

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
COMPANIES LIST (Ch D)

IN THE MATTER OF R N RESTAURANT (STOCKPORT) LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ
Date: 22 January 2024

Before:

HIS HONOUR JUDGE STEPHEN DAVIES
SITTING AS A JUDGE OF THE HIGH COURT

Between:

USMAN HUSSAIN MALIK

Claimant

and

(1) NUSRAT MALIK
(2) MAHBOOB HUSSAIN JUNIOR
(3) R N RESTAURANT (STOCKPORT) LIMITED

Defendants

Patrick Lawrence KC and Andrew Blake

(instructed by Needle Partners, Solicitors, Leeds LS7) for the Claimant

Alexander Learmonth KC and Amit Karia

(instructed by Key Solicitors, Birmingham B66) for the First Defendant

Hearing dates: 18-20 December 2023

Further written submissions lodged: 22 and 23 December 2023

Draft judgment circulated: 11 January 2024

APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10am on 22 January 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

I direct that pursuant to CPR PD 39A paragraph 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.

His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

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[Introduction and summary of decision](#)

1. In 2016 Nusrat Tariq Malik, the first defendant (“Nusrat”), transferred 4 of the 25 shares she held in a limited company, R N Restaurant (Stockport) Ltd, being the (nominal) third defendant (“the Company”). She transferred 2 shares to her elder son, Asad Malik (“Asad”) and 2 shares to her younger son, the Claimant, Usman Malik (“Usman”). At the time all three were agreed that this would assist them to achieve their common objective of removing Tariq Malik (“Tariq”), Nusrat’s estranged husband and Asad and Usman’s father, as director of the Company, with a view to saving the restaurant business operated through the Company and, thus, preserving the economic fortunes of the family. Subsequently, it is said by the other members of his family, Usman has separated himself from the rest of the family and aligned himself again with Tariq and/or with other external investors who they do not trust. The question of the beneficial ownership of these 2 shares in these changed circumstances has become a matter of great importance in the continued battle for ownership of the Company and its resolution is the objective of this trial.
2. There have been two previous trials before me, resulting in my first judgment [2020] EWHC 2334 (Ch) and my second judgment [2021] EWHC 1405 (Ch) respectively. There have also been a number of further contested hearings, including one appeal to the Court of Appeal, resulting in a judgment at [2023] EWCA Civ 2, and a further two day hearing before me in May 2023, itself leading to a further judgment at [2023] EWHC 1433 (Ch).
3. The first two trials related to the wider litigation, involving members of the Malik and the Hussain families, both of which have been involved in the ownership and operation of a large and highly successful restaurant business in Levenshulme, Manchester known as the Royal Nawaab. This wider litigation concerned the existence and assets of what I held was a partnership between the then claimant Tariq and the then second defendant, Mahboob Hussain (“Mahboob”). In my first judgment I held that the partnership owned the premises and also owned initially all 100, and then 50, of the 100 shares in the Company through which, as I held, the restaurant business was operated. (In 2009 Nusrat and Mahboob’s wife, Mirza, had each been gifted 25 shares in the Company by their respective husbands for tax planning purposes in a transaction which, as I held in my first judgment, could not be impeached by Tariq.) In my

second judgment I held that the premises and the partnership shares in the Company should be sold under an open market sale process.

4. In my third judgment I held that Usman, who had become the successful bidder, had failed to comply with the sale mechanism and had thus lost the opportunity to acquire the premises and the shares, thereby enabling Mahboob to do so instead. The final chapter in that litigation was when the Court of Appeal overturned that decision and held that Usman was after all entitled to acquire the premises and 50 shares.
5. Anticipating the possibility of further disputes, the Court of Appeal directed that I should deal with the same if I was available, given my knowledge of the background. Those disputes duly materialised and, following a 2 day contested hearing in May 2023, I held that the attempts made by Mahboob and the then directors of the Company to block Usman's acquisition of the 50 shares failed.
6. However, in 2021 and again in 2022 – at around the time that the appeal was proceeding in the Court of Appeal - Nusrat first advanced a contention that, following her transfer of 2 shares to Usman and his registration of the 2 shares in his name by the Company on 21 October 2016 (“the transfer”), she remained the beneficial owner of those 2 shares and/or that they ought to be re-transferred to her. Having requested the then directors of the Company to do so, they purported to re-register the 2 shares back to her on 9 August 2022, which action I held was wrongful and ineffective in my fourth judgment.
7. In the Part 8 claim issued by Usman in early 2023, seeking the determination of the disputes which had arisen, he sought declarations as to his legal and beneficial ownership of the 2 shares. Following the 2 day hearing in May 2023 I held that the registration by the Company of him as owner of the 2 shares was effective at law and the purported re-registration ineffective and, thus, ordered that he be re-registered as legal owner of the 2 shares. However, by this stage Nusrat had asserted her substantive claim to the 2 shares in her defence to the Part 8 claim and, following argument, I concluded that her case was sufficiently arguable to proceed to a final determination.
8. Accordingly, I gave directions for the trial of the counterclaim, concerning the beneficial ownership of the shares, and whether the transfer should be set aside. I also required Usman to give undertakings to restrict his use of the 2 shares pending the final determination of Nusrat's counterclaim.
9. Usman's case is that Nusrat gifted the 2 shares to him at the same time as she gifted a further 2 shares to Asad.
10. Nusrat's case is, as it is put by her counsel in their written opening submissions, triple tiered:
 - a. first, she transferred the 2 shares for a specific administrative purpose, without donative intent, so that Usman holds them on resulting trust for her;
 - b. second, further or alternatively, the transfer was as a result of misrepresentations by Asad and/or Usman, or a under a mistake and should be set aside; and
 - c. third if, contrary to the above, the transfer was effective in equity, then it was procured by Usman and/or Asad's actual or presumed undue influence over Nusrat.
11. Although the value of the 2 shares is, in itself, relatively modest, they are of substantial value in real terms in current circumstances because they make the difference between Nusrat and Mirza together having a 50% interest in the Company or only a minority 48% stake in the Company. If they have a 50% share, their ability to block any decisions taken by Usman as incoming owner of

the other 50% share will be significant, if not decisive. If they only have a 48% share, their ability to do so will be very significantly reduced.

12. I am fully aware that it follows that the consequences of a finding in favour of Nusrat will not be conducive to the aim of achieving a clean break between the warring factions, as envisaged in my previous judgments and orders made in the previous litigation. If, however, Nusrat is entitled as a matter of law to the relief which she seeks, then she must have it, even if the result is likely to prolong this bitter, time and cost-intensive inter-family dispute.
13. I have been greatly assisted by the thorough and skilful presentation of the respective cases by counsel for Usman, Patrick Lawrence KC and Andrew Blake, and counsel for Nusrat, Alexander Learmonth KC and Amit Karia, who had to work to an expedited timetable and did so most effectively. I have borrowed heavily from their excellent written opening submissions for the non-controversial sections of this judgment.
14. I have not referred to all of the evidence and submissions in this judgment, nor dealt with each and every point raised, only those which are of direct importance to my decision.
15. In summary, my decision is that Nusrat effectively and unconditionally disposed of the entire legal and beneficial interest in the 2 shares to Usman and that there is no basis for that disposal to be reversed by the Court, so that her Part 8 counterclaim must fail and so that Usman is entitled to the relief which he seeks as regards his beneficial ownership of the 2 shares.

The issues

16. The issues are as follows:

Resulting Trust

17. Does Usman hold the 2 shares on trust for Nusrat?
18. This turns on the following issue: when Nusrat agreed to transfer 2.5 (later reduced to 2) of her shares to each of Asad and Usman, did she do so for a specific purpose of allowing them to be appointed directors of the Company and/or to use the votes to remove Tariq as a director (the “specific purpose”), or did she have a general donative intent?

Misrepresentations

19. Two misrepresentations were pleaded but, after the evidence had been heard, the second was, properly and realistically, withdrawn on behalf of Nusrat.
20. The first was that, prior to the transfer, Usman and/or Asad represented (even if only innocently) to Nusrat that they needed to be shareholders in the Company in order to become directors as intended (“the representation”). This involves a consideration of the following issues:
 - a. Was the representation made?
 - b. Was the representation of a character which could be relied upon by Nusrat?
 - c. Was Nusrat in fact induced in whole or part to make the transfer by the representation?
21. It is common ground that, both as a matter of general company law and by reference to the articles of association of the Company there was no qualification requirement that a person had to be a shareholder of the Company before he could be appointed as a director. However, as I will explain later, in the rather unusual circumstances of the case it was the position, as Nusrat’s own evidence shows, that her sons needed to be shareholders so that they could ensure that they

could procure Tariq's removal as a director and their appointment as directors, even if Nusrat was not willing herself to vote her shares to achieve that objective.

22. The second, now withdrawn, was that prior to the transfer Usman represented to Nusrat, by words or conduct, that he would only use the 2 shares in accordance with her wishes and for her and the family's benefit.

Mistake

23. As an alternative to the first representation set out above, it is said that the same issue gives rise to an operative mistake, such that this voluntary transaction is voidable. This gives rise to the following issues.
- a. Was Nusrat labouring under a mistaken belief that it was necessary for Usman and Asad to hold shares in order to become directors?
 - b. Was that mistake causative?
 - c. Was that mistake of sufficient gravity to make it unjust for the transferees to retain the benefit of the transfers?

Undue Influence

24. Was the transfer procured by the actual or presumed undue influence of Usman and/or Asad over Nusrat? This gives rise to the following issues.
- a. Does the evidence establish actual undue influence by Usman and/or Asad over Nusrat in relation to the transfer?
 - b. Alternatively, does a presumption of undue influence arise? In other words:
 - i. Was the relationship between Nusrat (donor) and Asad and Usman (donees) factually one of trust and confidence, and/or ascendancy?
 - ii. Is the transfer (on the hypothesis that it is a gratuitous transfer of the beneficial ownership of the 2 shares) a transaction calling for an explanation?
 - c. If so, can Usman rebut the presumption on the evidence by showing that Nusrat made the transfer of her full, free and informed consent?

