



Neutral Citation Number: [2016] EWHC 1950 (Ch)

Case No: HC-2016-000716

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

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

Date: 28/07/2016

**Before :**

**MR JUSTICE HENDERSON**

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**Between :**

**MR SAMSUL HAQUE**

**Claimant**

**- and -**

**(1) MS MUKHLISHA RAJA**

**Defendants**

**(2) MR SHERAZ ALI KHAN**

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**Ms Louisa Nye** (instructed by **Arona St James Solicitors**) for the **Claimant**  
**Ms Bridget Williamson** (instructed by **Farooq Bajwa & Co**) for the **Second Defendant**

Hearing date: 17 June 2016  
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**Approved Judgment**

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

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MR JUSTICE HENDERSON

**Mr Justice Henderson:**

**Introduction**

1. The issue on this application, which I heard on 17 June 2016, is whether an interim proprietary freezing order (“the Injunction”) which was first granted without notice by Arnold J on 12 April 2016 should be continued until trial of the action, or discharged. The hearing before me was the effective return date of the application, following a further hearing before Arnold J on 19 April when he gave directions for the filing of evidence and ordered an expedited hearing of the application on a date to be fixed.

**Background**

2. The property to which the Injunction relates (“the Property”) is at 96 Bramley Close, London, E17. Originally built as commercial premises, although in a mainly residential district, it is a detached rectangular building of two storeys with a flat roof and floor space of approximately 1,500 square feet. The Property is registered at HM Land Registry under title number NGL 112946.
3. The present registered proprietor of the Property is the second defendant, Mr Sheraz Ali Khan (“Mr Khan”). Mr Khan was registered with title absolute on 4 April 2013, having purchased the Property for £135,000 from the previous registered proprietor, Ms Mukhlisha Raja (“Ms Raja”), who is the first defendant. After purchasing the Property, Mr Khan obtained permission from the local authority (the London Borough of Waltham Forest) to change its use from commercial to residential, and he is now in the process of converting it into two flats. According to his evidence, Mr Khan has not yet decided what to do with the Property when the work is complete. He may sell it, but has no immediate plans to do so.
4. Ms Raja had herself been the registered owner of the Property since 6 May 2010, following its purchase at auction in November 2009 for £160,000. Ms Raja was at the time married under Sharia law to the claimant, Mr Samsul Haque. They were married in August 2008, but the marriage was never registered under the civil law of England and Wales. According to the claimant, it was he who purchased the Property at auction in November 2009 as an investment, and the whole of the purchase price was provided by him. They nevertheless arranged for the Property to be registered in the sole name of Ms Raja, although he says it was always understood between them that he was, and would remain, the sole beneficial owner of the Property.
5. In or around 2011, a number of significant events took place. First, the relationship between the claimant and Ms Raja deteriorated, and they divorced under Sharia law. According to the claimant’s pleaded case, Ms Raja’s father sought to mediate when their marital difficulties arose, and during their discussions he acknowledged that the claimant would get the Property back if he and Ms Raja separated. The claimant further alleges that, at the time of the divorce, he and Ms Raja orally agreed and confirmed that the Property belonged to him.
6. Secondly, between about March and October 2011 the claimant arranged for various works to be carried out at the Property, with a view to converting it from commercial premises into three residential flats. No planning consent had been obtained for this, however, and there are issues about the extent, nature and quality of the works that

were carried out. According to the claimant, he spent approximately £90,000 on the works, and they added about £200,000 to the value of the Property.

