Neutral Citation Number: [2025] EWFC 36

Case No. ZZ20D65691

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 19 February 2025

Before :

MR JUSTICE POOLE

- -

Between :

ALVINA COLLARDEAU **Applicant**

- and -

(1) MICHAEL FUCHS
(2) LJ HOOKER PROJECTS FZ-LLC

Respondents

- -
- -

Justin Warshaw KC (instructed by Farrer & Co LLP) for **the Applicant**
The First Respondent not appearing
William Buck (instructed by Shoosmiths LLP) for **the Second Respondent**

Hearing dates: 18-19 February 2025

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APPROVED JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the children of the Applicant and First Respondent may not be named. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

Introduction

1. The Applicant was the wife ("the Applicant") and the First Respondent was the husband ("the First Respondent") in financial remedy proceedings that resulted in a final order made by Mostyn J in June 2023 including for the payment by the First Respondent to the Applicant of a lump sum of £18.964 million. There have since been a series of enforcement orders made by Knowles J. On 10 April 2024, recording that the First Respondent had accepted that he had failed to pay the lump sum and interest thereon and was in default, it was agreed that the amount owing was £17.964m and interest of just over £1m increasing at the rate of £3,973 per day. Knowles J ordered the sale of various assets and four properties including the property on an estate known as The Lakes By Yoo in Gloucestershire ("the Cotswolds Property").

2. The application before me is the Applicant's dated 27 September 2024 for an order under Matrimonial Causes Act 1973 ("MCA 1973") s37, alternatively the Insolvency Act 1986 s423, to set aside, or for a declaration of sham in respect of, a purported assured shorthold tenancy or lease over the Cotswolds Property. By common consent the AST is not actually an assured shorthold tenancy but I shall refer to it as "the AST" for shorthand. The existence of the AST was first disclosed by the First Respondent via his associate Will Harrison on 2 August 2024 after a cash buyer had made an offer to purchase the Cotswolds Property at the end of July 2024. Contracts have been exchanged for the property but the buyer insists on the AST being set aside by court order before completion.

3. The AST is dated on its face 5 September 2023. It is an agreement between the First and Second Respondents as landlord and tenant respectively of the Cotswolds Property. Although purportedly signed on 5 September 2023 the tenancy was not to begin until 1 June 2024 and was to end on 31 December 2030. The annual rent is £70,000 payable in two tranches, by 1 June and 1 December each year. Under its terms the Second Respondent is obliged to pay all the utilities in relation to the property. As tenant, the Second Respondent is obliged by clause 18 of the AST to inform the Landlord if it is to be absent from the property for any reason for a period of more than 28 days. At clause 41 it is provided that it is understood by the parties that the tenant intends to offer the property for short term rentals to third parties, which use of the property the landlord agrees to permit in consideration of 30% of any profits above rent.

4. The First Respondent had not disclosed the existence of the AST to the Court or the Applicant at any stage before 2 August 2024 and only disclosed it on 3 September 2024, notwithstanding that he was subject to disclosure obligations prior to the hearings before Knowles J on 10 April 2024 and that the existence of a lease on the property that was ordered to be sold by way of enforcement of the financial remedy final order was clearly a highly relevant matter. The First Respondent served witness evidence for the hearing on 10 April 2024 and was represented by two KCs and his solicitors at the hearing. There were also two further rulings from Knowles J subsequent to the hearing on 10 April 2024. On 5 August 2024 she ordered that the Applicant was entitled to rent out the Cotswold Property and to have the benefit of the rent received.

5. The application first came before Mr Simon Colton KC sitting as a Deputy High Court Judge on 26 November 2024. Attempts to serve the Respondents had been made but there had been no response until the day of the hearing when RPC LLP confirmed that they had been instructed by the Second Respondent. The First Respondent did not attend and was not represented.

6. In his first witness statement in this application, which is dated 26 November 2024, Mr Hooker explained that he is the chair of LJ Hooker which manages 100,000 residential properties through a franchise network. Under its umbrella, LJH Projects is a business which leases luxury properties on short-term rentals. He has known the First Respondent well since 2004 and they have been involved in a number of projects together. He says they concluded a lease in September 2023 pursuant to which the Second Respondent would sub-let the Cotswolds Property to holidaymakers in return for an annual rental fee and a share of the profits from sub-letting. Mr Hooker stated in that witness statement that he had first become aware of the court order to sell the property in August 2024 and that the First Respondent had told him that he had made the Applicant's legal team expressly aware of the lease more than once. He says he assumed that the lease would be protected even if a sale went ahead. He says that the emails from the Applicant's legal team about the application had gone into a junk folder and that he came across them only by chance on 20 November 2024. He said that there was work to be done on searching for and collating relevant documents in preparation for the hearing which could not be done.

