



Neutral Citation Number: [2025] EWHC 487 (Ch)

Case No: CH-2024-000110

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

Royal Courts of Justice, Rolls Building,  
Fetter Lane, London, EC4A 1NL

Date: 4 March 2025

**Before :**

**MR JUSTICE RAJAH**

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**Between :**

**PURDEEP KANG**

**Appellant**

**- and -**

**(1) FRESHACRE PROPERTIES  
LIMITED**

**(2) MRS GURDEV KAUR KANG**

**Respondents**

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**PURDEEP KANG** appeared in person  
**DANIEL BROMILOW** (instructed by **Herrington Carmichael LLP**) for the **Respondent**

Hearing dates: 21 February 2025  
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**APPROVED JUDGMENT**

**Mr Justice Rajah :**

1. This is an appeal against the order of HHJ Johns KC dated 18 April 2024. The judge found at trial that two documents relied on by the Defendant were forgeries and that disposed of her defence to the claim. Whether the documents were forgeries was not an issue raised on the face of the pleadings. This appeal raises the question of whether there has been a procedural irregularity which has made the trial and decision unjust. That is one of the two grounds on which an appeal court will allow an appeal, the other being that the decision below was wrong; see CPR52.21(3)(b).
2. Permission to appeal was refused on paper by Mr Justice Mellor but granted by him when the application was renewed at an oral hearing on 31 October 2024.

*The Background*

3. Freshacre Properties Limited (“**Freshacre**”) was founded by Lehmbur Singh Kang, a property developer, in 2006. He died in October 2013. Mrs Gurdev Kaur Kang (“**Mrs Kang**”) is his widow. Miss Purdeep Kang and Mr Baljit Singh Kang are their children. I will refer to them as “**Purdeep**” and “**Baljit**” for convenience in distinguishing between family members with the same surname, and with no disrespect intended.
4. Mrs Kang was a director of Freshacre from 2006 and inherited her husband’s interest in it on his death, becoming its sole shareholder in 2013. Purdeep was a director of Freshacre from 11 January 2012 to 12 February 2020 and managed the company. Baljit became a director on 14 February 2013 and Mrs Kang transferred the whole shareholding in Freshacre to him in or around June 2019.
5. At Baljit’s instigation, Freshacre and Mrs Kang brought proceedings against Purdeep in relation to her actions while a director of Freshacre. By the time of trial there were two claims for the judge to determine:
  - a) a claim that Purdeep had breached her director’s duties by misappropriating £1.281m odd which was used to purchase 100 Wakehurst Road (“Wakehurst”) for Purdeep on 28 November 2016 and
  - b) a claim for the sum of £230,000 (plus interest) said to have been loaned by Mrs Kang to Purdeep to renovate No 100.
6. Purdeep accepted the receipt and use of the sums of £1.281m and £230,000. In her Defence she said that:
  - a) some £533,284 of the allegedly misappropriated funds were owed to her own company, Bright Star, as profits under an alleged joint venture and for management fees, and the balance (some £700,000 odd) was a gift from Mrs Kang; and
  - b) the sum of £230,000 was an undocumented gift from Mrs Kang.

7. At trial Purdeep relied upon 2 key documents:
  - a) a Joint Venture Agreement dated 14 August 2013 (“**the JVA**”), said to have been signed by her mother before the death of her father, and
  - b) a “Letter of Gift” dated 28 October 2016 (the “**LoG**”) relating to the £700,000 odd also allegedly signed by her mother.
8. Purdeep has throughout this case been a litigant in person, but she has from time to time instructed Mr Shaw Kelly, a barrister on a direct access basis. Mr Kelly settled her Defence and attended the early pre-trial review before HHJ Gerald in June 2023 and pre-trial review before HHJ Johns in January 2024. Mr Kelly represented Purdeep at the trial.
9. The Claimants have been represented by Herrington Carmichael LLP solicitors. Mr Bromilow, of counsel settled the Particulars of Claim and appeared at the pre-trial review and the trial.

