Claim No. C00CL599

In the County Court at Central London
Business and Property Court List

Before His Honour Judge Parfitt

JASPAL KAUR RAI

Claimant

v

JAGDISH KAUR POONI

Defendant

JUDGMENT

Dates: 7 to 9 January 2019 & 1 February 2019

Simon Brilliant instructed by **Prolegis Solicitors** for the Claimant

Simon Hill instructed by **Sriharans Solicitors** 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 parties are sisters and in their sixties. This protracted dispute is about the beneficial interest in a property at 11 Birch Grove, Slough ("the Property"). The parties are registered as joint legal owners. The Claimant says the beneficial interest is split equally between the Claimant and the Defendant. The Defendant says the beneficial interest is hers alone.

2. The main factual dispute has been whether £3,887, paid to the Claimant by the Defendant at the end of November 1996, was paid as a loan, the Claimant's case, or paid in return for the Claimant giving up her rights in the Property, the Defendant's case. In addition, Mr Brilliant, for the Claimant, argues that even if the Defendant's factual case is to be preferred, then the Defendant should not be able to claim 100% of the beneficial interest because of the doctrines of illegality and/or clean hands.

3. The parties were well represented at trial by their respective counsel and I thank them for their efforts.

4. This judgment addresses the following matters in this order:

   (i) Narrative Context.

   (ii) Submissions.

   (iii) The Law.

   (iv) The Issues.

   (v) Conclusion.

Narrative Context

5. Much of this section is common ground, to the extent it is disputed the disputes are not material. The Property was purchased by the Defendant in 1981 with the assistance of a mortgage from Nationwide. The purchase cost was £27,500 and mortgage £15,500. At that time the Claimant and her husband lived in Nottingham.

6. During the 1980s the Claimant and her husband had a shop in Nottingham which got into financial difficulties. The Claimant said because of the miners' strike and the amount of time she needed to dedicate to her severely asthmatic son. Although the Claimant denied this, it appeared from a record shown to the court that the Claimant became bankrupt at this time and that her husband had similar financial problems.

7. In any event by the mid-1980s the Claimant's husband was working in the South East and shortly thereafter the Claimant and their children joined him. It was common ground that

the relationship between the Claimant and her husband was not straightforward. The details do not matter but I refer to some of the passing evidence below.

8. By 1987 the Claimant and the Defendant were both living at the Property. However, the Defendant wanted to purchase and move to 31 Clifton Rise ("31 Clifton Rise") but in order to do this she needed to refinance. It was agreed – and this is still agreed between the parties – that the Property would be transferred from the Defendant's sole ownership to the joint ownership of the Claimant and the Defendant on a 50 / 50 basis. As part of this transfer the Property was re-mortgaged to the Britannia. The purchase cost was £68,000 and the mortgage was £59,760. The difference between the mortgage and the purchase cost was attributed to a £4,000 payment made by each sister and in addition the Claimant says she provided another £1,500 which covered fees. These figures are not supported by documents.

9. The Defendant acquired and moved into 31 Clifton Rise. The Claimant and her family remained in occupation of the Property.

10. In circumstances which I will refer to in a little more detail below, by roughly the end of 1989 the Claimant and her family moved out of the Property into a council flat at 48 Fox Road. It was the Claimant's case in closing that this obtaining of local authority accommodation was unlawful because of the existence of the Claimant's interest in the Property and that such illegality should vitiate any order in favour of the Defendant that the court might otherwise make in these proceedings.

11. From that period and with the normal occasional voids, the Property appears to have been tenanted (I say appears because this is based on the parties' oral evidence only) and the Defendant has managed those lettings and the Property. No monies have been paid to the Claimant by the Defendant referable to the income from the Property – indeed this is one of the Claimant's complaints about the Defendant's conduct.

12. In 1992 the Claimant and her family (and I think some extended family also) moved to a larger council property at 1 Hubert Road ("1 Hubert Road").

13. On 9 November 1996 the Claimant and her husband completed a purchase of 1 Hubert Road under the right to buy scheme set up by the Housing Act 1980.

14. Also in November 1996 the Claimant paid into her account the £3,887 cheque from the Defendant. This is at the centre of the main issue. It is not necessary to say any more about the controversial matters in this summary but the Claimant says it was a loan and was repaid by six cash payments totalling £3,750 made during the spring of 1997. The Defendant says the money was given as part of an agreement by which the Clamant gave up her interest in the Property. The Claimant says there was no repayment.

15. In 2006 the Defendant took steps to re-mortgage with the Halifax. Solicitors were involved for the Halifax. As part of that re-mortgage a TR1 was lodged with the Land Registry, dated 31 October 2006. In that TR1 the Claimant purported to transfer her interest to the Defendant. The Claimant alleges her signature was forged on that TR1. The Defendant says the Claimant signed it. If the Claimant succeeds on this forgery issue then the

Claimant also argues that the Defendant should be refused relief on the basis of the clean hands maxim.

