Claim No. C10CL956

In the County Court at Central London

Property and Business Court List

His Honour Judge Parfitt

JUVERIA MEMON

(As PR of Zubeida and Noor Memon deceased)

Claimant

- and -

TALHA NOOR MOHAMMED MEMON

Defendant

Dates: 9 to 12 & 16 April 2018 & 1 May 2018

Roman Poplawski instructed by direct access for the Claimant

Christopher Snell instructed by **Rainer Hughes** for the Defendant

Approved Judgment

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic

HHJ Parfitt

Introduction

1. The Claimant and Defendant are sister and brother. On 17 June 2012 their mother, Zubeida, died ("Zubeida"). On 6 January 2013 their father, Noor, died ("Noor"). Both Zubeida and Noor died intestate. On 21 March 2013 letters of administration were taken out by the Claimant making her the personal representative ("PR") of Noor's estate[1]. The claims brought in this action are all made in that capacity. There are four other siblings (in order of seniority): Faiza; then the Defendant; Bilquis; then the Claimant; Afira and Fatima.

2. The gist of the Claimant's case is that the Defendant has ignored her rights as Noor's PR, has failed to cooperate with her to collect assets and in six specific requests is holding or controlling assets belonging to the estate which he is obliged to put in the hands of the Claimant. The Defendant's position is that there are no assets. The disputed assets or asset classes are:

    (a) The former parental home at 137 Dollis Hill Avenue ("137"). The Defendant says legal and equitable title was transferred to him by Zubeida on 18 October 1977 (it being placed in her sole name by Noor some years earlier).

    (b) Assorted items of jewellery last seen by the Claimant as a package in about 2006. The Defendant says Zubeida gifted these to various family members before her death.

    (c) Monies paid out of Noor's HSBC account totalling £10,100 in cheques payable to the Defendant and £18,600 of cash, alleged to be more likely than not to have been given to the Defendant. The Defendant says no money was given to him beneficially and if he did receive money it was in return for cash payments he made to Noor or to pay away as Noor instructed.

    (d) £37,909.70 paid to the Defendant by a relative called Reshma Saleem, based in Saudi Arabia, from an account in her name with Habib Zurich AG ("the Reshma Account"). The Defendant says this money was beneficially Reshma's, was paid to him in the UK and he arranged credit of an equivalent value to Reshma in Pakistan. The funds had nothing to do with Noor.

    (e) Monies held in Pakistan by a relative of Noor's called Abdul Razzak. The Defendant accepts such monies were Noor's but says there is only £7,500 and Mr Razzak was told by Noor to only deal with the Defendant. Accordingly, the Claimant has no claim on those monies (or perhaps no reason to make a claim on them). Mr Snell, for the Defendant, in closing accepted that, if it wished, the court could make an order over the Defendant requiring him to ask Mr Razzak to transfer the funds (in whatever amount they might be) to the Claimant so they could form part of the estate in this jurisdiction.

[1] And in September 2013 for Zubeida. No distinction was drawn during the trial when the operating assumption was that any assets within mother's estate would have passed to father on her intestacy.

(f) £4,000 in cash which was at 137 when Noor died. The Defendant accepted this money was at 137 but said it was put aside for him by Noor to pay funeral costs. He incurred that liability.

3. As the PR the Claimant is "under a duty to…(a) collect and get in the real and personal estate of the deceased and administer it according to law" (Administration of Estates Act 1925, section 25). These proceedings are brought in exercise of that duty.

4. In this judgment I deal first with the evidence and then consider each of the asset issues identified above in turn.

Evidence

(1) The Claimant's Witness Evidence

5. There were a number of witnesses whose evidence added little to anything of substance but so far as is relevant I identify it here:

(a) Obeid Jaffer Ahmed. Was a relative who assisted the Defendant with a company called Fossberg Ltd, which the Defendant claimed was a failed oil trading venture. In the event a claim about payment from the Reshma Account to Fossberg Ltd was dropped once the Claimant appreciated that the money had long gone and there was no pleaded basis upon which it could be argued that there was any present asset of the estate arising out of the admitted payment in 2010.

(b) Mohammed Salim Merchant. He had known Zubeida since 1955 and confirmed the list of jewellery from the particulars of claim in his witness statement but without giving evidence of what he had witnessed which enabled him to do that and had witnessed the transfer agreement of 137 from Zubeida to the Defendant and the charge back which the Defendant granted to Zubeida. He says he was told by Zubeida that the transfer took place because her and Noor were buying another property nearby.

(c) Osman Osman. Mr Osman, Fatima's husband since May 1997, had done work on the house at 137 at the request of Noor and/or Zubeida. The work included general maintenance type issues. He had also heard Zubeida say she intended to distribute her jewellery.

(d) Andrew Miller. Mr Miller had been married to the Claimant. Mr Miller was not required to be cross-examined. His witness statement described being asked by Zubeida to renew the kitchen at 137 and do landscaping and paving work to the front and rear gardens.

6. The Claimant had relatively little evidence to give about the issues. She knew nothing of the circumstances in which 137 was transferred to the Defendant but knew that it was always treated by her parents as their home. She last saw her mother's wrapped up bundle of jewellery in 2005 or 2006 and remembered how important collecting jewellery was in her mother's life. She had found out about the other matters because of steps taken in the course of her duties as PR and/or the litigation. It was curious, and in my view unhelpful, that notwithstanding this lack of evidence about the issues, the

Claimant's witness evidence ran to many hundreds of paragraphs (even after I required her main statement to be shortened before it was adduced in chief). Much of the material put forward consisted of the Claimant's own narratives about the case or about her brother whether contained in emails or video presentations or within the body of her statements. Her statements were more argument in support of her case than evidence.

7. I found her oral evidence to suffer similar faults – it was more a sustained attempt to argue why she was right and her brother wrong than it was a statement of facts that she had witnessed. For the most part she accepted that her case was based on what she had been told by her father.

8. Afira Szablowksi / Menon. Afira's witness statements also contained much irrelevant material which was either not evidence at all or carried no weight[2]. Substantially, Afira confirmed that she had received £7,000 from her parents (which could be demonstrated to have come from the Reshma Account) and that Bilquis had also received a substantial sum at about that time (again from other disclosure it was a reasonable inference that this had come from the Reshma Account as well). These payments were explained as being substitute dowries in circumstances where neither Afira nor Bilquis had married their partners. Afira did not believe that the jewellery had been distributed by Zubeida and referred to the Defendant's wife ("Rukhsana") having said just after Zubeida's death that she, Rukhsana, had not been able to come to hospital before because of Zubeida's jewellery being in her care. Afira said in her witness statement that once it became clear that the Defendant was not going to share any of Zubeida's jewellery with the Claimant, she decided to support the Claimant. Afira's witness statement reflects a split between the Claimant and the Defendant as a result of which, according to Afira, the Defendant excluded any of his siblings who he considered were on the Claimant's side (Afira says the Defendant told her during a telephone conversation after their parent's death that "she was out" because Afira told the Defendant that it was not right for the Claimant to get nothing). I say more about the family dynamics below.