7. Thirdly, on 19 October 2011 the claimant was convicted of conspiracy to defraud certain insurance companies, and was given a custodial sentence of five years' imprisonment. He was detained in prison from October 2011 until September 2013, when he was moved to an open prison. He was finally released from custody on 17 April 2014.
8. While he was in prison, the claimant says he gave the keys of the Property to a friend, Mr Fizul Abdurrahman Khan, whom he knew as Ray Khan, so that he could manage the Property and obtain an income from short term lettings. According to the claimant, he asked Ray Khan to finish the necessary works and then rent out the top floor. They agreed it would be necessary to find a residential tenant, albeit in breach of planning control, because this would be the only way to secure some income as child support for the claimant's daughter with Ms Raja while he was in prison. Ray Khan then completed the conversion of the top floor into a residential flat, and in about August 2012 he found some residential tenants for it.
9. This evidence is corroborated, at least in broad terms, by Ray Khan in his witness statement dated 3 May 2016. There is also an issue whether the Property was used as a brothel during this period. This is alleged by Mr Khan, but denied by the claimant and Ray Khan.
10. Ms Raja was by now living with her daughter in Newcastle, the city where she (Ms Raja) had been born and grown up. One of her closest childhood friends was a Ms Husnara Ali, who was married to Mr Khan's brother, Shahzad Khan. There is no evidence before the court from either Ms Raja or Ms Ali, but Shahzad Khan has filed evidence in support of his brother.
11. According to Shahzad Khan, his wife and Ms Raja had a series of telephone discussions in 2012 during which Ms Raja complained about the stress and financial hardship caused by her ownership of the Property. The problems included outstanding demands for business rates, illegal occupancy of the Property, the issue of an enforcement notice by the London Borough of Waltham Forest, and her inability to claim benefits due to her ownership of the Property. Shahzad Khan says that initially he paid little attention to these matters, when his wife mentioned them to him, but eventually, knowing that Ms Raja was a childhood friend of his wife, and at his wife's request, he felt obliged to help Ms Raja. He visited the Property in the late Summer or early Autumn of 2012, and was able to confirm that it was being occupied. He then decided to contact the police, and they assisted in the eviction of the occupants. Upon entry, it was clear to him that the Property was being used as a brothel. He then arranged for the locks to be changed. Ms Raja was very pleased when told that the Property had been vacated, and she then indicated to him "that she simply wanted to dispose of the Property as it had caused her nothing but hassle, and it was too difficult for her to manage it from Newcastle". He agreed to help her sell the Property, and she offered to pay him some sort of remuneration for his services, but this in fact never occurred because the eventual purchaser was his brother.
12. The steps which Shahzad Khan took to sell the Property on Ms Raja's behalf are described in his statement. He says he lacks any experience in marketing or selling

properties. He first placed an advertisement on the online website Gumtree, at an asking price of around £180,000, but this elicited no offers. He then decided that the Property should be sold by auction, and made enquiries of an estate agent who advised by email on 21 November 2012 that the next possible auction in which to enter the Property would be held on 18 December 2012 at the Connaught Rooms in Covent Garden. The agent recommended a reserve price of £150,000 to £160,000. The entry fee would be £395, and commission would be payable at the rate of 2.5%, in each case plus VAT. Meanwhile, says Shahzad Khan, he mentioned the Property to his brother, in the hope that one of his friends or colleagues might wish to purchase it. His brother then expressed some interest in the Property himself, and eventually agreed a price of £135,000 for it. The sale was then handled by the respective solicitors of Ms Raja and Mr Khan, and Shahzad Khan had no further involvement in it.

13. Mr Khan confirms in his evidence that the purchase was carried out through solicitors on both sides. He paid for the Property in two tranches, making a first payment of £90,000 on 11 March 2013, and paying the remaining £45,200 on 8 October 2013. Ms Raja registered a restriction against the Property in the interval between the two payments, in order to protect her interest. According to Mr Khan:

“I was buying the Property from someone I did not know in an arm’s length transaction. I am not a professional property dealer and this is my first and only property development, for which it took me some time to raise the funds, which had to be paid in two tranches.”

### **The claimant’s case**

14. Against this background, the claimant’s case, as pleaded in his particulars of claim settled by Ms Louisa Nye of counsel, is as follows. He claims that, when the Property was put into Ms Raja’s sole name in May 2010, she held it on a resulting trust for him absolutely. He says that his subsequent expenditure in 2011 on improvements to the Property evidences a common intention on the part of himself and Ms Raja that she should continue to hold the Property on trust for him absolutely, upon which he relied to his detriment by trusting her and taking no steps to place a restriction on the registered title to reflect his interest. In relation to the subsequent sale of the Property by Ms Raja to Mr Khan, the claimant alleges that the sale took place without his knowledge or consent, and was intended by Ms Raja to defeat his interest in the Property while he was in prison.
15. No interim relief is sought against Ms Raja, so I can summarise the claim against her briefly. The claimant alleges that, as a trustee, she breached various duties which she owed to him under the Trustee Act 2000 and the Trusts of Land and Appointment of Trustees Act 1996, including duties under sections 6 and 11 of the 1996 Act to have regard to his rights, and to consult with him as beneficiary before disposing of the trust assets. He claims that she is liable to account to him for the value of the Property at the time of sale, and for the loss of rental income from the Property from October 2012 to date.
16. The claimant’s case against Mr Khan is put in two different ways. First, it is alleged that, on the sale of the Property to him, the claimant’s beneficial interest in the

