Essam Abdulamir Al Fadhi Al Tamimi v Rouzin Marwan Al Charmaa

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	23 February 2017
Neutral Citation:	[2017] JRC 33
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Date:	23 February 2017

Text

[2017] JRC 033

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, Esq., Bailiff, and Jurats Nicolle and Ramsden

Between
Essam Abdulamir Al Fadhi Al Tamimi
Plaintiff
and
Rouzin Marwan Al Charmaa
Defendant

Advocate R. O. B. Gardner **and Advocate** J. W. Angus **for the Plaintiff**.

Advocate O. A. Blakeley **for the Defendant**.

Authorities

Financial Services (Jersey) Law 1998.

Ferchal v Ferchal [1990] JLR 117.

Lewin on Trusts, 19th Edition.

Z v Y and others [2014] JRC 170.

Re Vandervell's Trust (No.2) [1974] CH 269.

West Deutsche Landesbank Girozentrale v Islington London Borough Council [1966] 2 All ER 961.

Fiduciary Management Limited v Sheridan [2002] JLR Note 11.

Trusts (Jersey) Law 1984.

Flynn v Reid [2012] JRC 100.

McKenzie v Nutter [2007] SLT 17.

Fraud Act of 2006.

Theft Act 1968.

Patel v Mirza [2016] 3 WLR 399.

Criminal Justice Act 1993.

Companies — ongoing issues relating to ultimate ownership of two Jersey companies

Bailiff

THE

Introduction

1 The Defendant and the Plaintiff were married in the United Arab Emirates under Sharia law on 13 th February, 2002, the two of them having met in the year 2000 when the Defendant was 18 years of age. They have three children, one born in 2003, the second born in 2005

and the third born in 2008. They were divorced according to the laws of the UAE on 6 th January, 2015, the marriage having hit difficulties in or about 2012. In the context of the UAE divorce, alimony and child support proceedings are thought to be still ongoing between the Plaintiff and the Defendant in the child matters division of the Dubai Court of First Instance, those proceedings being mainly concerned with the amount of maintenance payments it is proper for the Plaintiff to pay to the Defendant in respect of their children under the laws of UAE. The proceedings do not concern matters of asset ownership and it is unclear (and unimportant for the purposes of this case) whether any such proceedings may or may not take place in the future.

2 The issues in this case are focussed upon the ultimate ownership of two Jersey companies, First Grade Properties Limited ("First Grade") and Jorum Limited ("Jorum") (together "the Companies"). Each of those companies wholly owns UK situated immovable property, details of which appear below. The Plaintiff claims that he is the ultimate beneficial owner of the two £1 ordinary shares of the issued share capital in each of First Grade and Jorum ("the Shares"). His primary case is that the Defendant, who is the registered share holder of the Shares, holds them as nominee or bare trustee for him and he seeks a declaration to that effect. In the alternative, he seeks a declaration that the Defendant holds the shares on resulting trust for him, to include all dividends, income, profits and all or any net sale proceeds deriving from the shares, alternatively that she holds the shares on constructive trust for him including all dividends etc., and as a further alternative a declaration that she has been unjustly enriched at his expense. Various consequential orders on those essential findings are also contained in the prayer for relief in the Order of Justice. The Defendant denies any form of trusteeship or nominee arrangement and denies that she has been unjustly enriched at his expense and asks the Court to dismiss the Plaintiff's claims.

3 Both the Plaintiff and the Defendant are resident in the United Arab Emirates. There is no dispute between them that it is Jersey law which needs to be applied to the asserted nominee and/or trust arrangements, and to the question of unjust enrichment. Accordingly, there has been no expert evidence of foreign law on which we need to adjudicate, although, as will be seen, in the course of the evidence produced to us, we heard from a member of the Bars of both Milan and Paris in connection with matrimonial proceedings that took place in Italy in 2006 in respect of an earlier marriage of the Plaintiff. There does not seem to be a dispute about many of the core facts, which we now set out below.

4 The Plaintiff is the senior partner of a law firm with offices across the Middle East. He says that he has over 30 years of experience in litigation and dispute resolution. He is also an experienced businessman with extensive real property interests and an investment portfolio. On 7 th October, 1995, the Plaintiff married Katia Buratto, from whom he was divorced in the UAE on 7 th July, 2000. In August 1998 he purchased Flat No 3 Sager House, London for £362,769. On 23 rd November, 2001, he purchased Flat 25, Western Beach Apartments, London for £460,935. These two properties were therefore in his name in May 2006 which was when his first wife Ms Buratto commenced an action in Italy for judicial separation.

5 On 5 th February, 2007, the Plaintiff purchased some Air Arabia shares through a company called Euro Gulf Limited.

6 We now turn to the incorporation arrangements for First Grade, Jorum, Rosace Limited ("Rosace") and Vadium Limited ("Vadium") (in this judgment the Companies, Rosace and Vadium are together referred to as the companies unless the language requires otherwise).

First Grade

7 First Grade was incorporated on 30 th May, 2007, having an authorised share capital of £100,000 divided into 100,000 shares of £1 each. The subscriber shareholders were Continental Nominees Limited and Continental Secretaries Limited, each of whom took one issued share in the company. At the inaugural meeting, Mr Peter Watts, Mr Richard Fagan and Mr Stephen Ascroft, all of Continental Nominees Limited, were appointed as the first directors of the company and it was resolved to open a bank account with the Royal Bank of Scotland International PLC in St Helier.

8 On 7 th June, 2007, the directors met to agree that the company should purchase Flat 4, 35 Bryanston Square, London for a consideration of £2,051,600 in respect of which a 10% deposit would be payable on exchange. The board had before it a purchase report on the property produced by a firm of London surveyors. The tenure was leasehold, for a term of 999 years from 1 st April, 2006. The minute reflecting the company's agreement to purchase then continues:–

> *"Mr Fagan explained to the meeting that the Beneficial Owner or her husband had provided to Messrs Latty and Daw, sufficient monies to effect an exchange.* He advised the Meeting that an approach had been made to Messrs Coutts and Co to provide the company with a loan to meet the majority of the balance of the purchase monies.
>
> *After careful consideration of the purchase report referred to above and the related documentation, it was resolved that, subject to Contract, the company acquire the property for £2,051,000 and that Messrs Latty and Daw be and are hereby authorised to sign and exchange contracts on behalf of the company."*

9 On 13 th June, 2007, there was a further directors' meeting when Messrs Coutts and Co of 440 Strand, London were appointed as bankers to the company and the standard company mandate, resolutions and specimen signatures form was tabled and approved. The chairman then tabled a commercial banking current account facilities application form, an agreement and authorisation to accept instructions by tele-facsimile, and a credit reference enquiry authority and agreement to provide investment advice, all of which documentation was again approved on behalf of the company.

10 On 29 th June, 2007, a directors' meeting noted that a facility letter had been received from Coutts and Co to assist with the purchase of Flat 4, 35 Bryanston Square, London and it was agreed that the seal of the company be affixed to the legal mortgage over this property to secure all monies from time to time owing to the bank as mentioned in it. The following week there was a further directors' meeting when a facility agreement with Coutts and Co was tabled whereby the bank outlined its terms and conditions upon which it would make a loan available to the company in the sum of £1,538,700 to assist with the purchase of the same property. Interest would be charged at 1.25% above base rate, and an arrangement fee of £7,500 plus any associated fees and expenses would be for the account of the company. It was noted that as security, the bank would also require a first legal charge over the property together with a personal guarantee to be provided by the Plaintiff. The company agreed to execute the loan documentation. The same day the Land Registry form was approved and signed on behalf of the company. There was a third directors' meeting on 5 th July, 2007, where the relevant entry in relation to a loan to the company reads as follows:–

> *"The chairman advised the meeting that the company had received from Essam Abdul Amir Al Tamimi, the husband of the Beneficial Owner, the sum of £4,996 which had been credited to the bank account of the company*.
>
> *IT WAS RESOLVED that the sum of £4,996 be accepted as a loan from Essam Abdul Al Tamimi, the terms of the loan being unsecured, interest free, with no specific date for repayment"*

11 On 14 th August, 2007, there was another directors' meeting of First Grade. The relevant minute is as follows:–

> *"Mr Fagan advised that he had now received from Messrs Latty and Daw a completion statement in connection with the purchase of Flat 4, 35 Bryanston Square which completed on 10th July 2007*.
>
> *He advised that the completion statement detailed the sums of £205,160 as being received on 30th May 2007 and £444,882.18 being received on 28th June 2007.* He confirmed that he has spoken earlier in the day with Dominic Filleul of Messrs Latty and Daw and it had been confirmed to him that these monies had been received from Mr Essam Al Tamimi personally. The meeting noted that Mr Essam Al Tamimi was the husband of the beneficial owner of the company.
>
> *After consideration IT WAS RESOLVED that the sums of £205,160 and £444,882.18 be credited to the loan account of Mr Essam Al Tamimi in the ledger of the company, it being noted that the loans were unsecured, interest free with no specific date for repayment."*

12 Further meetings of the company took place in December 2007, January 2008, February 2008, March 2008 and June 2008. At each of these meetings, the board noted that the

company had received monies from the Plaintiff who in each case was described as *"the husband of the Beneficial Owner"*. In each case those monies were credited in the books of the company as a further loan from the Plaintiff, the terms of the loan being unsecured, interest free with no specific date for repayment. The reason for the loan is not always given, but in some cases it is clear the loan is in relation to the payment of service charges for the flat at Bryanston Square.