### *The Judgment*

10. In his approved Judgment dated 11th March 2024, the Judge identified the three issues of fact he had to decide at [12], namely:
  - (i) Was there a joint venture agreement between Freshacre and Bright Star Limited which therefore justified the payment of the sum of £533,284 for Purdeep’s benefit?
  - (ii) Was the balance of the sum required for the purchase of No. 100, being £700,000-odd paid out of Mrs Kang’s director’s loan account funds to Purdeep, a gift?
  - (iii) Was the further sum of £230,000 paid by Mrs Kang to Purdeep a gift?
11. The judge had handwriting expert evidence on the LoG which was inconclusive one way or the other and the JVA copy was too poor to permit any comparison. He therefore determined the validity of the two documents on the oral and documentary evidence before him.
12. At [13] he reminded himself that ‘*there is something of an inherent unlikelihood about documents being forged*’.
13. At [14] he stated his conclusion that there was no JVA, and in [15]-[20], gave a series of reasons for that conclusion.
14. The Judge dealt with issues (ii) and (iii) together, as they both involved whether large sums of money were gifted to Purdeep. At [22], the Judge found these

sums were not gifts and again he set out his reasons for that conclusion in [23]-[29].

### *The Appeal*

15. There are two grounds of appeal. The first is that the trial judge was wrong to make findings of forgery which were not pleaded.
16. The relevant chronology is this.
  - a) On 24 June 2014 a signed copy of the JVA was produced by Purdeep to Mr Graham, Freshacre's accountant, for the preparation of accounts and it was mentioned in those accounts and subsequent accounts. For several years, the accounts reflected the split of profits in the JVA.
  - b) On 12 November 2021 Freshacre and Mrs Kang's solicitors wrote a letter before action ("**the Letter before Action**"). In it they set out the background as they alleged it to be and claimed the return of various monies, principally the two sums in dispute at the trial. In the course of that letter, they acknowledged a joint venture between Freshacre and Purdeep's company Bright Star but said that there was no formal Joint Venture Agreement. They acknowledged that on 13 May 2021 Purdeep had produced the LoG but asserted that this was a forgery.
  - c) There ensued correspondence between Purdeep and Herrington Carmichael LLP until November 2022, but there was no substantive response to the Letter before Action and no mention of a written JVA.
  - d) Particulars of Claim were served on 25 May 2022. The Claimants claimed:
    - i. £1.28m spent on the purchase of No.100 was a breach of fiduciary duty by Purdeep
    - ii. repayment of the £230k loan.No mention was made of the disputed LoG or the existence of a joint venture.
  - e) On 17 June 2022 a Defence was filed by Purdeep.
    - i. In paragraph 6 she asserted a joint venture agreement between Bright Star and Freshacre to split profits 80/20% (but did not plead whether it was written or oral) and an entitlement on the part of Bright Star to fees for management services all of which were recorded in Freshacre's accounts as management fees.

