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Case No: BR-2019-001310

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CHD)

IN THE MATTER OF MOHAMMAD BABAR IQBAL (A BANKRUPT)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Rolls Building London, EC4A 1 NL

Date: 17/01/2024

Before :

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Between :

(1) Ann Nilsson
(2) Adam Harris
**(in their capacities as Trustees in Bankruptcy of the
First Respondent)**

Applicants

- and -

(1) Mohammad Babar Iqbal
(2) Faraheen Khalid Iqbal

Respondents

James Freeman (instructed by **Hill Dickinson LLP**) for the **Applicants**
Richard Ascroft instructed as direct-access counsel by the **Second Respondent**

Hearing dates: 24 November 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Insolvency and Companies Court Judge Burton :

1. This is the final hearing of an application brought by Ann Nilsson and Adam Harris as the joint trustees in bankruptcy of Mr Mohammed Babar Iqbal (“Trustees”). They seek a declaration as to beneficial ownership and an order for possession and sale of the freehold property, his former matrimonial home, known as Southview, Pollards Hill East in London (the “Property”).
2. Mr Iqbal is the first respondent to the application. The second respondent, Mrs Iqbal is his former wife under Islamic law. The respondents are registered as the joint tenants of the Property pursuant to a TR1 dated 14 March 2003. The TR1 contains an express declaration of trust that the Property is held by them as tenants in common in equal shares. Mrs Iqbal has filed a witness statement in which she claims that pursuant to the terms of an oral agreement in 2017 bringing an end to their Islamic marriage, Mr Iqbal agreed to transfer to her, and she now holds, all of the beneficial interest in the Property.

Background

3. Mr and Mrs Iqbal entered into an Islamic marriage, a Nikah, in August 1996. On 25 September 1998, Mr Iqbal was registered as the sole proprietor of the Property. Refurbishment works were undertaken which required planning permission. Mrs Iqbal’s evidence states that she moved into the Property around July 2000 to live there together with Mr Iqbal and his parents.
4. On 6 March 2003, a deed in the form of Land Registry form TR1 was executed, transferring the Property from Mr Iqbal’s sole name into their joint names. Box 11 of the TR1 was ticked to say that they would hold the Property as tenants in common in equal shares. The TR1 was registered at the Land Registry on 14 March 2003.
5. Mrs Iqbal’s written evidence states that around July 2000 - notably before executing the TR1 - she and Mr Iqbal visited a firm of solicitors, Carpenter & Co where they consulted Gavin Carpenter and arranged to take out a mortgage with Platform (which I understand to be part of the Co-operative Bank group). She states that Mr Carpenter was instructed to transfer the Property so that she would hold 90% of the beneficial interest with the remaining 10% being held by Mr Iqbal. She left it to her former husband to conclude the arrangements but has now learnt that Mr Carpenter failed to carry out their instructions.
6. The Land Registry charges register includes details of a charge in favour of Cooperative Bank plc dated 19 July 2006.
7. Mr and Mrs Iqbal separated at some stage in 2016 and according to Mrs Iqbal’s evidence, they went through an Islamic divorce in 2017. Mrs Iqbal sought advice regarding the divorce settlement from a firm called MacKenzie & Co but states upon learning that their Nikah was not recognised under English law, and that consequently there was no need to obtain a court order to confirm the divorce, they decided to sort out the terms of the settlement between themselves, without the assistance of solicitors.
8. She claims that her only concern was to ensure that she would own, outright, the home in which she and the children would live and that once that had been agreed, despite being told by others that she could claim a share of Mr Iqbal’s business interests or

other assets, she decided not to do so. It is her case that their divorce settlement therefore provided that she would have 100% of the Property plus £5000 per month to look after the children and that she would not lay claim to any of Mr Iqbal's other assets. The agreement was never reduced to writing.