13 On 17 th June, 2008, the board met to agree with immediate effect that the registered office of the company be moved from 4th Floor, Forum House, Grenville Street to No 6 Britannia Place, Bath Street. A share transfer form in relation to each of the two shares in the company, duly executed by Continental Secretaries Limited and Continental Nominees Limited was presented, and both shares transferred into the name of the Defendant. Mr Hashmath Shareef was appointed as company secretary, and he and the Defendant were appointed as directors, all of the then current directors tendering their resignations. The stock transfer form did not require to be executed in either case by the Defendant. However, about a month later on 16 th July, 2008, a written resolution of the board of directors appears in the company books — the Defendant resigned as a director of the company, and Ms Rachel Louise Wunsch was appointed as a director with immediate effect. For the avoidance of doubt the written resolution was signed both by the Defendant and by Mr Shareef. On 25 th November, 2009, the minutes show a change of registered office to the Third Floor of Winward House, La Route de la Liberation, St Helier. In 2012 the minutes reflect a meeting held by the directors on the 9th Floor of the World Trade Centre in Dubai (the directors being Mr Shareef and Ms Wunsch) when it was resolved that the actions of the directors in connection with the purchase of 28 Charles Street, London for the sum of £3,600,000 and 28A Charles Street, London for the sum of £4,200,000 were approved. The board noted that the properties had been registered in the company's name on 9 th June, 2009, and 5 th December, 2008. There was a further resolution in these terms:–

> *"IT WAS NOTED that confirmation had been received from Essam Abdul Al Tamimi confirming that the loan payable by the company in the sum of £4,996 has been written off.* IT WAS RESOLVED that an entry be made in the company's books writing off the loan payable to Essam Abdul Al Tamimi."

14 Mr Shareef resigned as a director on 11 th October, 2012, and Mr Ban Abdul Kadir was appointed as director in his place.

15 There is nothing of interest otherwise in the minutes of the company, but we now turn to the accounting records produced to us. A trial balance as at 31 st December, 2007, which appears to have been signed by Mr Shareef shows a number of outgoings in relation to the acquisition of Flat 4 Bryanston Square which include the purchase price, legal fees, interest, survey fees, brokerage fee and bank charges. On the *other side of the balance sheet the costs are reflected by a Coutts' bank loan of £1,538,700, and "Rouzin current account"* of £709,675.31. The trial balance as of 31 st December, 2008, is in similar terms — here the outgoings are reflected inter alia to include the purchase price, legal fees, a

"retained loss" and outgoings in respect of interest paid and service charges. On the other side of the balance is reflected the Coutts' bank loan and an increased credit to the *"Rouzin current account"*. Again this has been signed off by Mr Shareef. Essentially the same process can be seen for subsequent years, with the result that by 31 st December, 2011, the total shown as due by the company to the Defendant was put at £1,172,910.28.

16 The change in registered office reflected the move of that office to STM Fiduciaire, a trust and company services provider registered with the Jersey Financial Services Commission. Amongst our papers is a copy of the client due diligence check-list and input form of STM dated 13 th October 2010. It describes the Defendant as the beneficial owner of First Grade. Annexed to it is a copy of her passport.

17 We have reviewed the bank statements of the company with Messrs Coutts and Co in the Strand for the period 10 th December, 2008, until 10 th March, 2010. They appear to show regular payments into the company by the Plaintiff to discharge interest payments due to Coutts. The bank statements are addressed to the company, care of Mohamed Shareef in Dubai.

18 On the first morning of the trial the Court asked to see the application forms to the Jersey Financial Services Commission for the incorporation of the Companies. Difficulties having been experienced by the parties in obtaining a copy of these forms, the Court made an order that the Commission supply them, with liberty to apply. The forms were duly supplied promptly by the Commission, and we express our gratitude for that. In relation to First Grade, the application form reveals the ultimate beneficial owner of the company to be "Mrs Rouzin Marwan Al Chamaa Al Chamaa, born 5/1/82, is a housewife and is supported by her husband who will be financing the property acquisition by this company." The form goes on to give her residential address in the United Arab Emirates, and confirms that the intended activity of the company is to acquire a residential property in the United Kingdom. The form is dated 25 th May, 2007, and is signed by a Mr Richard Fagan on behalf of Continental Financial Services Limited, an entity authorised to conduct financial business of this kind under the Financial Services (Jersey) Law 1998.

Jorum

19 The incorporation application to the Jersey Financial Services Commission for Jorum was also signed by Mr Richard Fagan on behalf of Continental Financial Services Limited. It is dated 31 st May, 2007. In answer to the question on the form seeking the name of the ultimate beneficial owner of the shares in the proposed company the following information appears:–

> *"Mrs Rouzin Marwan Al Chamaa Al Chamaa, born 5/1/82, is a housewife and is supported by her husband who will be transferring ownership of the property to the company."*

20 The response then goes on to set out her address in the UAE. In answer to the question as to whether she is the beneficial owner of any other Jersey companies, the answer is given that she is the beneficial owner of First Grade Properties Limited and Rosace Limited, the incorporation papers for which were submitted on the same day. As with First Grade, the information in relation to the company's intended activities is that it will *"own a residential property in the United Kingdom."*

21 Jorum Limited opened a bank account with Coutts Bank. The current account application form at paragraph 2 sets out this information:–

> *"2. Shareholder details*
>
> *In order to comply with UK legislation, Coutts and Co needs to verify the identity of any individual who owns 25% or more of the Business, as well as at least two significant controllers of the Business, if different*.
>
> *Please therefore state the full names and details of all individuals who own 25% or more of the Business.* If the shareholder is a parent company or trust, please provide a corporate structure chart identifying the ultimate owner(s). In the case of charities, clubs, trusts etc, please refer to the separate mandate which will be provided to you by your commercial banker.
>
> *Full Name: Rouzin Marwan Al Chamaa*
>
> *Preferred daytime contact number: [left blank]*
>
> *Email address: [left blank]*
>
> *Interest in the Business: 100%*
>
> *Position in Business eg Director/Secretary: [left blank]"*

22 The authorised signatories on the banking accounts were completed — these were Ms Wunsch and Mr Shareef, both of whom were described as directors.

23 The correspondence address, to which correspondence between the bank and Jorum was to be sent is given as that of the Plaintiff, with his PO Box number in Dubai. The same contact details are given in relation to the name and address to which bank statements should be sent.

24 The application form is signed by Ms Wunsch and Mr Shareef as directors.

25 Interestingly the current account application form for First Grade shows the shareholder details as Continental Nominees Limited as to 50% and Continental Secretaries as to 50%. The bank account application form is signed by Mr Richard Fagan and Mr Steve Ascroft,

both of them directors of the company and makes it plain that bank statement information and correspondence is to be sent to the registered office at Forum House in St Helier. It is clear that the directors at that time considered that the bank mandate requested only the identity of the registered owners of the company, and that it was not necessary to give the ultimate beneficial owner. This is slightly surprising, but we did not hear from either Mr Fagan or Mr Ascroft, so we were not in a position to ask why the form was completed as it was.

26 Jorum was incorporated on 4 th June, 2007. As with First Grade, the original shareholders were Continental Nominees Limited and Continental Secretaries Limited, and the first directors were Messrs Watts, Fagan and Ascroft. However it appears the company also entered an international banking relationship with Standard Chartered Bank. The application form in that respect, which was executed by Mr Fagan on 10 th August, 2007, shows the Defendant as the ultimate 100% equity owner of the company. Jorum is described in this document as having been incorporated to hold a property in London, and the nature of the intended relationship was that the company would be seeking a loan from the bank, to enable the property to be transferred from the ownership of the beneficial owner's husband. Rosace was described as a sister company.

27 The Court has not been shown the first minutes of the meeting of the directors of Jorum, but it seems clear that Messrs Fagan, Ascroft and Watts were appointed as directors from the minutes which we have seen. As with First Grade, there is a record of some sums of money having been credited to the bank account of the company by way of loan from the Plaintiff, the terms being unsecured, interest free with no specific date for repayment. The application form for opening the bank account with Standard Chartered was duly tabled and approved and it is noted that on 4 th September, 2007, the board met and resolved as follows:–

> *"The chairman reminded the meeting that the focus for the incorporation of the company was to accept, from the husband of the beneficial owner a transfer of ownership of the Property [in the marginal note the property is defined as Flat 3, Segar House, 50–54 (even) Seymour Street, London].* To originally acquire the property, the husband of the beneficial owner had taken a loan from Standard Chartered (Jersey) Limited who had a first legal charge over 4 [sic] the Property. It was therefore necessary for the existing borrowings or the husband of the beneficial owner [sic] to be replaced by borrowings taken out in the name of the Company.
>
> *In that regard a facility letter dated 30th August 2007 from Standard Chartered (Jersey) Limited ("the facility letter") was tabled before the meeting.* It was noted that Mr Essam Al Tamimi, the husband of the beneficial owner, would be the guarantor.
>
> *It was noted that the amount of the facility would not exceed the lower of GBP 252,865.* 00 or 60% of the open market value of the property. That the term of the facility was for a period of 19 years from the anniversary of the date of

drawdown. Interest would be charged at 1.25% per annum above the cost to the bank of funding the loan and that a facility fee of £500 would be payable.

After due and careful consideration IT WAS RESOLVED that the terms of the facility letter be and are hereby approved and accepted …"

28 Although this was resolved in September 2007, it appears from subsequent documentation that the transfer may not have taken place until April 2008. In August 2008, the board met to approve the transfer of the registered office to No 6 Britannia Place, Bath Street, the transfer of the two issued shares in favour of Continental Secretaries Limited and Continental Nominees Limited to the Defendant and the appointment of Mr Shareef as company secretary and Ms Wunsch and Mr Shareef as directors in place of the Continental Financial Services Limited appointed directors. Once again, the Defendant did not have to sign the stock transfer forms as transferee.

29 A board meeting in November 2008, signed by both Mr Shareef and Ms Wunsch shows that the company approved a facility letter from SG Hambros Bank Limited in the sum of £3 million with interest at LIBOR plus 1.25%, and as security a legal charge would be taken over the property to be acquired by the company, namely 28A Charles Street, Mayfair, London. In January 2009 the registered office was moved to Windward House on La Route de la Libération in St Helier. In May 2009 the board approved a further facility letter from SG Hambros Bank Limited in the amount of £2.45 million, again at interest of LIBOR plus 1.25%, the loan being available for the period of 10 years and to be repayable by 40 quarterly instalments. As security the bank would require a first legal charge over the property 28 Charles Street, Mayfair, London. That facility letter was approved. The next minute shown to us is dated 19 th August, 2010, where the meeting noted that Flat 2, Mayfair, 28 Charles Street, London, had been purchased in the name of the company in 2009.

