidence that he was very private as to his financial affairs, and would not have had them discussed in front of the family, including the Transfer, was manufactured in an attempt to maintain that this was a purely commercial transaction.
134. Mike then swore the Statutory Declaration in [21] above on 29<sup>th</sup> October 2019, that he no longer had any further interest in the House. That was clearly untrue. The Transfer completed on 4<sup>th</sup> November 2019. The financial transactions I set out at [26] took place. I find that this was Mike's attempt to make it look as though the lease to Smartway was in place and the rent being paid whereas in reality, as he intended all along, and in accordance with the Conditions, he was providing Tom from his company SMC the monies to pay the mortgage of about £6,500, plus as he put it in his oral evidence, £1,000 for utilities and £500 for "odds and sods", hence £8,000 pcm. Tom knew of and went along with this deception; it was in his interests as otherwise there would have been no transfer.
135. It is unfortunate that there are no earlier bank statements from Tom in the evidence bundle but in the circumstances I accept Mike's evidence, especially as Tom I consider could have disclosed his earlier statements. Mike's evidence is that he made those payments of £8,000 pcm until February 2023. That may be incorrect as there is no evidence before me that SMC paid the "rent" for several months from about April 2020 when Mike and Tom fell out. In any event, they decided to work together again and Tom says Mike then agreed to resume paying him rent for various outbuildings, and payments were in place by September.
136. I do not accept Tom's evidence that this was a genuine arm's length rental as it makes no commercial sense as to the amount, being more than the estimated rental value of the House including all of the outbuildings. Again, it was Mike providing Tom with monies to pay the mortgage, as otherwise he could not afford to do so. That is obvious on his then salary of £76,000 pa as has been demonstrated by the severe financial straits he has been in for some time since their relationship broke down. Mike said, and I accept, that for him to have paid that amount for the outbuildings would have been "staggeringly stupid."

137. Conditions 1, 2 and 3 I set out in [124] were therefore met. Mike also continued in his redevelopment and maintenance of the House, its grounds and outbuildings. He continued to pay for the services of two housekeepers, as he had since 2007, and also a handyman. In 2022 he organised development works to the Gatehouse and Annex, paid for by ETT.
138. There was considerable debate about who actually paid for these and other works with Tom saying they came out of in effect his director's loan account with ETT. There was insufficient evidence before me to determine whether that was the case. I am however satisfied that Mike organised those works and others, Tom playing no part in them. Mike certainly did pay for almost £15,000 worth of furniture and decorations placed in the House post transfer, and service the air conditioning. I find he did organise the ground development works as well, all part of his continuing control of the House in his lifetime.
139. That is also evidence in correspondence with third parties relating to income generation and insurance. In November 2021 Mike signed an agreement with a specialist holiday letting agency, Kate & Tom's, as "owner". In September 2021, Tom was copied into email exchanges with Mike's insurance agent, Tom confirming that the House was to be insured "...in isolation on a let basis." In October 2021 Mike alone continued the discussions with the agent.
140. I therefore reject Tom's evidence in the main. Whilst there are certain discrepancies and unexplained matters in the substantial evidence I have heard over the trial, I find on the balance of probabilities that all of the Conditions were satisfied, the Transfer being in accordance with and subject to them.

## **DETERMINATION OF THE ISSUES**

### **Issue 1: Did Mike and Tom agree or have a common intention that the transfer of the House on 4<sup>th</sup> November 2019 would be subject to certain conditions and/or limitations?**

141. Yes, for the reasons set out above.

### **Issue 2: If so, what were those conditions and limitations?**

142. They are set out in [124].

### **Issue 3: Did any such agreement or common intention, as regards conditions or limitations to be placed upon the Transfer, give rise to a constructive trust in favour of Mike?**

143. Mr Digby submits that Mike faces an insuperable obstacle in the form of the Statutory Declaration, as his confirmation that he has no further interest in the House disposes of the matter, citing *Bannister* and *Gallant*. Mr Digby accepts, as he must, that the Statutory Declaration is not a declaration of trust *per se* but submits that it is a written document which declares the beneficial interests in the House and was a document to which Tom was privy (even though he did not sign it). I do not accept his submission; first this document was not made by the trustee, namely Tom, and secondly or in the

alternative the Statutory Declaration is not a "...relevant conveyance" as required in *Gallant*.