16. In 2011 the Claimant applied to the Land Registry to have the register altered to show her as the joint owner of the Property with the Defendant. This led to proceedings before the Tribunal which ended by a consent order, following the Defendant being debarred from relying on expert evidence on the signature issue, dated 18 March 2013. In the consent order the Defendant withdrew her objections to the 2011 request for the register to be altered. The parties were registered as joint proprietors as they had been prior to 2006.

17. In 2012 there was a criminal prosecution of the Defendant in respect of the alleged forgery of the TR1. The Defendant was acquitted following a Crown Court trial at Reading in September 2012.

18. On 16 December 2014 the Claimant served a notice of severance in respect of the beneficial interest in the Property.

19. On 1 March 2016 this claim was issued.

20. In June 2017 I determined a preliminary issue application addressing the extent of the issue estoppel and/or res judicata arising out of the consent order before the Tribunal. I ordered that the Defendant was estopped from disputing the joint legal title but not the beneficial interest.

Submissions

21. The Claimant's starting point was the 2006 TR1 and the forgery allegation. This was supported by the expert evidence which had been created for the purpose of the Land Registry application. The purported witness to the Claimant's signature provided two statements to the police and in that second statement said that she did not witness the document. The Claimant did not sign her name in that style in 2006. The TR1 was late relative to the alleged transfer of interest in 1996, without adequate explanation, and wrongly stated the consideration. It had involved solicitors acting for the new mortgagee who were writing to the Claimant at addresses which were not her own address. It was likely done because the Defendant had fallen out with the Claimant about the Claimant's children marrying into the Muslim faith. If the Defendant had a genuine belief in the document she would not have agreed to withdraw her objection to the Land Registry application. This finding of fraud should colour the court's approach to the rest of the case.

22. So far as that rest of the case was concerned, the Claimant's position was that the court should prefer her evidence on disputed matters. The court should find that there was no conversation between the parties about not putting matters in writing in 1996 because of a concern about the local authority knowing about the Defendant's interest in the Property. The payment arrangements in 1996 were about a loan: the Claimant needed money to refurbish the family home at 1 Hubert Road and asked for more but was provided with less. The loan monies were paid back and it is not surprising that the Claimant should remember the dates she made cash repayments, in particular when she had an aide memoire (and not

surprising that she should have lost that note in the last couple of years and not made reference to it until the witness box). The Defendant had overstated her case – in particular in saying that the Claimant said in the criminal trial that she had no beneficial interest. Also in the transcript from that trial the Claimant should not be criticised for saying that she had not been paid back the 1996 money because even if that were the case it was still a loan she was talking about.

23. However, Mr Brilliant continued, if the court was against the Claimant on the facts regarding the 1996 arrangements then he had two backstop points. The first of which was described as his main argument. These were:

    (i) The 1996 arrangement should not be enforced because of *Patel v Mirza* illegality. The court should find that the Defendant is correct in the parties having an agreement not to register the change to sole ownership in 1996 to keep it from the local authority. This was because (Mr Brilliant asked the court to infer) it would have undermined the basis upon which the Claimant's family were able to get local authority accommodation in 1989 / 1990. If they had not got that accommodation at that time then they would not have been eligible for the right to buy 1 Hubert Road in 1996. This was a fraud on the public and should disentitle the Claimant to any relief.

    (ii) In any event the equitable maxim of "clean hands" would apply to the Defendant seeking a declaration of being a 100% beneficial owner, contrary to the joint ownership registered at the Land Registry, in circumstances where the Defendant had tried to achieve that same position by a forged document.

24. Finally, even if the court was not with the Claimant otherwise, the Claimant was entitled to seek an account for the period from 1989 to 1996 of the rents and profits.

25. Mr Hill, for the Defendant, focused his submissions on the evidence surrounding and relevant to the 1996 agreement. The conversation agreeing the buyout occurred on 19 November 1996. The cheque was credited to the Claimant's bank account on 21 November 1996. At that time it was common ground on the evidence that the Claimant and the Defendant considered the Property was in negative equity. The Claimant was asking for money. There is plenty of evidence from the Claimant, in particular from the criminal proceedings, that the investment in the Property was considered a temporary one and she wanted her money out. It is likely, in those circumstances, that in broad terms she should take a deal which allowed her to more or less get back what she had put in. Assuming the Claimant put in a total of £4,000 plus costs then she got back £3,887 plus the Defendant forgiving a sum of £1,080. This was about £5,000 which was the sum often mentioned by the parties in their evidence (including the criminal proceedings). This was a more credible explanation than the loan, which on the Claimant's own evidence had never been asked for in that sum or anything close to it and on which the Claimant's evidence on repayment was both incredible of itself and a recent fabrication (it being entirely contradicted by her evidence in the criminal proceedings). The Defendant's evidence was to be preferred over the Claimant's which was evasive and inconsistent. If there was an informal agreement that the Claimant would receive £3,887 plus being forgiven £1,080 of debt for the beneficial interest and the Defendant paid the money on that basis then there

was a constructive trust binding on the Claimant's legal interest and/or a proprietary estoppel.