30 Although the figures in relation to Jorum are different from those in relation to First Grade, the financial treatment is the same — in other words, the trial balances show numbers of expenses in relation to Jorum, and on the credit side liabilities due to the lending banks and to the Defendant. Thus as at 31 st December, 2010, for example, the fixed assets are shown as 28A Charles Street and 28 Charles Street, with sundry credits to a bank account with SG Hambros, and the liabilities are shown as two long term loans to SG Bank, and a *"Rouzin current account"* loan of £4,475,107.57.

31 We will deal with the issue below, but we note that on 3 rd June, 2014, a written resolution of the company, signed by its sole shareholder, the Defendant, removed Mrs Ban Abdul Allah Abdul Kadir Al Dar and Mrs Rachel Louise Wunsch as directors with immediate effect, and appointed the Defendant as a director with immediate effect. We note also that on 9 th July, 2014, the former directors Mrs Wunsch and Mrs Al Dar purported to hold a board meeting of Jorum to agree as follows:–

> *"It was noted that the ultimate beneficial owner of the company, Essam Al Tamimi had, since the time of incorporation of the company paid sums amounting to £6,703,208 to the company or to third parties on behalf of the company, of which to date £3,200,295 has been repaid to Essam Al Tamimi leaving an outstanding debt balance of £3,502,913.* The sums (with the exception of a mortgage interest repayment amount of £12,136 paid to Coutts Bank on 30th June 2014 which was paid subsequent to the finalisation of the HLB Hamt report … had been listed by HLB Hamt at the request of the board of the company and were referred to, and listed in, annex 1 in a report dated 7th July 2014 addressed to the boards of the company and First Grade Properties Limited … IT WAS RESOLVED that the payments listed in annex 1 to the HLB Hamt report together with all past and further payments (including but not limited to the Coutts June payment) from time to time by Essam Al Tamimi to the company or on behalf of the company be treated as interest free loans to the company payable on demand. The company hereby approves the loan agreement and the HLB Hamt report and the amounts currently (and from time to time) payable by the company thereunder and authorises any director to sign the loan agreement on behalf of the company."

32 A loan agreement dated the same day was duly signed by Ms Wunsch on behalf of the company and by the Plaintiff.

33 Jorum later opened a bank account with SG Hambros Bank in London. The Banking Services questionnaire was executed on 15 th October, 2008, by Ms Wunsch and Mr Shareef. They made a declaration just above their signatures:–

> *"By signing this declaration:*
>
> *I/we confirm that I/we have read and understood this banking services questionnaire;*
>
> *I/we confirm that all the details provided by me/us in this banking services questionnaire and true and correct to the best of my/our knowledge and belief;*
>
> *I/we acknowledge receipt of the SG Hambros banking services terms of business and confirm that we have read and understood them and agreed to be bound by them as they may be amended from time to time*.
>
> *I/we will provide you with any future ancillary document(s) that may affect the information provided herein."*

34 Ms Wunsch and Mr Shareef were the authorised signatories on the company account. The bank asked a question in these terms "List the beneficial owners and/or the principal shareholders and any controllers of the company/partnership (a separate form may be used if necessary)".

35 The answer given to this question was *"Rouzin Marwan Al Chamaa owner 100%"*.

36 We note that in connection with the opening of that bank account with Messrs SG Hambros Bank Limited in St James' Square, London, a confirmation was issued by Messrs Al Tamimi and Company, advocates and legal consultants, from the Dubai World Trade Centre that:

> *"this is to confirm to you that Mrs Rouzin Mawan Al Chamaa, wife of Mr Essam Al Tamimi is residing in the following address:–*
>
> *Villa No.33, Al Zahrawi Street,*
>
> *Al Talaa Area,*
>
> *Sharjah*
>
> *United Arab Emirates*
>
> *This letter is issued at the request of Mrs Rouzin Marwan Al Chamaa."*

37 The letter is signed off by a partner in the firm.

38 Three days later, the Plaintiff wrote to SG Hambros Bank in St James' Square, London to send documents requested by the bank. He wrote as follows:–

> *"Please find enclosed the following documents as requested by you from Mr Dominic through your email dated 16th October 2008, other than this I need to send you the good standing certificate of Jorum Limited, which I will forward to you ASAP when I get the original*.
>
> *Identity, and address of Rachel, Shareef, Rouzin*.
>
> *Share certificate*.
>
> *Shareholder resolution*.
>
> *Kindly acknowledge the receipt of the same."*

39 Although the letter purportedly comes from the Plaintiff, it appears to have been signed on his behalf by Mr Shareef. The original good standing certificate of Jorum was sent by Mr Shareef the same day.

Rosace and Vadium

40 These two companies do not directly form part of the proceedings before the Court, and

accordingly the treatment of them is less important. We have considered them only to the extent that they form part of the background to the general relationship between the Plaintiff and the Defendant. Essentially however, it is clear that they were treated in very similar fashion to First Grade and Jorum. The incorporation application for Rosace was signed by Mr Fagan and submitted on 31 st May, 2007, and in answer to the question as to the identity of the ultimate beneficial owner, the following information was given:–

> *"Mrs Rouzin Malwan Al Chamaa Al Chamaa, born 5/1/82, is a housewife and is supported by her husband who will be transferring ownership of the Property to the company …."*

41 In answer to the question as to whether the beneficial owner owned or had been the owner of any other Jersey companies, the information provided was that she had been the owner of First Grade and Jorum. In relation to Vadium, the application form, signed by Mr Fagan, was submitted on 10 th July, 2007, and in answer to the question as to ultimate beneficial ownership gave the following:–

> *"Mrs Rouzin Malwan Al Chamaa Al Chamaa, born 5/1/82, is a housewife who is supported by her husband …."*

42 The application form shows that Ms Al Chamaa was the beneficial owner of First Grade, Jorum and Rosace. The purpose of incorporating Vadium was to own residential property in the UK.

43 In similar fashion to First Grade and Jorum, the shares in Rosace and Vadium were first held by Continental Nominees Limited and Continental Secretaries Limited and subsequently transferred into the name of the Defendant. The directors of the two companies were also Mr Shareef and Ms Wunsch, in similar fashion.

Summary of company documents

44 The core company documents therefore show that from the moment that the application forms for the incorporation of Jorum and First Grade were submitted, the Defendant was described as the beneficial owner of each of these two companies. She was a director of First Grade for only a short time in 2008, but she exercised her shareholder rights in 2014 to dismiss the directors and instead appointed herself to that office. Although property and/or money was provided to the two companies in question by the Plaintiff, the company records show that after 2008 such funds were always credited to a loan account in the books of the relevant company in favour of the Defendant. In so far as there were dealings between the companies and the banks, the bank account opening documentation showed that the company represented to the banks that the defendant was the ultimate beneficial owner and controller of the company. The Plaintiff's name is not to be found in such documentation, albeit that it is clear that when it came to the companies securing loans from the banks, the banks required those loans to be secured against the companies'

properties, but also guaranteed by the Plaintiff.

45 What we have set out above represents, in a sense, the hard facts about what the company documentation discloses. We now turn to the competing claims which each of the two parties makes.

The Plaintiff's case

46 The Plaintiff's case is that he always ensured that his assets were separated from those of the Defendant, and that that is clear from the way in which he made gifts to her in Dubai and the way in which the financial arrangements were generally maintained. He had an interest in London property. In or about 2006 he became aware of a claim which his first wife was bringing for judicial separation in the Italian courts. He took advice from his Italian lawyer, Ms Paola Garnier, which was to the effect that he should structure his assets either in the name of the Defendant as his relatively new wife, or in the name of his children. He had also been told by his English lawyer that there were good reasons to structure the asset holding in London property through Jersey companies for good practice and taxation reasons. Accordingly the companies in Jersey were incorporated and the properties transferred into them. The financial arrangements clearly demonstrated that he provided finance both directly and by his negotiation of loans to the companies from banks, which loans he personally guaranteed. He said that he used family nominee arrangements regularly — he had done so with his two brothers in the UAE and this was what happened on this occasion. He explained in his evidence that he had an oral agreement or understanding with the Defendant that she would hold the shares in the companies as his nominee and he had certain particular conversations with her over the relevant time period. He recalled one in early 2007 at the matrimonial home in Sharjah, UAE, which followed his conversation over the telephone with Ms Garnier. The conversation he had with the Defendant took place in the presence of the Plaintiff's brother Mr Ahmed Al Tamimi who was not called to give evidence. They discussed and agreed that the London property would be held by the Defendant on the Plaintiff's behalf and, according to the Plaintiff, the Defendant was fully supportive of this idea. Later on the Defendant was asked to sign powers of attorney which enabled the Plaintiff to deal with the property of the various companies. We will return to these powers of attorney later, but according to the Plaintiff, the powers of attorney were granted by the Defendant at his insistence to confirm his complete authority and power of disposition over the companies and any of their property.

47 In fact the Plaintiff's first wife Ms Buratto did not make any claim against the properties in question and he settled her proceedings on payment of a lump sum in or about 2010.

48 It came as a shock to the Plaintiff in May 2014, when he moved out of the matrimonial home that he shared with the Defendant that she revoked the powers of attorney. He contended this went completely against and was a serious breach of the arrangement between them. It was the first time she had taken any unilateral step in relation to the companies. The Plaintiff's case that the Defendant held the shares in the companies as

nominee for him was, he said, supported by the fact that he had disposed of some London properties owned by one or other company and arranged for the net proceeds of sale after the discharge of the bank loans secured against the property in question to be paid into his personal account. On one occasion, although the sale had not been completed, the Defendant had actually signed a transfer authority for such a payment to be made.

49 The case for the Plaintiff was supported by his witnesses, Mr Shareef, Ms Wunsch, Ms Garnier and Mrs El Zeini in particular, and perhaps more obliquely by his first wife Ms Buratto. The witnesses other than Ms Buratto all deposed to their belief that the Defendant held the shares as nominee for the Plaintiff. We will turn to their evidence in more detail below.