9. Fatima Ahmed. Fatima made a number of witness statements. Much of these contain Fatima's beliefs as to the rights and wrongs of the disputes, details of the falling out between the siblings following their parents' deaths and the lack of any assets being asserted by the Defendant. Fatima did have some material evidence:

    (a) She said that she had been given jewellery by her mother (some 14 gold bangles in about August 2010).

    (b) She said in oral evidence that her mother told her that she was going to give away her other jewellery but that she did not know if this happened. This contrasted with her witness statement which expressly referred to her belief that the estate assets only consisted of 137 and monies in or derived from bank accounts and emails she had written dated 2 August 2012 and 6 August 2012 when the siblings were disputing between themselves which stated various times that her mother had told her she had given jewellery away (not was going to). This included giving "some diamonds to Mil…and the rest to Bhijan – coz he's the boy" ("Mil" is Faiza and "Bhijan" is the Defendant). In the emails Fatima agreed that the

[2] Just one example: *I remember vividly how my brother's body language signalled an eagerness to impart this lie to Bilquis and I, via Fatima, whilst we were heartbroken with grief and worry…*

package of jewellery had been kept with the Defendant (or at the house at 139 Dollis Hill Road ("139")) but that Zubeida got it back so that she could distribute it before her death.

(c) Fatima said Noor asked her to open a nominee account with BCCI Gibraltar in the early 1990s, when Fatima was working for the bank. Fatima did so. The Reshma Account was similar and (i) in 2004 Noor instructed Fatima to draw a cheque from that account in favour of Reshma and (ii) Noor had asked Fatima to open an account to receive the monies from the Reshma Account in late 2012. Fatima refused.

(d) Now and again Fatima would take Noor to the bank so he could make cash withdrawals but she did not recall getting cheques from him. Distributions that might be made by Noor at Eid or similar festivals would be in the low hundreds to each recipient.

My overall impression of Fatima as a witness was that her evidence in general was not so much her best recollection as the best she considered she could do in the circumstances to assist the Claimant to succeed in the dispute with the Defendant. In short, I consider the email statement that Zubeida said she had given the jewellery to deserve more weight than the oral evidence that Zubeida said she was going to give the jewellery (but of course both are hearsay so far as whether or not the jewellery was in fact given). However I accept her evidence in (a), (c) and (d) above, none of which was seriously disputed.

(2) The Claimant's Recorded Evidence

10. The Clamant had made various video and other recordings. Mr Snell, rightly, drew my attention to *Singh v Singh* [2016] EWHC 1432, HHJ Cooke at [11] about the caution that should be used in taking recordings at face value. The short point is that when deciding what weight to give such material, context and circumstance is important. I was asked to experience in real time three of these recordings which were those the Claimant said she wanted to rely on:

(a) 29 June 2012. Noor in hospital. The key points of which were Noor saying that the Defendant was the "hisaabi" (which the Claimant says means "trustee") and that Noor had told the Defendant whatever there is should be shared equally. The house was in the Defendant's name but that did not mean it belonged to the Defendant. Zubeida did not distribute her jewellery. The children should not fight between themselves.

(b) 2 July 2012. A telephone call between the Claimant and the Defendant. There was little of material substance in this except for the Defendant acknowledging that Noor had an account in Reshma's name (contrary to what the Defendant told the court) and that the Defendant had some sort of authority over it because the bank had been told that the Defendant would be communicating with the account holder if anything happened to Zubeida and/or Noor.

(c) 14 July 2012. Noor back at home. Noor appears more philosophical in this video. For the most part the transcript shows the Claimant asking leading questions to which she does not get any response which merits any weight. Noor says Zubeida

did things without him knowing (such as having the kitchen refurbished). Noor is relatively removed from the detail but the gist of what he does say is: (a) he and Zubeida managed without having to rely on others and did the hard work; (b) the children should not fight or question each other but should "sit with love" and accept whatever fate might bring them.

(3) The Defendant's Witness Evidence

11. The Defendant was a poor witness. In the course of his evidence he made plain that he did not regard the Claimant as having any right whatsoever with respect to Noor's or Zubeida's affairs since all she had was a piece of paper from the court and this was of no value. The same attitude was reflected in an answer he gave regarding the jewellery – he would refuse any attempt to make him (or his wife and children) give back any jewellery because "I won't accept any authority to hand-over this jewellery" and "I will never give jewellery given to my wife back". And again later in the context of being asked about vouching his alleged expenditure on Noor's funeral he said: "I'm not under any obligation because I do not recognize her. That is why we are here today. You [Mr Poplawski] can be the Queen of Sheba. Nothing to do with me".

12. These denials of the court's authority over him need to be put in context: (a) they are immaterial so far as concerns whether or not the court does have authority over him (it does because he has been validly served with these proceedings) and immaterial as to whether or not the law applies to him, it does; (b) they are immaterial, of themselves, to whether or not this court on this occasion should exercise its powers over the Defendant because the court's powers are such that they are indifferent to the attitude of those before it, the subjective views of parties as to the court's powers are irrelevant unless and until they become relevant because the law requires them to be (for example in the context of contempt proceedings); (c) however, as accurate reflections of the Defendant's attitude they provide part of the context within which his evidence needs to be assessed – this is a person who regards his own views of right and wrong as more important than any legal obligation. Such a person is likely to justify (consciously or unconsciously) giving false and self-serving evidence because his own interests are more real to him than objective truth. Of itself this undermines the weight that the court might otherwise give to his unsupported evidence. However, this is by no means the only factor that leads me to my negative conclusion as to the Defendant's credibility.

13. In any event and regardless of my comments about the Defendant's attitude to the law and the court's authority his evidence was unsatisfactory. Mr Poplawski demonstrated in his written closing a number of respects in which what the Defendant said lacked credibility:

    (a) The Defendant asserted in his pleading that he had not obstructed the Claimant in her role as PR. In fact he had obstructed her at every turn by writing letters to numerous third parties alleging that the Claimant was variously fraudulent, dishonest, criminal, attempting to pervert the course of justice, pursing a personal vendetta against him with malice and skulduggery with greed as the motivation and involving money laundering and conspiracy. He had made four reports to the police about the Claimant. There has been no evidence adduced before me that would remotely justify any of these descriptions of the Claimant. They do the Defendant no credit and his assertion in the defence of not obstructing was false and knowingly so. Indeed, in oral evidence, when these matters were put to him,

he did not attempt to justify them beyond asserting that he did not recognize the Claimant's role as PR. This is a good example of what I describe above: the Defendant creates his own truth (the Claimant is a dishonest fake) regardless of the reality (the Claimant is a duly appointed PR).

(b) It became apparent during oral evidence that the Defendant had destroyed or refused to hand over documents potentially relevant to Noor's estate, namely some account documents relating to the Reshma Account and certificates relating to assets in Pakistan (assets since recovered by the Claimant). This was also obstructive, although nothing substantial turns on those documents in this case.