- ii. The payment of £1.28m was admitted but said to be (a) £533,284 owed to Bright Star and (b) a gift of £746,338.54 by Mrs Kang. The LoG which referred to a gift of £687,927 was said to refer to this gift and the £58,511.54 discrepancy, said to be an error.
- iii. The £230k loan was in fact an undocumented gift.
- f) No Reply was served.
- g) On disclosure Purdeep disclosed the JVA and the LoG. No notice disputing authenticity was served by the Claimants pursuant to CPR 32.19.
- h) Case management directions were given for a single joint expert forensic accountant. The expert was told that the LoG was disputed but was not told there was any issue with the JVA. The expert's opinion was that Bright Star's share of the profits under the JVA was £605,000 and the shortfall between what was due to Bright Star and Purdeep and the payments made to or for Purdeep's benefit was a little higher than the £746,338 odd Purdeep said had been gifted to her by her mother from the director's loan account. In other words, the single joint expert's evidence confirmed Purdeep's case that Bright Star had been entitled to £533,284 of the £1.28m paid to her.
- i) On 8 March 2023 the parties exchanged witness statements. In her witness statement, Mrs Kang said the monies provided to Purdeep by her were a loan and not a gift. She was positive that she had not signed the LoG. She also said, for the first time, that she was positive that she did not sign the JVA. Purdeep's own witness statement, dealt very briefly with the JVA, which is perhaps unsurprising as there had until this point been no dispute that there had been a joint venture.
- j) On 16 June 2023, Purdeep issued an application notice seeking permission to instruct an expert on handwriting to examine the LoG (but not the JVA or any other document). At the pre-trial review on 23 June 2023, a direction was made for handwriting evidence on four documents - the LoG, the JVA, a board minute and a letter. An expert report dated 21 August 2023 was produced and was before the judge.
- k) In the undated case summary for trial prepared by Herrington Carmichael, which Purdeep did not agree, he indicated that the existence of a joint venture was not accepted and that the JVA was not genuine and had not been signed by Mrs Kang. In the ordinary course, this would have been produced a matter of days before the trial. Mr Bromilow's skeleton argument dated 20 February 2024 also made clear that the existence of a joint venture was in issue as was the authenticity of the JVA. Mr Kelly's skeleton argument treated the question of Mrs Kang's knowledge and approval of the payment of £1.28m as the key issue. It makes no mention of the JVA or its authenticity.

- l) The trial began on 23 February 2024 with a reading day. Opening submissions and evidence began on 26 February 2024.
17. If there is a point in this Ground of Appeal it is that no Reply was served expressly pleading the Claimants' contention that the JVA was a forgery and that the Letter of Gift was a forgery. There was therefore no reference in any statement of case, to there being a dispute as to the authenticity or validity of those documents.
18. Statements of case are required to mark out the parameters of the case that is being advanced by each party and the extent of the matters in dispute between them; *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 per Lord Woolf MR. The purpose of a statement of case is that (i) it enables the other side to know the case it has to meet (ii) it ensures parties can properly prepare for trial and (iii) the process of preparing the statement of case operates (or should operate) as a critical audit for claimant or defendant and its legal team that it has a complete cause of action or defence; see *King v Stiefel* [2021] EWHC 1045 (Comm).
19. CPR 15.8 makes clear that a Reply is not required or appropriate in every case, but that does not mean that a failure to file a Reply does not have consequences. The effect of not filing a Reply is that the Defendant is required to prove the matters raised in the Defence; CPR 16.7. However, a party who wishes to deny what is asserted and advance a positive case must plead it. The Chancery Guide at paragraph 4.2(g) (which applies to all statements of case including a Reply) states: "A party wishing to advance a positive case must set out that case; and reasons must be set out for any denial of an allegation". This guidance recognises that the overriding objective makes it unacceptable for a party to fail to plead a positive case in respect of an important matter which is within their own knowledge. A fair trial and equality of arms means that the other party should not be taken by surprise.
20. A separate point is that a party who alleges fraud, dishonesty, malice or illegality must state it in a Statement of Case and give full particulars; see the Chancery Guide at paragraph 4.8. Such allegations are serious, and it is particular important that the other party knows what is being alleged and can prepare accordingly for trial. It also secures that such allegations are treated with an appropriate measure of formality, and that an "audit" is made of whether there is credible material justifying such an allegation (see Chancery Guide at paragraph 4.9).
21. There may be peripheral documents produced as part of disclosure, and to be relied on as evidence, where authenticity is disputed. In respect of such documents, CPR 32.19 requires the disputing party to serve a notice to prove such documents, so as to prevent a deemed admission of authenticity. As Norris J made clear in *Redstone Mortgages Ltd v B Legal* at [58], that procedure is not an alternative to pleading forgery where it is a necessary part of a party's pleaded case, defence or reply:

*“If a case of forgery is to be put then the challenge should be set out fairly and squarely on the pleadings (and appropriate directions can be given).”*