The Defendant's case

50 The Defendant's case was that the shares were registered in her name because they belonged to her. She had signed no declaration of trust, nor had she signed a share transfer form with the identity of the transferee uncompleted. She had signed powers of attorney, but the purpose of those powers of attorney was to enable her husband to deal with the assets on her behalf, and certainly not on his own behalf. The incorporation of the companies and the transfer of property into them had come about in this way. In or about 2005, before her second child was born, relations between her and the Plaintiff deteriorated. She discovered he was having an affair, and shortly before the birth of their second child, he threw her out of the matrimonial home. She had to go and live with her sister, and indeed as we understood it, the second child was born while Plaintiff and Defendant were living apart. During the marriage the Plaintiff was solely responsible for financing the running of their different households. She had no decision-making power whatever in relation to financing, and she asserted that it was the Islamic culture that even if a woman has her own source of money, she does not actually use it for the household or her children. Thus it was that the Plaintiff paid for everything during the marriage including expenses relating to the houses they lived in, the food and all other necessities for the children and so on. They lived a very comfortable life. As far as she was aware, their average monthly household expenditure is 2014 was in the region of £30,000.

51 At all events, when they reconciled after the birth of their second child, she made it plain to the Plaintiff that she would only have him back if her future were to be secured. She did not wish to risk the possibility of being thrown out on the street again without access to money, credit cards or a means of living. She and the Plaintiff discussed ways in which he could safeguard the future financial needs which she had, and which the children would have, to maintain their lifestyle, and as a reward to her for being a faithful wife. As a result of this, she says it was agreed that she would hold a 1% shareholding in Al Tamimi Investments Company LLC (“ATI”), which held a number of investments, the Plaintiff holding the other 99%; and that the companies would be incorporated and properties transferred to her for the future. In lieu of her receiving any form of dividend from ATI, the Plaintiff would continue financing the different maintenance costs in relation to the properties owned by the Jersey

companies. Thus it was that the shares in the companies were issued to her, and the loan accounts were in her name. What seemed to be the position by reference to company records was in fact the position. The Defendant relies for support of her own evidence upon e-mails which were sent by the Plaintiff, and instructions given by his agents. Thus, on 22nd April, 2007, the Defendant claims that an email from the Plaintiff to Mr Shareef indicated the Plaintiff was considering a gift of assets to her and her children, the email containing this language:–

> *"I would like to transfer my two flats in London and my house in the US into a trust which should be owned by Rouzin, Abdullah and Faisal.* What I first want is for the trust to be set up and then transfer these assets into the trust.
>
> *This is something which needs to be initiated immediately and I would be grateful if you would see me to discuss the same."*

52 She relies also upon an email exchange the Plaintiff had with his London lawyer in May 2007 where the Plaintiff requested a company to be set up to hold the property in London, the company to be in the name of the Defendant. The Plaintiff noted that all the finance and transactions would be supported and guaranteed by himself. The email goes on to indicate that he was contemplating having the properties in London and in the US held by a trust. The London lawyer, who was not called to give evidence before us, indicated that he would ascertain the fees which would be incurred in the various structures, and there is an email from the Plaintiff to Mr Shareef the same day, Wednesday 16th May, 2007, where he says:–

> *"Follow up on this"*.

53 There are numbers of other examples where the Plaintiff's agents gave instructions on his behalf which the Defendant asserts also support her case. Thus on Friday 1st June, 2007, Mr Shareef sent an email to Dominic Filleul, the London lawyer, in which he says:–

> *"Dear Dominic*
>
> *One small clarification, I cannot find Mrs ..* Rouzin name in incorporation certificate OR in memorandum?"

54 To this email there is the following reply, sent the same day:–

> *"It does not appear and never does.* She is the owner of the shares"

55 There is perhaps an illuminating email exchange between the Plaintiff and the Defendant in March 2009. At this time Jorum owned the property 28A Charles Street in Mayfair, London. The Plaintiff obtained estimates for some building works and sent to the Defendant a copy of the email dated 6th March from Lamys Araktingi. The Defendant responded "hayaatee assome, how about the house at mayfair? do the (sic) still want to sell it??" The Plaintiff's response was "working on it, if ui (sic) want it I will get it for you hayatti". We were

told by the Plaintiff in evidence that *"hayatti"* in translation means *"my love"*. This exchange of emails clearly cannot refer to 28A Charles Street which had been acquired a year earlier, but seems to refer to 28B Charles Street which was acquired the following month. It seems to us that the email is capable of supporting the Defendant's case that at that time the Plaintiff had a propensity or inclination to make gifts to her.

56 In so far as there had been dealings in company owned property whereby net proceeds of sale had been paid to the Plaintiff personally, the Defendant's case was that she had assumed, where she knew about this, that the monies were being reinvested for her benefit. When she discovered in 2014 that her husband was making arrangements to change the shareholding in the companies, she revoked the powers of attorney and replaced the directors with herself.

57 Given that these are the competing cases advanced by the parties, we think it is relevant to make one preliminary comment. On the face of it, the shares belong to the Defendant. She does not have to prove anything in that connection. The Defendant understandably points out that whereas there is ample documentation, only some of it quoted in this judgment, which evidences or supports her claim to ownership of the shares, there is no significant contemporaneous documentation which supports the Plaintiff's case.

58 We agree that there is no burden of proof upon her to show that the Companies were incorporated for her and not for her husband, and there is no burden on her to show that he intended to gift the properties to her by transferring them to the Companies or acquiring other properties in the names of the Companies. The burden lies on the Plaintiff in these proceedings. It was for that reason that the Court enquired of both counsel during the course of the hearing as to whether there was room for an intermediate finding — namely one where neither the Plaintiff nor the Defendant's case was wholly accepted, but it was the position that the Plaintiff proceeded on the assumption that the shares were held on a nominee arrangement for him, and the Defendant proceeded on the assumption that the shares were hers and her husband was managing the properties for her. Both counsel disavowed any such intermediate ground.

The powers of attorney

59 The Defendant granted a power of attorney to the Plaintiff on 17 th June, 2007. It was executed before a notary public in Dubai. It is a general power of attorney giving the Plaintiff power to act on the Defendant's behalf in any respect whether in her personal capacity or as the main shareholder, partner or as a beneficiary in any company in the UAE, the USA, the United Kingdom or Syria, and it also enables him to deal on her behalf with any real or personal property held in her name. On 12 th December, 2007, a revised power of attorney was issued by her in his favour. This was again a general power of attorney but it named the companies expressly. It was in these opening terms:–

"[The Defendant] does hereby constitute and appoint [the Plaintiff] lawyer UAE

national to be appointed as the grantor's attorney under power, who will perform in her name, under her personal capacity, and on her behalf as the main shareholder, partner or as a beneficiary and including the right to transfer in First Grade Properties Limited, Vadium Limited, Rosace Limited, Jorum Limited or any other company that may be owned, registered or as a beneficiary in any other company in British Channel Island on in UK and to deal with any real or personal property held in her name in the British Channel Island or United Kingdom, and to perform all or any of the following acts or things from the date of execution of this power of attorney until such time that this power of attorney has been revoked by [the Defendant]. …"

60 The powers conferred by that power of attorney are subject to any express restrictions set out in the memorandum of association of any company for which the Defendant was recorded as a partner, beneficiary or shareholder. The power of attorney is expressed to be governed by and interpreted in accordance with the laws of the United Arab Emirates, notwithstanding that it applied to property outside the United Arab Emirates.

61 In his evidence before us, the Plaintiff indicated that he came up with this particular language, which he thought gave him the power to dispose of the shares whenever he wanted. Indeed he thought it enabled him to do whatever he wanted. The Defendant was not consulted about the content of the power of attorney, although he believed it was read to her by the notary. He was not present when she signed it. He treated the power of attorney as security in order that he could sell the shares, although he never used the power of attorney itself.

62 As we did not have expert advice about the UAE law on powers of attorney, the Court put to the plaintiff, who is a lawyer, the Jersey law in relation to such powers. He was informed that under our law where a general power of attorney is given, the donee is conferred power to deal on behalf of the donor (grantor) with any of the donor's assets, and the donor is obliged, *vis-à-vis* third parties, to ratify and hold good everything the donee does on his or her behalf. That rule however does not mean that the donor of the power cannot take action if necessary against the donee of the power in respect of any losses sustained by the donor in circumstances where the donee has acted against the particular instructions of the donor in relation to the property in question — an obvious example of that would be where lawyers act under power of attorney for their clients. The existence of the power of attorney does not remove the other obligations which the lawyer has to the client, which may be actionable. The Plaintiff agreed that the power of attorney would be construed in the UAE in the same way. As a result, the Court has felt comfortable that it is not wrongly applying an understanding of what this document means, and in construing it at face value.

63 The Plaintiff asserted that the use of powers of attorney was commonplace in the UAE where there was a nominee arrangement. This assertion was supported by Ms Wunsch when she gave evidence, but when she was tested in that respect, she agreed that she had on many occasions issued powers of attorney in the UAE to lawyers requesting them to complete a particular transaction on behalf of a company or on her own behalf as the case

might be. She agreed that the grant of the power of attorney did not confer beneficial ownership of the underlying asset upon the lawyer. It seems to us that that is the clear legal effect of the power. The Plaintiff was conferred power by the Defendant to act on her behalf, but that cannot be construed, as a matter of law, as a document evidencing a nominee arrangement. It clearly does not, because the document itself says that the power will be exercised *"in her name"*. In our view it is quite clear that this is not a document which of itself demonstrates any form of nominee arrangement. Had the Plaintiff wished to construct such a document, he would have requested his wife to execute a declaration of trust, or at the very least a stock transfer form with the identity of the transferee left blank.