9. On 14 November 2019, a bankruptcy petition was presented against Mr Iqbal by HMRC. He was adjudged bankrupt on that petition on 17 March 2020. The Trustees were appointed on 1 May 2020.
10. The Trustees' evidence provides a copy of a letter dated 7 May 2020 sent to Mrs Iqbal at the Property referring to her and Mr Iqbal's joint interest in the Property and enclosing a notice to interested parties of a dwelling house falling within section 283A of the Insolvency Act 1986. The Trustees have also provided a copy of letters from their solicitors, addressed to Mrs Iqbal at the same address dated 23 September 2021 and 5 October 2021. Mrs Iqbal did not reply to any of the letters.
11. Having not received any response from Mrs Iqbal, on 7 February 2023, the Trustees commenced these proceedings.
12. In separate proceedings commenced by Mr Ashank Patel against Mr Iqbal, Mr Ashley Greenbank sitting as a Deputy High Court Judge made an order declaring that the first £950,000 realised by the Trustees, together with 50% of any subsequent sums so realised up to a total of £7.3 million (and thereafter a specified percentage) would not be considered to comprise Mr Iqbal's property for the purposes of the bankruptcy but would instead be held by the Trustees on bare trust for Mr Patel. It is consequently apparent that very considerable assets would need to be realised before any of Mr Iqbal's creditors, other than Mr Ashank (who I understand has a claim as a creditor as well as a beneficial interest in assets held by him) will benefit from asset realisations.
13. A separate agreement was reached between the Trustees and Mr Ashank pursuant to which the Trustees could retain £50,000 from the first £950,000- tranche of realisations to meet their costs and expenses.

Relevant legal principles

14. The applicable law was not in dispute. The Trustees' claim for possession is brought pursuant to section 14(2) of the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA") and section 335A of the Insolvency Act 1986 (the "Act"). Pursuant to section 335A(3) of the Act, if an application for possession is made after one year following the vesting of a bankrupt's interest in their trustees, the court will assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.
15. In determining an application for possession pursuant to section 14 of TOLATA, the court ought to make such order as is just and reasonable having regard to the following factors:
 - i) the interest of the bankrupt's creditors
 - ii) the conduct of the spouse, so far as contributing to the bankruptcy;

- iii) the needs and financial resources of the spouse;
 - iv) the needs of any children;
 - v) all the circumstances of the case other than the needs of the bankrupt.
16. Mrs Iqbal accepts that the starting point for the determination of the beneficial ownership of the Property is the express declaration contained within the TR1. In *Stack v Dowden* [2007] 2AC 432, Baroness Hale of Richmond noted:
- “In the olden days, before registration of title on certain events, including a conveyance on sale, became compulsory all over England and Wales, conveyances of unregistered land into joint names would in practice declare the purchasers’ beneficial as well as their legal interests. No one now doubts that such an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel.”
17. Baroness Hale went on to note that the Land Registry forms in use from 1995 to 1998 did not require or provide an opportunity for transferees to set out their beneficial interests; the form referred only to the legal title. It was subsequently changed. The new form, which largely resembles that which appears on the title register for the Property, was considered by the Court of Appeal in *Pankhania v Chandegra* [2012] EWCA Civ 1438. There, the parties had purchased a property in joint names and completed the Land Registry TR1 stating that they held it as tenants in common in equal shares. Notwithstanding this, the judge at first instance held that the legal and beneficial ownership of the property was held solely by the defendant and made a declaration to that effect.
18. On appeal, at paragraph 13 of his judgment, Lord Justice Patten noted that the approach of the judge at first instance, seeking to determine the parties’ intention as to who should own the property beneficially and in what shares, would have been entirely appropriate, were it not for the express declaration of trust. He continued:
- “But that was not the issue with which the judge was faced. For whatever reason, the parties (both of them of full age) had executed an express declaration of trust over the property in favour of themselves as tenants in common in equal shares and had therefore set out their respective beneficial entitlement as part of the purchase itself. In these circumstances, there was no need for the imposition of a constructive or common intention trust of the kind discussed in *Stack v Dowden* nor any possibility of inferring one because, as Baroness Hale recognised in paragraph 4 of her speech in that case, such a declaration of trust is regarded as conclusive unless varied by subsequent agreement or affected by proprietary estoppel.”
19. Proprietary estoppel is an equitable remedy pursuant to which the court may intervene in cases where it considers that reliance by a party on its strict legal rights would be unconscionable. The nature of the remedy is described in *Underhill & Hayton: The Law of Trusts and Trustees* at paragraph 14.59:

“If a defendant makes a promise or assurance to the claimant (or knowingly acquiesces in the claimant's mistaken belief) that the defendant's property is the claimant's property or that the defendant has given or will give the claimant a right therein or a benefit over it, and the claimant acts to his detriment in reliance on that assurance (or mistaken belief), then equity will estop the defendant (and his personal representatives) from asserting his full legal and beneficial ownership in the property or from causing the claimant to suffer detriment and from claiming that non-compliance with statutory formalities under the Law of Property Act 1925 or the Wills Act 1837 bars the claimant's claim.