(c) Mr Poplawski demonstrated that the Defendant had taken words out of texts and copy emails before he handed them over to the police as part of complaints against the Claimant or Afira but without making it clear that such editing had been done. This was misleading and the Defendant's explanations were focused on his wanting to be in control of whatever narrative he was telling at any particular time. He told the court first that he did not remember making changes to a particular text and then that the email manipulation did not matter because the police would not be interested in such trivial garbage (the bits the Defendant removed from the email were those critical of him). The Defendant's attitude is summed up by his response when the allegation of document tampering was put to him: "I'm not in the habit of manipulating documents, big deal". What I consider relevant is that the Defendant is happy to change a document but without making it clear that he has done so in order to tell what he regards as the more significant truth. This subjective (or solipsistic) approach to history is one which undermines any weight that I might otherwise have given to his evidence.

(d) The Defendant started his evidence by telling the court that since Noor's death he lived at 137 and his wife and child lived at 139, where he, the Defendant, worked. He did not live with his wife and daughter. During his evidence he said that his "living" at 137 consisted of using that property to pray and get away from family "aggro" for two or three hours a day. I regard the assertion of his "living" at 137 as either untruthful (in that he knows that he is not really living there, or knows that most people would not regard his use of 137 as living there) or if the Defendant genuinely believes that he is living at 137 then his ability to believe his own narrative is without boundaries. In either respect his unsupported evidence can be given little weight.

(e) There were other aspects of the Defendant's conduct, the best example is telephoning the hospital and without any good reason telling them not to allow the Claimant to see Noor (which the Defendant said orally he could not remember), which while unattractive do not of themselves necessarily undermine his credibility. I make a similar point about Noor not having a bath for three years. This upset the Defendant a lot and he emphasized that Noor would carry out the necessary cleansing before prayers. I can well understand the Defendant's upset on this issue, as it was put to him. On this particular point I did not consider the Defendant had anything to answer for.

14. In short, I can give the Defendant's evidence little if any weight unless it is supported by other evidence and/or is so consistent with the inherent probabilities that notwithstanding this general lack of credibility, it is still probably true.

15. The key points from the Defendant's oral evidence that are relevant to the issues are as follows:

(a) Noor had given him instructions about the assets in Pakistan that have been recovered by the Claimant (to keep them invested to maturity and then distribute them in accordance with Sharia). This being relevant because it shows (i) Noor did have an estate of some kind, contrary to the Defendant's general position of Noor having no estate, (ii) that Noor gave personal instructions to the Defendant about his assets.

(b) He telephoned HSBC and had a general conversation with them about what to do when a person died and was told that because an amount was small then it could be transferred to a named beneficiary rather than the account being frozen. However, the Defendant said that prior to Noor's death he had given the Defendant his bank card, and password and told him to use the money in the account for funeral expenses. Later the Defendant said he did not talk to HSBC about this account. He said he never withdrew any money without Noor's permission. I regard these various positions as inconsistent and of no assistance in attempting to work out what has really happened.

(c) When the Defendant said in his defence that he never had any access to the HSBC account, it should have said he never had any unauthorized access.

(d) The Defendant also said he collected £4,000 in cash from 137 which Noor had collected for the purpose of meeting Noor's funeral expenses.

(e) The Defendant confirmed that a payment from one of the Defendant's bank accounts of £3,345 to Hendon Mosque was for the funeral expenses but that maybe there were other expenses in addition.

(f) So far as his withdrawal of monies after Noor was in hospital and after his death from HSBC (the amounts were only about £1400), the Defendant said it was without malicious intent and that his father had told him to close the account.

(g) The Defendant's previous assertion that cash from Noor's account would reimburse the Defendant for paying 137 utilities because Noor did not have direct debits was the Defendant's misunderstanding. Noor would write cheques in favour of the Defendant and the Defendant would give Noor cash. Whenever there was a cheque drawn on Noor's account in favour of the Defendant, the Defendant would give the money, in cash, back to Noor. In this respect Mr Poplawski demonstrated that there was no correlation at all between paying in cheques from Noor into the Defendant's account and any cash withdrawals from any of the Defendant's accounts. The Defendant suggested he might have drawn cash from credit card accounts of which he had not given disclosure.

(h) Noor would also give the Defendant cash to pay bills or distribute amongst the other siblings. This was for Eid and Ramadan or similar. These were very small amounts. But once the Defendant used £2000 of Noor's money to buy three cows for sacrifice in Pakistan (at Noor's request). The transfer was done by Western Union but the Defendant was not able to disclose details because Western Union only kept documents for 5 years (the Western Union account had not been

previously disclosed, including in the Defendant's two lists of documents as no longer in his control).

(i) The Defendant and his wife had both contributed money to the purchase of 139 and 139 was put in his wife's name because he "bought it for her".

(j) The Defendant did not remember the sequence of events regarding his acquisition of 137 at the time of the defence and/or amended defence but on seeing the documents he now realized that he had purchased it for £15,000 from Zubeida. He remained of the view that Zubeida did not want two properties in her name (at the time 141 and 137). He paid off Zubeida informally by 1988 from money he earned and which he handed over to his mother, which may well have been substantially more than £15,000 and he forget to ask her to remove the charge on the title to 137. It was informal and there was no documentation. About this loan the Defendant said: "That was what was cleared. Technically. Legally. That is what I owed my mother. £15k was market value".

(k) The Defendant's understanding was that his parents could carry on living at 137 until they died.

(l) While the Defendant said he was generally responsible for the upkeep of 137 the only example he could give was the cost of double-glazing (when it was done at the same time as he paid for double-glazing at 139) but he also said he did general maintenance work such as the garden and decorating.

(m) The Defendant knew about the Reshma Account. It was a private affair between his father and Reshma and the Defendant would not know if it was the beneficial account of his father, whether it was Reshma's or Noor's money was Noor's affair and not the Defendant's. The Defendant filled in withdrawal requests from that account for Noor in March 2010.

(n) The Defendant said he received the balance of the Reshma Account (£37,909.70) because of a private arrangement with Reshma: the Defendant wanted the money to settle debts he had in this jurisdiction; he arranged with friends to make an equivalent amount of money available to Reshma in Pakistan. The arrangement was either made over the phone or by email. If it was by email then the Defendant did not have to disclose that email in these proceedings because it was his private business.

(o) The Defendant knew nothing about the jewellery gifting. He was not there. He thinks it was all done in front of Noor because Zubeida had told the Defendant that she had given it away and he had assumed, therefore, that it was done in front of Noor.

(p) The Defendant's share of the jewellery had gone to his wife and daughter between 2010 and 2012 and that was nothing to do with him. He did not know what they had received. He had not asked them about it.

(q) The Defendant was holding two gold bracelets, one for Afira and one for Bilquis. These had been handed to him with instructions to hand them over when he

thought it appropriate but that "with this mischief [i.e. the court proceeding and/or the Claimant's PR] he had not had a chance".