In *Lemos and others v Church Bay Trust Company Ltd and others* [2023] EWHC 2384 (Ch), Joanne Wicks KC sitting as a Deputy High Court Judge considered what fairness required in cases where it was appropriate to serve a Notice under CPR 32.19 in respect of a peripheral document:

*“If a party challenging the authenticity of a document wishes to make a positive case as to how the document came to be created, including any allegation that it has been forged, then if it is not appropriate to plead out the allegation, it seems to me to be incumbent on that party to set out the allegation clearly in correspondence, either at the time of serving the notice to prove or at least in sufficiently good time to ensure that the challenged party has a fair opportunity to deal with it.”*

22. Mr Bromilow states frankly that he does not know why a Reply was not served. He says that looking at in hindsight, one was not required. I do not accept that submission.
23. Mr Bromilow says that as no Reply was served, it was for Purdeep to prove her case on the JV Agreement and Letter of Gift. That is correct, but the Claimants should not have been allowed to raise a positive case that the documents were forgeries. If the Claimants wished to adduce evidence from Mrs Kang that she had not signed those documents, and that her signature had been forged, that positive case needed to be pleaded in a Statement of Case, the natural place being in a Reply. In principle, Purdeep was entitled to rely on the deemed admission of the JVA and LoG which arose under CPR 32.19.
24. Mr Bromilow submitted that the JVA and Letter of Gift were mere evidence and did not need to be pleaded. I reject that submission. The alleged fact that the two documents were forgeries was an integral part of the Claimants positive case in answer to the Defence. They were required to plead their reasons for saying that there was no joint venture and no gift, and those reasons included, indeed were wholly based, on the JVA and LoG being forgeries. As has happened at trial, the question of the authenticity of those two documents has been treated as a dispositive of the issues in the case.
25. There is no good explanation as to why no Reply was served stating that the LoG was a forgery. Mr Bromilow says that the assertion had been made in the Letter before Action, but that is not a pleading. Pleadings frame the issues for the court to decide.
26. As for the JVA, Mr Bromilow says the Claimants cannot be criticised for not alleging the JVA was a forgery because the Defence did not make clear that the Defendant was relying on a written agreement. The Defence said there was “a joint venture agreement” which is ambiguous as to whether the agreement was oral or written. The Claimants did not ask for clarification and did not request further information. Any doubt should have disappeared when the document

relied on was produced by Purdeep on disclosure. At that point the Claimant knew that “the joint venture agreement” referred to in the Defence, was a written agreement between Bright Star and Freshacre signed by Purdeep on behalf of Bright Star and by Mrs Kang on behalf of Freshacre. If the Claimants intended to say the document was a forgery, then a Reply should then have been filed saying so. At that point, the “audit” referred to by Cockerill J in *King v Stiefel* would have involved considering whether Bright Star needed to be a party to the proceedings – it seems to me that it did.