Property was not overreached, because contrary to section 27(2) of the Law of Property Act 1925 the proceeds of sale were not paid to two trustees. Accordingly, Mr Khan now holds the Property on trust for the claimant as sole beneficiary.

17. Secondly, it is alleged that Mr Khan was “dishonest in relation to [*Ms Raja*’s] breach of fiduciary duty and/or breach of trust”. His dishonesty is said to be apparent, or alternatively to be inferred from the following facts and matters:
- (a) Mr Khan is a family friend and knew of the relationship between the claimant and Ms Raja, having attended family events;
  - (b) as a family friend, he would have been aware of the claimant’s beneficial interest in the Property;
  - (c) he would have known that he was purchasing the Property for significantly less than its value; and
  - (d) he would have known that the transaction constituted a deliberate attempt to defeat and defraud the claimant of his beneficial interest in the Property.

Thus it is said to be unconscionable for Mr Khan to retain the benefit of the value of the Property, and he is liable to account to the claimant for the difference between the sale price and its true value “as a constructive trustee on the ground of knowing receipt”.

18. The relief claimed against Mr Khan includes a declaration that he holds the Property on trust for the claimant, and an order that he convey it forthwith to the claimant.
19. In his defence dated 9 May 2016, settled by his counsel Ms Bridget Williamson, Mr Khan denies these allegations. He says that the £135,000 which he paid for the Property represented its then market value, because:
- (a) the development works carried out by the claimant had been undertaken without planning permission, and the local authority had served an enforcement notice on Ms Raja requiring her to reinstate the Property as commercial premises;
  - (b) the Property was in a poor condition, the works undertaken by the claimant having been carried out to a poor standard;
  - (c) there was evidence that the Property had been used as a brothel; and
  - (d) a direct sale to Mr Khan had the advantage of avoiding estate agents’ fees.

Further, if the claimant did have any beneficial interest in the Property, his interest had not been protected by any entry on the register at HM Land Registry, and Mr Khan had no knowledge, until service upon him of the present proceedings on 15 April 2016, that the claimant was alleging that he had such an interest. Accordingly, Mr Khan says he is entitled to rely on section 29(1) of the Land Registration Act 2002, and he acquired the Property free of any alleged or actual interest of the claimant.

20. As to his alleged involvement in a dishonest plan to deprive the claimant of his interest in the Property, Mr Khan avers that he had never met either Ms Raja or the claimant, and states his belief that the claimant must have mistaken him for his brother, Shahzad Khan. This mistake is admitted by the claimant in his witness statement in reply, dated 3 May 2016, but he nevertheless maintains his description of Shahzad Khan as a family friend on the basis of the close relationship between their wives. Despite his mistake, he repeats his belief that the two Khan brothers colluded with Ms Raja to carry out the transfer of the Property, and that all three of them were fully aware of his beneficial interest.