Defences

25. Does Usman have any defences to the above? Usman submits that given events since 2016, in particular, his bid for the 50 shares in the Company and his payment of the deposit before any claim by Nusrat was first made and, thus, in reliance on his uncontested right to use the 2 shares as legal and beneficial owner, it would now be wrong to allow Nusrat successfully to assert the rights she now claims.

Witnesses and evidence generally

26. The factual enquiry in this case is most directly concerned with events in autumn 2016, over 7 years ago, since when there has been almost permanent litigation between the various warring factions. In my judgment after the first trial I reminded myself as to the correct approach to resolving factual disputes in cases where there is both conflicting oral and contemporaneous documentary evidence, especially where not all of the witnesses have a good command of written or spoken English and where their backgrounds and experience differs, greatly in certain cases,

from those of most Business and Property Court judges. I do so again in relation to the evidence heard at this trial.

27. At the first trial I was not particularly impressed by the evidence of Asad or Nusrat. I was cautious in relation to Mr Nawaz's oral evidence. Usman did not give evidence at either trial and nor did the remaining witnesses from whom I heard at this trial. I must not simply stand by my previous findings as regards the reliability of those who did give evidence at the first trial, not least because: (a) the primary issues in that case were very different from the single issue in play in this case; (b) in that case, Nusrat, Asad and Usman all shared a common objective (although, as I recorded, Usman had by that stage already disengaged from the litigation, in that he had not provided a witness statement and nor did he give evidence); (c) in that case I took the view that all three witnesses mentioned above were influenced in giving evidence by their low regard for Tariq.
28. That said, in this case I am satisfied that I must also approach the oral evidence of all of the witnesses with some caution. There are differences of emphasis and extent in relation to the individual witnesses but, overall, it is a case where I am satisfied that the strong emotions which this dispute and litigation has provoked has affected to some extent the objectivity and reliability of everyone who has been dragged into it, coupled with the natural decline in genuine recollection and the increase in misremembered recollection over the years from 2016 down to trial. The latter is particularly relevant in this case since the focus of much of the trial rests on the reasons, expressed or subjective, which motivated Nusrat to transfer the 4 shares to her sons, in circumstances where the dispute is not about the result to be achieved (the prevention of Tariq resuming his direct involvement in the Company and the saving of the family restaurant business), but about the specific legal rationale for including the transfer of the 4 shares as one of the steps to achieving that result, in circumstances in which most of those involved at the time had little knowledge and at least one (Asad) now says that he was completely mistaken. It also remains a case where the adverse view which the witnesses exhibited against Tariq is an influence, because of the perception that Usman has now tied in his lot with Tariq, or with people connected to or at least introduced to him by or through Tariq. It is, therefore, a case where I need to place close attention on the contemporaneous documentary evidence and test the oral recollections against this evidence and my assessment of the inherent reliabilities.
29. The following witnesses gave evidence in the following order.
30. Nusrat. A striking feature of Nusrat's evidence was that when on the first day of the hearing she was asked by Mr Lawrence (through an interpreter) careful and fair questions about the circumstances in which she came to transfer the 4 shares to Asad and Usman, her evidence was significantly different from the pleaded case (in particular, paragraph 10.7 of her Points of Claim) and the evidence she had given in her witness statements (in particular, paragraphs 41 and 45 of her second witness statement dated 21 April 2023 and paragraph 7 of her third witness statement dated 21 July 2023). In short, she did not say that she had transferred the shares on the conditional basis pleaded and set out in her statements. Instead, she said that she transferred the shares because she wanted to prevent Tariq from destroying the restaurant business and she was willing to transfer the shares on the basis that her sons had suggested that this would assist in that objective and she trusted her sons. In her cross-examination on the second day she reverted to a significant extent to her previous evidence. This was either because she had re-read her witness statements in Urdu overnight, and realised the need to emphasise in evidence the points which she had not previously raised or, more likely I am driven to conclude, despite her denial, because she had discussed her evidence with others overnight despite my warning that she should not do so. Even however if I was wrong about that, in my view the conflict between what she had pleaded and said originally in relation to this claim (at a time when there was no question – as

there may be as regards her earlier witness statement and evidence for the first trial – of her not having received full or entirely accurate assistance with the production of her witness statement or fully accurate interpretation) and her oral evidence means that I must treat her evidence with real caution.

31. Mr Mohammed Idris Mir. Mr Mir is a solicitor with a longstanding family connection with the Tariq family who was initially unwilling to provide a witness statement but who, after being served with a witness summons to attend trial, attended and provided a witness statement which made some amendments to the previous witness summary produced by Nusrat's current solicitors after discussions with him.
32. The importance of his evidence was that in early 2020 he had translated the witness statement drafted by Nusrat's then solicitors into Punjabi in her presence, after which she signed it without making any changes. As relevant to this case he gave evidence in relation to a discussion he had had with her about a key paragraph in Nusrat's witness statement which was the focus of attention both at the first trial and again, and even more so, at this trial, saying that he had a clear recollection of what she had said when he asked her about it in 2020.
33. I regret to say that I do not find this clear recollection reliable for the following reasons: (a) the meeting and discussion occurred almost 3 years ago, in the context of a busy professional practice with there being nothing particularly unusual in the subject matter or purpose of the meeting, such as would justify his having such a clear recollection; (b) it seems very unlikely to me that he just happened to ask her, and then to remember, without the benefit of any contemporaneous document, what she had said about the one paragraph which is of particular importance in this case when, at the time, her brief reference in that statement about giving 4 of her 25 shares to her sons could not, in my view, have been thought by him to have been of any obvious significance; (c) at the time, he did not think what he recalled her saying as being sufficiently important to justify amending the witness statement before she signed it so that it accorded with what she had told him, when at least on one view it was sufficiently important for that to be done to ensure that she did not give misleading evidence; and (d) he had also acted for her in October 2021, when he had written a letter to Usman claiming the return of the 2 shares on the basis of substantially the same version of events, so that in my judgment there is plainly a risk of cross-contamination of his recollection of what he had been told in January 2020 and in autumn 2021, especially since he did not make any file note of his attendance in January 2020. It seems to me that he has persuaded himself that his recollection is different to and far better than it really could be and is. Even if he did have a general recollection of some discussion along the general lines indicated, I am unable to accept it was as specific as he now says it was, and could only have related in general terms to Nusrat having given the shares to her sons as part of the process by which Tariq was to be prevented from running the restaurant business and was to be replaced by her two sons to prevent him from destroying the business and, with it, the family prosperity.
34. Asad. I must also treat Asad's evidence with caution, since the key part of his evidence in his witness statement from 2020 was so plainly at odds with his evidence in written and oral evidence in this case and without, in my view, any convincing explanation for the difference. It seemed to me that the best explanation he could give was that in the previous litigation he did not want to volunteer any information which might have opened up an opportunity for Tariq to claim that he and Usman held the 4 shares on trust for the partnership. This, on analysis, amounts to an explanation that he was prepared to tailor his evidence to the court to support his own case in the earlier litigation. It also seemed to me that he had become so emotionally attached to the litigation, fuelled by his loathing for his father Tariq and his sense of betrayal by Usman, together

with his determination to prevent Usman – and, through him, he believes, Tariq – gaining full control of the restaurant business, that he was unable to give objective, reliable, evidence.

35. Mr Taher Nawaz. Mr Nawaz is a chartered accountant and principal of the accountancy firm which has, until Usman assumed control, provided accountancy services to the Company and to Tariq, Mahboob, Nusrat and Mirza as regards their associated tax affairs. The key part of his evidence was that in September 2016 he asked his assistant why 5 shares were being transferred from Nusrat to Asad and Usman and was told that Asad had informed his assistant that it was “so that he and his brother could be appointed as directors in order that they could vote to remove their father as a director of [the Company]”.
36. I do not accept that Mr Nawaz has such a clear and precise recollection of this conversation as he says, because: (a) to have such a clear recollection of a conversation with his assistant taking place over 7 years ago is inherently surprising, especially in the context that he could not have been aware that it would be an important issue to anyone at the time or for many years thereafter; (b) as he agreed in cross-examination, he would have been aware that as a matter of strict company law there was no such requirement, so that he might have been expected to say so at the time, especially since he did say that the initial proposal (to transfer 2.5 shares each) was not possible as a matter of company law; and (c) he has not produced any contemporaneous notes or other documents to confirm his oral recollection. I am satisfied that his recollection of what was said could only be in far more general terms and along the same lines as what I have concluded was all that Mr Mir was told. Even if I am wrong about this, I am unable to accept, if this was indeed Mr Nawaz’s evidence, that what he was told was that the only reason why the shares were transferred was because the two sons had to be shareholders in order to be directors.
37. Usman. Usman was a most unimpressive witness. Despite having graduated with a degree in business management, having been involved in the running of the restaurant business and in the events of 2016 to date, and having been the successful bidder to take over the restaurant business, he sought to portray himself as very largely excluded from the decision making process by his elder brother Asad and almost entirely ignorant of basic principles of corporate governance. Overall, the impression I gained was that he was essentially a weak personality, easily influenced by others and willing to do what he was asked by the person or persons who at the time had influence over him. Also, however, I am satisfied that he was more aware of what was happening and why than he was prepared to admit in evidence, and that he was not simply doing whatever Asad asked him to do without any understanding of what was happening and why. I therefore treat his oral evidence with great caution.
38. Siddra. Siddra is one of Tariq and Nusrat’s two daughters and Asad and Usman’s sisters. She gave evidence by video-link from the UAE, where she now lives. She was the most reliable of the three siblings who gave evidence, possibly because she is less involved in the continuing battles. However, as with the other witnesses she had a good recall of the important events as concerned the family at the time but, in my view, less if any recall of the specific reasoning for the transfer of the 4 shares.
39. Finally, I should say that Reema, the other sister and married to Qaiser (who also worked in the restaurant business), had provided a witness statement but was not called to give evidence since she was unable to speak to the key issues in the case.