The House of Lords in *Thorner v Major* made it clear that, to establish a proprietary estoppel claim, a claimant needs to prove: (1) that assurances or conduct of the defendant in relation to identified property were sufficiently clear and unambiguous in all the circumstances so as (2) to lead the claimant reasonably to rely on those assurances or conduct (3) by acting significantly to his detriment, so that it would be unconscionable for the defendant to deny the claimant any remedy.”

20. The burden of proving that the requisite elements were present to establish a proprietary estoppel lies with Mrs Iqbal.

Witness evidence

21. This final hearing was listed pursuant to the order of Deputy ICC Judge Agnello dated 17 July 2023. It provides that the makers of witness statements shall attend the hearing for cross-examination, unless excused in writing, in default of which their statements will not be read without the permission of the judge.
22. Mr Iqbal filed a witness statement in these proceedings but failed to attend the hearing. His attendance has not been excused in writing. Mr Iqbal did not seek by correspondence, application or evidence to explain his absence or to seek the Court's permission for his statement to be read. I see no basis to derogate from the terms of the order dated 17 July 2023. Mr Iqbal's evidence has not therefore been considered or taken into account for the purposes of this judgment.
23. Ms Nilsson is a licensed insolvency practitioner at Mazars LLP and one of the joint trustees of Mr Iqbal's bankrupt estate. I found her evidence to be honest, reliable and straightforward, but due to the nature of the claim, other than her description of the arrangement entered into with Mr Patel, of limited value.
24. Mrs Iqbal has largely conducted these proceedings as a litigant in person, without the benefit of legal advice or assistance. It is often difficult for a litigant in person to distinguish what is relevant from what is irrelevant. However, Mrs Iqbal struck me as an intelligent woman. She describes herself as a pharmacist, and the issue in dispute in this case, namely the ownership of the Property, is relatively straightforward and also of considerable importance to her.

25. Nevertheless, Mrs Iqbal provided very little information in her first witness statement regarding the terms of the alleged agreement with her husband to transfer to her what she claims was, at the time of their Islamic divorce, his remaining 10% of the beneficial interest in the Property. She referred to no written note of the agreement and has provided none, nor in her written evidence did she seek to explain why it was not recorded in writing.
26. Mrs Iqbal stated in her first witness statement that she had not received any of the letters sent by or on behalf of the Trustees. When giving oral evidence she accepted that she could not explain why so many letters had not reached her, but volunteered that the Property is located on a private road and very hard for postmen and couriers to find, particularly after her neighbours removed all signage. She also informed the Court that the post box for the house is outside the Property. She said that after Mr Iqbal left the Property, she agreed to permit him to continue to use it as a correspondence address. He could remove any post delivered to the post box at the Property without having to enter the house. She said it is possible that Mr Iqbal may have removed letters addressed to her as he kept her in the dark about many important things which she did not learn about until they “arrived on her doorstep”. When asked what she meant by this, she referred to Mr Iqbal not having informed her of death threats made against him and his family until she returned home one evening and he told her that she and the children had to leave the house immediately.
27. Mrs Iqbal said nothing in her first witness statement about the charging orders obtained by third parties against her ex-husband’s interest in the Property. This struck me as surprising. Even if she had not received notice of the application for the charging order in the post, details of the orders, both made against Mr Iqbal’s beneficial share of the Property were made after their Islamic divorce and were set out and evidenced in Ms Nilsson’s witness statement.
28. Mrs Iqbal attested to the truth of each of her witness statements both when making them and when giving evidence before me at the final hearing. However her written evidence conflicted with her oral evidence in two important respects. The first concerns the date on which she said that she attended the meeting with Carpenters. In her first statement, she said that the meeting took place in or around July 2000. This was around the same time that she first moved into the Property. It was also three years before executing the TR1 which she signed in the presence of a witness clearly setting out that she and Mr Iqbal would hold the Property on trust for themselves in equal shares. Despite the TR1 being included in Ms Nilsson’s exhibit, Mrs Iqbal’s written evidence, prepared with the assistance of counsel, made no reference to it, nor to her attending before Edward Isaacs, a solicitor in Shirley, Surrey to execute it in his presence as a deed.
29. During cross-examination, she stated that she remembered executing the TR1, that she understood at the time that it was an important legal document and that she understood it intended to transfer the Property into both their names in equal shares. She then said that they went to the solicitor after that date, in 2003, and instructed them to change the beneficial interest so that she would hold 90% and Mr Iqbal the remaining 10%. She said that one of the reasons she had been content to leave Mr Iqbal to conclude the arrangements they had discussed with Carpenters, was because, at the time, she had a lot on her plate with three children under the age of two. However, according to her first witness statement, in June 2023 her eldest child was 20 and her twins were 18. The twins would not therefore have been born in 2003.