7. The DHCJ granted the adjournment as requested by the Second Respondent. He joined the Second Respondent as a party, directed the parties to exchange witness statements by 6 January 2025 with statements in answer by 10 February 2025, and ordered the First Respondent to attend the hearing, with a penal notice attached, warning that if he failed to attend the hearing adverse inferences might be drawn in his absence. He fixed the hearing for two days and it was listed before me.

8. On 6 January 2025 RPC notified the Applicant's solicitors that they had applied to come off the record on 24 December 2024 and that an order to that effect had been made on 6 January 2025.

9. The Applicant has filed her own statement and a statement from Zoe Wilde, a representative from Lakes By Yoo, the company that manages the estate where the Cotswolds Property is located. Solicitors for the Applicant chased the Respondents for their evidence multiple times in January and in the light of the lack of response invited the court to determine the application to set aside the AST on paper which I refused to do. The Second Respondent then communicated with the solicitors for the Applicant and on 5 February 2025 informed them that it had instructed lawyers. The communications came from Mr L Janusz Hooker. On 10 February 2025, Shoosmiths solicitors contacted the Applicant's solicitors to say that they were instructed by the Second Respondent. On 12 February 2025, the First Respondent confirmed that he would not be attending the hearing.

10. On Friday 14 February - one clear working day before the hearing and six weeks after the statements were due to be filed - Shoosmiths served on the Applicant a copy of a second statement from Mr Hooker. They made an application for relief from sanctions in relation to the late filing and service of that statement. There was no objection to the admission of the evidence and I ruled at the outset of the hearing that it might be admitted.

11. I heard oral evidence from Ms Wilde, remotely, the Applicant in court, and Mr Hooker remotely. In addition to the hearing bundle I was provided with an additional clip of financial documents including copes of the First Respondent's bank statements.

The Evidence

12. Ms Wilde is Head of Leisure and Groups for the Lakes By Yoo company and manages a team at REML which is a company managing the letting of properties on the estate where the Cotswolds Property is located. This is a large estate comprising over 150 luxury homes. Owners, including the First Respondent, can let their homes either independently or through REML which will, in return for a fee, advertise the property and manage all aspects of bookings and guests' stays. She told the Court that to avoid double bookings, owners must liaise with REML if they are letting their property otherwise than through REML. She has produced a schedule of bookings of the Cotswolds Property between 10 February 2022 and 17 August 2024. She was not informed, and REML has no record of, a lease of the Cotswolds Property being granted to the Second Respondent. She was not aware, and REML has no record of, the Second Respondent or Mr Hooker. Likewise,

there is no knowledge or record of them at CPEM which is the company that manages the estate itself.

13. Ms Wilde understood Will Harrison to be the First Respondent's personal assistant. I note that in a published judgment dated 8 February 2024, *Collardeau v Fuchs and Harrison* [2024] EWHC 256 (Fam), Knowles J described Mr Harrison as running a management company that works for the First Respondent. He or another named person whom she believed worked for the First Respondent would be informed if there was a booking for the property so that the booking could be confirmed. The property is not currently being marketed for rent because it has fallen into disrepair. Ms Wilde was a straightforward witness who was not seriously challenged in cross-examination.

14. The Applicant gave oral evidence and has provided written evidence in this application. She produced a schedule of rental income and outstanding utilities and other payments due in respect of the Cotswolds Property. She settled that account, receiving a net payment of just over £14,000. The schedule of rental payments coincided with Ms Wilde's schedule. The outstanding utilities and bills came to over £35,000. She accepted that she has no direct knowledge of the formation of the AST agreement.