Factual findings

Pre-2016

40. This is a case which will turn very largely on my factual findings, which cover substantially the same ground in relation to each of the issues for determination. Accordingly, it is most sensible to deal with the facts and make the necessary findings of fact at this point.
41. It is convenient to begin by quoting from the first section of my first judgment where I referred to the uncontentious background history up to that point.
42. In early 2003 Tariq and Mahboob opened a large-scale buffet style restaurant with wedding and banqueting facilities (“the restaurant”) in what had been a cinema at 1008 Stockport Road in Levenshulme, Manchester (“the Stockport Road property”). They were equal joint owners of the Stockport Road property and equal joint shareholders in the Company, through which the restaurant business was undertaken. The relationship between the two men and their families had become close, both socially and in business terms. The restaurant achieved considerable success and became very profitable. Tariq’s two sons, Asad and Usman, and Mahboob’s son, Mohammad Waqaas, were all involved in the restaurant business. Asad also married one of Mahboob’s daughters, Atikah.
43. In 2006 Tariq and Mahboob entered into a formal deed of partnership to regulate their business affairs. However, within a few years of the restaurant opening the relationship between Tariq and Mahboob had badly deteriorated. In 2007 Tariq executed a power of attorney in favour of Asad which, according to the defendants, allowed Mahboob and Asad to run the restaurant business for the benefit of both families without interference from Tariq, whose continued involvement had become disruptive.
44. In 2009 Tariq and Mahboob’s wives, Nusrat and Mirza, were each allocated shares in the Company so that they became holders of 25 shares each, with Tariq and Mahboob also holding 25 shares each.
45. In 2016 there was what transpired to be a final falling out between Tariq on the one hand and Mahboob, Nusrat and Asad on the other. At this time Usman also sided with the others. As I shall explain in more detail below, the end result was that Tariq was removed from his position as a director of the Company. In her witness statement for the first proceedings Nusrat explained that she and Tariq had been estranged from each other for the last few years, although they still notionally shared the same jointly owned matrimonial home.
46. It was his removal as director of the Company and other connected disputes, including a dispute as to the extent of his interest in the Company, which led to the issue of the first proceedings. In those proceedings Mahboob, the Company, Nusrat, Mirza, Asad and Usman were all defendants and were all represented by the same solicitors, Clarion Solicitors of Leeds.
47. At the first trial the effect of the 2009 share allocation was an issue in the case, because Tariq was alleging that the two wives held their shares for the partnership. I dealt with this at section D4 of my judgment, noting that it was common ground that in 2009 Nusrat and Mirza acquired these shares for no consideration and that it was also common ground that the allocation was for tax saving reasons with the benefit of advice from Mr Nawaz.
48. I recorded at paragraph 190 of my judgment that Nusrat and Mirza’s evidence was to the effect that they were told that 25% of the shares in the Company had been put into each of their names. At paragraph 191 I recorded my conclusion that I was satisfied that Nusrat and Mirza held their shares in the Company absolutely and beneficially and free from any contrary interest or qualification or reservation.

49. I also recorded at paragraph 193 that there was never any suggestion that Nusrat or Mirza ever played any active part in the management or control of the Company or the business and that Nusrat had agreed that until 2016 she never got involved in the Company in any way.
50. The impact of the 2016 transfer of the 4 shares by Nusrat to her sons was a sub-issue at the first trial, being addressed by Nusrat and Asad in their witness statements and being the subject of cross-examination of Nusrat. As explained in paragraph 40 of the Defendants' written opening submissions for that trial, this transfer was relied upon as supporting their case that the shares were Nusrat's to do with as she wished. I shall refer to that evidence in due course, but it is most sensible to deal first with the detail of the evidence as to what happened in 2016.

2016

51. On 22 September 2016 Tariq executed and then sent a deed of revocation of the power of attorney which he had granted to Asad in 2007. It is common ground that everyone understood that this signified Tariq's intention to become directly involved in the management and operation of the restaurant business again.
52. It is clear that this caused great consternation. It led to a family meeting being called and held at Reema's house, at which all of the family members other than Tariq were present, as well as Mahboob. It is common ground that Mahboob made clear that he would refuse to work with Tariq again and would rather close the restaurant than do so. It was apparent to all that the consequences of such a course would be disastrous for the family in that: (a) Asad, Usman and Qaiser would lose their remunerative employment; and (b) the whole family, including Nusrat, would no longer enjoy the substantial financial benefits from the restaurant business which had propped up their comfortable lifestyle for many years. Mahboob was not to be dissuaded and left the house.
53. Apart from Usman, who says that there was no further discussion, everyone else says that there was then a further discussion between all of the family members, which ended in an agreement that they act to remove Tariq as director, so as to prevent him from carrying out his threat, and that Asad and Usman should be appointed directors of the Company in his place. Nusrat, Asad and Siddra all said in their witness statements words, confirmed at trial, that Asad and Usman asked Nusrat to give her a few of her shares each in the Company, which was needed so that they could be appointed directors of the Company and vote with Mahboob to remove Tariq as director. Asad said that it was his belief at the time that only shareholders could be directors, although he now accepts that this is not the case and is unable to explain how he came to hold that belief. Their evidence is that Nusrat did not immediately agree, because she was scared of Tariq's reaction when he found out. However, after some time, and after assurances from all her children that this was the only way to save the family business, she agreed. She says that she did so on the basis that she accepted that this was indeed the only way to save the family business and because doing so would enable her sons to vote Tariq off the board even if she was too scared to do so. She pleads and says that she made it a condition that they would always use the shares as she asked, saying that "this is my *amanat*" which, she says, directly translates from Urdu to English as "trust". She says that this was not, therefore, a gift, and was only done on the basis that she had been told that it was necessary for the sons to become directors.
54. It is also worth noting some particular parts of her evidence in her witness statement evidence.
55. In paragraph 37 of her first witness statement she said that in the first part of the discussion after Mahboob left the meeting: "My sons explained that I could vote with Mahboob and Mirza to remove Tariq as a director and save the business. They continued to explain this to me over the next few days". In paragraph 38 she said that: "It was a very difficult decision from me to act

against my own husband. I knew this will have terrible consequences for me”. In paragraphs 39 and 40 she explained that she was hesitant at first, but she was told that if they did not act now the business would be shut down and they would have nothing and both her sons and her son-in-law would lose their jobs. In paragraph 41 she says that she was “told by each of my sons that if I let them hold my shares in the Company on my behalf, they could be made directors of the Company and they would use those shares to follow my wishes and to remove Tariq as a Director of the Company and keep him out of the business permanently”. In paragraph 42 she said that they explained that “to Tariq, it would appear to be them opposing and defying him, as opposed to me. I recall Usman specifically saying that to me that by giving shares to him and Asad and them becoming directors they would be able to vote against their father and save me from having to do that. I hoped that would spare me from his anger”. And finally, at paragraph 43, that “it was agreed that because they only needed a majority, with Mahboob and Mirza’s shares, that they only needed a few more shares and not all of my shares to remove Tariq” and at paragraph 44 that: “After assurances from all of my children that this was in the best interest of the family, and this was the only way to save the business and I was the only one who could save it, I had to make a decision”. She said it was only on this basis that she agreed and used the words pleaded and stated by her in her witness statement.

56. She also explained in paragraph 46 that she “gave shares to both of my sons so that they would be stronger, united in opposing their father. I could have given just 2 shares to my eldest son Asad but he has a very gentle and conciliatory disposition and I did not feel he was strong enough alone to stand up against his father. Despite Tariq being a poor father to him, he has always shown obedience and respect to him. My younger son Usman is much more aggressive and assertive in nature. I knew he would give strength and support to Asad”. That is consistent with what Asad said in his witness statement at paragraph 14, which is that initially the idea was simply for him to be appointed director, but Usman complained and so it was agreed that both would become directors to assist in standing up to Tariq.
57. Asad also confirmed at paragraph 15 that: “Since Mahboob and his wife had only 50% of the shares, and a majority would be required to remove him, we knew that shares held by my mother would have to be used to vote him out. But we knew my mother would find it excruciatingly difficult to vote against him, and we were worried that he might force her to vote for him, and about what he might do to her if she did voted against him”.
58. He said at paragraph 16 that “I was under the impression that we could only be directors of the company if we held shares. So we asked my mother to give a few shares each to Usman and I and then we could be appointed as directors and would vote with Mahboob to remove Tariq as a director”. He was asked about the source of this belief in cross-examination and said that it was “just my belief. I just thought it was generally how its done. I’m not an entrepreneur – just a family man in a nepotistic business”. He was asked what his belief was based on – a guess or something solid? His reply was “Arrogance – stupidity – foolishness – I didn’t take advice. No-one questioned what I was doing”. He said that he didn’t believe there were lawyers involved, but he did speak to the Company accountant to “initiate the process”. He said that he didn’t ask for advice on that matter.
59. There had been an issue at the May 2023 hearing about the fact that the correct procedure under the Civil Procedure Rules had not been followed in relation to Nusrat’s first witness statement because the signed version was not made in her principal language, Urdu. The process of taking the witness statement was, however, clarified by a statement made by the legal representative who had produced it, and its accuracy was confirmed by her in her second witness statement, which was compliant with the rules, and in which she said she had re-read her original witness statement in Urdu and confirmed its evidence.