30. Whilst I recognise that Mrs Iqbal was being asked to recall a meeting taking place at least 17 years earlier, the Land Registry documents were exhibited to Ms Nilsson's first witness statement and available to Mrs Iqbal when making her first witness statement. These proceedings have been going on a long time and concern a very important asset. Mrs Iqbal has had plenty of time to try to refresh her memory of the circumstances surrounding the matters set out in both her and the Trustees' evidence. It would have been apparent from the Land Registry documents exhibited to Ms Nilsson's statement that the charge now held by Cooperative Bank plc was taken out in 2006, at which time, the twins would have been born. During re-examination Mrs Iqbal said she now thought the meeting with Carpenters may have been in 2006. Her evidence did not say that she could not remember when that meeting took place. She expressed no difficulty in recollecting the timeline. She clearly referred to the meeting with Carpenters taking place in or around July 2000. The difference is not a matter of a few months; it is years.
31. The second serious inconsistency concerns the evidence set out in Mrs Iqbal's second witness statement and her oral evidence.
32. Mrs Iqbal said nothing in her first witness statement about mortgage payments for the Property. The day before this final hearing, having instructed Mr Ascroft two days earlier to represent her on a direct-access basis, Mrs Iqbal served a second witness statement on the Trustees dated 23 November 2023. In that witness statement she states that following the Islamic divorce, she became responsible for paying the mortgage on the Property and all other outgoings including council tax and utility bills. She exhibits copies of online print-outs from what she states is an account held in her sole name at Barclays Bank.
33. The Trustees "mildly objected" to the admission of such late evidence. For the reasons set out in a brief judgment at the beginning of this final hearing, I permitted it to be entered in evidence.
34. The exhibited bank statements start two years after Mrs Iqbal's Islamic divorce. They show payments from 19 August 2019, approximately monthly, in varying amounts to "MTGE Agency SVS/Leek 4" until 22 September 2021 when the payments were made to "Platform PCP Re Warwi" through to 23 January 2023 when the payee details changed to Platform Funding. The most recent payment on the exhibited statements is dated 6 November 2023. The print-outs include no details of the name on the account nor the sort code or account number from which they were being made. There is also no evidence of payments being made into the account nor of other payments being made from it. Consequently it is not possible from the print-outs to determine whose money was being used to make the payments. Mrs Iqbal's evidence is that it was all her money, earned by her as a pharmacist.
35. Mrs Iqbal referred to the mortgage payments and stated:

"After the First Respondent and I went through what I referred to in my first witness statement as an Islamic divorce, I became responsible for paying the mortgage on Southview and all of the other outgoings including council tax and utility bills".