27. In summary, the Claimants accepted in their Letter before Action that there was a joint venture, and having instructed the forensic accountant on that basis, have changed their position. The impact of the change in position was to put in issue some £605,000 that the forensic accountant had said was due to Bright Star under the JVA, and by implication to falsify Freshacre’s filed accounts for many years. The manner in which they have notified the Defendant of this change of position was by serving Mrs Kang’s witness statement. I have not been shown any other communication explaining this change of position. No notice under CPR 32.19 was served requiring Purdeep to prove the JVA. It was left for Purdeep, a litigant in person, to deduce from Mrs Kang’s witness statement that they had changed their position. By that stage, pleadings were closed, disclosure was complete, and Purdeep had prepared and exchanged the witness statements on which she intended to rely.
28. This is a serious procedural irregularity. The question for me is whether it makes the trial and judgment below unjust. It might not be unjust for the Court to determine at trial an unpleaded issue, even one as important as an allegation of forgery, particularly if both sides have come to court ready to deal with it.
29. Mr Bromilow says both sides knew perfectly well what was in issue by the time of the trial. He said that in relation to the LoG this was because its authenticity had been challenged in the Letter before Action, and then in Mrs Kang’s witness statement. Purdeep had sought handwriting expert evidence in relation to the LoG and so must have been aware that its authenticity was in issue. I accept those submissions in relation to the LoG.
30. In relation to the JVA, Mr Bromilow says Purdeep should have known from Mrs Kang’s witness statement that the authenticity of the JVA was in issue, and he relies on the fact that the handwriting expert was asked to examine the JVA and his case summary before trial. However, from the documents I have been shown, it is not clear that Purdeep or her barrister did appreciate that there was a challenge to the existence of a joint venture until the trial was upon them. The case summary was plainly far too late to raise forgery as an issue if the parties were not already well aware that it was a matter for trial.
31. Purdeep, who appeared in person, said that she did not. There is support for this - Purdeep’s application for a handwriting expert, and her correspondence with Herrington Carmichael LLP in relation to it, did not mention the JVA at all. She gave lengthy reasons why the LoG should be subjected to handwriting examination and explained the lateness of the application by reference to the



fact that its authenticity had first been raised in the litigation on 8 March 2023 in the letter to the forensic accountant and in Mrs Kang's witness statement. Purdeep ignored Herrington Carmichael's questioning of why she was limiting handwriting evidence to the LoG (their letter of 5 June 2023). This is consistent with the significance of Mrs Kang's witness statement in relation to the JVA not being understood by Purdeep. The handwriting expert was eventually asked to look at the LoG, the JVA, and two other documents of tangential relevance, but this may have been for the sake of completeness as Herrington Carmichael appeared to be suggesting. That is not clear evidence that Purdeep understood the existence of the joint venture was in issue at the trial, that the accounts which she relied on and which the single joint expert had verified, were going to be said to be false, and that the £605,000 due to Bright Star was now disputed.

32. Mr Kelly's skeleton argument made no mention of the JV or any challenge to it. I do not have a full transcript of the trial, but I can see that in closing submissions Mr Kelly complained that the trial had morphed from a trial about directors duties into a trial about forged documents. I have read Mr Kelly's skeleton argument for the trial, and there is no indication that he knew, when he was preparing that document, that the existence of a joint venture was in issue.
33. I am conscious that the appeal bundle I have is prepared by Purdeep and it contains documents selected by her. It is not a complete bundle even in relation to the application for handwriting expert evidence. It sometimes contains selected pages from documents rather than whole document. It contains transcripts of parts of the hearing, the rest not having been transcribed. I keep in mind that it may provide a misleading picture. However, the Respondents, who have had plenty of notice of this hearing, have not asked for further documents to be put in the bundle and have not suggested that the bundle is misleading. I have not been told on instructions of the existence of documents which can shed a different light.
34. There is no reasoned decision by the judge, that it was fair to determine these issues of forgery although they had not been pleaded. There is no reasoned decision by the judge that it is clear that both sides have come to court ready to deal with the issues of forgery. What does seem to appear from the judgment is an unexplained assumption that both sides knew that the issue of forgery of the JVA was an issue for trial, and that Purdeep had had an opportunity to prepare for trial on that basis. This does not seem to me, from what I have been shown, to have been properly explored.
35. Mr Bromilow says there was some discussion in opening submissions about whether or not forgery should have been pleaded, but there is no transcript of that exchange, and he cannot recollect with confidence what was said. Whatever was said does not seem to have resulted in a ruling as Mr Kelly was still complaining about forgery not having been pleaded in closing submissions. In his closing submissions, Mr Bromilow addressed the judge as to whether Purdeep knew the case she had to meet and referred to the Letter before Action (relevant to knowledge of the LoG challenge but not the JVA). So far as the JVA was concerned he relied entirely on an assertion that the JVA was one of

the documents Purdeep had wanted to be assessed by the handwriting expert – thereby indicating her understanding of its significance. That is not borne out by her application or the correspondence surrounding it. That assertion seems to be the only basis on which the judge could have concluded that Purdeep knew the case she had to meet in relation to the JVA long before the trial. By this stage, Mr Kelly had no substantive right to reply to Mr Bromilow’s submissions, the trial was all but over and the judge’s strong inclination would have been to resolve the dispute that had been tried.