15. Mr Hooker has produced two statements dated 26 November 2024 and 14 February 2025. He gave oral evidence by remote link from Dubai. He explained that he effectively runs the Second Respondent himself with the help of various others who are associated with other companies under the umbrella of LJ Hooker of which he is CEO. He described Will Harrison as working for him, managing properties. In his first statement he told the court that:

    a. LJ Hooker manages approximately 100,000 residential properties around the world including in the United Kingdom.
    b. He has known the First Respondent for many years and has done business with him on many occasions.
    c. He became aware in 2020 that the Applicant and First Respondent were "arranging a divorce" and he knew it to be contentious.
    d. From in or around May 2023 on behalf of the Second Respondent, his advisors were in negotiations with the First Respondent about a property on the island of Capri which he intended to lease from the First Respondent and sub-let to holiday-makers for profit. That potential deal was evidently not coming to fruition, but the First Respondent mentioned the Cotswolds Property and so the Second

Respondent entered into negotiations for a similar deal in relation to that property.

e. He was told by the First Respondent that he already had a management company in place managing the property, namely CPEM.
f. The agreement was that the Second Respondent would pay the First Respondent annual rent of £70,000 for possession of the property. "To date USD $80,000 has been paid in accordance with the terms of the lease … up until 17 May 2024… LH Projects would also pay, and has paid, Mr Fuchs 30% of any rental income it received above the rent (i.e. above £70,000)".
g. In September 2023, the Second Respondent began advertising the property for rent.
h. "Some bookings are made privately, directly through LJH Projects whereupon we will liaise with CPEM to organise the rental – these are personal contacts of mine."
i. "Since September 2023 LJH Projects has managed to secure much longer rentals (e.g. months long) and many more of them" than had previously been booked in for the property.
j. "Currently there are 8 future rentals of [the Cotswolds Property] booked in between now and the end of 2025 and LJH Projects expects to receive around £375,000 in rental payments in respect of those bookings."

16. At the hearing in November 2024, the Applicant was able to adduce evidence from Lakes By Yoo which Ms Wilde has now confirmed. Her evidence is that CPEM has no knowledge of the Second Respondent, that it is REML that manages lettings of the property, and that the property is now dilapidated and cannot be sub-let to holidaymakers. The Second Respondent has had ample opportunity, as it requested, to gather evidence to substantiate the assertions made by Mr Hooker in his first witness statement and to counter the evidence from Lakes By Yoo and Ms Wilde. In fact the only further documentary evidence adduced by the Second Respondent is in the form of four screenshots of bank transfers from the Second Respondent to the First Respondent in AUS$ for the equivalent of US$10,000 each in January, March, April and May 2024.

17. In his second statement in this application, Mr Hooker says that the AST was completed on 5 September 2023 but not to begin until 1 June 2024 because the property was intended to be targeted at the summer rental period. In fact, there were bookings of the property arranged by REML between September 2023 and June 2024. He had previously stated that there were £375,000 worth of bookings made from November 2024 to the end of 2025, indicating rentals at other times of the year, not just in the summer months.

18. In his second statement, Mr Hooker says that the First Respondent asked for rental money up front because he was low on capital and so four instalments were paid in January, March, April and May 2024 to cover the rental due by 1 June 2024. He exhibits the four screenshots referred to above, each of which is headed "rent".

19. In cross-examination Mr Hooker was asked about the lack of any documentation regarding the lease other than the lease itself and the screenshots. He variously said that he tended to rely on verbal communications, that any WhatsApp messages would be automatically deleted after seven days, that he relied on his agent, Will Harrison (the person Ms Wilde thought was the First Respondent's assistant), that he does not use email very much, that the AST was sent to him in the post and that he returned the fully signed version by hand to the First Respondent's girlfriend, and that he could not remember the names of the advisors to whom he had referred in his first statement. He accepted but did not explain why he had not relied on witness evidence from either Will Harrison or the First Respondent's girlfriend to corroborate his evidence. The court had limited the parties to statements from two witnesses, but the Second Respondent would have been able to call on one of those two people in addition to himself.

20. Mr Hooker was shown redacted bank statements from an account belonging to the First Respondent which he accepted showed payments of US$10,000 from the Second Respondent to the First Respondent nearly every month from April 2023, over a year before the first rental payment was due under the AST and nine months before the first US$10,000 payment he had stated he had made as pre-payment of rent. He accepted that the first record, in April 2023, was noted by the First Respondent's bank to be "repayment of loan" and subsequent records labelled the further payments as "loan". He told the Court that he had paid US$90,000 as a loan to the First Respondent and that that was a different matter from the rental payments. He could not explain why the First Respondent's bank had labelled the first payment "repayment of loan".