### **The grant of the Injunction**

21. The initial application for an injunction against Mr Khan was made without notice, and came before Arnold J in the Chancery applications court on 12 April 2016. Although concerned by the claimant's delay since he had first instructed solicitors to act for him in July 2015, the judge was satisfied that there was just sufficient evidence to warrant the application being made without notice. It was explained to him that the claimant and Ms Raja were currently on reasonable terms, and she was aware of his claim. He had heard through her that a sale of the Property might be intended, and he had also noticed the recent renovation works at the Property. I need say no more about this aspect of the case, because Mr Khan has not sought to discharge the Injunction on the ground that the application should have been made on notice to him.
22. In his judgment, of which there is an unapproved note prepared by the claimant's solicitors in the bundle, Arnold J pointed out that the application before him was for a proprietary injunction, on the basis that the Property was held on trust for the claimant. It was therefore unnecessary for the claimant to make out the usual requirements for a freezing order. It was necessary for him to show only that there was a serious question to be tried, and that the balance of risk of injustice favoured making the order sought. Again, I pause to note that no issue is taken by either side with this analysis, which in my view is plainly correct. I mention it only because, a little confusingly, the Injunction is described as a "freezing order", and even in her skeleton argument for the hearing before me Ms Nye submitted that the court must be satisfied that there is "a good arguable claim", that being the test for a freezing order properly so-called.
23. Arnold J then said he was satisfied that there was a serious question to be tried, and that the balance of risk of injustice favoured the grant of an injunction, because it would preserve the status quo pending trial of the action.
24. By paragraph 4 of the Injunction, Mr Khan was restrained until the return date on 19 April 2016 or further order of the court from disposing of, dealing with or diminishing the value of the Property, or (if it had been sold) the net proceeds of sale thereof. This order was then continued on the return date, and the claimant now seeks its further continuation until trial.

### **The claimant's direct trust claim**

25. I begin by considering whether the Injunction should be continued to trial in support of the claimant's claim that the Property was at all material times held on trust for him absolutely by Ms Raja, and that the trust still binds the Property in the hands of Mr

Khan even though he is now the registered proprietor of the Property following his purchase of it from Ms Raja for £135,000.

26. The first issue is whether there is a serious question to be tried in relation to the claim that Ms Raja held the Property on trust for the claimant. Unless this question is answered in the claimant's favour, his claim for an interim injunction falls at the first hurdle. The hurdle, however, is a relatively low one. As the House of Lords explained in American Cyanamid v Ethicon Ltd [1975] AC 396, the claimant need establish only that his case has a real prospect of success, and is not frivolous or vexatious: see the speech of Lord Diplock at 407G to 408B. So long as there is some credible material to support the claim, and its outcome can only be determined at trial, the test will normally be satisfied: see Snell's Equity, 33<sup>rd</sup> edition, para 18-052, and Cayne v Global Natural Resources Plc [1984] 1 All ER 225 (CA) at 230b-d, 235d-e and 237g.
27. There are two aspects of the matter which need to be considered: first, whether there is credible evidence that the claimant provided the purchase price of £160,000 for the Property in 2009; and secondly, if so, whether he can argue with a real prospect of success that Ms Raja held the Property upon trust for him when it was placed in her name.
28. As to the provision of the purchase price, the claimant pleads in his particulars of claim, verified by a statement of truth signed by him, that he provided the entirety of the £160,000, either directly or by loans raised by him. He repeats this evidence in his first affidavit, and in his witness statement dated 3 May 2016 he adds that his family are well-known in Walthamstow for being wealthy and owning a number of businesses, whereas Ms Raja's family were not well off and would have been unable to provide her with the funds to buy the Property. Ms Raja herself, says the claimant, was a devout Muslim wife who did not work and had no income. In my view this evidence is clearly sufficient to give rise to a triable issue, even though Ms Williamson criticised the claimant for providing no details of the source of the money, or any documents to support the alleged loans or the provision by him of the part of the purchase price which was not borrowed. There is obvious force in this criticism, but without disclosure and cross-examination it is impossible for the court to conclude that the claimant's clear evidence on this point is untrue or unreliable. In particular, no other credible source of the purchase price has been suggested by either defendant.
29. As to the claimant's alleged beneficial interest in the Property, the starting point, since the decision of the House of Lords in Stack v Dowden [2007] UKHL 17, [2007] 2 AC 432, has been that beneficial interests follow the legal title, at least where a cohabiting couple buy a property to live in: see per Lord Hope of Craighead at [3] to [5], and Baroness Hale of Richmond at [56]. On the other hand there is Court of Appeal authority that such an approach is not appropriate, and principles of resulting trust are still applicable, if a property is primarily purchased as an investment, even in a family context: see Laskar v Laskar [2008] EWCA Civ 347, [2008] 1 WLR 2695, at [17] per Lord Neuberger of Abbotsbury, with whom Rimer and Tuckey LJJ agreed. The present case may fall somewhere in the middle, because although the claimant says he purchased the Property as an investment, he nevertheless accepts in his evidence in reply that there was an intention that it would eventually become the family home. This was, however, very much a long term plan, because it depended on extensive renovations being carried out, and upon the grant of planning permission. In the event,

his relationship with Ms Raja broke down long before the Property was ready to move into.