26. The court should be slow to make a finding of fraud against the Defendant regarding the TR1. The Defendant had already succeeded before a jury on that issue. The expert evidence was undermined by a handwritten letter dated 3 March 1997 which appeared to show the Claimant's signature. This led the Defendant's expert to qualify his opinion and it was a document which was not referred to by the Claimant's expert. The Defendant had disclosed that document in these proceedings but no issue was taken with the validity of the Claimant's signature on it until the Claimant's cross-examination (CPR 32.19 is relevant here – although it was not particularly mentioned). The court should accept the Defendant's evidence about the Claimant using the Property address for correspondence and making many visits to the Property to get correspondence.

27. Mr Hill argued that the Claimant's other arguments were wrong:

    (i) The illegality argument should not be available on the pleadings which focused the alleged illegality on the Claimant's eligibility for the right to buy not on the acquisition of the council flat in 1989. This is not a technical pleading point but is bound up with the total lack of evidence about the acquisition of the flat as to which there is no disclosure, limited and contradictory evidence from the Claimant and nothing from the relevant local authority. It is a new point based on speculation and hypothesis nothing more. In any event the 1989 events are remote from the 1996 arrangement where the Defendant bought out the Claimant's interest in the Property. There is no direct connection and neither public policy nor the integrity of the judicial system requires the court to refuse to allow the Defendant's equitable rights.

    (ii) In a similar way the deceit in respect of the TR1, if found, does not engage the clean hands maxim. It is also not sufficiently related and the court is not endorsing the TR1 by recognising the Defendant's rights.

    (iii) It is too late and would be unfair, given the apparent absence of any documentation, to have an account now of the rents and profits from 1987 to 1996. This is between 32 and 23 years ago. There do not appear to be any documents available. No fair account could now be obtained.

The Law

28. I can take this reasonably swiftly as there was no significant dispute about any of the relevant principles.

29. An agreement for the disposition of an equitable interest needs to comply with the requirements of s2(1) of the Law of Property Miscellaneous Provisions Act 1989. An actual disposal of an equitable interest must comply with the requirements of section 53(1)(c) of the Law of Property Act 1925. The Defendant's alleged 1996 buyout arrangement did neither and so can only be saved by the operation of a constructive trust or proprietary estoppel (Mr Brilliant did not argue that the savings in those statues not

mentioning proprietary estoppel created a material difference for the purposes of this case[1]).

30. The requirements of a common intention constructive trust are: (a) the starting point is that the legal ownership signifies the equitable ownership; (b) however if it is the parties "mutual wish" (*Marr v Collie*, [2017] UKPC 17, paragraph 54) that the beneficial ownership should be held differently; and (c) if there is reliance on that common intention; and (d) if there are not other equitable considerations to the contrary then the court will give effect to the parties intention. Mr Hill, without citing any authority, did not accept (d) in the summary I have given. In the event it makes no difference to the outcome of this case because that element is satisfied but there is a convenient summary of the law and reference to relevant cases in **Emmet & Farrand**, at paragraph 11.115 (this also, helpfully to the present case, refers to *Oates v Stimson* [2006] EWCA Civ 548 where a common intention constructive trust arose where one co-owner gave up his joint beneficial interest in return for a promise to be paid £2,500).

31. The requirements of a proprietary estoppel were summarised by Mr Hill and were common ground: (a) a representation about rights or interests involving land; (b) reliance on that representation and (c) detriment in consequence of that (reasonable) reliance (*Thorner v Major* [2009] UKHL 18, Lord Walker at paragraph 29).

32. The law on illegality is now derived from the Supreme Court's judgment in *Patel v Mirza* [2016] UKSC 42. I was referred to paragraphs 99 to 101 and the summary at paragraph 120. I will quote from the latter: *the essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system… In assessing whether the public interest would be harmed in that way, it is necessary (a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact, and (c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts*.

33. I was referred to the summary of the clean hands maxim in Snell, 33rd ed, at 5-010. This summarises that this is not about general moral culpability but whether *there is a sufficiently close connection between B's alleged misconduct and the relief sought. The maxim is therefore only applicable in relation to conduct of B which has "an immediate and necessary relation to the equity sued for"*….Various examples follow, all of which I have borne in mind.

34. The nature of the issues in the case means that the Defendant bears the burden to establish that the beneficial interests in the Property do not follow the legal interests and I bear in mind that this should not be an easy burden to overcome. The Claimant bears the burden

[1] See for example the discussion in Chitty, 33rd ed between 5-044 and 5-049. I agree with Mr Brilliant's decision in this respect – it would have made no difference to the outcome of the present case.

on the TR1 issue but this is still a balance of probabilities test even though the allegation is a serious one of fraud and dishonesty.

Relevant Findings of Fact

35. I take these matters in chronological order but start with some general observations about the evidence.

General Comments

36. I heard live evidence form the Claimant, her daughter and the Defendant. The Claimant also relied upon statements from her father and husband. The Claimant would have called her husband but unfortunately he became ill just before trial and was in hospital throughout. I allowed his statement in. I also bear in mind when considering the Claimant's oral evidence that she was obviously much stressed by her husband being in hospital and it being uncertain what his prognosis might be. No party sought an adjournment.