21. Mr Hooker was asked why he had said in his first statement that the Second Respondent had paid US$80,000 in rent under the AST whereas now he was saying that only US$40,000 had been paid. He said that there had been an error in his first statement. He had thought at the time of the first statement that a further US$40,000 had been paid but in fact it had not.

22. Mr Hooker told me that this deal was his first venture into the UK market but in his first statement he had said that LJ Hooker, the major company of which he is CEO, managed properties in the UK. He said that he had not questioned or taken advice on the legalities of the lease agreement, for example that it is

said to be an assured shorthold tenancy. He could not point to any evidence of any rent receipts by the Second Respondent. He accepted that no utilities had been paid for by the Second Respondent. He produced no evidence of a notification of vacancy. He explained that once the financial remedy proceedings became what he called a "basket case" he effectively gave up on trying to rent out the property and also stopped paying rent to the First Respondent. He adduced no evidence of any communications with the First Respondent or Will Harrison about the cessation of rental payments, the non-payment of utilities, or the dilapidated state of the property.

23. As set out in Counsel's note for this hearing on behalf of the Applicant, and confirmed by the documents within the bundle for this hearing, the First Respondent has wholly failed to comply with the final order of Mostyn J. He has then impeded and frustrated the enforcement proceedings. He has not attended any hearings in this application and has not sought to adduce any evidence in the proceedings. Neither has he consented to the application or indicated to the Court that he does not oppose it.

Legal Framework

24. Under the Matrimonial Causes Act 1973 s 37(1) and (2):

> "37 Avoidance of transactions intended to prevent or reduce financial relief.
>
> (1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 22, 23, 24, 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.
>
> (2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—
>
> (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

(c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

…

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) in a case falling within subsection (2)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or

(b) in a case falling within subsection (2)(c) above, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise."

25. A relevant financial relief order has been made and so the AST itself may be a reviewable disposition which may be set aside under s37(2)(c) if the Court is satisfied that the First Respondent has, with the intention of defeating the claim for financial relief, made the disposition. MCA 1973 s37(1) provides that defeating a person's claim for financial relief is a refence to "preventing financial relief from being granted to that person …. or frustrating or impeding the enforcement of any order…"

26. The 'disposition' with which I am concerned, the AST, if genuine and if a disposition in law, was a disposition that took place less than three years before the date of the application under MCA 1973 s37. Hence, a presumption arises that the First Respondent disposed of the property with the intention of defeating the applicant's claim for financial relief, unless the contrary is shown.

27. Mr Hooker says that the 'disposition' - if the AST was a disposition in law - was made to him for valuable consideration and that at the time he acted in good faith in relation to it and without notice of any intention on the part of the other party, the First Respondent, to defeat the applicant's claim for financial relief. The evidential burden to establish the exception falls upon a respondent – *Kremen v Agrest and Fishman* [2011] 1 FLR 478.

28. The effect of an order to set aside a disposition under s37 is to void the transaction ab initio - *AC v DC (financial remedy: effect of s37 avoidance order)* [2012] EWHC 2023 (Fam).

29. Mr Buck submits that a disposition must involve a conveyance or transfer of existing property – in fact MCA 1973 s37(6) provides that disposition includes "any conveyance, assurance or gift of property of any description…" Mr Buck accepts that a subsisting periodic tenancy can be property within the meaning of the MCA 1973 but submits that neither the creation of a tenancy nor its coming to an end constitutes a "reviewable disposition" of property. In *Newlon Housing Trust v Alsulaimen* [1998] 2 FLR 680 it was held that the termination of a tenancy by the effluxion of a notice to quit was not a disposition of property. Lord Hoffmann in the House of Lords held at p 693 that:

> "It is essential to the notion of a disposition of property in this context that there is property of which the disponer disposes, whether to someone else or not. It is this property which the court can restore to his estate by setting aside the disposition."

Lord Hoffman did hold that he was sure that 'disposition' was "intended to include the surrender of a subsisting proprietary interest, such as a tenancy for years of for life so as to merge in the reversion or remainder," but Mr Buck

maintains that the creation of a tenancy is a grant of new rights to a tenant under contract and that there was no actual transfer or disposition of property even though there may have been dealing in property. MCA 1973 s37(2)(a) was drafted more widely than (b) and (c) in that respect. Mr Warshaw KC dismissed this submission as unarguable.