(r) It was not the Defendant's job to ask any of the recipients of Zubeida's jewellery to give evidence about receiving it and so he had not asked them to do so.

16. Abdul Karim Menon. Mr Menon was the parties' elder cousin. He had told Noor to make a will but Noor had not done so. Noor said that the Defendant would sort it out. Noor told Mr Menon that Zubeida had given her jewellery away.

17. Ms Shaheen Ghani. Ms Ghani was not called. She reported being told by Zubeida that she had given her jewellery away and Noor saying he did not like being questioned aggressively by his daughters about money.

18. Mr Shohail Ghani. Mr Ghani was not called. He also reported Noor not liking being questioned by his daughters.

Discussion and Findings on the Issues

(1) General Observations

19. There is little direct evidence of any weight. The energy for this dispute comes from the Claimant's perception, supported in part by Afira and Fatima, that the wealth that belonged to their parents is being kept from them by the Defendant, clashing with the Defendant's belief that in so far as anyone has any entitlement to determine what happens to the family wealth then it is him as the only son. The Defendant's description that his refusal to recognize the authority of the Claimant as duly appointed PR is what has brought this dispute as far as court is right.

20. I note, though it is irrelevant for the resolution of the issues before me, that Noor was accurate when he told the Claimant that it would lead to fighting and discord between the siblings if she (and other like-minded daughters) did not keep quiet and accept whatever fate might bring them. Unlike the Defendant, however, and (I suspect unlike Noor) the law recognizes the Claimant's right to have herself appointed as PR and such a person's right and obligation to pursue and collect in the assets of the estate. From the law's perspective the idea that the daughters should simply let the son do whatever he wishes is anathema – the law is concerned with rights and obligations which apply equally regardless of sex and any particular cultural understanding.

21. It is important for the family members caught up in this dispute and who might read this judgment to bear in mind that the court does not decide matters of this kind based on whose views and attitudes or general behaviour is considered better or worse than the others. What the court is required to do for each issue is identify the relevant evidence, make such findings of fact as that evidence warrants and apply the law to those facts so as to determine the outcome of the issue. In doing that the court reaches conclusions on determinative facts on the basis that because of the relevant evidence they are more likely than not to have occurred. The test is probability and not certainty. In short, the court does the best it can on the evidence to see if the Claimant has made out her case on the various issues but without regard to the consequence of its findings and without regard to who might be thought to be more deserving.

(2) 137 Dollis Hill Avenue

22. The Claimant's case is that at all material times the Defendant held 137 as the nominee of his parents so that the beneficial ownership remained with them. Accordingly, 137 was part of Noor's estate on his death. The detailed argument is:

    (a) The charge and loan are a sham. No money changed hands and the Defendant had no liability to repay Zubeida and did not repay Zubeida.

    (b) It is accepted that *prima facie* when a parent transfers a property to a child for no consideration then there is a presumption of advancement. However, this is a presumption only and the court must consider all the evidence.

    (c) Although there is limited evidence of the parties' intentions at the time, there is plenty of evidence since the transfer in 1977 from which the court can infer a contrary intention (I was referred to *Kyriakides v Pippas* [2004] EWHC 646 at [78] – [79]):

        (i) The Defendant's lack of credibility generally given the many inaccuracies in his pleaded case about the 137 transfer.

        (ii) It being implausible that the Defendant would have taken on an obligation to repay £15,000 (or his parents impose one on him) at a time before he became a student in Saudi Arabia and implausible, given his student status and then beginning employment, that he paid back £15,000 by 1988.

        (iii) Zubeida and Noor lived at 137 throughout their lives and with the possible exception of the double glazing appear to have taken responsibility for all aspects of the Property.

        (iv) The Defendant's evidence about his taking responsibility for 137 should be rejected – he did not pay the bills, he did not authorise the various work done at Zubeida's request by Mr Miller and Mr Osman and he did not live there once he became independent.

        (v) Although the Defendant denies having any obligation to his parents regarding 137 both Noor, in the videoed chat with the Claimant on 29 June 2012, and Mr Menon, one of the Defendant's own witnesses, referred to the Defendant having such obligations (both essentially saying 137 was held by the Defendant for Noor).

    (d) On that evidence the presumption does not apply and 137 is held on a bare trust for the estate.

23. The Defendant's case is that the 1977 transaction was just what it purports to be on the face of the conveyancing documents: a sale by Zubeida to the Defendant for £15,000; a charge in favour of Zubeida to secure repayment of the £15,000; and the Defendant then repaying Zubeida her £15,000 by informal payments of salary once he started working. On the details, Mr Snell pointed out the following:

    (a) There is also inconsistency in the Claimant's case and pleading. The amended particulars of claim refers to the Defendant holding on trust for the children. This

is correct but I don't think of much consequence, the position advanced by the Claimant is clearly stated in paragraph 9 viii (c) of the pleading and the arguments at trial and cross-examination have been clear (and of course on intestacy the children will all have an equal share if the asset is within the estate).

(b) The involvement of solicitors in the 1977 transaction would be inconsistent with it being a sham.

(c) The existence of the charge makes no sense in the context of a transfer which did not include the beneficial interest – if Zubeida's intention was to retain the beneficial interest then the charge would take effect over her own interest which would be absurd.

(d) If the parties had wanted to transfer 137 subject to a trust then they could have done so but they did not.

(e) The lack of any evidence about repayment or detailed recollection is not surprising given these events are over 40 years old. In this relatively informal context, it is not surprising that the charge was not removed from the Land Register – this was a family situation and informality is not unexpected.

(f) However, if the court finds no payment was made then the Defendant is entitled to rely on the presumption of advancement given this was a transfer from a parent to a child. This Claimant cannot rely on evidence from the parents after the date of the transfer (in this latter respect I was referred to **Lewin On Trusts** [9-037] but I note in the footnote, *Lavelle v Lavelle* [2004] EWCA Civ 223: *it is not satisfactory to apply rigid rules of law to the evidence admissible…self-serving statements…long after…carry little or no weight…*).

24. I prefer the Claimant's case on this issue. I consider that the starting point is whether or not I accept the Defendant's evidence that he incurred a liability of £15,000 to his mother in respect of the 137 transaction and whether that liability was repaid. I find that there was no liability and that it was not repaid:

(a) There is much evidence in the case of the parents making gifts to their children. It is common ground, at least between the various sisters I have heard from, that the Defendant was something of a favourite son (he was certainly the only son). In that context it is at least not unlikely that the transfer of 137 would have been for no consideration (even assuming the intention was to make a gift rather than use the Defendant as a nominee).

(b) The Defendant's case is that his parents "were reluctant to be the owners of two properties" and so his mother "decided to transfer 137" to the Defendant ([25] of his witness statement). The Claimant, based on what was said to her by Noor, says the transfer was to do with tax planning. In his defence the Defendant said that his father did not want to be responsible for two properties. What is absent from any of these explanations is an intention or need to part with the beneficial ownership of 137 (I take "tax planning" in this context to be consistent with creating an appearance of separate ownership but without an intent to give up the benefits of ownership).