37. The evidence which was contained in statements and the evidence of the Claimant's daughter do not carry much, if any, weight. This is because in general those witness statements address the potential issues in the case at such a level of generality that at best they are only evidence about general family assumptions regarding the Claimant's position. They are not good evidence, i.e. actual detailed evidence about facts which the witness is able to speak to from their own recollection of having been present at the time those facts occurred upon which those assumptions might be based. I have made reference to any parts of those statements as are of particular potential relevance below.

38. In general and for slightly different reasons I am cautious about the evidence of both Claimant and Defendant. The problem with both was that I formed the clear view that they would say and for the most part believe that which was most helpful to their own wish to succeed rather than any particular regard to the truth or accuracy of their recollection. In the Claimant's case this was demonstrated by a preference for evidence which meandered around a question but without really answering it. Although the Defendant generally gave her evidence in a more direct manner – her spoken English appeared to come more quickly to her – and so was a more accomplished witness much of what she said was couched in a manner designed to put herself in a better light than her sister: the Defendant was always the person who was in the right and the Claimant always the person in the wrong. This was unpersuasive.

39. The only exception to this general and unceasing criticism of the Claimant relative to the Defendant, was a half comment regarding the Claimant's husband – the Defendant told the court that the Claimant always worked hard but it was her husband who did not (and who the Defendant also said threatened her). The Claimant was also critical of her husband: mentioning that he had had an affair with the Defendant. It was those parts of the evidence, also reflected in brief references in witness statements, that led me to summarise above that the Claimant's relationship with her husband was not straightforward.

40. The Claimant's approach to evidence is well demonstrated by a relatively trivial example (but one which is paralleled in the far more important evidence about the 1996 arrangements). The Claimant was asked if she had read the Defendant's witness evidence. The parties were very late in producing witness evidence, only doing it in late December 2018. The Claimant's first response was to say that she had read it. Then, almost immediately, she qualified that by saying she had read parts of it. Since I could not quite understand the circumstances in which only parts might have been read – the statement is not very long – I asked for clarification. Then the Claimant said she had not read it at all because of her husband's illness. This is understandable and I would have had no criticism of the Claimant if that had been her first and/or instinctive response. But the Claimant's initial response was to say the answer which she thought showed her in the best light rather than was accurate. This exchange, which was right at the end of her evidence, crystallised the general impression I had already formed of much of the Claimant's evidence.

41. In giving the Claimant's oral evidence little weight I do very much bear in mind that English is not her main language, the general stress of cross-examination, the particular stress of this being a family dispute and the Claimant's husband being ill. I also take into account that it is difficult when the cross-examiner has available the transcript of another cross-examination exploring similar subject matter. In this case that cross-examination was in the criminal proceedings and involved an interpreter. It is clear from the transcript that it was a difficult cross-examination for various reasons. Nevertheless, there are certain clear answers which are inconsistent with the Claimant's case before this court and which I cannot ignore when weighing the relevant evidence from which I form my conclusions.

The Claimant Gets A Council Property

42. This is the foundation of Mr Brilliant's illegality argument. There is no documentary evidence which supports this part of the Claimant's case. The witness evidence, such as it is, is not consistent in the details. The pleading of this aspect is thin or non-existent: the 1989 acquisition of a council property is not mentioned in the particulars of claim; it is not mentioned in the defence and counterclaim (which says that *in order to ensure that 1 Hubert Road was regarded as her only or principal home for the purposes of her qualifying to exercise the Right to Buy…the Claimant informed the Defendant that she did not wish the local authority to know of her interest in the Property*); it is not mentioned in the Reply and Defence to Counterclaim which only refers back to the allegation made in the defence and counterclaim as the source of any alleged illegality and makes the allegation that the performance of the 1996 agreement would involve something legally objectionable.

43. There was nothing in the Claimant's skeleton argument which might have alerted Mr Hill (or me) that it was the original acquisition of the council flat which was relevant.

44. It is common ground that the relevant time-scale is the late 1980s: in 1987 the Defendant moved out of the Property but the Claimant and her family remained there; by 1989 all the family had moved into 48 Fox Road, which was a council flat, and then in 1992 the family moved into the larger house of 1 Hubert Road.

45. The relevant evidence in witness statements is:

(i) The Claimant who says: 1988 the Defendant told the Claimant to move out of the Property; consequently, the family moved in with the Defendant at 31 Clifton Rise; then 3 months later, in circumstances that are not explained, the Claimant's husband moved into the council flat at Fox Road but not the Claimant; then in 1990 three other family members and the Claimant moved in with the husband. This would suggest it was being said that the Claimant's husband obtained the council property but says nothing about the basis upon which he did so.