144. I find that the agreement between Mike and Tom was one by which Mike would continue to retain a beneficial interest for the rest of his life in the House post the Transfer. Further, Mike relied upon this to his detriment in that he was as a result thereafter unable to dispose of the House or in effect his previous equity in it to anyone else whether during his life or on death. That establishes a common intention constructive trust, based upon the common intent held by Mike and Tom up to the Transfer – *Grant* in [47] above.
145. If I am wrong in finding detriment and in any event I find a *Rochefoucauld* constructive trust has arisen as it would be inequitable for Tom to exclude Mike's claim when the basis of the Transfer was that Tom would hold the House for Mike's benefit during his life. In other words, it would be inequitable for Tom as a recipient of property to rely upon the absence of writing to defeat Mike's agreed interest.
146. I also find that the evidence before me is substantive and convincing on the balance of probabilities and far from being slender; certainty as to the basis of the trust as required in *Ashburn* is present as I have set out in my findings of fact. There was an express agreement between Mike and Tom which they actioned together.

**Issue 4: To the extent that any constructive trust does so arise, what remedy is Mike entitled to?**

147. A declaration that Tom holds the House on trust for Mike on the terms I have found.

**Issue 5: Is Mike liable to pay Tom the sum of £24,000 in respect of an outstanding OVO Energy bill pursuant to an agreement made on or about 28<sup>th</sup> February 2023?**

148. In the course of negotiations between Mike and Tom in a detailed four page 22 point email exchange Tom at point 6 said the power to Babs Park would be cut off if the monies were not paid. Mike denied this but said "...you don't know what you are talking about...I've agreed to deal with that for you."
149. I find there was no binding agreement as this was part of the negotiations when looked at in the context of the whole of them, which, sadly and expensively for Mike and Tom, failed.
150. If I am wrong as to that, based as it is upon the above narrow Issue I am to determine, in the alternative I do not consider that the pleadings establish (nor in any event does the evidence before me) a proper contractual basis for this claim, so I dismiss it.

**Issue 6: Was Mike entitled to carry out works at the House on and around 7<sup>th</sup> September 2023 to lay cables serving Babs Park...Issue 7 If not, what remedy is Tom entitled to?**

151. Mike was entitled to carry out works by reason of the constructive trust and the Conditions thereunder. No remedy therefore arises.

**Other matters**

152. That leaves the Chattels Claim, as the trial estimate was insufficient to hear evidence on it as well. That claim is valued between zero and several hundred thousand pounds. Determination of that claim must be proportionate and in accordance with the Overriding Objective, minimising costs and court time. I have substantial concerns from the evidence before me that if fully fought several days of court time will be required, as the inventory lists over well over 100 items plus numerous categories described as “various”.
153. I request counsel to agree if at all possible a minute of Order as to my determination of the Issues and also to propose a proportionate disposal of the Chattels Claim for my approval. That may involve transfer to another court and/or a guillotine on submissions to restrict court time and possibly the number of witnesses involved. I will not order but urge the parties to seriously consider a stay of two or three months for ADR in respect of the Chattels Claim.
154. I think some form of Scott Schedule would assist whoever hears this aspect, with the Judge’s decision possibly being limited to indicating in a box against each item (if Tom’s defence as to purchase is not accepted) whether it is proven and if so the value (if any) found to be due. Otherwise, a written judgment may well be excessive/disproportionate in size and time compared to the sums in dispute. If a costs/consequential hearing is necessary, counsel should file a draft order adjourning to a date to be fixed, a joint list of availability in September, October and November plus an agreed time estimate for the hearing and pre-read, within 14 days of today.

**Deputy Master Linwood**

**5th September 2024**