(c) If the intention was to not have legal title to 137 then that could be achieved by transferring it to the Defendant and without any need to burden their son with an obligation to pay his parents £15,000 over a time when he was starting out on whatever career he found.

(d) It has not been part of the Defendant's case that his mother in fact provided him with £15,000 which was then paid to her but rather that the £15,000 was treated as a loan. Certainly there is no evidence in the available solicitor's correspondence that an actual £15,000 changed hands.

(e) I am wholly unconvinced by the Defendant's evidence about repayment. I agree with Mr Snell that it is not surprising that there is no documentary evidence but the lack of detail in the Defendant's witness statement or his oral evidence about the alleged repayment is not credible. In cross-examination he was dismissive of the question and said he started to work, was living at 137 and gave his salary to his mother. There was no suggestion of any recognition by Zubeida that this process was repayment of the house price rather than any other support and not only was their no evidence that the process was done in such a way as to keep track of the amount given but the Defendant added to his answer that he did not know how much he had given but was sure that he had paid over much more than £15,000. This led me to the view that what was being described, assuming that there was any truth in it at all, was not loan repayment but more general payments being made by a child to his parents while they were supporting him and that the Defendant's evidence was little more than self-justification for why he should be able to keep 137 for himself.

(f) This lack of detail contrasts with the wording of the charge which states that the Defendant was obliged to pay £125 a month for 120 months.

25. Having found that the Defendant did not pay his mother £15,000 in respect of 137 (either as payment of the purchase price or as repayment of a loan), it is clear that the Claimant is right and that the charge is a sham: there was no debt for it to secure and both parties knew that. I put little weight on the involvement of solicitors: I am sure that the solicitors (who only charged £75.00 for their work) were just following the instructions given to them by Zubeida, (and perhaps Noor) and the Defendant. A possible explanation for the charge is that suggested by Mr Poplawski in cross-examination – it would give the parents some limited protection from the Defendant's creditors if he should fail in business, another is that it was perceived to add a veneer of authenticity to the transaction.

26. I agree with Mr Snell that the court should have regard to presumptions of advancement but this must be in the context of an assessment of the evidence overall. It is plain that at the date of transfer there was no intention that the Defendant's parents would move out of 137. On the contrary, the intention of all concerned was that the property would remain the family home and be enjoyed for so long as they wanted by Noor and Zubeida – to all intents and purposes Noor and Zubeida enjoyed all the benefits of 137 and were intended to by both parties to the October 1977 transaction.

27. It was the parents and not the Defendant who took care of and/or controlled all the normal incidents of home ownership so far as 137 was concerned: the bills, the insurance (covering for their benefit the full value of 137), other outgoings, arranging

and instructing third parties to carry out certain refurbishment works. Mr Poplawski is right to draw a comparison with the *Kyriakides* case.

28. I agree that the assertions of Noor at the end of his life carry relatively little weight and would carry no weight at all if the other evidence was contrary to them but since all the other evidence is consistent with the parents retaining the beneficial interest, Noor's assertion is rather limited confirmation of a finding that I would have made in any event. I also bear in mind that there is ample other evidence (the Reshma Account (on my findings set out below) and the assets placed in Pakistan being examples) of Noor putting assets owned by him beneficially into the hands of third party nominees. It is not surprising if he (and/or Zubeida to whom he had gifted 137 in September 1973) did the same with 137.

29. The conclusions I draw in this section get some limited support from the wording of an answer the Defendant gave in cross-examination about the loan and charge. When the sham nature of the transaction was put to him, in the context of Noor having the beneficial interest at his death, the Defendant said "that was what was cleared. Technically. Legally. That is what I owed my mother. 15k was market value". In the context of manipulating ownership to disguise the true holders of assets "technically" and "legally" are more consistent with asset holding vehicles designed to disguise beneficial ownership rather than an intention to transfer full ownership rights in a property.

30. I pressed Mr Poplawski during his closing submissions as to why it would not be an available conclusion from the evidence that the parents were content for the Defendant to have 137 but merely subject to their life interest. Mr Poplawski's response was that there is little benefit in speculating as to what other ways the transaction could have been done when there is nothing from the parties in writing beyond the documents that were created. I agree with this analysis.

31. For the reasons set out above I find that the beneficial interest of 137 belonged to Noor at the date of his death and that it is part of his estate. The parties rather assumed the beneficial interest passed to Noor on the death of Zubeida but it is perhaps also likely that Noor had retained the beneficial interest at the time of the transfer to Zubeida on 26 September 1973. In the circumstances I do not think this matters.

(3) The Jewellery

32. In the Amended Particulars of Claim the Claimant sets out a list of 15 items or groups of jewellery. It is the Claimant's case that the court should find that: (a) these items and groups were owned by Zubeida; and (b) were contained in a bag placed with the Defendant for safe-keeping.

33. It is the Defendant's case that: (a) the Claimant has not proven that the 15 items or groups of jewellery existed or were ever owned by Zubeida; (b) but in so far as Zubeida did own jewellery then that jewellery was gifted by Zubeida during her lifetime. The Defendant has chosen not to set out what jewellery his family obtained from Zubeida (or Noor).

34. Since the Claimant's case is that the Defendant controls the jewellery which is the subject of this part of the claim and since the Defendant admits that he or his family do

have a packet of jewellery that was previously Zubeida's, it is convenient to start with the issue as to whether or not the jewellery being held by the Defendant was gifted to him or his family or not.

35. I remind myself that while the Claimant has the overall burden of proving that the jewellery is part of the estate, the issue of whether or not the jewellery was gifted to the Defendant and/or his family is one where the particular burden is on the Defendant.

36. I consider that taking all the evidence together the Defendant has satisfied me that the jewellery was gifted to him and/or his family:

    (a) One base point is that the jewellery was Zubeida's and was important to her. It was common ground that Zubeida had collected jewellery over her life and it appears to have been the most obvious way in which she acquired wealth that could sustain her if necessary or be passed on to those she wished to protect in turn.

    (b) Another base point is that Zubeida acted independently of Noor when it was necessary for her to do what she wanted. An example referred to by various witnesses and by Noor in his video-taped conversations with the Claimant was the kitchen refurbishment, which Zubeida instructed and had carried out while Noor was away because she knew he would not have allowed her to do it (a further indication supporting my conclusions regarding 137).

    (c) A yet further base point is that it was accepted by the Claimant (at least to the extent that it was put to the Defendant as a fact during his cross-examination) and reflected in the evidence of emails written by one or more of the Claimant's siblings that the Defendant, as the only boy, was a favourite of Zubeida's. A nice story is told by Fatima of Zubeida making roti and Fatima asking if she could have one but Zubeida refusing because these were the Defendant's roti.

    (d) The Claimant accepted that she last saw Zubeida's jewellery in 2005 or 2006. The assumption at trial (based on evidence including that of Fatima and the Defendant) was that any gifting by Zubeida occurred in 2010 and/or 2011. The Claimant has no direct evidence about what happened to the jewellery after 2005/6.