(ii) The Claimant's husband who says: not long after November 1987 the Defendant said they all had to move out of the Property; the Claimant did not want to do this; they all moved in with the Defendant; then after a few days the Defendant arranged a B&B for the husband and the children; then after a few weeks the Defendant arranged for the husband to move to a council flat; the Claimant went back and forth; then in 1990 more family members moved in to the flat; in 1992 the council offered the husband 1 Hubert Road where he moved in with the Claimant, their children, other family members and a friend of the husbands. This suggests it was the Defendant who obtained the first council property but on behalf of the Claimant's husband. Again, nothing about the basis upon which this occurred.

(iii) The Claimant's daughter who recalls that the family moved from the Property to 31 Clifton Rise, then to a hotel, then to a three bed council property and then in 1992 to 1 Hubert Road with other family members. This gives no evidence at all about the circumstances in which a council property was obtained.

46. In her oral evidence the Claimant said that she understood from the beginning that it was her husband who was offered the council property and then subsequently offered 1 Hubert Road. When the issue in the pleadings about her believing that the right to buy could not be exercised if she had an interest in the Property was put to her, the Claimant said the council house application was done by her husband and not by her. She did not remember how her husband might have filled out the form (there was evidence that in general since the husband's English was poor, the Claimant would help him with forms). The Claimant also said that she went to the council before the 1 Hubert Road purchase and told them she had martial problems, owned an interest in the Property and hoped to move in to the Property when it was empty.

47. The Defendant said in her oral evidence that the Defendant and the parties' mother moved to 31 Clifton Rise and that the Claimant moved out a few weeks later into the hotel and then the Claimant filled out the form to get a council property.

48. In those circumstances there is no proper evidential basis upon which I can make any findings about the circumstances in which the Claimant ended up living in the council flat at Fox Road. There is certainly no basis upon which I could find that there was anything unlawful in the manner in which that right was obtained. The evidence relied on by the Claimant would indicate that it was the husband who was granted the council accommodation but the husband attributes it to the Defendant. The Defendant attributes it

to the Claimant. My hunch is that given each adult places the responsibility on someone else that there might at least be a perception shared amongst them that something was done which is thought to be sharp practice in some way but I cannot make any findings about that on the material available and given the state of the pleadings and lack of any relevant documentary evidence it would be wrong to do so (and potentially unfair to whoever I might have picked as being responsible – without any evidence justifying such a choice or notice that such a finding might be made).

The 1996 Arrangement

49. The Claimant's case in her oral evidence, in summary, was that she wanted to borrow money from the Defendant and asked for £10,000 and then £13,000 and then without further discussion about amounts the Claimant gave her a post dated cheque for £3,887. This was in the summer of 1996. This was a loan and was paid back from cash drawn on 6 specific occasions from the Claimant's bank account between 27 March 1997 and 1 May 1997 which totalled £3,750 (that being set out in the witness statement) and then orally the Claimant added that she also paid other cash to make up the shortfall. The Claimant said she made a note of the dates she paid the money and kept it until it was lost during decorations in the summer of 2017. She said she had told her solicitors about the note.

50. The Defendant's case was that the parties had spoken in the context of the Claimant needing money for 1 Hubert Road. The Claimant asked to borrow money but the Defendant refused. The Property was in negative equity at that time. The Claimant wanted to sell but that would have been a bad time to sell. On 19 November 1996, the Claimant said the Defendant should give her back the money that the Claimant had put in. The Defendant agreed and gave the cheque for £3,887 and forgave a debt arising out of money given for a mortgage payment which was used by the Claimant or her husband for another purpose. This was more or less the amount the Claimant paid in to the Property in 1987. There was no way the Defendant would lend money to the Claimant given her and her husband were buying 1 Hubert Road. No money was paid back by the Claimant.

51. In considering the various evidence I start from the position that the Defendant has the burden and that because the Defendant wishes to move the beneficial interests from what the formal position would be under the documentation registered at the Land Registry that burden should not lightly be overcome.

52. Notwithstanding that starting point I am satisfied that the Defendant has met the relevant burden and that it is more likely that the admitted payment made by the Defendant to the Claimant was in return for the Claimant giving up her rights in the Property. The reasons, which are for the most part those urged on me by Mr Hill in his oral closing, follow.

53. A loan is inherently unlikely on the evidence. The amount is so particular that it suggests there was a reason for it. The only likely reason why a loan would be in such a particular amount is if that was what was asked for or perhaps all the money someone had but that makes no sense in the context of the Claimant's case of asking for £10,000 and then £13,000 and getting, without asking, a cheque post-dated for 3 months because the

Defendant had made other borrowings. None of the Claimant's evidence about this is persuasive.