30. If the governing principles are those of Stack v Dowden, then even if it is the case that the claimant provided the whole of the purchase price, the fact that the Property was placed in Ms Raja's sole name would give rise to an initial presumption that she was intended to be the sole beneficial owner. The onus would therefore be on the claimant to show whether he had any beneficial interest at all, and (if so) how extensive it was. For this purpose, principles of resulting trust are unlikely to provide much assistance in a domestic context, and as Lady Hale said in Stack v Dowden at [60]:

“The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”

See too Snell’s Equity at para 24-046, and Jones v Kernott [2011] UKSC 53, [2012] 1 AC 776, at [52].

31. In the light of these principles, the claimant’s claim to be entitled to the entire beneficial interest in the Property under a resulting trust may arguably betray a rather narrow approach to a complex subject. Nevertheless, if the claimant is able to make good at trial his pleaded case that he purchased the Property primarily as an investment, and that when the Property was registered in Ms Raja’s sole name, it was agreed and understood between them that he was the sole beneficial owner, and if his evidence is accepted about subsequent family discussions which reflected or reinforced a common intention of this nature, his claim to sole beneficial ownership may yet be upheld, whether or not the law of resulting trusts provides a short route to that conclusion. Alternatively, the court may deduce from an objective appraisal of all the circumstances that the intention of the claimant and Ms Raja was to share beneficial ownership. Either way, it seems to me impossible for the court to conclude at this stage that the claimant’s claim to a beneficial interest in the Property is obviously unsustainable. I am therefore satisfied, as a matter of mixed fact and law, that there is a serious issue to be tried about the extent (if any) of the claimant’s beneficial interest in the Property.
32. The next question is whether, assuming the claimant to have had such an interest, the Property is still bound by it in the hands of Mr Khan, even though Mr Khan is the registered proprietor and the alleged interest was never protected by any entry on the register. The question would not arise if the claimant had protected his (assumed) beneficial interest by entry of a restriction on the registered title, but he never took steps to do so, either when the Property was in Ms Raja’s sole name, or after he had carried out improvements to the Property in 2011, or even after the breakdown of their marriage and his imprisonment.
33. Accordingly, the claimant has to rely on the general law, and in particular on section 27 of the Law of Property Act 1925 which, as amended, and as now in force, provides as follows:

“27(1) A purchaser of a legal estate from trustees of land shall not be concerned with the trusts affecting the land, the net income of the land or the proceeds of sale of the land whether



or not those trusts are declared by the same instrument as that by which the trust of land is created.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust of land or in any trust affecting the net proceeds of sale of the land if it is sold, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees, except where the trustee is a trust corporation ...”

In the present case, assuming there to have been a trust of land in the claimant’s favour, there was only one trustee, namely Ms Raja, with the consequence (so it is submitted) that, on the sale of the Property to Mr Khan, the claimant’s beneficial interest in it was not overreached. That is the normal consequence where, in breach of the requirements of section 27(2), the proceeds of sale of land held on trust are paid to a sole individual trustee: see section 2(1)(ii) and (2) of the 1925 Act.

34. On behalf of Mr Khan, Ms Williamson argues that such a result is precluded by the scheme of the Land Registration Act 2002 (“LRA 2002”). She submits that the basic scheme applicable to registered land is well established:

- (1) only legal interests appear on the register maintained by HM Land Registry (section 2 of LRA 2002);
- (2) interests under a trust of land may not be entered on the register (section 33(a)(i));
- (3) a purchaser for value takes free of unregistered interests (section 29(1) and (2)); and
- (4) the doctrine of notice in relation to unregistered land has been replaced by the concept of the overriding interests of a person in actual occupation of the land.

35. So far as material, section 29 of LRA 2002 provides as follows:

“29 (1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.

(2) For the purposes of subsection (1), the priority of an interest is protected –

(a) in any case, if the interest –

...

(ii) falls within any of the paragraphs of Schedule 3, or

...”

36. The only potentially relevant paragraph of Schedule 3 is paragraph 2, which protects interests belonging to a person in actual occupation, and reads (so far as material) as follows:

“2. An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for –

...