    (e) In the videoed conversation between Noor, the Claimant and Faiza on 29 June 2012 Noor does, in answer to some very leading questions, confirm that the Defendant is looking after the jewellery because it is safer there and that Noor told Zubeida not to gift it to the children during her lifetime (because they did not need it and might not keep it safe). I do not give much weight to this evidence: it has not been the subject of cross-examination; the circumstances of the conversation were the Claimant trying to extract information useful to her after Noor's death so Noor's responses are less freely given than they might have been otherwise (this is not intended to be critical of the Claimant, I am sure Noor needed to be led or he would have said nothing relevant anyway); it is common ground that the jewellery had been kept safe with the Defendant at one time and so Noor's belief as to that is easily explained; it is common ground that Zubeida could act in relation to some matters independently of Noor and so it is unsurprising that his belief and the truth might be different.

(f) Fatima says she was gifted 14 gold bangles in 2010. I accept this. Of itself this proves that Noor's assertion that nothing had been gifted was wrong.

(g) In her oral evidence Fatima said that her mother told her that she was going to gift her jewellery. In email exchanges between herself and the Claimant during August 2012 she clearly said that her mother had given away her jewellery. This was not a slip of words, as she suggested during evidence, because in her emails she focused on the gifting and explains it and justifies her mother's actions. Since I place weight on what is said by Fatima in these emails, I set out the material narrative:

(i) The context is that the Claimant, in the summer of 2012, after Zubeida's death, had prepared a DVD incorporating various recordings she had made which among other things included the assertion derived from Noor that the Defendant held the jewellery. The DVD caused some upset amongst the siblings. Its contents was included in the digital trial bundle but I was not asked to look at it (and have not) and there has been no cross-examination about it.

(ii) Fatima emailed on 2 August 2012. She addressed Zubeida's gifts of jewellery a number of times. The following bits of substantive evidence appear in the email: Zubeida told Fatima that she give diamonds to Faiza; Fatima believed (in each case she does not say why) that (i) the rest of the diamonds were given to the Defendant (ii) Zubeida gave a gold bangle to a third party; Zubeida gave Fatima gold bangles and at the same time told Fatima "she had already given" Faiza and Faiza's daughters jewellery. Fatima remembers thinking that she, Fatima, would have liked diamonds but that was Zubeida's choice. This strongly suggests that so far as Fatima was concerned at the time of her getting the bangles the gifting of the diamonds had taken place and she was not getting diamonds. If it had not already taken place (or was not already a settled thing) then there would be less reason for this thought. Likewise, if Fatima believed when writing the email that the diamonds had not been gifted (or even might not have been gifted) then there would be no reason for her to express herself as she did (even taking into account general family upset and hyperbole).

(iii) The Claimant responded on 2 August about an hour later by writing comments within the body of Fatima's email. So far as is material the Claimant questions why not all sisters have received jewellery and posits that the Defendant might be the source of information and is lying.

(iv) Fatima responded later in the evening of 2 August but only to say that she had nothing more to add.

(v) On 3 August 2012 the Claimant posted the DVD to Bilquis and Afira (who I infer had yet to be sent it at that point).

(vi) On 6 August 2012 the Claimant addressed to Fatima an email of comments broken down into 6 main subjects and with numbered remarks under those subjects (there were other emails but I do not need to refer to them or identify them and they were not the subject of oral evidence).

(vii) Fatima responded also on 6 August 2012. In that response Fatima addressed the Claimant's comments and was careful about the source of her belief. She stated she was not present when Zubeida was said to have showed off in front of Noor. She said that Zubeida told her, Fatima, that she had given the Defendant's wife and daughter the rest of the diamonds. Fatima said that the jewellery had been kept in the Defendant's loft (this is consistent with the Claimant's evidence) but then was returned to Zubeida so she could distribute it "so there could be no arguing about it later". I recognize that there is no source given for Fatima believing that but it is the only reasonable conclusion that a person in Fatima's position would have drawn from what she says Zubeida told her.

(h) I accept what Fatima said in those emails about what she had been told by Zubeida: Zubeida said that she had given away her diamonds.

(i) I also consider on such evidence as there is about Zubeida that it is likely that having collected her jewellery over her life and having a strong personal attachment to her collection that she would have wanted to be responsible for where it went. I share Fatima's view expressed in her email of 6 August 2012 set out above. It is supportive of this conclusion that Zubeida's so dealing with the jewellery is consistent with the agency she took for herself when she could regarding the kitchen refurbishment.

37. On my finding that Zubeida gifted to the Defendant (or his wife and daughter – the distinction is irrelevant for present purposes) the jewellery that is located at 139 or otherwise in the possession of the Defendant, the claim in respect of the jewellery fails. I find the jewellery does not fall within the estate of either Zubeida or Noor.

38. It is not necessary for me to make any further factual findings regarding the jewellery. I do comment that on the evidence it would have not been possible to make detailed findings. I suspect that the only conclusion that could have been drawn was that if I had decided jewellery (generally) had not been given to the Defendant (his wife and daughters) and so such jewellery as the Defendant was holding belonged to the estate, then I would have found that all the jewellery alleged by the Claimant to be held by the Defendant was so held (that being the only practicable conclusion once the Defendant chose not to provide the Claimant or the court with evidence about which actual pieces were held by him or his family and not to have Mr Snell cross-examine the Claimant's and Mr Merchant's evidence proving the list in the particulars of claim).

39. The exception to the finding in this section are the two gold bracelets which the Defendant holds but with instructions to pass them to Afira and Bilquis. I accept his evidence about those. These must be handed over to the Claimant as PR but subject to the bracelets being necessary to meet administration costs or tax liability they should be passed to Afira and Bilquis in due course.

(4) Noor's HSBC Account

40. The Claimant's case in closing breaks down into three:

(a) £10,100 of cheques drawn and paid to the Defendant between 10 January 2010 and 30 April 2011.

(b) £18,600 of cash paid out of Noor's account between 31 November 2009 and 5 November 2012.

(c) £1,400 drawn out of the HSBC account by the Defendant (and admitted by him) at the time that Noor was in hospital and incapable and in the weeks following Noor's death on 6 January 2013.

41. The Defendant's evidential case included (some of which I have set out above):

(a) In his pleading that he never had money from the HSBC account. In cross-examination, the Defendant accepted this was wrong and should have said that he had never had unauthorized money from the account. The Defendant offered a different story, namely that he would pay Noor cash and then be reimbursed by cheques from Noor's account. There was no evidence from within the Defendant's bank account of cash withdrawals being proximate to the cheques paid in from Noor's account and the Defendant said he might have got cash from his credit cards (these were not disclosed).