54. I agree that whether or not the money was repaid is important evidence. The Claimant's position is hopeless on this area. Firstly, she was asked about this in the criminal trial and said that she had not repaid the Defendant the money. The Claimant's attempt to say that she only understood the judge to be asking her whether she had repaid it by cheque is a nonsense because there is nothing in that part of the transcript to indicate that the method of payment was of any relevance to the judge's direct question which was did you repay the money? Secondly, the Claimant's bank account showed a large number of intermittent cash withdrawals throughout the relevant period in sums of similar amounts to those identified as being the source of the repayment money. The Claimant accepted she did not know what those other cash withdrawals were for. When Mr Hill asked the Claimant how she manged to identify the particular 6 withdrawals that she did in her witness statement the Claimant mentioned for the first time an alleged contemporaneous note then lost in 2017. The evidence about the note is hopeless. It was not disclosed but should have been (assuming it existed). It was not properly explained how a note lost in Summer 2017 could inform a witness statement – which did not mention that note – signed in December 2018. It was not explained how a note said to say when monies were paid informed a witness statement which addressed when money was withdrawn not when it was paid. On balance I find the Claimant told the criminal court the truth: the money was not repaid. If it was not repaid that does not mean that it was not still a loan but it means the Claimant cannot support her case with evidence of repayment.

55. It was common ground on the parties' oral evidence – and that was all the evidence that there was – that the Property was thought to be in negative equity in 1996. This may or may not have actually been the case but the Claimant accepted that she understood it was the case. It is at least common ground that the Claimant wanted money at this time (both parties say the Claimant was asking to be lent money). There is much evidence in the criminal trial that the Claimant wanted the Property to be sold. In those circumstances giving up the interest in the Property in return for something which was broadly consistent with what the Claimant put in (£3,887 / £4,000 or £3,887 plus debt forgiveness / £4,000 plus £1,500 costs) makes some sense from a short term needing money perspective.

56. I consider it far more likely that the parties did agree what the Defendant says they did in November 1996 but that the Claimant then regretted it and/or after further thought or in the light of subsequent events (perhaps with input from other family members, perhaps other grudges arising or old ones re-emerging) or just normal buyer's remorse came to the belief that it was not fair and that she was entitled to more. This may well have been associated with a general sense that the Claimant had helped the Defendant out so that the Defendant could buy 11 Clifton Rise but had received no benefit in return. The Defendant, on the other hand, got 11 Clifton Rise and the Property. The Defendant got the better of the deal, that was not fair and so justice would require the Claimant getting her fair share. In this way the Claimant has convinced herself, but not me, of the justice of her case.

57. Not only is this a far more likely explanation than the Claimant's loan allegation but it is more consistent with a statement the Claimant gave to the police in January 2008. The

typed statement says: *In 1996… I asked my sister for £10,000 but she refused…she gave £5,000 cheque and I told her I wanted my name out of the property and she could settle the price of the property and my share minus the £5,000…Every year since 1988 I asked her to take my name off the deeds and pay me my profit. She refused…*[and then later]*…I have to date been given £5,000 by my sister as a payment back in 1996…no profit or financial gain has been given to me since 1996…*There is nothing there about a loan and the £5,000 payment spoken of is being treated not as a loan but as a payment on account given in circumstances where the Claimant's name is to be taken off the Property.

58. At the criminal trial the payment of £5,000 had become a loan (and explained as being the cheque of about £4,000 plus forgiving the £1,000 of mortgage monies). In evidence in the criminal trial (in addition to saying that she had not paid the money back), the Claimant said: *When she came up to me, then I said to her you better buy the property and legally take my name out of it…then she stopped me and then I told her that this £5,000 is just I am borrowing from you…*

59. During the same cross-examination, there was an echo of the 2008 position when the Claimant said: *I handed over to her and I said "take my share out. Take my name out".*

60. I consider this development from, in 2008, a part payment of the Claimant's interest; to in 2012, a payment which I said is a borrowing but which has not been repaid; and then in 2016, a loan which I had repaid, shows a process by which the Claimant has become more and more entrenched in the justice of her own position and the wrongness of her sister's conduct towards her.

61. I have considered whether, notwithstanding the complete lack of any evidential weight to support the Claimant's position, I should nevertheless reject the Defendant's position because it is so unlikely that a person in 1996 would give up all equity in a property in return for an actual payment of £3,887. For the reasons I have given above regarding the Claimant's need for money and concern about negative equity I do not think it so unlikely. It follows, that notwithstanding my caution about the Defendant's evidence, I accept her case on the events of November 1996 and find:

    (i) The relevant conversation happened on 19 November 1996;

    (ii) The gist was that the Claimant would give up her interest in the Property in return for a payment from the Defendant.

    (iii) In reliance on that agreement the Defendant gave the Claimant a cheque for £3,887 which the Claimant then cashed and spent.

62. Mr Brilliant also wanted me to find, if I was against his client's case on the loan issue that it was agreed between the Claimant and the Defendant that the Land Registry title would not be changed at that time because it might alert the local authority to the Claimant owning the Property. This is only supported by the Defendant's evidence. The Defendant said in oral evidence that the Claimant did not tell the local authority because if she did tell the local authority then she would not have been able to purchase 1 Hubert Road. This did not address any agreement between the Claimant and the Defendant that the title would not

be altered at that time. In her witness statement the Defendant said that the title remained in joint names because the Claimant did not want the local authority to be alerted to any property transactions which might jeopardise the purchase of 1 Hubert Road.