64 It is quite clear that the Plaintiff was well aware of this. In an email sent to Mr Shareef on 20th August, 2007, at 4:05pm, he wrote as follows in relation to the London flats:–

> *"I am writing to you regarding the following three matters which I would like you to follow up in order of listing:*
>
> *When I am in London, please ask the London lawyer if he requires my signature, approval or review on any documents or information so as to complete the transaction relating to the companies and the transfer of the London property to the companies*.
>
> *Since all the companies are in Rouzin's name and all the property will be transferred to her name, please ask the lawyer in London to prepare a general and wide power of attorney.* With this I could represent Rouzin's interests in these companies including the rights to dispose of these companies or sell/transfer the property to another person (including myself).
>
> *With regards to the companies, I would also like to get some document prepared by the lawyer so that Rouzin may sign the same when she is in London.* It will not necessarily be used now and may only be kept in the safe/drawer. By this documents, Rouzin will sell, transfer or relinquish all her rights over to me, in regards to the three companies we have established. These documents will not be filed, registered or processed. It will only be used when needed in future and will be kept in a safe with Rouzin and me …"

65 In his evidence, the Plaintiff described the obtaining of a stock transfer form or declaration of trust as unnecessary, but clearly in the extract from the email set out above, he had in mind that such a document would be prepared. The conclusions we draw from this email are that firstly the Plaintiff well knew the different legal effect that a power of attorney would have from a declaration of trust, and as a lawyer it is unsurprising that he should know that; secondly that as at the date of this email he intended that he would be able to acquire the Defendant's interest at some future date. It is possible that some form of declaration of trust or blank share transfer form would be executed by the Defendant, but if so, that intention changed. However, the email seems to recognise that the Defendant did have an interest in the shares. If the Plaintiff had insisted upon the signature by the Defendant of a declaration of trust, the difference between what is now her case and his, would have been exposed.

66 The powers of attorney were revoked by the Defendant on 11 th May, 2014. She did so in the presence of a notary in Dubai. According to her evidence, the motivation for doing so was that in April 2014 the Plaintiff removed his personal effects from the former matrimonial home, taking his clothes, shoes, books and electronic devices that he had left at the property, leaving behind, however, his desktop computer with his emails left open on the screen. He also locked out the Defendant from two of her cars, including the station wagon that she used to drive the children around in, and a Porsche Panamera. He locked her jewellery away in the safe situated on the property, and although that jewellery had been bought for her by the Plaintiff as gifts, it has never been returned to her. The Defendant puts its approximate value at £1 million. The Defendant asserts that the primary reason for her cancelling the powers of attorney was that on 10 th May, 2014, she became aware of an email which the Plaintiff had sent to Ms Wunsch that day in which he said:–

> *"Just qality [sic] and discretely [sic] be sure that the two company which own the two flats in London I am the only beneficiary, make it in a simple instruction to the Jersey trustee please, get the facts and the status today (without alerting the trustee) and ensure I am the only one, I remembered we may have changed things when Katia filed in Italy, did we reverser [sic] it after that??* We may have done it by simple facts or email then, we can do the same."

We think that the word *"qality"* is intended to mean *"quietly"* and *"discretely"* means *"discreetly"*.

67 Promptly on becoming aware of that beneficial ownership instruction email, the Defendant asserted that, angry that the Plaintiff was trying to take away assets that were hers, she took a photograph of it rather than printing it off, and revoked the powers of attorney.

68 This email to Ms Wunsch bears two possible interpretations. On the one hand it could be said to support the Plaintiff's case that he wanted to be sure that he became the registered owner of the Companies. It is consistent with his evidence that the Companies were incorporated with the Defendant as the beneficiary, only because of the proceedings which the Plaintiff's first wife filed in Italy. It might be thought on the other hand not to be consistent with a genuine nominee arrangement, because if he had believed that there was such an arrangement, it would not have been necessary for Ms Wunsch to proceed quietly and discreetly with a simple fax or email to the trustee to change the beneficial ownership, impliedly therefore without telling the Defendant about it.

69 The Plaintiff and others said on numbers of occasions in their evidence that the power of attorney had never been used. We think that this is not entirely accurate. The email just described was in effect to use the power of attorney by giving instructions for the transfer of shares in Jorum and First Grade. In addition, evidence of both Ms Wunsch and Mr Shareef was that they followed the instructions of the Plaintiff at all times in relation to the Companies. In effect they must have done so upon the basis that the power of attorney gave him valid authority, because they were well aware that the registered shareholder was

the Defendant.

The witnesses

70 Having set the scene by this review of formal documentary evidence, we now turn to our assessment of the witnesses, before looking at the evidence which they actually gave. The parties both gave evidence before us. The Court's view was that the Plaintiff, who was born in Sharjah, the third largest Emirate of the UAE exercises considerable influence over those he employs, and, when married, over his wife. In our judgment, there is little doubt from the evidence, both written and oral, that all material decisions taken in respect of the matters we have had to consider in reaching our decision on the principal issue, were his decisions. That is not the same thing as saying that it was only his intention which counted, which was a submission which Advocate Gardner made on his behalf. Nonetheless, the Defendant said in her evidence that it was common practice for the husband in a marriage entered into under the laws of the UAE to negotiate and deal with all financial matters of his family, either personally or through a family office, and we do not have any doubt that she relied upon her husband and his experience in financial matters while they were married. The Court heard also that the Defendant has nonetheless learned some business skills during the course of the marriage, and she now is engaged in a clothing business in Dubai. We regret to add that the Court's view is that the evidence of neither the Plaintiff nor the Defendant can be accepted in its entirety and we have looked closely at any contemporaneous written evidence as a result.

71 The other witnesses in the case were all called by the Plaintiff. Ms Rachael Wunsch is the Chief Executive Officer of ATI, incorporated in Dubai, a position which she has held since 26 th April, 2006. This entity is asserted to be 100% owned by the Plaintiff. Ms Wunsch was a director of Jorum Limited and First Grade from 19 th August, 2008, until 3 rd June, 2014. She was also a director of Rosace and, prior to its dissolution, Vadium Limited. In closing, Advocate Blakeley submitted that her evidence lacked credibility in many respects. He gave three examples:–

> (i) One of his early questions in cross-examination was whether Ms Wunsch had looked at the witness statement of the Plaintiff before making her own witness statement. She said that she had not done so and she remembered she had not looked at it. Indeed she would not do so. She was then asked why her witness statement referred to specific references in the Plaintiff's witness statement. How could she do so, declaring her witness statement to be true, if she had not seen his statement? We accept Advocate Blakeley's submission that her response that she believed he would address the points in his witness statement was not a credible explanation. This meant that her oral evidence needed to be considered with care.
>
> (ii) It is clear from the incorporation arrangements of the companies and the banking arrangements made for them that she was well aware of her obligations under the various money laundering rules and her duties of disclosure to banks providing

banking facilities to the companies. She holds a business diploma from her home country of Australia. She is aware of the ATI website which contains language about the ATI approach to anti-money laundering initiatives and she said she would not knowingly breach anti-money laundering rules, and would always act in an ethical fashion. Nonetheless her explanations as to how she came to sign the bank mandate and opening account forms was unconvincing, asserting that when she declared the Defendant to be the ultimate beneficial owner, she did so because the Defendant was the *"shareholder of record"* and not because she was the ultimate beneficial owner; and when she said that she did not include the Plaintiff as a *"controller"* for the purposes of the companies' dealings, notwithstanding that as a director she looked to him solely for instructions as to what she should do in that capacity.

(iii) In June 2014, Ms Wunsch executed loan documents on behalf of the Companies, as a director, when she knew that there was a dispute between the Plaintiff and the Defendant over the ownership of the shares. In the context of her duties as a director, this was surprising, and in our judgment it goes to show that she would in practice do as the Plaintiff requested.

72 Unless her evidence is supported by contemporary documents, we did not feel able to rely upon it.

73 The Plaintiff also called Mr Mohammed Shareef, an accountant who had worked for the Plaintiff between 2002 and 2012. After a short break in his home country of India between 2012 and 2015, Mr Shareef has returned to UAE, where he works for a company which is one of the Plaintiff's clients. Mr Shareef was also a director of the companies between 2008 and 2012 and he confirmed that he always took instructions from the Plaintiff. We again accept the submissions of Advocate Blakeley in relation to the credibility of Mr Shareef's evidence. Unless his evidence is corroborated by contemporaneous documents, we think it is likely to have been heavily influenced by the Plaintiff, either consciously or unconsciously. As Advocate Blakeley said in his closing address, it is extraordinary that very material facts were mentioned in cross-examination for the first time, and did not appear in the original witness statement when Mr Shareef was well aware of what was in issue between the Plaintiff and the Defendant. We think Mr Shareef was responsible for the information given to the Jersey Financial Services Commission that the Defendant was the ultimate beneficial owner of the companies, and we found his explanation that all he was indicating was that she was the shareholder but not the owner of the shares — similar to a 'shareholder on the record' — as unconvincing given the particular questions which appear both in the incorporation application and in the bank opening account documentation. We also accept the submission that when Mr Shareef said in his evidence that he believed that STM Fiduciaire Limited was preparing the accounts for the companies before 2010 when he, the accountant maintaining all the relevant books, did not give them the financial information they would need to prepare the accounts was intrinsically incredible. We add that we also found his evidence to be less credible given that he had had witness training prior to the case, paid for by the Plaintiff, which left us with a lurking doubt as to whether his evidence was complete. In all the circumstances, we do not place great weight on Mr Shareef's evidence.

74 The Plaintiff called Ms Garnier, a member of the Bars of both Milan and Paris, who has been a friend of the Plaintiff since 1985. The main thrust of her evidence was that in 2006 she had advised the Plaintiff with an Italian colleague specialising in matrimonial law in relation to proceedings commenced in Italy by the Plaintiff's first wife, Ms Buratto. Her advice was that it would be good practice to structure the holding of the assets in the name of the Defendant or in the children's name, in the light of those proceedings, and she also recalled that he had had a recommendation from his English lawyer that the assets should be held via Jersey companies for good practice and taxation reasons. As regards the Defendant, she gave evidence that she first met the Defendant in February 2009 and at that time they discussed placing the Plaintiff's London assets in the name of a company which the Defendant would own. In fact the transfer of assets into the names of the Companies had taken place in 2007, and her recollection of the meeting with the Defendant clearly cannot be correct — yet as Advocate Blakeley pointed out in his closing speech, she said that she had prepared her statement by reference to her very clear memory of what had been discussed, without any meeting notes. Later in her evidence, she indicated that she had asked the Plaintiff to recall things and he gave her a draft of what he could remember. Advocate Blakeley's submission was that really her evidence was not her evidence at all, but the Plaintiff's recollection of what had happened. In relation to the meeting with the Defendant it was in any event impossible and her evidence is therefore discredited.