36. The judgment itself raises further grounds for concern as to whether the judge fully appreciated that there was a real issue as to whether both sides knew that the issue of forgery of the JVA was an issue for trial, and whether Purdeep had had an opportunity to prepare for trial on that basis. The judgment shows that the assumption that she had, played a significant part in the judge’s reasoning that she was lying.
37. Firstly, the judgment refers to the allegations of forgery being raised late and “*so far as the statements of case are concerned, only in the Reply*”. That was wrong. There was no Reply. It was raised, as I have said above, in Mrs Kang’s witness statement. On the face of the judgment, the judge did not appreciate that the point had not been raised in the pleadings at all, and not at a relatively early procedural stage. This sentence in the judgment could simply be a mistake (although an oddly specific one) because both Mr Bromilow and Mr Kelly had made submissions as to whether a Reply should have been filed alleging forgery (it should). I simply do not feel I can disregard it as a mistake. It would be surprising if the judge knew he was finding allegations of forgery were made out, even though they had not been pleaded, and did not refer to it at all in his judgment.
38. Secondly, one of the reasons the judge gave for disbelieving Purdeep was that her witness statement did not deal with the circumstances in which the JVA had come to be signed and that her story had only emerged when she was cross examined after the other witnesses had all given their evidence. The implication was that she had waited to hear the evidence and then tailored her evidence accordingly. In fact, it was unsurprising that her story in relation to the JVA was not in her witness statement. The judge did not seem to appreciate that her witness statement had been prepared and served when there was no issue as to the joint venture. The judge refers elsewhere to a failure to file supplemental witness statements, but I cannot see from the transcript that there was any exploration as to why this had not occurred.
39. Thirdly, the judge drew inferences from Mr Kelly’s failure to cross examine the Claimants’ witnesses about the matters on which Purdeep gave evidence, but if Purdeep and Mr Kelly were taken by surprise that this was an issue at trial that provides an innocent explanation, and not the fabrication by Purdeep which the judge inferred.
40. The judge’s conclusion that the JVA was forged influenced his conclusion that the LoG was a forgery and that the £230,000 had been loaned – he referred to

his finding in relation to the JVA as one of the reasons for his conclusions on the LoG.

41. It may well be that Purdeep is open to criticism as to how this situation has come about. For example, it might be said that she should have appreciated the significance of Mrs Kang's witness statement. She could have sought permission to serve supplemental witness statements (although she says she did not know this). She could have objected to the trial continuing once she had Mr Bromilow's case summary and skeleton argument. Mr Kelly could have objected to Mrs Kang's evidence being introduced on the issue of forgery, or a positive case being advanced. If it is the case that they were both taken by surprise then one would have expected that to have been made clear at the outset of the trial. However in circumstances where Purdeep was conducting the litigation and Mr Kelly was being instructed only for the hearing it may not have been clear initially where the responsibility for the confusion lay, which may explain why it features in closing submissions.
42. In the end, one cannot get away from the fact that the doubt which has arisen is of the Claimants' making. Had they pleaded forgery in a Reply, as they should have done, there would be no room for doubt that Purdeep knew the case she had to meet and had the opportunity to properly prepare for trial. It does not lie in their mouth to say that Purdeep, a litigant in person, should have worked out their change of position. I am just not satisfied in the events which have happened that the trial was fair and the judgment is safe. I will set aside the order of HHJ Johns and order a re-trial. I will also give directions for the service of a Reply and an exchange of further witness statements. The parties should consider whether Bright Star should be joined as a party.
43. In these circumstances, it is not necessary to consider the second ground of appeal (that the judge was plainly wrong in his findings of fact).