60. Her second witness statement confirmed the position as recounted in her first witness statement and she added at paragraph 6: “They said that if I gave some of my shares to one or both of them, then they could be directors themselves, and they could use the shares to vote out Tariq if I was not strong enough. They said they could not be directors unless they had shares, which I believed. If I had been aware that my sons could have been appointed as directors without being shareholders I would have not given the shares, but just asked them to vote on my behalf”.
61. In cross-examination she said that her sons had said to her that they thought it would be a good idea for the family and the business for her to transfer a small number of shares to them. She said that she trusted them and told them that she was agreeing to do this to save the family business and so the family could look after her. She said that she had not played any part in the original decision by Tariq to transfer the 25 shares to her and never received any benefit from it. She said that her only concern about the transfer was the risk that Tariq might behave violently towards her if he discovered what she had done, but she was willing to take the risk to save the family business and because she had no other option since otherwise the family would have no money to keep a house and put food on the table. She did not say that they had said anything about the need to be a shareholder to be a director. When she was asked whether she had imposed any condition on the transfer she said that they had to remain together and look after her.
62. She was asked about the declaration of trust she had signed, saying that she had gifted the shares to her sons, and said she had signed it without asking for it to be translated or explained because she trusted her sons. She said that she had always done the same with any documents which they asked her to sign.
63. In her witness statement she had provided for the first trial she had simply stated that she “gave 4% of them away – 2% to each of my sons”. This was the witness statement translated and read out to her by Mr Mir before she signed it. As I have already explained in the section recording my impression of Mr Mir, I am unable to accept his evidence that he had asked her why she had given her shares and she had replied: “I did it so they could vote the way I tell them to”.
64. In her answers to questions put in cross-examination at the first trial she said that “it [the shares] was my ownership and I could give it to my children”. Of even more significance, when she was asked: “Was it Asad who suggested to you transferring some of the shares to your sons?” her answer was: “No. I did it with my own happiness”. When she was asked why she had decided to do that suddenly in 2016 her answer (which, as the transcript records, was written down by the interpreter, so that the latter could ensure that her translation was correct) was: “Because in 2016 Tariq Malik was carrying on with his brothers, and the Company was suffering the loss, and I thought there should be something for my children so that they can stand on their feet”. Finally, when she was asked whether she had discussed it with her sons before she did it she replied: “When I was going to give it, when I had decided, then I told the children”.
65. All of this evidence is plainly inconsistent with her pleaded case and her witness statement evidence in this action, despite what are obviously carefully drafted attempts by her in her second witness statement in this action to seek to minimise and explain away any discrepancies. Indeed, in cross-examination she agreed that everything she had said in evidence at the first trial was true.
66. There are three possible explanations. One is that she answered in this way because that was indeed the truth. The second is that she knew that her account was not true because it does not accord with what she now says happened, namely that: (a) Asad (and Usman) did indeed suggest transferring the shares to them; (b) her immediate reason for agreeing was to enable her sons to become directors to vote Tariq off the board, to achieve the objective of getting rid of him and

saving the business; and (c) she did discuss it with her sons before she decided to do so. The third is that both at the first trial and again now she is emphasising or inventing, consciously or unconsciously, elements which support her interests and those of her family and minimising or suppressing those which do not.

67. In my judgment the third explanation is the most compelling. Nusrat is clearly an intelligent woman, and I am satisfied that she did not want to volunteer any answers at the first trial which might lead to a finding that her sons held the 4 shares on trust for her, so that if it was held that she held her shareholding on trust for Tariq (whether directly or via the partnership) those shares might end up being transferred back to Tariq. Nor would she necessarily have wanted to volunteer in open court that the transfer was part of a plan to remove Tariq as director. However, I am also satisfied that the evidence she gave reflected the reality that she had, willingly, given the shares to her sons to enable them to – as she put it – stand on their feet, both as against Tariq and as directors and shareholders of the Company, running it in conjunction with Mahboob and his son, because she trusted her sons to act in the best interests of her family, herself included. I am satisfied that she did so without imposing any pre-conditions or qualifications, so that even if she was unwilling to use her remaining shares to vote Tariq off the board and to appoint her sons as directors in his place they could do so using those shares.
68. This analysis is also consistent in my judgment with what Asad said in his witness statement for the first trial. In paragraph 69 of his witness statement, which he confirmed in evidence, he said in categorical terms: “In 2016, my mother gifted two shares in [the Company] to myself and two further shares in [the Company] to my brother. It was always my understanding that those shares were my mother’s to freely give and as far as I am concerned, I now hold them in my own right for myself. I currently receive £10 a week in respect of my shares and pay tax on my dividends.”
69. His explanation in cross-examination for why he had said something then which is clearly inconsistent with his current position and evidence was that he had personal and business problems at the time. That is wholly lacking in detail and in my judgment wholly unconvincing. Indeed, when asked about this in cross-examination at this trial, he explained that it was because he was trying to get across that he wasn’t holding on trust for Tariq. That seemed to me to amount to an admission, if his evidence in this trial is true, that he had deliberately lied at the first trial in order to achieve the intended result in that litigation of ensuring that Tariq could not claim those shares. However, in my judgment it is more likely, for reasons I explain below, that he was telling the truth then but not now, because it is only since the first trial that the significance of Usman’s 2% shareholding has become a real issue, and because in his view the interests of the family lie firmly in securing the 2% shareholding for Nusrat.
70. I refer to the contemporaneous documents from 2016. Unfortunately, none are available – or at least have been disclosed – to record the genesis of the decision to transfer the 4 shares. Given that Asad did ask for and obtained legal advice on the subsequent registration of the transfer of the shares and the formalities of removing Tariq as director and appointing himself and Usman as directors that seems, at first blush, a little surprising. However, I proceed on the basis that this is indeed the position. That does however mean that Nusrat is unable to place before me any contemporaneous documents to support her case that the transfer was designed, with the benefit of legal or other documented advice, to achieve the specific effect of allowing her sons to become directors or to be subject to a trust or a condition in her favour.
71. At the same time as Asad and Usman were appointed directors so was Mohammad Waqaas, Mahboob’s son, even though he was not a shareholder at the time and nor was he made a shareholder for the same reason as Asad and Usman are now said by Asad and Nusrat to have been. In cross-examination Asad tried to explain his failure to appreciate the inconsistency at the

time as simply his not “connecting the dots”. However, I find this explanation fundamentally unconvincing. In my judgment the reason Mohammad Waqaas, as Mahboob’s son, was appointed director at the same time as Asad and Usman was to ensure that the Company had two directors from each family going forwards, whereas previously there had only been one from each. It is obvious that this must have been the subject of discussion and agreement as between Asad and Mahboob, since the proposed appointment of Usman as another director would upset the balance of equality of directors between the two families. It is inherently unlikely in my judgment that, if Asad had been labouring under this fundamental misapprehension about the need to be a shareholder before he or Usman could be made directors, he would not have enquired whether Mohammad Waqaas also needed to be a shareholder and, had he done so, he would have understood that there was in fact no need for any of them to be made shareholders as a pre-qualification requirement.

72. The available contemporaneous documents provide little direct evidence to support Nusrat’s case. Initially the decision was taken to transfer 5 shares to Asad and Usman equally but, when the transfer was sent to Mr Nawaz, he appreciated and advised that ownership of one single share could not be divided, leading to the decision to transfer only 4 instead. The declarations signed by Nusrat were not translated into Urdu, so that it cannot be said that she had the material to appreciate their inconsistency with her case. They were, however, procured by Asad who, on his own case, appears not to have been troubled that they stated that the shares were a “gift ... in consideration of my love and affection for my two sons”, with no reference to their being held on trust or subject to conditions or reservations. The fact that both he and Asad subsequently received the dividend from his shares is also inconsistent with Nusrat’s case and their evidence that they were always only ever transferred to them for a specific limited purpose and on trust. It is clear from the communications from the solicitors instructed by Asad to deal with the share transfers and the director removal and appointments that they were not made aware of the alleged reason behind the share transfer or any alleged condition or reservation.
73. It is also of note that in an email from Asad to Mr Nawaz dated 19 October 2016 he refers to the two reasons for the urgency of getting the share transfers completed as being firstly to do with a court case in Birmingham and secondly to expel Tariq as director. As to the second stated reason, whilst at first blush that might be thought to be consistent with Nusrat’s case, on further thought what it reveals is that Asad and Usman needed to be shareholders to expel Tariq as director, not because they needed to be a shareholder to be a director, and that this was only in case Nusrat was unwilling to do so to vote as such at the meeting of shareholders called to expel Tariq as director and to appoint themselves as directors. As to the first stated reason, this reinforces the same point because the court case was a claim for passing off which the Company was pursuing (at Mahboob’s instigation) against Tariq’s brothers, who had opened a restaurant with the same name as the Company restaurant in Birmingham. Tariq was seeking to block the legal action and a majority vote at a shareholders meeting was required to continue with the action.
74. Further consideration of this email and the thinking behind it seems to me to be the key to the real reason why the two sons needed to become shareholders before becoming directors. Obviously, since Mahboob, Mirza and Nusrat had 75% of the shareholding between them, they had the clear majority needed to remove Tariq as a director and to appoint Asad and Usman (and Mohammad Waqaas) as directors. However, in the meantime, because Tariq had revoked Asad’s power of attorney, Mahboob and Asad could not, as they previously had done, make decisions as directors, with Asad using the - now revoked - power of attorney for that purpose. Thus, the most urgent step was to call a meeting of shareholders to remove Tariq and to appoint the incoming directors. That did not need either Asad or Usman to become shareholders so long as

Nusrat was ready, willing and able to vote her 25% in support. The concern, as Nusrat and Asad say in terms, was the fear that she would be unwilling to vote against Tariq, or unable to withstand threats, pressure or persuasion from Tariq not to use her shares to vote against him or his wishes. The only way success at the meeting of shareholders could be guaranteed in such circumstances was for her to transfer some of her shares to Asad and Usman, so that they could use those shares to pass the key resolutions even if Nusrat was pressured or persuaded into not doing so. Whilst it is true that the same objective could be achieved by a written or proxy vote, if Nusrat was pressured or persuaded there was always a risk of revocation of those instructions. An unconditional transfer of 4 shares to Asad and Usman could not so easily be revoked without the agreement of the sons.