75 We did not find Ms Garnier to be a wholly convincing witness. Her credibility is not improved by the confirmation that she gave advice that it would be helpful, in relation to the Italian proceedings if the Plaintiff were to place his assets in the Defendant's name. How could this possibly be helpful, other than as a mechanism for being untruthful with the Italian court? We gained the impression that Ms Garnier herself recognised her difficulties in this respect and that she was embarrassed when she came to answer questions on this advice.

76 The Plaintiff's next witness was Katia Buratto, his first wife. She confirmed the background to the Italian proceedings and their settlement. She confirmed that the Plaintiff and she lived a luxurious life during the course of their marriage and that she was well aware that he was a wealthy man, a high profile lawyer with his own private investments. She said that she never had any intention of making any claim in relation to his London property or indeed his other assets wherever situated. All she was looking for was a settlement which related to her living requirements, unrelated to his wealth. Her claim was settled for €600,000. She was not cross-examined. She did indicate that during the course of their marriage, she was aware generally of what the Plaintiff did in business, but he did not discuss the details of that business with her.

77 The last witness called was Ms Fatima El Zeini, who had worked for Al Tamimi and Company between 1989 and 2013, progressing from being a legal secretary to a legal associate who is legally qualified. Ms El Zeini gave her evidence in English, although it is not her first language. Her husband is a partner in the Plaintiff's law firm, and head of the Maze Tower office. The two of them have been long-standing friends of the Plaintiff since

1988, and she met the Defendant in 1998. She confirmed that the Plaintiff was important to her and that she was loyal to him and wanted the best for him, if he deserved it. The main thrust of her evidence went to a confirmation that the Plaintiff was a very good husband and a very good father, and as to three telephone conversations which she said she had with the Defendant, during which there was discussion of the case between the Plaintiff and the Defendant. She asserted that the Defendant agreed that she was not entitled to the shares in the Companies, and not entitled to the properties. She was proceeding with those claims because she wanted to hurt the Plaintiff and she said specifically that the Defendant told her “I want to crush him like he has crushed me and I know that he loves the London properties so I will take them from him”.

78 Attached to her witness statement was a copy of her e-mail to the Plaintiff on 7 th July, 2016. In that e-mail, she recites the three telephone conversations with the Defendant, with extensive use of quotation marks attributing particular words either to herself or to the Defendant. When cross-examined, she said that although the e-mail was sent two years after the event in the case of one of the conversations, in each case she recalled the exact words which were used. Her statement was reviewed and the lawyers put it in a more official form to put before the Court, but the e-mail was accurate. When she was asked whether this meant that it was accurate in just the general sense she denied it, but said that where words were shown in quote marks, they were an exact quote, and she maintained that they were accurate exact quotes.

79 We cannot find this to be credible; we simply do not accept that, two years after the event, the detail of which she could not be expected to recall because she did not know at the time that she would be a witness, she can now recall the exact words which were used. Her adamant insistence that she could remember the language in question tainted, in our view, her evidence and meant that she lost intrinsic credibility as a result, quite apart from the lack of independence which flows from her own and her husband's substantial connections with the Plaintiff.

Our findings of fact

80 We indicated earlier in this judgment that the burden lay on the Plaintiff to show that the legal owner of the shares in Jorum and First Grade was not the beneficial owner. The best case for reaching that conclusion in our judgment relies upon the unlikely nature of the alternative, namely that the Plaintiff made a gift of the London properties, for which he had an accepted passion, to his wife. He financed the acquisition of the London properties, made arrangements for the incorporation of the companies and had powers of attorney granted in his favour. Albeit an unattractive argument, he had good reason in 2007 to put the shares in the Defendant's name because he was seeking to protect these assets from any potential claim in the Italian proceedings brought by his first wife. The Plaintiff was consistent in the evidence which he gave in all these respects, and one can note that he made no claims to other businesses which clearly did belong to the Defendant.

81 The best case for the Defendant is that the shares were in her name because they were hers. All the incorporation and banking documentation points in that direction. The Plaintiff and the Defendant clearly had a financially comfortable marriage and he made her numbers of gifts even if, in relation to the jewellery, the Plaintiff may have taken that back from her later. Whatever the inconsistencies in the Defendant's evidence, she was not really challenged about the marital problems which existed at the time of the birth of their second child, and her explanation that she would return to the Plaintiff only if given some financial security was intrinsically credible. The Plaintiff's witnesses were not convincing witnesses, and it was clear that the Plaintiff was prepared to hide assets from his first wife Ms Burrato, and one could surmise that he was willing to hide them or take them back from his second wife as well. Our view is that the Defendant's case is therefore the more compelling.

82 The Court finds that the Defendant did not hold the shares in First Grade and Jorum for the Plaintiff as nominee. We find that the Defendant was convincing as to her reasons why she would only go back to the Plaintiff in 2007, namely her desire to achieve financial security. We accept that the Plaintiff may well have wished to have had executed by the Defendant a declaration of trust or undated blank stock transfer form, but the fact is that he did not press the matter, and such documents would have been relatively easy to produce. At the time the companies were incorporated, he may well have considered that the changes which he made to the standard powers of attorney which the Defendant was asked to execute gave him adequate protection in practice; and that would seem certainly to be so in circumstances where, in the Middle Eastern culture, it was normal for the husband to take control of the family finances. In the circumstances, we do not think that he has satisfied us of any agreement on the part of the Defendant to hold the shares as his nominee, and we think instead that he was willing to settle for the Defendant owning the shares in the companies because he wished to get both the fiscal advantages of structuring ownership in that way and because he wished to protect the London assets from any claims by Ms Burrato. It may well have been the case that until separation in 2014, it did not appear to the Plaintiff to be very important who the legal owner of the shares might be, because after all he had both control of the purse strings, and he had the powers of attorney and in practice control of the companies by his employees being on the boards of the companies.

83 There is one further feature on which we wish to comment briefly. The clearest possible information was given to the company incorporation agents in Jersey and to the Jersey Financial Services Commission that the owner of the Companies on incorporation would be the Defendant. We accept that in civil proceedings of the kind currently before us, it is not impossible that the Court should be invited to reach conclusions of fact which are consistent only with untruthful representations being made to financial service providers in Jersey or elsewhere as to the ownership of Jersey companies, with the intention, where necessary that those untruthful representations should be passed on to the Jersey Financial Services Commission. Indeed there may be occasions when the Court is obliged to find that despite the registered ownership of the shares in question, they were in fact held on nominee arrangements, because the evidence in a particular case points in that direction. However, deliberately misleading or procuring, attempting or conspiring to mislead the Jersey Financial Services Commission on the incorporation of companies in

the Island is capable of being a criminal offence and the Court is bound to be slow in reaching a conclusion that one or more parties before it in a civil case have in fact a potential criminal liability. In particular, we take it that as a successful lawyer in the Middle East, the Plaintiff can, on the face of it, be assumed not to have proceeded with any criminal intent and accordingly, when he instructed those making arrangements for the incorporation of the Companies in Jersey that the Defendant was to be the beneficial owner of those companies, he must have meant it.

84 We take the same view in relation to the various company records in relation to the financial liabilities of the company. Loan accounts were opened showing the companies to owe monies to the Defendant. It may well be that the monies were first provided by the Plaintiff, but we see no reason to strike down the integrity of company documents merely on that basis.

85 It was variously asserted by the Plaintiff that the alleged nominee arrangement arose out of an agreement or an understanding. In so far as it is said to have arisen out of an agreement, there is of course the presumption under Jersey law, which is said to govern this particular agreement, that family arrangements do not create legally binding contracts — see *Ferchal v Ferchal* [1990] JLR 117. The presumption is capable of being rebutted on the evidence where it is clear that a legally enforceable contract was being contemplated. That is not the position here because neither party suggests there was any binding contract. As to whether this arrangement could be legally enforceable when it is said to have arisen as a result of an “understanding”, it seems to us that the Court is being asked to go into equitable and not legal territory. The understanding in question would not amount to a contract, and so it must arise as some form of equitable obligation, if it arises at all.

86 That takes us on to the twin arguments of Advocate Gardner that either the shares are held on trust for the Plaintiff, or that the Defendant has been unjustly enriched as a result of these arrangements, and that she must account for that unfair enrichment to the Plaintiff.

Trust claims

87 It was submitted by Advocate Gardner that the grant of the powers of attorney and the issue of the shares in the Companies should he treated as one transaction. In fact the submission made by Advocate Gardner was that the Settlor settled the shares on an express trust by conduct, causing the shares to come into existence — if that argument failed, then the Court should deal with it as a resulting trust. It was said that only the Plaintiff's intention was significant in this respect. Thus Advocate Gardner submitted, relying on Lewin on Trusts, 19th Edition at page 103 paragraph 4–002:–

> ***“Whenever a person having a power of disposition over property manifests any intention that it be held upon trust for another, the Court, where any necessary formal requirements (such as that of writing) have been complied with, will execute that intention, however informal the***

language in which it appears to be expressed, so long as the three particulars mentioned in the next paragraph can be gathered from the language used."

88 Those particulars are certainty of objects, certainty of words, and certainty of subject matter.

89 It seems to us that this argument falls at the first hurdle. The issue of the shares to the Defendant's nominees may have been arranged by the Plaintiff or his agents but as we have indicated above, we consider that the Plaintiff would not have deliberately misled the Jersey Financial Services Commission and that therefore there was no trust of the shares on incorporation. Thus the argument that the Plaintiff had power of disposition over the property relies upon the grant of the powers of attorney. These powers of attorney were not granted by the Plaintiff: they were granted by the Defendant. The terms of the powers of attorney required that the Plaintiff act on the Defendant's behalf. It follows that he did not, as a result of the powers of attorney, have power of disposition over the shares. He could not use the powers of attorney to dispose of the beneficial interest of the Defendant in the Companies without her consent, or if he did, he might be liable in damages to her. In those circumstances, it was clearly not only his intention that was important. The validity of any express trust arising in this way required the approval or consent of the Defendant as well. There is no evidence of that.

90 The claim that there was an express trust is therefore rejected.

91 We turn now to the question of whether there could be a resulting trust. In *Z v Y and others* [2014] JRC 170, this Court adopted the reasoning of the English Court of Appeal in *Re Vandervell's Trust (No.2)* [1974] CH 269, which upheld a decision of McGarry J at first instance. McGarry J said this:–

"Before any doctrine of resulting trust can come into play, there must at least be some effective transaction which transfers or creates some interest in property .