(b) an interest of a person of whom enquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to so do;

(c) an interest –

(i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and

(ii) of which the person to whom the disposition is made does not have actual knowledge at that time;

...”

It is not suggested that the claimant was a person in actual occupation of the Property at the time of the sale to Mr Khan, or that his assumed beneficial interest was capable of being protected under paragraph 2 of the Schedule.

37. Ms Williamson goes on to submit that an unregistered equitable interest in land, if not protected by entry of a restriction on the register, is postponed by virtue of section 29(1) to the registered estate which Mr Khan acquired for valuable consideration from Ms Raja. She submits that this must be so, even if his beneficial interest was not overreached under sections 2 and 27 of the Law of Property Act 1925.
38. In support of this submission, Ms Williamson relies on the well-known description of the system of land registration in England, under the Land Registration Act 1925, given by Lord Wilberforce (with the agreement of the other members of the court) in Williams & Glyn’s Bank Ltd v Boland [1981] AC 487 at 503-504, as follows:

“The system of land registration, as it exists in England, which long antedates the Land Registration Act 1925, is designed to simplify and to cheapen conveyancing. It is intended to replace the often complicated and voluminous title deeds of property by a single land certificate, on the strength of which land can be dealt with. In place of the lengthy and often technical investigation of title to which a purchaser was committed, all he has to do is to consult the register; from any burden not entered on the register, with one exception, he takes free. Above all, the system is designed to free the purchaser from the hazards of notice – real or constructive – which, in the case of

unregistered land, involved him in enquiries, often quite elaborate, failing which he might be bound by equities. The Law of Property Act 1925 contains provisions limiting the effect of the doctrine of notice, but it still remains a potential source of danger to purchasers. By contrast, the only provisions in the Land Registration Act 1925 with regard to notice are provisions which enable a purchaser to take the estate free from equitable interests or equities whether he has notice or not ... The only kind of notice recognised is by entry on the register.

The exception just mentioned consists of “overriding interests” listed in section 70. As to these, all registered land is stated to be deemed to be subject to such of them as may be subsisting in reference to the land, unless the contrary is expressed on the register. The land is so subject regardless of notice actual or constructive. In my opinion therefore, the law as to notice as it may affect purchasers of unregistered land, whether contained in decided cases, or in a statute ... has no application even by analogy to registered land. Whether a particular right is an overriding interest, and whether it affects a purchaser, is to be decided upon the terms of section 70, and other relevant provisions of the Land Registration Act 1925, and upon nothing else.”

39. Under the Land Registration Act 1925, the equivalent provision to paragraph 2 of Schedule 3 to LRA 2002 was section 70(1)(g), which included in the list of “overriding interests”:

“The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed; ...”

40. Ms Williamson submits that Lord Wilberforce’s analysis applies with as much force to the legislative scheme of LRA 2002 as it does to the previous regime of LRA 1925. She further points out that the overreaching provisions of the Law of Property Act 1925 must have been considered by the House of Lords in Boland, because Lord Wilberforce referred to them expressly at 503D-E, and in each of the cases before the House the property was in the sole name of the husband, so the beneficial interest of the wife as an equitable tenant in common could not have been overreached when the property was mortgaged by the husband to the bank. There was no suggestion in any of the speeches, or in the arguments of counsel, that this fact alone could have entitled the wives to resist the possession proceedings brought by the bank, merely because the mortgage monies were paid to the husband as sole trustee for sale.
41. In answer to these submissions, counsel for the claimant relies on a passage in Ruoff & Roper, Registered Conveyancing, which in her submission recognises that a third party purchaser from a sole individual trustee takes the land subject to the beneficiary’s equitable interest. The passage (in paragraph 13.005.04) reads as follows, with my emphasis:

“The Land Registration Rules 2003 implicitly recognise the requirements of the Law of Property Act 1925 which regulate overreaching. A sole or last surviving trustee of land must, when applying to register a disposition of a registered estate in his favour or to be registered as proprietor of an unregistered estate on first registration of title, at the same time apply to have a restriction entered against his title, which prevents a disposition of the registered estate by a sole trustee (unless a trust corporation) under which capital money arises from being registered without an order of the court. The rule recognises that a sole trustee (unless a trust corporation) is incapable of giving a valid receipt for any sale proceeds of capital money so as to overreach the trust. *It recognises that any third party to whom the sole trustee (unless a trust corporation) made a disposition of the land would otherwise take it subject to the beneficiary’s equitable interest.*”

42. In my opinion, however, this passage does not provide any real support for the claimant’s case, because footnote 75 to the final sentence then says:

“Subject to the rules of priority contained in Land Registration Act 2002 ss.29 and 30.”