36. However, during cross-examination she referred, for the first time, to Mr Iqbal continuing to pay the mortgage until the freezing orders were made against him. That was at least two years after the Islamic divorce.
37. Despite seeing the evidence in which Mr Iqbal appeared to have retained at least 50% of the beneficial interest in the Property (most notably the TR1), and Mr Iqbal informing the Court under oath at his public examination that he resided between two properties, one of which was the Property, Mrs Iqbal obdurately refused to concede that it might be reasonable for third parties to think that he continued to hold an interest in it.
38. The absence of detail provided in Mrs Iqbal's written evidence, the initial absence of any information regarding Mr Iqbal continuing to pay the mortgage after their Islamic divorce, the conflicting dates and information set out in her written and oral evidence, the factual likelihood that Mrs Iqbal would have received at least one of the letters sent to her at the Property from at least one of the Trustees, their solicitors and/or those seeking to obtain a charging order against the Property and her apparent failure, after Mr Iqbal had been made the subject of freezing orders and bankruptcy to check that he had put their apparent agreement, pursuant to which she would hold 100% of the beneficial interest in the Property into effect, all lead me to approach Mrs Iqbal's evidence with considerable caution.

Was the express declaration of trust set out in the TR1 varied by subsequent agreement?

39. It appears to be Mrs Iqbal's case that the express declaration of trust set out in the TR1 was varied twice by agreement. The first provided for her to gain 40% of Mr Iqbal's 50% share of the Property, such that she would hold 90%, leaving him with 10%. The second provided for her to receive the remaining 10%, such that she now holds 100% of the beneficial interest. Even setting aside the inconsistencies in her evidence, neither agreement is recorded in writing. There is consequently no agreement that meets the requirements of the Law of Property (Miscellaneous Provisions) Act 1989 to supersede the express declaration of trust set out in the TR1.

Proprietary Estoppel

40. These proceedings were commenced by application notice containing the information prescribed by the Insolvency Rules and without pleadings. Mrs Iqbal made no application to enable her to plead such a case nor did she set out full particulars in her witness statements of each of the requisite ingredients for proprietary estoppel and how they were met. I recognise that she has only periodically had the benefit of advice from direct-access counsel. The first, Mr Becker, appears (by the unusual inclusion of his name at the end of the document) to have assisted in the preparation of her first witness statement. She only instructed Mr Ascroft, again on a direct-access basis, a few days before this final hearing. Although there is no pleaded claim for proprietary estoppel, I heard submissions from both sides on the issue and shall therefore address it in this judgment.
41. The first requirement to invoke the equitable doctrine of proprietary estoppel, is for there to be a clear and unambiguous assurance. Mrs Iqbal relies on the two alleged oral agreements: the first for her to hold 90% of the beneficial interest in the Property; and

the second upon her Islamic divorce when Mr Iqbal agreed to transfer his remaining 10% interest to her.

42. In relation to the second requirement for the equitable remedy - reliance on the assurance - Mrs Iqbal refers to the terms of her Islamic divorce settlement and her decision not to make any claim for an interest or share in any of Mr Iqbal's business or other assets, provided she obtained outright ownership of the Property. She claims that that agreement can now be seen to be to her detriment, because Mr Iqbal has been made bankrupt and his assets have vested in the Trustees.
43. The third requirement requires unconscionability on the part of the property owner (or here, the holder of the remaining 50% of the beneficial interest in the Property) in denying the claimant the interest that they expected to have. The Court must be satisfied that the detriment is sufficiently substantial to render it inequitable to allow the assurance to be disregarded. This largely overlaps with the requirement for detrimental reliance. Mrs Iqbal relies, again, on her decision, in return for sole beneficial ownership of the Property, not to lay claim to any of Mr Iqbal's other assets such that it would now be unconscionable for him, or those who stand in his shoes, to deny the interest that was promised to her.
44. There was, in my judgment, no clear assurance to invoke the equitable principle of proprietary estoppel. Whilst I found credible Mrs Iqbal's evidence that on divorce, all she wanted was the Property, that is not the same as Mrs Iqbal receiving, or even being assured that from that moment, without any other steps being taken, she held 100% of the beneficial interest in the Property. The evidence leads me to conclude, on the balance of probabilities, that her desire to own the Property absolutely (and the alleged agreement between her and Mr Iqbal on divorce to put that into effect) was to be concluded some time later, most likely, revisited once the mortgage had been paid off. In reaching this decision, I have taken into account the following:
 - i) Mrs Iqbal's failure to say anything about the mortgage payments for the Property until the eve of the final hearing and even then, in her second witness statement, she failed to inform the Court that Mr Iqbal made the payments until the freezing order prevented him from doing so. The arrangement is inconsistent with her statement that since 2017, she held 100% of the beneficial interest in the Property. She referred in her first witness statement to being paid £5000 maintenance each month and yet nothing was said to the Court about Mr Iqbal continuing to meet the mortgage payments.
 - ii) The absence of any written note of such an important agreement being reached between parties apparently concluding the terms of their divorce/separation. When questioned about the absence of any document recording the terms of the alleged divorce agreement, Mrs Iqbal stated that she spoke to her solicitor "but we didn't get round to completing it". When counsel responded saying that that need not have prevented them from recording such an important matter in writing, Mrs Iqbal replied that the cost would have been high, so they agreed to it verbally. When counsel pressed further, highlighting that one does not need a solicitor to put something in writing, she replied "he was going to pay off the mortgage and then his name would not be on the property at all". This strongly suggests to me that despite giving evidence that on divorce, she and Mr Iqbal reached a concluded agreement giving her 100% of the beneficial interest in the