63. I think it far more likely, based on inherent probability, that there was no agreement about what should happen with the Land Registry. The Defendant's evidence does not talk about agreement so much as what the Claimant wanted as an explanation for why the formal steps were not taken with regard to the Claimant being bought out. In fact, as the Defendant had to address later in 2006, the existence of the mortgage would have made the removal of the Claimant from the title something that would have required third party consent. It was not a mere formality. I think it far more likely that the parties did not address it or even think about it at that time.

64. As pointed out by Mr Hill, it is consistent with this finding (or my non-finding) that the Clamant and her husband acquired 1 Hubert Road on 9 November 1996 which is before the date upon which the vital discussion took place and agreement was reached regarding the Claimant being bought out.

65. My findings as to what took place during November 1996 are sufficient to give rise to a constructive trust in favour of the Defendant to the extent that the Claimant's legal ownership is subject to the Defendant being the sole beneficial owner of the equity in the Property. It is unnecessary to say so but this would also have amounted to a proprietary estoppel and the necessary relief would be a declaration that the Defendant was the 100% owner of the equity in the Property.

The TR1

66. In 2006 the Defendant remortgaged from the Britannia to the Halifax. As part of that process a TR1 was submitted by the Halifax's solicitors. It was dated 31 October 2006 and appeared to be signed by both Claimant and Defendant. The Claimant's case is that her signature was not on that document and, by inference, that it was the Defendant who caused the false signature to be placed upon it. The Defendant disagrees and says the Claimant did sign it.

67. The Claimant relies on the expert evidence produced in 2014 in the context of the Land Registry application. The Defendant says the only difference in view between the two reports is because the Defendant's expert referred to a reference document dated 3 March 1997. That document is a handwritten letter to the Britannia which purports to be signed by both parties. It asks that the mortgage be converted to repayment and how much would need to be paid in at that date to bring the mortgage debt to the same level it would have been if it had been repayment from the beginning. In context it is information which the Defendant would be interested in but not so much the Claimant – who had just given up her interest in the Property (albeit the Claimant would have been liable on her covenant). When the Defendant's expert considered this document he was of the view that it was sufficiently like the index signature on the 2006 TR1 to change his opinion to "inconclusive" from "strong evidence" that the index signature was not that of the Claimant. This is because both expert reports are premised on all other reference

signatures being different at the relevant date (the Claimant had changed her signature from 1987). The 1997 document was an anomaly but it made a significant difference to the Defendant's expert. The Defendant's expert expresses a degree of scepticism about the validity of the 1997 document in his report.

68. In her oral evidence but not otherwise in these proceedings, the Claimant asserted that the 3 March 1997 letter was another document on which her signature was forged. The document had been disclosed by the Defendant in this claim. Its relevance and potential importance were clear from the expert evidence from 2014. Nevertheless the Claimant failed to comply with the requirements of CPR 32.19 and require that the document be proved at trial (no notice was served and no reference was made to the document in the Claimant's witness statement). The consequence under that rule was that the Claimant is deemed to admit the authenticity of the document. No application was made for relief from sanction in this respect.

69. The necessary consequence of the Claimant being deemed to admit the authenticity of the 3 March 1997 document is that the expert evidence, as a whole, does not support a finding that the signature on the 2006 TR1 is not the Claimant's. It is inconclusive. There is nothing that would indicate the Claimant's expert, whose report makes no reference to the 3 March 1997 document, might not have agreed with the Defendant's expert as to that document if he had seen it – the Defendant's expert agreed with the Claimant's expert otherwise. It is irrelevant that the Defendant's expert queried the authenticity of the 3 March 1997 document (or that I well understand why he might do so) because that authenticity is binding on the Claimant in these proceedings.

70. However, the Claimant has other evidence. In the criminal proceedings the alleged witness of the Claimant's signature first gave a statement saying that she recalled the Claimant signing the document and then gave a second statement where she said *I am not sure that it is not mine*. It seems to me that this is also inconclusive. The witness was also prosecuted but could not attend her criminal trial because of illness and was acquitted in her absence (I am told). Neither side called this witness at trial – she may still be unwell.

71. The witness to the Defendant's signature was a Ms Kaur. In the bundle related to the criminal proceedings is a translated statement (and a signed one in Ms Kaur's language) where she says she was asked by the Defendant to witness a mortgage application form. Ms Kaur was not called.

72. Mr Brilliant says that it is strange that the TR1 is 10 years late. The TR1 became necessary once the Defendant wished to remortgage. The delay does not impact on its potential authenticity. I have addressed above how I do not find it surprising that it was not done in 1996.

73. It is right that the consideration is wrongly stated on the TR1 at least in comparison to the 1996 agreement. On the other hand if the document was authentic then the benefit accruing to the Claimant by reason of the TR1 was certainly that she would no longer be liable on the Britannia mortgage.

74. It is said that the Defendant's motivation was to keep the Claimant's children away from the benefit in the house. Since I consider that the Claimant had already given up her interest there is nothing in this point.

75. The signature does not say "Rai" which was the name being used by the Claimant by that point. This point is also undermined by the deemed authenticity of the 3 March 1997 document.