75. In short, because of the very specific factor in this case, being Nusrat's potential unwillingness to vote against Tariq and fear that Tariq would pressure or persuade her into not voting against him, it was necessary for her to transfer a small shareholding to her two sons to enable them to stand together against Tariq and vote as shareholders to remove him as director and appoint themselves as directors.
76. This, in my judgment, is far more likely to be the real reason for them being made shareholders than the implausible and inaccurate explanation given by Asad. I appreciate that this is not Usman's positive case, but that is because it is his positive case that the discussions were held between Asad and Nusrat and the decisions were taken by Asad, who also dealt with the accountants and the solicitors, in conjunction with Mahboob, whereas his role was effectively limited to asking Nusrat to sign the documents which Asad sent to him to get her to sign at home.
77. His evidence in this respect is broadly consistent with the documentary evidence, which shows that Mr Nawaz and the solicitors, Clarions, were involved in this process through the instructions of Asad, with Mahboob being copied in to various communications. Thus, the email from Asad to Mr Nawaz referred to above shows that Mr Nawaz was aware of what was happening and ends with Asad saying that he would ask Mahboob to call Mr Nawaz to explain if he had any questions. This shows how Asad and Mahboob were both involved in this plan, whereas Usman was not even copied into the email. Also, by this stage Clarions were involved in advising on how to effect a legally effective share transfer and in drafting and advising on the requisite documents to enable the appropriate resolutions removing Tariq as director to be passed at the shareholders meeting at which Asad and Usman would be able to vote. This confirms that the first stage was to procure a legally effective transfer of the shareholding from Nusrat to Asad and Usman and the second stage was to deal with the director's removal and the appointment of the new directors.
78. Again, there is no contemporaneous record which supports Nusrat's case, or her and Asad's evidence, either about the alleged mistaken belief about directors needing to be shareholders or about the shares only being held on trust or subject to conditions, whether as to voting or otherwise.
79. All of this evidence in my view is far more consistent with this being a straightforward unconditional transfer of the shares to her sons, because this would ensure that the family could achieve the process of getting rid of Tariq and getting the sons appointed as directors, and because Nusrat trusted them as her sons to do so in order to achieve her objective of saving the restaurant business and, hence, the family income and financial security.
80. The most likely explanation in my judgment is that Asad has now convinced himself, and persuaded Nusrat and the other members of the family, that the only reason for the transfer was to enable Tariq to be removed and for him and Usman to become directors. It is possible that this is what he believed at the time, in the wider sense that this was the only way to ensure that this

objective could be achieved even if Tariq pressured or threatened Nusrat not to vote her shares in favour. However, it is only as a result of this dispute between himself and Usman, I am satisfied, that he has now convinced himself and persuaded the other members of the family – insofar as they have any clear belief or understanding either way, which I doubt – that this was because of his mistaken belief that it was a qualification requirement.

Evidence particularly relevant to the undue influence claim

81. I should also at this stage refer to Nusrat's case and evidence particularly relevant to her plea of undue influence.
82. In paragraph 14.1 of her Points of Claim she pleads that she is a traditional Muslim woman, born in Pakistan, who was made to enter an arranged marriage at the age of 15 to Tariq, did not complete a formal education, has poor literacy (in any language), and has lived a domestic life with little or no experience of personal or professional finance or business. She has throughout her life been accustomed to doing whatever her husband or other adult males told her to do in matters of finance and business and to rely on them entirely and in paragraph 14.2 she pleads that, no longer being able to rely on Tariq in relation to financial and business matters, she relied wholly upon her sons Asad and Usman, and placed her trust and confidence in them in relation to the Company and the transfer specifically and/or her finances and business affairs generally.
83. Little of this is seriously challenged, and rightly so in my judgment. The only qualifications I would make based on my assessment of the evidence are as follows: (a) in my view Nusrat is a reasonably strong-minded, forceful and intelligent person, with a deep-rooted instinct to promote the best interests of her family and, thus, capable to an extent of withstanding pressure from Tariq and from her sons to do anything which she was aware conflicted with that instinct; (b) whilst, as a result of her estrangement from Tariq, she did indeed come to place trust and confidence in Asad and Usman in relation to her own and her family's business and financial matters, that was not blind trust and confidence and she would not necessarily have deferred to them if she was clear in her own mind that what they were proposing was not in the best interests of her family or herself.
84. In paragraph 14.3 she pleads that she would not have treated her four children unequally by making a gift of the 4 shares to her sons alone, and in paragraph 14.4 she pleads that she felt that she had no choice but to go along with the request by all four to do so, because she was told by them that it was the only way to save the business of the Company, their jobs and their livelihoods, and that only she could save the situation. I accept that she would not under normal circumstances have given her shareholding away to her sons and not also to her daughters if it was simply a matter of making some form of inheritance gift. However, there was an important difference between her two sons and her two daughters, which was that both Asad and Usman were working in the Company business whereas her two daughters were not. Thus, there was an obvious reason for treating them differently, in circumstances where she accepted that the only way to achieve her objective of saving the family business, and the jobs and income associated with it, was to replace Tariq with her sons as the male representatives of the family in the Company business, which included making them directors and shareholders. I am satisfied that she would not have agreed to transfer the shares other than to achieve this very important purpose to secure the family fortunes, including her own personal fortunes.
85. In paragraph 14.5 she pleads that Usman procured her signature on all of the documents and that she signed them without question. In paragraph 14.7 she pleads that she did not and could not read or understand these documents because they were in English and that all she knew was that she was transferring the shares to Asad and Usman. I accept this, save that the evidence indicates that what happened was that Asad, as the older son dealing primarily with Mahboob,

Mr Nawaz and the solicitors, produced the relevant documents and then sent them to Usman to get Nusrat to sign them, since Usman lived (and still lives) in the same house at Nusrat, whereas Asad did and does not. Thus, whilst I accept that she would tend to sign such documents when presented with them by Usman and without being able to read or understand them, this was on the basis that they were being put to her by both Asad and Usman as documents which they were both asking her to sign, not just Usman, in order to achieve the purposes already discussed and agreed. It is thus clear, I am satisfied, that she was aware that she was signing documents to transfer the 4 shares to her two sons and also to remove Tariq as director and to replace him with Asad and Usman.

86. Finally, in paragraph 14.9, she pleads that she received no advice of any kind from anyone, legal or accounting, independent or otherwise, about the transfer. I accept that she neither sought nor obtained advice from anyone other than her children in relation to the transfer of the 4 shares.

Post 2016

87. I can deal with the events post 2016 relatively briskly, especially because nothing casts any doubt on the essential conclusions I have already reached as regards the position in 2016.
88. Following my first judgment it became apparent, as recorded in my second judgment, that Tariq indicated in January 2021 that he wanted the partnership assets, including its 50% shareholding in the Company, sold on the open market with the right to bid himself. In February 2021 both he and Usman had attended a family wedding in Pakistan and by early April 2021 Usman had instructed solicitors and made his own bid for the partnership assets. I concluded that this was a front for Tariq. What has now been produced is a transcript of a covertly recorded (by Asad) recording of a family meeting in late March 2021 at which Usman was being accused of siding with Tariq and betraying Nusrat and Asad in making this bid. Apart from Asad referring on two occasions – albeit in passing - to Nusrat having 25% of the Company, which Usman did not challenge, there is nothing of particular relevance in that transcript. What appears to have happened is that following that meeting Usman briefly changed his mind and withdrew his bid, only to change his mind again, doubtless as a result of influence from Tariq or the investors who are behind his bid.
89. What is also clear, however, is that no steps were taken at this stage by Nusrat or by anyone else on her behalf, particularly Asad or Mahboob - who both had a keen interest in ensuring that neither Tariq nor Usman should succeed in a rival bid - from asserting Nusrat's claim to the 2 shares held by Usman.
90. That did not happen until October 2021. This was at the point where, after I had produced my second judgment, the open bidding process had commenced and, after Tariq had made the highest bid but failed to pay the deposit, Usman's second highest bid became the winning bid (because both had outbid Mahboob) and on 27 September 2021 he paid the deposit and was required to exchange contracts by 4pm on 4 October 2021.
91. At some point earlier that day Mir Solicitors emailed a letter to Usman, saying that they had been consulted by Nusrat and, complaining that Usman's conduct in siding with Tariq was contrary to her wishes, alleged for the first time that the share transfer was conditional "on the understanding that you needed to have the shares to be a director" and "that you would execute your voting rights and act in relation to the Company's affairs in accordance with her wishes". There was also a separate allegation, accepted to be misconceived, that legal title to the shares was never effectively transferred to Usman. Usman was asked to acknowledge receipt and seek independent legal advice but did not reply. He had initially denied receipt of this emailed letter

but admitted in evidence that he had received it and was unable to offer any convincing explanation for his failure to reply.

92. Whilst it is a point in Nusrat's favour that she did make this first allegation, consistent with her primary case, at this stage, and a point against Usman that he did not respond to deny the allegation, it is also fair to say that this only happened over 6 months after Nusrat became aware that Usman had changed sides and only once it became apparent that Usman had become the successful bidder.
93. Nusrat has suggested that the trigger for this was her being informed that Mian Hussain had been appointed a director of the Company at this point in time without his being a shareholder and, therefore, her realisation that what she had been told in 2016 was incorrect. However, I agree with Mr Lawrence that this explanation is inherently implausible and I reject it. It assumes that Nusrat who, on her case, still had no understanding or appreciation of the niceties of company law or involvement in the business, not only became aware of Mian's appointment but also, of her own volition, happened to ask Asad whether Mian had been given shares in the Company and, upon being told not, was able to remember what she had been told in 2016 and to appreciate that she had been misled 5 years earlier. I am satisfied that the real trigger was the by then pressing need to find some ammunition to contest Usman's entitlement to the 2 shares and that it was at this point that Asad first persuaded himself, in the face of this looming disaster in the battle for control of the restaurant business, that the share transfer was only to enable him and Usman to become directors and was conditional on Usman continuing to act in accordance with Nusrat's wishes.
94. I should also note that before this letter was written there was a further family meeting in September 2021, again covertly recorded by Asad. Both Nusrat and Asad had suggested that Usman had admitted at the meeting that he had tricked her by taking the shares without admitting that he was still in league with Tariq. In fact, however, the transcript provides no support for such a suggestion and there is no other evidence that Usman had already decided to side with Tariq as early as 2016. Indeed the converse is true, since Usman duly voted in 2016 to remove Tariq as director and there is no suggestion nor evidential basis for any contention that at that time he was in any way acting in concert with Tariq, whether in his capacity as director and shareholder of the Company or otherwise.
95. What then happened was that I decided in my third judgment that Usman's bid had become invalid, due to his failure to exchange by the required date and time, but that decision was overturned by the Court of Appeal in its decision handed down on 11 January 2023, whereupon Usman was reinstated as the successful bidder.
96. In the meantime, on 21 July 2022, shortly after the hearing before the Court of Appeal, during which it may have become apparent to Mahboob and to the rest of the family that there was a real prospect of Usman succeeding in his appeal, new solicitors instructed by Nusrat – Cloude solicitors - emailed a letter to Usman, alleging that he held the 2 shares on trust for Nusrat, was now in breach of trust, and his position as trustee was now revoked. He did not respond to this or to a subsequent letter from one of the then current directors of the Company, Mian Usman, dated 10 August 2022, saying that the Company had accepted that the 4 shares remained with Nusrat and that the Company would rectify its records accordingly. Again Nusrat is entitled to point to this as a point in her favour. However, again it seems to me that the coincidence between the further twist in the litigation and this point being resurrected afresh, after nothing been done since October 2021, is a compelling reason for its emergence and the willingness of the then directors – misconceived as I found in my later judgment – to re-register Nusrat as legal owner of the shares.