(b) Cash was paid to the Defendant to pay the utilities for 137 because there were no direct debits from the account. This was false. Noor's HSBC account included all usual services for 137 being paid by direct debit. The Defendant said sometimes Noor would give him money to make payments to third parties: hundreds of pounds for Eid or Ramadan gifts; £2,000 once to purchase three sacrificial cows in Pakistan (the transfer of value to Pakistan being made through the Defendant's Western Union account for which he could not get records because of the lapse of time). Otherwise the Defendant did not know what might have happened with cash, as it was Noor's account and Noor's money. The Defendant's evidence about direct debits is curious because it was so obviously wrong – I conclude that the Defendant is content to say anything that will give some justification for his position regardless of the reality.

(c) In the run up to his death Noor gave the Defendant his cash card and told him to close the account and so he did.

42. Mr Snell's arguments on behalf of the Defendant are more promising than the Defendant's factual assertions (which I can give very little weight to given how inconsistent they are and how, when pressed, he leaned on untestable assertions which could have been tested had he given disclosure of them – such as his credit cards from which cash is now alleged to have been taken out for Noor). Mr Snell argued:

(a) The Claimant's pleaded case regarding the HSBC account is that the Defendant "removed" £68,788 from the account over a period of 7 years.

(b) There was also a similar allegation regarding an account in Zubeida's name but that was not pursued.

(c) The relief sought in the prayer regarding the £68,788 was an account and an inquiry as to the circumstances of the £68,788 payment or damages or equitable compensation for breach of trust or for money had and received.

(d) It must be implicit in the allegation of "removal" and the assertion of a breach of trust or money had and received that some wrong had been done by the Defendant

which resulted in him obtaining the money. In fact no such wrong has been established because it has not been alleged (and nor could it on the evidence) that any of the HSBC money has been dealt with otherwise than with the consent of Noor.

43. There is some merit in what Mr Snell argues. Certainly, I do not consider that the claim in respect of HSBC is as well pleaded as it should have been. Nevertheless, the parties have addressed in evidence, without any difficulty, the gist of a case which is that the Defendant has had money from Noor and which he should account for and if he cannot account for it then a reasonable inference is that he should repay it to the estate. I deal with the HSBC claims on that basis. I adopt the following principles:

    (a) If the Claimant proves that the Defendant has had money from Noor then that places an onus on the Defendant to explain why that money should not be returned.

    (b) By "onus" I do not mean burden in a technical sense. This is because it would be open to the Defendant to argue (albeit he has not in this context) that any such payments were from father to son and he should be entitled to take advantage of the presumption against advancement.

    (c) At both stages of the analysis I take into account the bareness of the Claimant's pleading. In weighing what the Defendant has said I take into account that the HSBC claim has not been set out in pleaded form as fully as it should have been and so up to a point the lack of detail in his evidence might be explicable.

    (d) At the same time, given the evidence that the parties have led and the submissions made, it would be unfair to the Claimant to dismiss the claim only on the basis of inadequate pleading.

44. My findings and rulings on each of the three aspect of the HSBC claim follow.

45. Cheques Payable to the Defendant. The Defendant admits that these cheques were paid to him and his explanations are wholly insufficient to demonstrate that Noor intended to part with the money. The assertion about the cheques being paid to him to pay him back for cash payments that he made on Noor's behalf deserves no weight to be given to it: it was only articulated in cross-examination once other evidence had been shown to be unsustainable and was not supported by any documentary evidence or detailed explanation. It also lacks general credibility – why would Noor need £10,100 of cash from the Defendant when he had funds in his own account and the ready means to be taken to the bank to get it out? I find the Defendant's explanation to be false. The Defendant has not relied on gift as an explanation (or raised the presumption) but the false (on my findings) explanation given by the Defendant is sufficient of itself to rebut any presumption that might operate in his favour (he would not have needed to give such an explanation if it was a gift and so the presumption has no role to play). The Defendant must pay to the Claimant £10,100 plus interest at the rate payable from the HSBC account from which the money was taken (if it can be ascertained, otherwise I will award 2.5%) but in any event from 6 January 2013 until judgment.

46. Cash. The Claimant proves that cash was taken out from Noor's account in the sum of £18,600 but has not attempted to prove that this was done wrongfully. I also agree that

the Defendant's explanation about being given cash to pay for utilities is false. It is also true that the only other explanation given by the Defendant for having cash is the three cows sacrifice (which may or may not fit in the relevant time-scale). But the Claimant has no positive evidence that the Claimant has had all of this cash or any particular part of it. The case is based on inference. I am not satisfied by such evidence that the Defendant has had the cash. The timescale is too great (between November 2009 and November 2012) and there are too many imponderables. I find that the Claimant has not established any interest on behalf of the estate in these cash withdrawals that would entitle her to any order against the Defendant. This aspect of the claim is dismissed.

47. £1400. This was money that should have formed part of Noor's estate. The evidence of the Defendant is only consistent with it being such and the Defendant, who has had the value of it, must make it good. I order judgment against the Defendant for £1,400 plus interest at the same rate as I described above but in this case interest should run from 16 February 2013 (this is the date of the last cash withdrawal by the Defendant, it under compensates the estate but it would be disproportionate to take interest from the date of each separate withdrawal for such a small sum).

(6) The Reshma Account

48. The Claimant's case is that the Reshma Account was a nominee account held by Reshma for Noor and that the closing balance of that account, £37,909.70, was paid to the Defendant as Noor's nominee.

49. The Defendant's case is that the Reshma Account was beneficially owned by Reshma and that he and Reshma agreed that she would transfer to him the closing balance so that he could pay credit card bills (or perhaps other debts) in this jurisdiction and in return using the hawala system, the Defendant made credit available to Reshma in Pakistan.

50. I consider the same principles apply as I have set out above regarding the funds paid out of the HSBC account.

51. Neither parties' case is set out in their statements of case: the Claimant asserts the existence of the Reshma Account, says it contains £250,000, says the Defendant controlled the account, and seeks an order for payment or alternatively money had and received; the Defendant asserts the Reshma Account is Reshma's, says he understands it was closed during his parents' lifetime and says he has no knowledge of the £250,000.

52. What is absent from the Defendant's pleaded case (and should not have been) was his knowledge that Noor was a signatory on the account and that the closing balance of the account, £37,909.70, had been paid to him because of his arrangement with Reshma. All those matters were required as a proper response to the Claimant's assertions and/or to enable the Defendant to make the positive case he did at trial.

53. The Claimant's pleading should have been amended once the Claimant got the disclosure from Habib but there has been no prejudice to the Defendant who has known the case he has had to meet and addressed it at paragraph 58 of his witness statement where his explanation for having received the balance of the account on its closing is set out.

54. There are two material issues:

(a) Was the Reshma Account a nominee account on behalf of Noor;

(b) If so, should the Defendant account for his receipt of the £37,909.70.

55. Neither party has called Reshma or provided a witness statement from her.

56. I have no doubt that the Reshma account was a nominee account. This finding follows inevitably from the following evidence:

(a) There is evidence from Noor (in the videos), the Defendant (the taped conversation) and Fatima only consistent with it being a nominee account. This includes statements that it was a nominee account and Fatima being asked to make payments into the Reshma Account of Noor's money held in BCCI Gibraltar and Noor asking Fatima to set up an account in her own name to receive the balance of the Reshma Account once it had to be closed.