76. There is a dispute between the parties about whether the Claimant attended at 31 Clifton Rise to get post or not. This is relevant because there is a letter addressed to the Claimant at 31 Clifton Rise from the Halifax's solicitors relevant to the preparation of the TR1 which the Claimant says she did not get and which the Defendant says was addressed to her at that address because that is what the Claimant told the solicitors to do. There is a later letter dated 16 May 2006 which is addressed to the Claimant at the Property. The copy of the earlier letter in the bundle appears to be of two pages and the second page at least suggests that there had been some communication by the Claimant with the solicitors (this may be a bundling error).

77. The only evidence relied on by the Clamant which on balance gives positive support for the assertion of fraud, is that which concerns the correspondence from the solicitors not using the Claimant's 1 Hubert Road address.

78. I recognise that the inherent probabilities makes a fraudulent signature not unlikely: the sisters had fallen out; the Claimant had already agreed to being bought out; the Defendant only needed to regularise the position and from her own perspective she might have thought a forged signature the simplest way to do progress without stirring things up further and bring along possible further conflict with her sister (who may have tried to get more money); and the dispute about the Property was ignited soon after this and pursued with considerable vigour. This all makes the inherent likelihoods favour the Claimant's position.

79. However, inherent likelihoods of this kind are context rather than positive evidence. On balance and primarily because of the deemed admission of the 3 March 1997 document, the Claimant does not persuade me that the TR1 is forged. In this respect my conclusion – on this evidence – happens to agree with that reached by the jury in the Defendant's fraud trial.

Illegality

80. On my not making findings about the circumstances in which the Claimant's husband obtained local authority accommodation in about 1989 and not finding that the parties agreement in 1996 included anything about not registering the transfer to avoid the local authority finding out, this point does not arise but I will deal with it briefly and by reference to the matters summarised by Lord Toulson.

81. If I assume that the allegation is that the Claimant wrongfully presented herself as homeless when she knew she was not in 1989 then the purpose of the prohibition would be the fair and proportionate allocation of local authority housing to those in most need.

82. If the court denies the Defendant's equitable right arising out of the common intention to transfer the Claimant's interest in 1996 then that will not enhance that purpose because it would have the consequence of the Claimant avoiding her equitable obligation towards the Defendant but at the same time keeping the benefit of the Property which was the very thing said to have made her homelessness application dishonest. This points against a refusal of relief.

83. Denying the Defendant's claim would give a windfall to the Claimant arising out of a wrong carried out by the Claimant.

84. Denying the claim would be wholly disproportionate: the claim arising out of events in 1996 is not causally linked to the alleged events in 1989. Those events did not (on this premise) involve the Defendant but did involve the Claimant.

85. In summary the alleged wrong is not sufficiently connected to the alleged gain to make it necessary or proportionate to refuse the claim.

Clean Hands

86. Again, on my refusal to find that the TR1 is a forgery this does not arise but if I had found that it was a forgery I would not have refused relief. The act of forgery some 10 years after the relevant transaction which transferred the equity from the Claimant to the Defendant does not have an immediate and necessary relation to the equity. If the Defendant had forged the TR1 then it was done in order to bring about a situation which the Claimant was already bound in equity to do. The forgery, if proven, was wrongful and something which could in particular circumstances have a bearing on equitable relief but in the actual circumstances of this case there is not the type of nexus between the wrongful act and the relief that would make it inequitable to recognise the Defendant's rights.

87. Perhaps there is an analogy with the common law principle that a person who lies about one aspect of their damages claim does not thereby disentitle themselves to the good parts – it does not sufficiently abuse the court's process to require a striking out (*Summers v Fairclough Homes* [2012] UKSC 26). As a valid claim is not necessarily tainted by a fraudulent part so, it seems to me, it is not necessarily inequitable for a good right to be recognised in circumstances where a party has attempted dishonestly to gain the benefit of that right.

88. In any event, there is nothing in giving effect to the Defendant's rights that either legitimises the Defendant's wrongdoing or is likely to involve the continuation of conduct which is immoral or inappropriate.

Account between 1987 and 1996

89. Finally, Mr Brilliant asks for this stale account to be provided. I refuse. Although this was not argued, I consider it highly likely that it was a necessary part of the agreement in 1996 that no such account would be provided: the payment was one which bought out the Claimant's interest and allowed the parties to go their separate ways. If more was required then it would have been discussed and agreed at the time.

90. But even if that were wrong in these particular circumstances where the monies are long gone, where there appear to be no documentary or other records available to the parties which might cast light on that account, where no account was sought at all until March 2016, and where the likely financial benefit after mortgage, maintenance, voids, other property costs and allowable disbursements would be small any such attempt to have an account now would be an exercise in futility where the costs and time would be wholly disproportionate to the ability of the court or the parties to have any confidence in the outcome.

Conclusion

91. The claim is dismissed and the counterclaim succeeds. I will leave it to counsel to draw an appropriate order.

HHJ Parfitt