Property, in fact her understanding was that the arrangement was to take place some time in the future, most likely because it depended on Mr Iqbal first paying off the mortgage.

iii) Similarly, according to my notes, during cross-examination Mrs Iqbal said:

“I just wanted my home. That’s what I thought I’d get. I wanted to close the chapter. It was the quickest way to get him out of my life.”

Her own evidence notably spoke to an understanding that she would gain total ownership of the Property in the future.

iv) The Trustees’ evidence exhibits an affidavit dated 22 November 2019 and a witness statement dated 16 December 2019, both made by Mr Iqbal in the proceedings commenced against him by Mr Patel. Mr Iqbal claimed in the affidavit to own four properties, one of which was the Property. He referred in both documents to the Property being held 90:10 between Mrs Iqbal and himself and to him transferring his remaining 10% of the beneficial interest to her when they divorced. He stated in the affidavit that he claimed to have a beneficial interest in 11 other properties. From this, I infer that he has a fair body of experience in the property market. He appears to understand the concept of a tenancy in common and beneficial interest. He expressly states that he and Mrs Iqbal held the Property during their marriage as tenants in common. However he provides no explanation why the beneficial interests, as recorded at the Land Registry, were not formally revised by agreement in writing to record the arrangement that he states took place pursuant to which they apparently agreed to alter their 50:50 interests to a 90:10 split. He simply stated that:

“The reason the mortgage is held in joint names as of now is that there are restrictions on the property pertaining to other cases. In any event, my ex-wife would be unable to secure a mortgage to repay the first lender due to insufficient income to obtain a mortgage.”

Whilst this appears partially to support Mrs Iqbal’s description of the agreement reached with her ex-husband, it expressly acknowledges the restrictions registered against the title in respect of the charging orders made against Mr Iqbal’s beneficial interest on 4 September 2019 and 26 November 2019 whilst at the same time failing to provide any explanation why Mr Iqbal did not oppose those charging orders on the basis that, on his own evidence, at the time, he no longer held a beneficial interest in the Property.

v) Despite Mr Iqbal stating in these sworn documents that he no longer held any interest in the Property, the Trustees’ evidence exhibits an email from Mr Iqbal to a finance company, RefCap dated 16 July 2018 to which he attached a schedule of properties, including the Property. It appears, according to the schedule, that he claimed then to own 100% of the Property with £1.5m net equity. Whilst Mrs Iqbal may not have been aware of this proposed transaction, the document suggests that Mr Iqbal did not appear to consider that there would, at that time, be any impediment to him relying on the full value of the Property.