97. There is nothing else of significance in the chronology and I can now turn to the relevant principles.

[Resulting trust](#) (a) [Overview](#); (b) [Legal principles](#); (c) [Analysis and decision](#)

[Overview](#)

98. Nusrat's case is that she did not intend simply to make a gift to her sons. The transfer of the 2 shares was asked of her by her sons as expedient in the specific situation which had arisen, for a specific purpose, and she complied. It follows that there was no donative intent associated with the transfer, and so, in the absence of consideration, a resulting trust of the shares arises.
99. Usman denies that the transfer was made for the specific purpose alleged and says that the 2 shares were gifted absolutely so that no resulting trust arises.

[Legal principles](#)

100. I was referred by Mr Learmonth to the applicable principles as set out in *Lewin on Trusts* (20th ed.) chapter 10 – trusts arising in relation to the acquisition of property, from paragraphs 10-001 onwards, addressing the kind of resulting trusts that arise in favour of the transferor on a gratuitous transfer of property to a transferee.
101. In paragraph 10-002 the authors observe that if the transfer instrument contains express or inferred provisions determining the beneficial ownership of the property transferred, effect will be given to those express or inferred provisions. As Mr Learmonth submits, since the declarations of gift were legally ineffective to operate as a transfer of the shares one can only look at the stock transfer forms, which are silent on the question and, hence, of no assistance. Further, as he submitted, since there is no evidence that Nusrat was able to read the declarations of gift in English or that they were translated to her they are, in real terms, of no evidential effect.
102. In the case of a gratuitous transfer, the question of whether the transfer conveys the beneficial title as well as legal title, or instead leaves the transferee holding the subject matter of the transfer on resulting trust for the transferor, depends entirely on the intention of the transferor: Lewin at 10-010. That intention is subjective and not objectively ascertained: see *Meisels v Lichtman* [2008] EWHC 661 (QB) at [71]). The question is whether the transferor intended the transfer to be a gift: *Lewin* at 10-011.
103. Where evidence is in short supply, the court may be assisted by the use of presumptions. *Lewin* summarises the position in a case such as this very well at paragraph 10-003:
- “Where there is a gratuitous transfer containing no express or inferred provisions determining beneficial ownership, then the starting point is that there is a rebuttable presumption of resulting trust, in that the transferor did not intend to make a gift. ... The presumption may be rebutted in two ways. First, it may be rebutted by extraneous evidence that the transferor did intend to make a gift. Secondly, it may be rebutted by a counter rebuttable presumption of advancement, that is that the transferor did intend to make a gift. There is a presumption of advancement if the transferor is the spouse or parent of the transferee, or in a similar relationship. The presumption of advancement may itself be rebutted by extraneous evidence that the transferor did not intend a gift. In a case where the presumption of advancement does not apply, the transferee is (sometimes misleadingly) described as a stranger.”
104. Thus, notwithstanding that, as noted in *Lewin* at paragraph 10-004, “when, if ever, section 199 of the Equality Act 2010 is brought into force, the presumption of advancement will be abolished”,

the current position in this case is that the presumption of advancement applies, because the shares were transferred by Nusrat as mother to her two sons.

105. I accept that the presumption of advancement is of course no more than a presumption. I also accept that the weight of such a presumption is much weaker in the present case, because this is a transfer by a mother to two adult sons with jobs and families in circumstances where the evidence shows that the transfer was made in circumstances which are completely unlike the typical gift from parent to child. Thus, this is not a case where the presumptions carry any real weight one way or another because, as observed in *Lewin* at paragraph 10-006, there is no need to rely on presumptions if there is evidence to establish the position one way or another.
106. I should however before turning to what the evidence establishes briefly address Mr Learmonth's reliance on what he described as "administrative convenience" cases, where he submitted that the circumstances show that the property was put in another's name merely for convenience and thus held on trust. In his written and oral submissions he referred me to:
- a. *Garrett v Wilkinson* (1848) 2 De G & SM 244, where a solicitor held funds of his mother's and purchased a bond with the same for his sole benefit. Upon his estate asserting it was a gift, it was held any presumption of advancement was displaced and he held the sums on trust for his mother.
 - b. A number of cases whereby a partner is added to a bank account for convenience only and no gift was intended: see *Marshal v Crutwell* (1875) LR 20 Eq 328 and *Simpson v Simpson* [1992] 1 FLR 601 at 617, where it was held
"the object and intention of the Professor was to ensure that, through any period of prolonged and possibly expensive illness with private nursing, Dr Simpson should be able to effect transfers from his deposit account to fund the payment of those expenses from their joint current account. Putting the deposit account into joint names was intended to be the machinery, in addition to the power of attorney and the assistance of Mr Quinton, enabling this to be done. In my judgment, this purpose and intention does not show, and is inconsistent with, a purpose or intention of making a gift of the balance in the deposit account at the Professor's death, not used or required to pay normal or anticipated expenses"
107. He submitted that this was just such a case and that it is irrelevant that the administrative convenience could just as well have been achieved by a gift instead of a transfer creating a trust. In my judgment these cases turn on their own facts and do not establish any principle and, thus, I am brought back yet again to the facts.

[Analysis and decision](#)

108. It is worth considering the pleaded case against my findings on the facts.
109. In paragraph 10.1 of the Points of Claim it is pleaded that the transfer was made by Nusrat not with the intention of making a gift, but for a specific purpose, namely to allow Usman and Asad to be appointed as directors, to vote at a general meeting to appoint themselves as directors and to remove Tariq as a director. I do not accept that this was the only purpose for the transfer. I accept that it was the immediate purpose of the transfer, because it enabled the two sons to vote to remove Tariq and appoint themselves as directors even if Tariq was able to pressure or threaten Nusrat into not voting to do so. However, that also promoted the long term aim of both sons continuing to be involved in the business, not just as employees but also as shareholders and directors, working together and alongside Mahboob, Mohammad Waqaas for the best interests of both families and ensuring that Tariq could not cause further trouble.

110. The reality was that this was part and parcel of Nusrat's decision, painful as it must have been as a married woman brought up in a traditional Pakistani culture, to separate herself from Tariq and to separate Tariq from the family business which provided for the family. Since she would not have felt able to take over from Tariq as responsible for the management of the business alongside Mahboob, and since she wanted her two sons to manage the business from the Malik family side together, it made perfect sense for the long term security of her family and herself to give them a small shareholding each and to allow them to become directors.
111. In paragraph 10.7 it is pleaded that Nusrat said she would agree to transfer the shares "to hold them on her behalf, for the specific purpose of allowing them to be appointed as directors of the Company and to remove Tariq as director, and on condition that they would always use the shares as she asked". For the reasons given, I am unable to accept this factual case. It is wholly implausible that she would, given her background and the circumstances, have expressed herself in this way. I accept, as she pleads in paragraph 10.8, that she may well have used the word "*amanat*". However, I am satisfied that this meant no more than that she trusted them to work together and do what was necessary to achieve the short term objective of removing Tariq and the long term objectives as described above of preserving the family and her own fortunes. I do not accept that, whether by the use of this word or otherwise, she intended to convey, or did convey, any suggestion that the transfer was only intended to pass the legal right to use the shares in accordance with her wishes or that it was only for the short term limited purpose or that it was conditional upon their continuing to act as she required them to do in relation to the business.
112. In paragraph 10.9 it is pleaded that she "made clear to Asad and Usman that she did not intend to make a gift to them and would not in that way favour them over their sisters". I am unable to accept that she did not intend to make an unconditional and irreversible transfer of the shares to the two brothers or that she expressed or herself intended any qualification in relation to the transfer. Again, context is all. It is clear that the two sisters were not only happy with, but positively supported, the decision. That, of course, is because it ensured that the family business continued, that in Reema's case her husband would still have a job, and in both cases that the family income would be preserved. I accept that one reason why the number of shares transferred was relatively modest was precisely because Nusrat was not intending to give the two sons anything like her entire shareholding, because that might well have been perceived as unfair. This was not, and was not intended to be, a typical inter-generational gift, where a parent or parents is seeking to give a part of their assets to their children as part of some long-term inheritance planning which was and would be viewed as fair as between the siblings. But that does not support the contention that the transfer of these shares was nonetheless anything other than unconditional and irreversible.
113. In the circumstances, I am satisfied that this was never simply an administrative convenience case. It was a decision for short term and long term reasons. Nusrat was willing to transfer the shares to her sons without reservation because she trusted them and she wanted them to work together as shareholders and directors to promote the success of the business and to contest any attempt by Tariq to wreck the business. Although she may not have seen it in this legal way, if she had thought that she was only transferring the shares for some specific time-limited purpose and thus – or more generally - on the basis that she could demand their re-transfer at any time and for any reason, she would have realised that Tariq could have later exerted pressure on her or threatened her to call for her sons to transfer them back to her and then from her to him. That is plainly not what she wanted. She wanted to put them beyond his reach for ever so as to ensure the two families could run the business together and for mutual benefit. It would be inconsistent with that intention to treat this as anything other than a gift.
114. For all of these reasons the case based on resulting trust must fail.