(b) The documents disclosed by Habib bank which evidence what was happening when the account was opened point to a nominee account. At first Habib in Pakistan wrote to Habib in London and asked that a joint account be opened in Noor and Reshma's name. Later there is a file note evidencing a discussion between the bank and Noor about resident and non-resident and tax rules following which Noor requests that the account only be opened in Reshma's name.

(c) The account is then opened in Reshma's name alone and she signs the relevant documents regarding beneficial ownership of the funds. I agree with Mr Snell that this is evidence supporting the Defendant's position but I do not find it at all unlikely that such documents might be signed but not truly reflect the actual beneficial owner of the funds. The weight to be given to these documents depends on the other evidence.

(d) The account being in Reshma's name enabled a HMRC form to be filled in allowing the payment of interest without deduction of tax.

(e) Reshma's correspondence address for the account was 137. This meant the statements were being sent to Noor and not Reshma. Reshma told the bank that Noor was to monitor the account. This is evidence supportive of it being Noor's money in the account.

(f) In 2000 Reshma confirmed Noor and Zubeida as being authorized signatories on the account. This gave them actual control over the money independent of Reshma. This is strong evidence of a nominee account – it is the only available conclusion in the absence of other explanation.

(g) It was common ground that Fatima was given £7,000 by Noor and/or Zubeida in March 2010 which was paid out from this account on the signature of Noor (the Defendant admitted filling out the payment instructions for Noor).

(h) The balance in the account was paid to the Defendant, which subject to the Defendant's explanation, is good evidence that it was Noor's account and that

such payment was made on Noor's instructions (consistent with Fatima's evidence that Noor was deciding what to do with the closing balance). This is strong evidence that the money in the account was Noor's (subject to the Defendant's explanation).

(i) There is no evidence from Reshma stating that it was her account and her money or supporting the Defendant's explanation.

(j) In oral evidence the best the Defendant could say was that he did not know who the beneficial owner was and it was a private matter between Noor and Reshma.

57. The Defendant's explanation about a hawala arrangement between himself and Reshma has no weight and I reject it:

(a) There is no detailed explanation about what the arrangements were, when and through whom they were put in place and why it was necessary for this elaborate transfer of value to take place if both parties had assets and liabilities sufficient to meet them (Reshma uses the Habib money to meet her liabilities and the Defendant his Pakistan assets, he did not say what they were, to meet his English liabilities).

(b) There is no evidence to support the existence of the alleged credit card or other debts and no evidence to support any payments being made for such debts. On the contrary the money was paid into the Defendant's Nat West account in mid-October 2012[3] and most of it was still there in December 2012 (which is when his disclosure runs out) and more money appears to have been paid to Noor than to anywhere else over that period (even without taking account the £3,345 funeral payment for the benefit of Noor's estate).

(c) In oral evidence the Defendant said there might be email evidence of the transaction but that he did not disclose it because it was a private matter between himself and Reshma. This is a hopeless explanation for non-disclosure and itself undermines the credibility of the Defendant's account.

(d) There is no evidence from Reshma to support the Defendant's explanation and no explanation for why there might not be (it is not enough that she is abroad, a statement could still have been put in evidence).

(e) In short beyond the Defendant's general assertion the allegation lacks particularity, lacks any supporting documents and in so far as there are relevant documents, the Defendant's bank account, it is inconsistent with the Defendant's assertion and without any explanation from the Defendant to explain the inconsistency.

(f) Finally and as a free-standing reason, is the Defendant's general lack of credibility – he is not a witness who the court is inclined to believe, for the reasons already set out.

[3] It is notable (and further indicative of the Defendant's complete lack of respect for the court or regard to the truth) that when he disclosed redacted bank accounts he covered up the entry for the receipt into his account of the monies from the Reshma Account.

58. For those reasons I find that the Reshma Account was beneficially owned by Noor

59. I also find that the £37,909.70 was received by the Defendant as Noor's nominee. The Defendant has received the money and has provided no explanation that would entitle him to keep the money as against the Claimant. It follows the Defendant is accountable to the Claimant as the PR of Noor's estate on the basis of money had and received. The Claimant should pay interest at the same rate and described above and from 6 January 2013.

(7) The Abdul Razzak Monies

60. Mr Snell agreed that the court had personal jurisdiction over the Defendant sufficient to direct him to tell Abdul Razzak to transfer the monies held by him into this jurisdiction. I will make such a direction. I consider that the monies in Pakistan are likely accountable to HMRC here given that Noor was domiciled in this jurisdiction, in which case the Claimant will need to take them into account when making any necessary HMRC returns (the Claimant would be well advised to take professional advice to ensure she has complied with all and any obligations arising out of her PR role for both Zubeida and Noor). It is something of an unknown as to the nature and value of the assets because the only information the court has is the Defendant's say so.

61. The relevant direction should take the form of a letter to be agreed between counsel and annexed to the order. The letter should direct Mr Razzak to transfer all and any assets he was asked to hold by Noor to an account of the Defendant's in this jurisdiction. I will make an order against the Defendant that once he receives such monies then he shall forthwith transfer them to the Claimant. I consider it more likely that Mr Razzak will comply with the Defendant's request if he should be asked to pay the assets to the Defendant rather than the Claimant. I will include a liberty to apply.

(8) £4,000 funeral cash

62. In so far as the Defendant has met Noor's funeral expenses then he should be entitled to credit. However at the moment he appears to have met the funeral expenses from his Nat West account with Noor's money derived from the Reshma Account.

63. I will order the Defendant to repay the £4,000 (along with the other financial orders against him) but allow him credit for £3,345 which is the sum evidenced in the Nat West account as being for the funeral. I have considered giving the Defendant another chance to prove with documents the amount paid for the funeral but on balance consider that these proceedings provided that opportunity and such documents were plainly relevant and should have been provided as part of disclosure. The absence of any other documents gives rise to the conclusion on the facts that the funeral costs were £3,345.00.

Conclusion

64. I invite Counsel to draw up an order reflecting the decisions set out above. The gist of such order must deal with the following:

    (a) 137 being held by the Defendant on trust for the estate. One obvious solution would be for the Defendant to be ordered to take all necessary steps to have the legal title to 137 registered in the Claimant's name as PR for Noor's estate.

(b) An order for delivery up to the Claimant of the gold bracelets.

(c) A money judgment against the Defendant for £50,064.70 (£10,100, £1,400, £37,909.70 and £4,000 less £3,345) together with interest as set out above.

(d) An order requiring the Defendant to sign and send to Mr Razzak by post and email a copy of a letter as described above regarding the relevant assets in Pakistan and for the Defendant to pay any resulting assets received by him to the Claimant.

(e) All other claims to be dismissed.

65. If costs cannot be agreed then they can be dealt with either by email submissions (if that process is agreed) or by a further hearing.

His Honour Judge Parfitt

Thomas More Building

Royal Courts of Justice