(4) Where A effectually transfers to B (or creates in his favour) any interest in any property whether legal or equitable, a resulting trust for A may arise in two distinct classes of case. For simplicity, I shall confine my statement to cases in which the transfer or creation is made without B providing any valuable consideration and where no presumption of advancement can arise; and I shall state the position for transfers without specific mention of the creation of new interests."

92 Here the argument of Advocate Gardner therefore relied upon the creation of the shares in the Companies on behalf of the Plaintiff, and an effectual transfer of those shares to the Defendant. Even at this point, it appears to us that the argument founders. The Plaintiff has not transferred or created any legal interest in the shares of the respective companies on

behalf of the Defendant. What he has done has been to transfer monies to some financial service providers in Jersey to be held by them not on trust (or if there was, it was a trust for the Defendant) but as fees and disbursements so that the Companies might be incorporated. We do not think that this amounts to the kind of transaction which McGarry J had in mind. However, McGarry J continued:–

> ***"(a) The first class of case is where the transfer to B is not made on any trust.*** If, of course, it appears from the transfer that B is intended to hold on certain trusts, that would be decisive, and the cases not within this category; and similarly if it appears that B is intended to take beneficially. But in other cases there is a rebuttable presumption that B holds on a resulting trust for A. the question is not one of the automatic consequences of a dispositive failure by A, but one of presumption; the property has been carried to B and from the absence of consideration and any presumption of advancement B is presumed not only to hold the entire interest on trust, but also to hold the beneficial interest for A absolutely. The presumption thus establishes both that B is to take on trust and also what that trust is. Such resulting trusts may be called 'presumed resulting trusts' .
>
> ***(b) The second class of case is where the transfer to B is made on trusts which leave some or all of the beneficial interest undisposed of.*** Here B automatically holds on a resulting trust for A to the extent that the beneficial interest has not been carried to him or others. The resulting trust here does not depend on any intentions or presumptions but is the automatic consequence of A's failure to disclose what is vested in him. Since ex hypothesi the transfer is on trust, the resulting trust does not establish the trust being merely carried back to A the beneficial interest that has not been disposed of. Such a resulting trust may be called 'automatic resulting trusts'."

93 In this case it is clear that no resulting trust arises under paragraph (b). There is no evidence that the Plaintiff left some of the beneficial interest in the shares undisposed of. Indeed, for the reason already given, the Plaintiff did not transfer the title to the shares in the first place. It cannot therefore be said that the resulting trust arises under paragraph (b).

94 Similarly it cannot be said to have arisen under paragraph (a) either. This is for two reasons. Firstly, the Plaintiff did not transfer the shares to the Defendant, and therefore it cannot be said that there has been any dispositive failure, nor indeed that the property in the shares has actually been transferred to the Defendant. Secondly, even if it could be said that the property in the shares had been transferred to the Defendant, the relationship between husband and wife is such that there is a presumption of advancement, as a result of which the wife acquired the property for herself. As was said in *Z v Y* (supra) at paragraph 108:–

> ***"Where there is an ostensibly valid legal transfer, there would need to be some special reason why the Court would determine to set it aside and***

hold that the property was subject to a resulting trust in favour of the transferor."

95 Here we have a transaction which does not amount to a transfer, but even if one were to treat it as such, there is no special reason why the Court should determine to set it aside, given the presumption of advancement between husband and wife.

96 If the Plaintiff's case had been accepted on the facts, it would have been on the basis that, at the time the companies were incorporated, the Defendant knew that the shares were to be held on trust. In effect, that would require that the Court accepted that there was a nominee arrangement in respect of those shares, and we have rejected that case. On the assumption therefore that the nominee arrangement was not created at the outset, the question arises as to how it could later have come about as a resulting trust. In *West Deutsche Landesbank Girozentrale v Islington London Borough Council* [1966] 2 All ER 961, the House of Lords was considering an award of compound interest, and at page 988, Lord Browne-Wilkinson, for the majority, considered the relevant principles of trust law and at paragraph C said this:–

> ***"Since the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a trustee of the property if and so long as he is ignorant of the facts alleged to affect his conscience, ie until he is aware that he intended to hold the property for the benefit of others in the case of an express or implied trust, or, in the case of a constructive trust, of the factors which are alleged to affect his conscience*** .
>
> ***…***
>
> ***These propositions are fundamental to the law of trusts and I would have thought uncontroversial.*** However, proposition (ii) may call for some expansion. There are cases where property has been put into the name of X without X's knowledge but in circumstances where no gift to X was intended. It has been held that such property is recoverable under a resulting trust … These cases are explicable on the ground that, by the time the action was brought, X or his successors in title have become aware of the facts which gave rise to a resulting trust; his conscience was affected as from the time of such discovery and thereafter he held on a resulting trust under which the property was recovered from him. There is, so far as I am aware, no authority which decides that X was a trustee, and therefore accountable for his deeds, at any time before he was aware of the circumstances which gave rise to a resulting trust."

97 Applying that reasoning, it would seem to us to be clear that, having rejected the Plaintiff's case of a nominee arrangement from the outset, one would have to look at what facts could have arisen at a later date that establish the resulting trust — facts which bear upon the conscience of the Defendant. Having found that the Defendant's explanation of desiring to achieve financial security by the transfer of the London properties in 2007 was a credible

position to take, it seems to us that no facts can be said to have arisen subsequently which would bear upon her conscience in the way suggested.

98 Accordingly we reject the claim in resulting trust.

99 The Plaintiff claimed in the alternative that the Defendant held the shares in the Companies and all dividends, income, sale proceeds and interest deriving from them on constructive trust for him. It was asserted that it was unconscionable for her to retain such assets and that in addition she had made no contribution whatever in respect of the purchase, maintenance or expenses of the assets of the Companies. Furthermore she had made no significant payments, whether to bankers, insurers or tax authorities, even after the present dispute as to beneficial ownership had commenced.

100 In *Fiduciary Management Limited v Sheridan* [2002] JLR note 11, the Royal Court (Collins Commissioner) held that the Royal Court should treat the requirements for the establishment of a constructive trust as being those largely prevailing in England and Wales. It was said that, although the English law of constructive trusts is not settled, there are certain principles of general application, namely:–

> ***"(a) In a constructive trust, equity operates on the conscience of the owner of the legal interest to require him to carry out the purposes which the law imposes on him by reason of his unconscionable conduct*** .
>
> ***(b) As the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a constructive trustee until he is aware of the factors which are alleged to affect his conscience*** .
>
> ***(c) In order to establish a constructive trust there must be identifiable trust property.*** A constructive trust may also be imposed on a person who dishonestly assists in a breach of trust even if he does not receive identifiable trust property .
>
> ***(d) From the date a constructive trust is established, a beneficiary has an equitable proprietary interest in the trust property.*** It is enforceable in equity against any subsequent holder of the property (whether the original property or substituted property into which it can be traced) other than a purchaser for value of the legal interest without notice .
>
> ***(e) Equity will require a constructive trustee to disgorge property which the beneficiary has never owned if it is unconscionable for the constructive trustee to retain it, eg if it would have belonged to him but for the constructive trustee's wrong-doing.*** The constructive trustee's wrong lies not in the acquisition of the property but in his

subsequent denial of the beneficiary's interest."

101 This summary makes it plain that the limits on where a constructive trust will arise have not been settled, but it is clear that constructive trusts traditionally fall into two categories of case. The first is that contemplated by Article 33 of the Trusts (Jersey) Law 1984, where the constructive trustee makes or receives a profit gain or advantage from a breach of trust, and is deemed to be a trustee of that profit, gain or advantage. The second class of case is that class where, as Collins Commissioner put it in *Fiduciary Management Limited v Sheridan* (supra) there is an equity which ought to operate on the conscience of the owner of the legal interest to require him to carry out the purposes which the law imposes on him by reason of this unconscionable conduct.

102 In the present case, there is no suggestion of any breach of trust giving rise to a profit gain or advantage of which the Defendant ought to be a trustee. If the claim is maintainable at all in constructive trust, it can only be because there is an equity which the Court ought to find should operate on the conscience of the Defendant requiring her to carry out the purposes which the law imposes on her by reason of her unconscionable conduct.

103 In our view, such an argument fails for very similar reasons to those which apply to the claim in resulting trust and indeed more generally. We have already indicated we do not find the Plaintiff has established his case in so far as he asserts an express trust or nominee arrangement. In our judgment, the contents of paragraphs 80–97 above also provide adequate reasons on the facts why the claim in constructive trust fails. Furthermore, if the Plaintiff had been able to establish any interest in equity, then in our judgment, he would have succeeded on the principal grounds upon which the claim was brought, and would not have to rely upon the doctrine of constructive trust. The claim is constructive trust is therefore rejected.

104 We now come to the claim in unjust enrichment. The most recent decision of the Royal Court in this area of the law is *Flynn v Reid* [2012] JRC 100, where the Court was considering, as between former sexual partners, the distribution of the sale proceeds of property in which they had previously co-habited. The Court, making it clear (at paragraph 100) that its judgment might have a wider impact than merely on heterosexual unmarried partners, adopted the approach taken in the Scottish case of *McKenzie v Nutter* [2007] SLT 17 where Sheriff Principal Lockhart took this approach:–

> ***"On the basis of the law which I have set out it is clear that the Court may allow an equitable remedy in circumstances where one party has been unjustly enriched at the expense of another party.*** I propose to deal with this matter under four headings:
>
> ***(a) Has the appellant been enriched at the expense of the respondent and what is the nature of that enrichment?***
>
> ***(b) If so, was that enrichment unjust?***

(c) If so, what remedy, in the particular circumstances of this case, is open to the respondent?

(d) Is that remedy equitable?"

105 That approach was adopted by this Court upon the basis that it provided a modern statement of the approach currently adopted by French courts to questions of *enrichissement sans cause*. As the Royal Court went on to say at paragraph 108:–

> ***"The starting point is the legal interest.*** The Court then looks at whether there has been enrichment which benefits the legal owner or owners or perhaps some of them, at the expense of the claimant in a way that is unjustifiable. We also think that approaching the problem in this way will enable the Court to consider enrichment problems holistically, rather than in separate compartments."