Misrepresentation or mistake

115. I can, given my factual findings, deal with this relatively shortly. Nusrat's remaining pleaded case on misrepresentation is that Usman and Asad stated to her that they needed to be shareholders in the Company in order to be eligible for them to be directors (the representation), when there was no such requirement by the Company's constitution or general law (this is common ground). It is acknowledged that this misrepresentation was an innocent one, in that neither Asad nor Usman knew that the representation was false.
116. I am satisfied that neither Asad nor Usman made any such representation. In the circumstances the claim fails at the first hurdle.
117. If I had not made this finding I would have needed to conclude whether the representation was substantially true in the context of the particular circumstances of the case, i.e. that the sons could not become directors unless either Nusrat was prepared to defy what she feared might be Tariq's pressure or threats to vote her shares against them becoming directors, which was the very issue which she was worried about, or she transferred a shareholding to them which would give Mahboob and Mirza and her sons a sufficient majority vote to appoint them regardless of Tariq's pressure or threats.
118. On the particular facts of this case I would have found that the representation was substantially true on this basis.
119. The same findings also dispose of Nusrat's alternative argument based on mistake.

Undue influence: (a) [Overview](#); (b) [Legal principles](#); (c) [Analysis and decision](#)

Overview

120. As I have already indicated, Nusrat's pleaded case is that the transfer of the 2 shares was procured by the undue influence of Usman and/or Asad over her and is, thus, liable to be set aside. She relies both on the evidence as showing influence in fact (actual undue influence) but also on the presumption of undue influence arising from the combination of relationship of trust and confidence and/or ascendancy existing between her on the one hand and Usman and/or Asad on the other and a transaction that requires an explanation.
121. Usman's defence asserts that the relationship between mother and son is not one which is automatically presumed to be a relationship of influence. That is accepted by Nusrat, whose case is that this was such a relationship on the facts.
122. Usman's defence also asserts the transfer was a gift "made of maternal affection and in the interests of the family" and therefore does not call for any further explanation.
123. Usman accepts that Nusrat received no independent advice, or indeed any advice about the transfer. He maintains his denial of actual undue influence, i.e. the overt application of pressure on Nusrat by the sons.

Legal principles

124. The opinion of Lord Nicholls in *Royal Bank of Scotland v Etridge (No.2)* [2002] 2 A.C. 773 includes the most frequently-quoted and authoritative analysis so far this century of the legal principles underlying the doctrine of undue influence. What he said has been summarised on many occasions since then. There is no need for me either to set it out or to attempt to

summarise it or to recite the summaries of his opinion produced by judges of far greater eminence and with far greater experience in the field than me, for example those of Lewison J in *Thompson v Foy* [2009] EWHC 1076 (Ch) at paragraphs 99 – 101 and the Chancellor, Sir Terence Etherton, in *Beech v Birmingham City Council* [2014] EWCA Civ 830, paragraphs 56 – 63. It suffices for me to note some points of particular relevance to the present case.

125. The starting point is that undue influence is a unitary doctrine. Thus, whilst it is convenient to divide it into two separate categories (actual undue influence and presumed undue influence) and then to subdivide presumed undue influence into two further sub-categories (where an actual relationship of influence is proved in the particular case and where there is a irrebuttable presumption based upon the very nature of the relationship), in the vast majority of cases after a trial the court will make its decision on the particular facts of the individual case, rather than making a decision based on a mechanistic application of the burden of proof and the presumptions if that would be at odds with the actual findings made.
126. As Lord Nicholls said at paragraph 28 of *Etridge*, in the context of whether a transaction is plainly disadvantageous to the person, the court should not take an unrealistically blinkered view of the transaction in question. Instead, it should adopt the approach posed by Lindley LJ in *Allcard v Skinner* 36 ChD 145: “if the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity, or other ordinary motives on which ordinary men act, the burden is upon the donee to support the gift”.
127. The two points referred to in the two preceding paragraphs were emphasised by Lord Scott in his concurring opinion in *Etridge* at paragraphs 219 and 220. Of particular relevance to this case is what Lord Scott said at paragraph 220, which was that “the nature and ingredients of the impugned transaction are essential factors in deciding whether the evidential presumption has arisen and in determining the strength of that presumption. [Manifest disadvantage] is not a divining-rod by means of which the presence of undue influence in the procuring of a transaction can be identified. It is merely a description of a transaction which cannot be explained by reference to the ordinary motives by which people are accustomed to act”.
128. That paragraph was applied by the Court of Appeal in the case of *Turkey v Awadh* [2005] EWCA Civ 382, cited by Lewison J in the *Thompson* case to which I referred above. As Buxton LJ said in that case at paragraph 20, it is not enough simply to say that the transaction “called for an explanation”. The issue is whether or not “the transaction, looked at as a whole, can be explained in terms other than those of undue influence”. At paragraph 23 he endorsed the approach of the judge at first instance that “what a trial judge ought to be doing is trying to exercise his common sense and assuming the necessary relationship to consider whether, given the circumstances and the nature of the transaction, it says to the unbiased observer that absent explanation it must represent the beneficiary taking advantage of his position”.
129. In his judgment, with which Chadwick LJ agreed, Buxton LJ concluded by saying this:

“To determine whether a transaction is explicable in terms other than undue influence, as Lord Nicholls and Lord Scott in *Etridge* cause us to do, it must be necessary to look at it in its context and to see what its general nature was and what it was trying to achieve for the parties. To take any other approach would, in my judgement, be completely artificial”.
130. In this case, Nusrat accepts that the relationship of son and mother is not presumed to be one of influence, so that the nature of the relationship must be established on a “meticulous examination of the facts” (*National Westminster Bank plc v Morgan* [1985] AC 686 at 709).
131. If undue influence has been established, then to set aside the transaction it need only be shown that the undue influence was a reason for entering into the transaction. It is no answer that the

person influenced would have entered the transaction anyway: *UCB Corporate Services Ltd v Williams* [2002] EWCA Civ 555 at [85]-[89].

132. As to what will rebut that presumption once it has arisen, it is necessary for the donee to prove that the gift was the result of a “free exercise of independent will”: *Hammond v Osborn* [2002] EWCA Civ 885 at [49]. However, “it is not sufficient to show that the complainant understood what he was doing and intended to do it. The problem is not lack of understanding but lack of independence.”: *Hammond* at [25]. Nor is it relevant to enquire whether or not the person exercising the influence had done anything “wrong”; as Mummery LJ said in *Pesticcio v Huet* [2004] EWCA Civ 372 at paragraph 20, where there is presumed undue influence and the transaction is not satisfactorily explained by ordinary motives then the requirement of the doctrine of undue influence is that it must be “affirmatively established that the donor’s trust and confidence in the donee has not been betrayed or abused”.
133. It is also immaterial in a case such as the present whether any undue influence was exerted by the donee (here, Usman) or by some third party (here Asad). In this case Usman received the 2 shares solely as a gift, providing no consideration for the transfer. In such a case it is not necessary to show that the recipient was on actual or constructive notice of the undue influence: *Bullock v Lloyds Bank Ltd* [1955] 2 Ch 317 at 325 (where a father’s undue influence resulted in benefits for his children’s trust fund), followed in *O’Sullivan v Management Agency and Music Ltd* [1985] QB 428 at 464B-D. In that respect, Mr Learmonth referred me to what he described as old and well-established law:

“Whoever receives (the gift) must take it tainted or infected with the undue influence and imposition of the person procuring the gift; his partitioning and cantoning it out among his friends and relations will not purify the gift and protect it against the equity of the person imposed upon...” (*Bridgeman v Green* (1757) Wilmot 58 at 65).

[Analysis and decision](#)

134. In my judgment the evidence does not establish a case based on actual undue influence. The evidence I have referred to and the findings I have made show that Nusrat was perfectly willing to transfer the 2 shares to each of her sons in order to achieve the objective, agreed by all of the family, of securing the survival of the Company business through ensuring that her sons, as directors, could – whatever she might be pressured or persuaded by Tariq to do – ensure that he was removed as director and replaced by them. I do not accept that she was pressured or persuaded by Asad or Usman into doing so. Instead, I am satisfied that she understood –in broad terms – why this was necessary and that she was willing to do so on the basis that she entirely agreed with that necessity.
135. I must therefore consider the question of presumed undue influence. By reference to the findings I have already made I am prepared to accept that Asad and Usman exercised a significant degree of influence over Nusrat and she reposed a significant degree of trust and confidence in them. Thus, she was unable to read documents in English, and relied on them to accurately explain what they were asking her to sign. More generally, she was willing to leave dealings with the accountants and the solicitors to them. She was also willing to leave the detailed decisions about the running of the Company business as between the two families to them. However, I do not accept that she placed blind or complete trust and confidence in them. It is clear that when this problem arose there was a meeting of and a discussion involving the whole family and that the ultimate decision was made by her to transfer the shares to her sons based on her own assessment of what was in the interests of the family and her own interests.