- vi) The Trustees' evidence includes, from February 2019, a letter from a firm of estate agents in Norbury addressed to Mr Iqbal thanking him for inviting them "to inspect your home to provide you with an up to date market appraisal" and stating that they looked forward to receiving his instructions to market the Property. Whilst I accept that Mrs Iqbal could not control her former husband's behaviour, it is at odds with the agreement supposedly reached between them in 2017, for him to hold himself out as owning or having a beneficial interest in the Property such as to entitle him to instruct agents to value it and for those agents to describe it as his "home".
- vii) In his witness statement dated 16 December 2019 Mr Iqbal said that he was using the Property as his postal address so that he could receive post and "also I do live between there and my parents' home as I cannot presently afford a place of my own." During his private examination before me on 12 January 2021, when asked to give his address, he said that he was between two properties. The examination took place during the Covid-19 pandemic. He said that he was in a pandemic "bubble" with his father at 26 Briar Avenue and that the other address was the Property – which he also gave as his address for correspondence. Notwithstanding the apparent agreement reached between Mr and Mrs Iqbal on divorce, he was clearly representing to third parties that he continued, at times, to live at the Property.
- viii) During cross-examination, Mrs Iqbal sought to refute that Mr Iqbal still lived at the Property. She said that following their separation, he and his parents moved out and he moved into a flat in Vauxhall where the children would visit him for weekends. As regards his time at the Property, she said that whilst the children were too young to be left alone, Mr Iqbal would stay there to look after them on occasions when she was away overnight - perhaps weekly during the Covid pandemic when she worked very long hours at the pharmacy and also on occasions when she went away for weekends with her partner. She estimated that Mr Iqbal stayed overnight a few times every month.
- ix) That seems to be at odds with a description that Mr Iqbal lived "between properties", suggesting to me that he considered it still to be a place he could call home. Whilst the arrangements described by Mrs Iqbal, pursuant to which Mr Iqbal would look after the children at the Property when they were young, struck me as credible, that does not explain why, when the children would have been in their late teens, Mr Iqbal still described himself to the Court as living between two properties, one of which was the Property. It would have been helpful to hear from Mr Iqbal on this and many other points in evidence, but as noted, he did not make himself available for cross-examination at the final hearing.
- x) When, on 29 November 2019, Mudassir Khan obtained an interim charging order against Mr Iqbal's interest in the Property, the usual restriction was registered against the title at the Land Registry. The Trustees' evidence is that the order was made final on 22 January 2020. There is no evidence of either Mr or Mrs Iqbal contesting the application. Whilst it is extremely unlikely that the Court would have been prepared to make a final charging order against Mr Iqbal's interest in the Property without first notifying any party believed to have an interest in the Property or to be living there, Mrs Iqbal states that she knew

nothing about it until these proceedings were commenced. She suggested Mr Iqbal might have removed from the post box outside the Property, letters addressed to her about it. As Mr Iqbal did not make himself available to be cross-examined, it is impossible for the Court to decide whether he is likely to have done so. However it is hard to see what Mr Iqbal would have gained by doing so, thereby depriving Mrs Iqbal of the opportunity to contest before the Court her interest in the home in which she and perhaps more compellingly, Mr Iqbal's children lived.

xi) The terms of the charging order were referred to in the Trustees' evidence. They relied upon it as evidence to support their claim that Mr Iqbal continues to have an interest in the Property. Despite being advised at the time she made her first witness statement, Mrs Iqbal failed to say anything about the charging order – not even that she was not aware of it.

45. I find on the balance of probabilities, that at the time when Mrs Iqbal states they effected an Islamic divorce, Mr and Mrs Iqbal reached no more than an inchoate agreement in respect of the interest which she would eventually gain in the Property, the terms of which would not be finalised until some time later, most likely once the mortgage was paid off. No final agreement was reached, no concluded assurance was given. Consequently, in my judgment, there was no assurance upon which to found a proprietary estoppel.

46. Even if I am wrong in reaching that conclusion, it remains open to Mrs Iqbal to seek to argue that she is entitled to a beneficial interest in Mr Iqbal's remaining assets, albeit that as a result of the bankruptcy order made against him, she would need to persuade the court of her entitlement pursuant to a resulting trust. As matters stand, therefore, there is no conclusive detriment suffered by her alleged reliance on the alleged assurance.

Conclusion

47. In the absence of a document satisfying the requirements of the Law of Property (Miscellaneous Provisions) Act 1989 altering the beneficial interests stated in the TR1 to be held by Mr and Mrs Iqbal, and in the absence of grounds to establish proprietary estoppel, I find that the Trustees are entitled to a declaration that they and Mrs Iqbal are beneficially entitled to the Property in equal shares.

48. I invite counsel, in the usual way, to agree the terms of an order to reflect the matters set out in this judgment. However I am conscious that Mr Ascroft stated during the hearing that if I were to reach such a conclusion he would wish to address me on the appropriate form of order. In the event, therefore, that the terms of an order cannot be agreed, I invite counsel to liaise with my clerk to arrange a brief consequential hearing.

END