In other words, the editors appear to recognise that the rules of priority in sections 29 and 30 of LRA 2002 will confer priority over the beneficiary’s equitable interest, even though it is not overreached. See further paragraph 37.004, which deals with the circumstances in which an equitable interest in land may arise under a resulting or constructive trust. This paragraph includes the following statement, with my emphasis:

“Moreover, given that there is usually only one trustee of the land, overreaching is not possible and the disponee finds himself losing priority to the interest of the claimant *if that interest amounts to an interest which overrides by virtue of discoverable actual occupation under para 2 of Sch. 3 to the Land Registration Act 2002.*”

43. A similar view is expressed by the authors of the 8<sup>th</sup> edition of Megarry and Wade, The Law of Real Property, where in their discussion of overreaching under a trust of land they say (again with my emphasis) at para 12-037:

“The Law of Property Act 1925 omits to say what will happen if these statutory directions are not obeyed. The existence of a trust of land will not always appear from the title deeds or the register, as where a house stands in the husband’s sole name but was bought partly with the wife’s money, so that she owns a share under a statutory trust of land. It is now clear however that in such circumstances (i.e., where there is but one trustee) the wife’s (or any other co-owner’s) interests will not be overreached. Where the title is unregistered, the purchaser will obtain a good title only if he is a bona fide purchaser of a legal

estate without notice of the trust. If the wife (or other co-owner) is in possession or occupation of the land, a purchaser is likely to be fixed with notice of her interest. *In the usual case where the title is registered, the purchaser will take the land free of any interest unless the equitable owner is in actual occupation so that she has an overriding interest.*”

The footnote to the final sentence of this passage refers to section 29 and Schedule 3 para 2 of LRA 2002, and to Williams & Glyn’s Bank Ltd v Boland.

44. In my judgment the law is correctly stated in these passages from the text books, and a purchaser for value of registered land from a sole individual trustee takes the land free of any beneficial interest under a trust of land, unless the equitable owner is in actual occupation and has an overriding interest which falls within Schedule 3. Not only is this the plain effect of the clear language of section 29, but it also accords with the legislative scheme of land registration in England expounded by Lord Wilberforce in Boland’s case. Although LRA 2002 made substantial changes from the previous law, I see no reason to doubt that the fundamental policy objective in this area remains the same as before, and a purchaser takes free from unregistered beneficial interests unless they are protected by actual occupation. If it were otherwise, I agree with Ms Williamson that the simplicity and certainty which registered conveyancing is designed to achieve would be absent just when it is most needed, that is to say where there is a beneficial interest in the land which is owned by a non-occupier and which is not overreached. The remedy for a beneficiary in the position of the claimant is to protect his interest by entry of an appropriate restriction on the register. This is a precaution which, for whatever reason, the claimant failed to take.
45. For these reasons, I am satisfied that the claimant’s direct trust claim against Mr Khan cannot succeed as a matter of law, even if his claim to have a beneficial interest in the Property were to be upheld. Accordingly, I would refuse to continue the Injunction until trial on this ground.

#### **The claimant’s knowing receipt claim**

46. I now turn to the alternative way in which the claimant puts his claim against Mr Khan, namely as an accessory to a dishonest breach of trust by Ms Raja. On this basis, the claimant seeks to make Mr Khan liable as a constructive trustee on the ground of his receipt of the Property with the requisite degree of knowledge of the alleged breach of trust and/or fiduciary duty by Ms Raja. The necessary degree of knowledge in cases of “knowing receipt” is that it “should be such as to make it unconscionable for [*the recipient*] to retain the benefit of the receipt”: see BCCI (Overseas) Ltd v Akindele [2001] Ch 537 (CA) at 455E per Nourse LJ, with whom Ward and Sedley LJ agreed.
47. If the requisite degree of knowledge on the part of Mr Khan is established, his liability as a constructive trustee arises as a matter of law and attaches to the Property while it remains in his ownership. It is a liability which affects his conscience directly, and is not dependent upon the survival of the claimant’s original beneficial interest as one which binds the Property in his hands. This way of putting the claim is therefore unaffected by the technicalities of overreaching and land registration, as Ms

Williamson rightly accepted. It follows that the critical issue on this part of the case is whether, on the facts, there is a serious question to be tried.