136. In such circumstances I have to determine the key issue, adopting and adapting the words used in *Alcard v Skinner* to the facts of this case, whether or not in the context of this family business and this family relationship and dynamic the transfer is such as not to be reasonably accounted for on the grounds of ordinary motives on which ordinary persons act.
137. In answering this question it is necessary in my judgment to consider this transfer on a realistic basis. Nusrat had been allocated the 25 shares as part of a tax planning exercise and had never exercised any rights in relation to the shares, whether in terms of control over the Company or in terms of receiving any economic benefit from them by way of dividend. I accept that as a result of her estrangement from Tariq she would have realised that if there ever came to be a formal separation or divorce from Tariq then her ownership of those shares might give her some legal and economic advantage and security.
138. However, there is no suggestion or evidence that at the time she – or anyone else – believed that the 25 shares, let alone the 2 shares, had any significant intrinsic capital value. Although this relates to a valuation at a later period, it is worth observing that the reserve price set following my second judgment with the benefit of further valuation evidence was £3,250,000, of which £1,100,000 related to the value of the shareholding in the Company. On that basis the valuation of the 4 shares was £44,000 and the 2 shares £22,000. In short, there is no basis for any suggestion that it was, or could have been, thought in 2016 that the 2 shares proposed to be transferred to Usman had in themselves an intrinsic high value. It was suggested that her 25 shares had value because they could be used to block a special resolution, however: (a) a special resolution only requires a 75% majority, thus a 25% shareholding is not sufficient by itself anyway; and (b) as at 2016 there was no suggestion of any conflict which might require Nusrat to use her shareholding to block any special resolution. In theory, I accept, Tariq as owner of 25 shares might be able to block a special resolution supported by the other shareholders if he could persuade Asad or Usman to vote with him to do so, but again as at 2016 this was wholly speculative.
139. In reality, on her understanding of matters at the time, which substantially reflected the true position, Nusrat was proposing to transfer 2 shares to each of her sons to ensure that Tariq could not subsequently pressure or persuade her to give him all of her 25 shares back or otherwise pressure her to use all of her 25 shares in accordance with his wishes, so that her two sons could use the 4 shares to ensure that Tariq could be prevented from voting his and Nusrat's combined 50 shares and using his position as director of the Company to wreck the family business and with it the family fortunes. Giving her sons 2 shares each, as part of a process whereby they would become the male representatives of the Malik family in running the business with the male representatives of the Hussain family, was a very small price to pay for saving the family business and the family fortunes, including her own fortune. She trusted them, perfectly reasonably at the time, to act in the best interests of the family. She was still left with 21 shares in the Company. If there came a time when she wanted to make a broadly equal lifetime transfer of her shareholding in the Company to her four children she could still do so.
140. At that stage, it understandably never occurred to anyone to anticipate the twists and turns which have since occurred in this case and which have led to the situation where Usman was no longer willing to work with the rest of the family and instead to throw his lot in with Tariq and/or external investors or, more specifically, that his 2% shareholding could make all the difference between his succeeding in that intention or from the others being able to block him from doing so.
141. Thus, as not just Nusrat but the whole family saw it at the time, she was giving away what was in mathematical terms a relatively modest (16%) of her shareholding in the Company to her two

sons to achieve the twin allied objectives of protecting against the short term risk of her estranged husband Tariq destroying the business, by regaining his directorship and his half share control of the Company (by pressurising or persuading Nusrat into letting him use her full 25% shareholding to do so) and promoting the long term objective of preserving the successful family business and, thus, the family jobs and family income which had led to her and her children enjoying an affluent lifestyle for many years. The only downside was that she was giving away 16% of the economic value of her shareholding, but that was in the circumstances where neither she nor anyone else had any positive belief at the time that this had a substantial economic or other value, and in circumstances where neither she or anyone else had any positive belief at the time that doing so would expose the family to a loss of control over the business.

142. Once these facts are understood, it does not seem to me that this is a case where the transfer can be said to be such as not to be reasonably accounted for on the grounds of ordinary motives on which ordinary persons act. Whilst the transfer was in the form of a gift of a shareholding with a value into 5 figures, it was not a simple gift in return for which Nusrat would receive nothing. It was a gift to achieve the specific and substantial purposes already explained, which were as much in Nusrat's interests as those of her two sons. It was also designed to enable her two sons, who she believed were willing to work together to run the business alongside Mahboob and his son, to continue to be able to work alongside her son-in-law for the greater good of the family, regardless of what Tariq might seek to do. Thus, the intention behind the gift was to enable Nusrat and her family to continue the extremely successful business with Mahboob and his family which would assure their financial future in the short term and, insofar as could be predicted, in the long to medium future as well.
143. This is not a case, unlike the case of Sheikh v Malik [2018] EWHC 973 Ch, a decision of Fancourt J to which I was referred by Mr Learmonth, where the mother of the family was being persuaded to put at jeopardy her one significant asset for the benefit of businesses owned by her sons in which she had no direct interest.
144. It follows, in my judgment, that the transaction, looked at as a whole, can be explained in terms other than those of undue influence. It thus follows that it is not necessary for Usman to affirmatively establish that Nusrat's trust and confidence in him was not betrayed or abused. I accept that, had he needed to do so, he could not have done so, but that is not material on the facts of this case.
145. In the circumstances, I am satisfied that Nusrat's case based on undue influence must fail as well.

Defences

146. Given my findings it is strictly unnecessary to deal with the defences advanced by Usman on the assumption that Nusrat establishes one or more of the grounds for relief asserted by her.
147. However, given that the points were argued, I will address them, albeit reasonably briefly, explaining why I would not have refused Nusrat relief had I found for her on one or more of her substantive claims.
148. This aspect of the case was the subject of impressively speedy supplementary written submissions post hearing because: (a) it was accepted by Mr Lawrence that his case in this respect needed further clarification to enable Mr Learmonth to make a meaningful response; and (b) there was insufficient time at the end of the hearing to do so, given the tight trial timetable.
149. The pleaded case is that: "If (which is wholly denied) the transfer of the shares was at any time liable to be set aside, there is now no equity supporting an application to have it set aside given:

(i) the passage of time; and (ii) the fact that in family litigation in June 2020 both Nusrat and Asad affirmed on oath the fact that the shares had been transferred absolutely by way of gift and (iii) the fact that Usman took steps to purchase the partnership assets in circumstances in which he believed himself to be the absolute owner of the 2 shares”.

150. In short, Usman’s case on the facts is that after the shares were transferred and Usman was registered as shareholder from 2016 there was no claim asserted by Nusrat at all until 2021 and, in the meantime, Nusrat confirmed that it was a gift in her evidence for the first trial. He says that the first assertion by Nusrat of any claim in relation to the 2 shares was in the letter from Mir solicitors on 4 October 2021 which was: (a) a week after Usman had already (on 27 September 2021) paid his non-refundable deposit for the purchase of the partnership assets, including the 50 shares in the Company, on the assumption that he was the legal and beneficial owner of the 2 shares so that he would achieve control of the Company following acquisition of the 50% shareholding; (b) sent under an hour before the expiry of the date for exchange of the sale and purchase contract.
151. Usman’s case is that in such circumstances: (a) it would be unconscionable to permit Nusrat to assert a beneficial claim to the 2 shares or to rescind the transfer for mistake; (b) any right to rescind the transfer for misrepresentation or undue influence has been lost by affirmation, estoppel or acquiescence.
152. Nusrat’s case on the facts, in short, is that: (a) it is not pleaded, nor could it realistically be found on the evidence, that Usman relied on anything said or done by Nusrat prior to 4 October 2021 in support of his decision to bid for the partnership assets in March 2021 and to proceed with the purchase of the partnership assets in October 2021, not least because he played no part in the first trial and does not say that he relied on any understanding one way or another in making his decision to bid for and to purchase the partnership assets; (b) insofar as there is any evidence, the recording of the March 2021 meeting does not indicate Usman asserting any claim to the 2 shares in the face of Asad’s repeated statement, endorsed by Nusrat, that at least she still had her 25 shares in the Company; (c) at the meeting in late September 2021 Nusrat did complain about his taking the 2% shares on the basis that he was with Tariq, and there were various suggestions about how he could even at that late stage withdraw from the bid without loss and continue to work with the family; (d) Usman did not, even on receipt of the 4 October 2021 letter or on receipt of the further correspondence in July 2022, acknowledge Nusrat’s entitlement to the 2 shares or abandon his – eventually successful – legal claim to be permitted to acquire the 50 shares in the Company.
153. Nusrat also contends that Usman’s case as pleaded and as advanced does not identify or justify any proper basis for denying her relief if she satisfies the court in relation to resulting trust, misrepresentation, mistake or undue influence.
154. What if I had accepted Nusrat’s pleaded case in relation to resulting trust, based on Nusrat having agreed to transfer the shares to her sons “to hold them on her behalf, for the specific purpose of allowing them to be appointed as directors of the Company and to remove Tariq as director, and on condition that they would always use the shares as she asked”? In my judgment there would have been no proper basis for allowing Usman to avoid liability to re-transfer the 2 shares to Nusrat, whether by reference to laches or by reference to any wider principle of unconscionability. He has not pleaded or made out a case that, for example, the evidence given by Nusrat and Asad at the first trial was part of some joint plan to torpedo Tariq’s claim by ensuring that the rest of the family held on to at least 4% of the shareholding so as to prevent Tariq from securing a 50% stake or, even if it was, that would justify a finding that it would now be unconscionable for Nusrat to succeed on the basis (on this hypothesis) of the true position. To

the contrary, on this hypothesis he would have chosen to seek to use his legal ownership of the 2 shares as part of a campaign to go against the express wishes of Nusrat and the rest of the family and for a purpose completely different to that for which they had been transferred, without any pleaded or evidential basis for a submission that he did believe, or could reasonably have believed, that the shares were by 2021 his own to do with completely as he pleased.

155. Given that the factual basis for the pleaded case in relation to misrepresentation and mistake is very similar to part of the factual basis in relation to resulting trust, it is highly unlikely that the former would have failed yet the latter succeeded. If, however, that was the case, then it would follow from what I said in paragraph 93 above that it was only in or around October 2021 that Nusrat would have come to appreciate, whether in the circumstances alleged by her or as I found them to be, that the representation was untrue and she was entitled to relief on that basis. There would have been no basis for denying her relief on the basis of any affirmation, estoppel, acquiescence or any other basis in such circumstances.
156. Finally, what if I had found for Nusrat on the basis of undue influence? If I had found for Nusrat it would have been on the basis of the undue influence exercised by Asad and Usman. On the evidence it appears that it was not until around March 2021, when it first became clear to Nusrat and the other members of the family that Usman was now siding with Tariq, that she first realised that she could no longer place trust or confidence in Usman and, possibly, Asad as well who, as appears from the recordings, she appeared to blame as well for this problem by this time. There is no evidence that she first sought legal advice before she went to Mir Solicitors sometime in autumn 2021. It does not appear that the allegation of undue influence was advanced either by Mir solicitors at that time or by Cloude solicitors in 2022 and was only first raised in this Part 8 claim, doubtless as a result of more detailed analysis from her new legal team. On the basis of that chronology, and in the absence of any pleaded case or evidential basis for considering that Nusrat knew (or even ought to have known) of her right to seek to have the transfer set aside for undue influence before she did so, again there would have been no basis for denying her relief on the basis of any affirmation, estoppel, acquiescence or any other basis in such circumstances.

End