106 In most cases of married partners, the division of assets will take place within the context of matrimonial proceedings but that does not arise in this case. Here we have a property dispute where the legal owner is the Defendant. All the evidence before us is that the Plaintiff and the Defendant shared an extremely comfortable life together when they were co-habiting. They had very substantial monthly outgoings, and an even more substantial monthly income. Accepting as we do that the Defendant made no financial contribution to the acquisition of the London properties or the incorporation of the companies, it seems to us that one can say that she has been enriched at the expense of the Plaintiff. The question which next arises is whether that enrichment is unjust. We do not think it was. The Court has found that the Defendant's explanation of how the transfer of assets came about is a credible explanation on the balance of probabilities. In those circumstances, it is impossible to conclude that the enrichment was unjust. This part of the Defendant's evidence was not tested in any substantial way in cross-examination and in the circumstances it appears to us to be a complete defence to the argument that she has been unjustly enriched at the expense of the Plaintiff.

Illegality or immorality

107 For all the reasons given above, the Plaintiff's claim does not succeed, but given that alternative cases have also been put to the Court on questions of illegality or immorality, it seems to us desirable that we express our view on these issues.

108 The Defendant's case is that even if the Court were to find that the shares in the Companies were held by her on behalf of the Plaintiff, the Court should not give effect to that conclusion because of the doctrine of illegality or the equivalent known as the "clean hands" equitable principle. This case therefore would arise in the context of any finding that there had been a nominee arrangement, a resulting or constructive or express trust, or unjust enrichment. Her case in this respect is that the Plaintiff had knowingly made through

his agents a false representation to banks, trustees, lawyers, company administrators and government authorities that the Defendant was the beneficial owner. It was said that that false representation involved the commission of multiple crimes both in the United Kingdom and in Jersey, and that the Court should not give assistance to a Plaintiff in those circumstances because to do so would be harmful to the integrity of our legal system. The Plaintiff, it was said, could only succeed in his case if the Court were prepared to endorse fraudulent misrepresentations made as to the true beneficial ownership of the companies. To the extent that this involved a criminal offence in the United Kingdom, it was said that false information had been given to United Kingdom banks for pecuniary advantage, contrary to the Fraud Act of 2006, Sections 2 and 3, read in conjunction with Section 5. In addition it was said there had been false accounting including the provision of documents containing untrue information under Section 17 of the Theft Act 1968, and that the same facts would probably render the Plaintiff guilty of fraud contrary to the customary law of the Island. The Defendant asked us to conclude that while we did not have to make a finding that the Plaintiff and/or his agents had committed criminal offences, the Court could arrive at the point where it was satisfied that there was a strong prima facie case on their own evidence that they had done so, and that would be sufficient, applying a doctrine of immorality rather than a decided question of illegality which would lead the Court to refuse relief.

109 Both Plaintiff and Defendant referred to the case of *Patel v Mirza* [2016] 3 WLR 399, a decision of the Supreme Court of the United Kingdom. In that case the claimant had paid a large sum of money to the Defendant pursuant to an agreement under which the Defendant agreed to use the money to bet on the movement of shares on the basis of insider information. That agreement was contrary to Section 52 of the Criminal Justice Act 1993. In the event, the expected inside information was not forthcoming, and the claimant brought a claim against the Defendant for repayment of the money. The judge had dismissed the claim as barred by illegality, holding that the claimant's case relied on the illegal agreement, since in order to make good his case, the claimant had to prove the illegal purpose for which he had paid the money to the defendant, as well as the failure of that purpose. The Court of Appeal allowed the appeal on the basis that a party who had withdrawn from an illegal agreement because it could no longer be performed was not prevented by public policy from relying on the agreement provided that no part of it had been carried into effect. Nine Justices of the Supreme Court sat on the appeal and the lead judgment was given by Lord Toulson, with whom four other Justices of the Supreme Court agreed. Other judgments with reasoning which corresponded to that of the majority, were given by Lord Mance, Lord Clarke and Lord Sumption.

110 The decision of the Supreme Court was that the general rule was that a person who satisfied the ordinary requirements of a claim in unjust enrichment should be entitled to the return of his money or property, and such a person should not on the face of it be prevented from recovering money paid or property transferred by reason of the fact that the consideration which had failed in whole or in part was an unlawful consideration. This was so because an order for restitution of the money paid by the claimant to the defendant would merely return the parties to their previous position before the conclusion of the illegal contract, and in that case would have prevented the defendant from gaining an unjust

enrichment, if the order were made. Put another way, it seems to me the Supreme Court was faced with two parties who had together made an unlawful agreement, and there was no equity in allowing one party to profit from it, to the prejudice of the other. Thus it was that Lord Toulson and Lord Neuberger reached the conclusion that the policy reasons for the common law doctrine of illegality as a defence to a civil claim were based upon the principle 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, or possibly certain aspects of public morality. To the extent that this rule had tended to be an absolute rule, the position should change. The direction from the Supreme Court was that the Court should assess whether the public interest would be harmed by enforcement of the illegal agreement. That required the Court to consider the underlying purposes of the prohibition which has been broken, and whether those purposes would be enhanced by a denial of the claim, together with any other relevant public policy on which the denial of the claim might have an impact.

111 The Defendant had not pleaded this case, but the basis for making these submissions arose out of the evidence which was given by the Plaintiff and his witnesses. Consideration was given to whether it was necessary for the Defendant formally to seek leave to amend her pleadings, but, by consent, it was considered unnecessary for the course to be followed, the nature of the Defendant's submissions being plain. Instead, leave was given to the Plaintiff to file written contentions after the close of the oral hearing before us, and this he did on 19 th October, 2016.

112 In those written contentions, the Plaintiff asserted that if the Defendant claims that he committed an offence whether under the control of borrowing legislation in Jersey, under Italian law in respect of Ms Burrato or under English or Jersey law in relation to obtaining bank financing, the burden lay on her to prove that he had done so and the Court should have regard to all the evidence put before it. It was said that in order to establish that defence, the Court would have to be satisfied on appropriate Italian expert evidence in respect of the assertions of criminality under Italian law, or in the case of the control of borrowing issues, all the files of the Jersey Financial Services Commission and Companies Registry would have to be produced and Commission witnesses speak to the content of the control of borrowing application forms and how they had been or would now be treated if filed in that way. It was said that in relation to the obtaining of bank financing, it would be necessary to produce evidence from the relevant banks as to whom they considered to be the real owner of the companies, and in addition to the factual evidence, there might well need to be expert evidence in English law concerning the offences of obtaining money by deception and so on. The Plaintiff submitted the Court could not make a finding as to whether the actions relied upon by the Plaintiff were illegal, and if it were minded to do so the Court should adjourn the hearing to allow for the production of proper evidence and witnesses to that effect.

113 At paragraphs 83–84 of this judgment we have already made some comments about the nature of the information given to the Jersey Financial Services Commission and the banks and we accept the submissions of the Plaintiff that it is not for this Court to make any findings at all in relation to alleged criminal conduct on his part. Indeed, we have assumed

the absence of any such criminality in reaching the conclusions we have.

114 However, in the exercise of a judicial discretion as to whether or not relief should be given in respect of an equitable claim, whether in trust or unjust enrichment as is the case here, we think that there are public interest factors which we would be entitled to take into account. The premise now is that the Plaintiff's case, albeit falling short of an actual nominee arrangement, was essentially correct. At that point, we think we can take judicial notice of the fact that criticism of those involved in the offshore financial services industry, and of those jurisdictions which encourage or permit such industries to prosper is often based on assertions of banking secrecy and underlying criminality which is not capable of being discovered by the relevant law enforcement authorities. Such claims are very frequently attached to claims that secrecy and illicit structures are in place in order to advance tax evasion. The international community now has organisations in place to carry out reviews across the globe of the different jurisdictions with sufficiently important financial services industries and those reviews are conducted against rules laid down by the Financial Action Task Force of the OECD or other similar bodies. In this small island, we cannot be unaware that the Island's regulatory and law enforcement systems have been examined at least twice by the International Monetary Fund and once by Moneyval in the last eleven years. On every occasion, the investigating body has been completely satisfied at the ability of the regulators and law enforcement authorities to identify the persons beneficially entitled under trusts, foundations, companies or limited partnerships. The public interest has very clearly rested in the Island authorities being able to demonstrate that ability to those making enquiry of them.

115 There is an obligation on those applying to the Jersey Financial Services Commission for permission to incorporate a company under the control of borrowing legislation to make complete and accurate answers to the questions which are raised. A failure to do so would amount in our judgment to a criminal offence, if the failure were dishonest. It would amount to a fraud, contrary to the customary law of the Island, achieving the result that a person obtained a benefit, namely a permission to issue shares under the control of borrowing legislation, which would not necessarily have been obtained if the regulator had been aware of the dishonesty. It is no answer to this to say that the regulator would still have given the Plaintiff a consent even if he had been identified as the beneficial owner, because, in our judgment, the benefit the applicant has obtained is not the incorporation of the company itself, but rather the incorporation of the company with the identity of the real owner kept secret from the authorities.

116 In the circumstances, we have a position on the premise under consideration that the Jersey Financial Services Commission was apparently deliberately given information which is now said to be incorrect. Nothing has changed in the interim, and so the information must have been incorrect then if it is incorrect now. On the other hand, of course, if it is correct now, then it was correct at the time of incorporation and nothing turns on it.

117 There is a public interest — a very strong public interest — in the Island being able to

demonstrate that it has the ability to identify the beneficial owners of companies, or the beneficiaries under trusts. In our judgment, this Court should not recognise any arrangement which detracts from the ability of regulators or law enforcement authorities to do so, and, even if we had been satisfied that the shares were held as a nominee or on trust for the Plaintiff, or that the Defendant had been unjustly enriched at the expense of the Plaintiff, we would not have been prepared to grant relief in the exercise of our equitable discretion on that basis.

118 For all those reasons, the Plaintiff's claim fails and is dismissed.