48. In his particulars of claim, the claimant does not shrink from alleging dishonesty on the part of Mr Khan. In effect, he alleges that Mr Khan was party to a dishonest plan to deprive him of his beneficial interest in the Property. I have already referred to the pleaded facts and matters from which it is alleged that such dishonesty is to be inferred: see [17] above. But these particulars in my judgment provide only the flimsiest basis for an allegation of such gravity.
49. The first allegation is that Mr Khan is a family friend, who knew of the relationship between the claimant and Ms Raja. This allegation gets off to an unpromising start, because when it was pleaded the claimant was, by his own admission, under the misapprehension that Mr Khan was his brother, Shahzad Khan, who had assisted Ms Raja with the sale of the Property. The claimant now attempts to get round this difficulty by relying on the close friendship between Ms Raja and Shahzad Kahn's wife, Ms Ali. He says that the sale can still plausibly be regarded as one to a member of the extended family of Ms Raja. Even assuming that to be the case, however, it cannot alone ground any inference of impropriety, although it might conceivably help to do so in conjunction with other matters.
50. The second allegation is that, as a family friend, Mr Khan "would have been aware" of the claimant's beneficial interest in the Property. This is not the appropriate way in which to plead particulars of alleged dishonesty. Knowledge, or any other matter relied upon, needs to be clearly and distinctly alleged; and if the court is to be invited to draw an inference, on the balance of probabilities, the matters relied upon to ground the inference must again be clearly and separately identified. If it is intended to allege that Mr Khan knew of the claimant's beneficial entitlement to the Property merely because of the friendship between his sister in law and Ms Raja, the allegation is in my view entirely speculative, and the evidence discloses no solid foundation for it.
51. The third allegation is that Mr Khan "would have known" that he was purchasing the Property "for significantly less than its value". Again, this is not the right way in which to plead an allegation of actual knowledge, and in any event there is no firm evidence that the market value of the Property at the time of the sale to Mr Khan was significantly greater than the £135,000 which he paid for it. It needs to be remembered that the works which the claimant had carried out at the Property in 2011 had been done without planning consent for change of use, and an enforcement notice had been issued by the local authority on 24 August 2012 requiring removal of all the unauthorised works and fixtures and fittings, and restoration of the internal layout of the first floor to its layout before the unauthorised development took place. Furthermore, the recommended reserve price on a sale by auction of between £150,000 and £160,000 would have been subject to commission and fees, and the evidence of Shahzad Khan does not disclose how much information about the planning history he gave to the estate agent who advised on the reserve price. Mr Khan, on the other hand, has given clear and apparently credible evidence of the factors which led him to consider £135,000 a fair price for the Property. Furthermore, the sale was conducted through solicitors on both sides, and appropriate measures were taken to protect Ms Raja's position during the period between payment of the two instalments of the purchase price. There is nothing here suggestive of a collusive sale between connected parties. On the contrary, the evidence appears to support Mr

Khan's case that he was buying the Property from someone he did not know in an arm's length transaction.

52. Finally, it is alleged that Mr Khan "would have known" that the transaction was taking place in a deliberate attempt to defeat the claimant's beneficial interest in the Property. This allegation suffers from the same pleading defects as those which I have already considered, and without proper particulars of the alleged knowledge it adds nothing to them. I conclude, therefore, that the case of dishonesty pleaded against Mr Khan is entirely speculative in nature, and unsupported by any firm evidence. It provides far too slender a basis upon which to found a charge of this gravity. There are no other grounds upon which the knowing receipt claim is based, so I find myself unable to conclude that the claim has any real prospect of success. In my judgment, it fails to disclose a serious question to be tried.
53. Accordingly, on this ground too I would refuse to continue the Injunction until trial.

### **Conclusion**

54. For the reasons which I have given, the Injunction against Mr Khan will be discharged.