Analysis and Conclusions

30. The AST is not in fact an assured shorthold tenancy although it says it is on its face. Such a tenancy cannot be granted to a company only to an individual – s1(1)(a) Housing Act 1988. It was a commercial tenancy agreement for a fixed term in relation to a valuable house owned by the First Respondent allowing the Second Respondent exclusive possession of it for a fixed period and permitting it to be sub-let for short term use by third parties. The Second Respondent submits that this was not a 'disposition' and therefore not a reviewable disposition, but MCA 1973 s37(6) defines 'disposition' widely to include "any conveyance … of property of any description". It is common ground that a periodic tenancy is capable of constituting "property" within the ambit of MCA 1973 s24 – *Newlon Housing Trust* (above) and *Thompson v Thompson* [1976] Fam 25. In that case Lord Hoffman held that the termination of a tenancy that had ended due to effluxion of a notice to quit was not a disposition but it is stretching that decision much too far to say that it is authority for the proposition that the creation of a lease is not a disposition of property. Under the Law of Property Act 1925 s205(1) a "conveyance" includes a lease and "every other assurance of property" but I accept that that is a definition for the purpose of that Act.

31. Given the wide definition within MCA 1973 s37(6) I am sure that, if genuine, the grant of a lease by the First Respondent to the Second Respondent in respect of the Cotswolds Property was a conveyance or assurance of the property – not a disposition of a lease but a disposition of the Cotswolds Property by the creation of a lease. The lease was a conveyance of the property. Hence, the purported AST was a disposition under MCA 1973 s37. That situation is far removed from the circumstances in *Newlon* (above). Furthermore, in the present case, if the disposition in the form of the lease is set aside, then the property of which the disponer disposed is restored fully to his estate.

32. It is clear that the disposition in question has had the effect of frustrating or impeding the enforcement of the final order because the sale ordered by Knowles J by way of enforcement has not been able to proceed due to the existence of the AST. The AST between the Respondents was a disposition

and therefore MCA s37(5) applies to raise a presumption that the First Respondent disposed of the property with the intention of defeating the applicant's claim for financial relief, because the disposition took place less than three years before the date of the application herein and the disposition has had the consequence of frustrating or impeding the enforcement of the final order.

33. Accordingly, the AST is a reviewable disposition unless the exception under MCA 1973 s37(4) applies. The disposition in question was for consideration. Hence the matters that need to be considered are whether at the time of the disposition, the Second Respondent acted in relation to it in good faith and without notice of any intention on the part of the other party (the First Respondent) to defeat the applicant's claim for financial relief.

34. The Applicant goes further and submits that on the evidence the Court should find that the lease was a sham.

35. To address whether the agreement was a sham and/or whether the s37(4) exception is made out, I have considered all the written and oral evidence. The following matters are of importance:

    a. On the basis of the evidence provided to me and the numerous previous enforcement orders it is clear that, even disregarding the creation of the AST, the First Respondent has sought to defeat the final financial remedy order made by Mostyn J and to frustrate and impede the enforcement orders made by Knowles J, including the order for sale of the Cotswolds Property. He has not paid the large lump sum ordered to be paid by Mostyn J. He has stopped paying the mortgage on the family home where the Applicant and children live. In relation to the sale order for the Cotswolds Property alone, he has objected to sales and delayed providing information. The list of non-compliances with the final order and impediments to its enforcement for which he is responsible is very long. I refer to Counsel for the Applicant's Note for this hearing as evidenced by documents within the bundle.

    b. The AST would have been expected by the Respondents to make it more difficult to sell the Cotswolds Property than if no AST was in place. Both Respondents are very experienced in property deals.

    c. The AST was agreed between the First Respondent and Mr Hooker acting for the Second Respondent, which he effectively runs himself. They knew each other very well – they were old friends and business associates. The First Respondent had invested more than AUS$6m in Mr Hooker's business – Mr Hooker accepted that in cross-examination

and agreed that the First Respondent would be unlikely to see any return on that investment. The Second Respondent had either loaned to or borrowed from the First Respondent sums that generated payments of US$10,000 a month from, at the latest, April 2023.

d. The First Respondent did not disclose the fact of the AST, if it existed at the time, to the Court or the Applicant until early August 2024 even though it was purportedly entered into in September 2023 and its existence was highly relevant to the enforcement proceedings before Knowles J including in April 2024, when she ordered the sale of the Cotswolds Property.

e. The First Respondent has deliberately chosen not to take part in the hearing of this application. The Court has warned him that adverse inferences may be drawn if he did not attend.

f. It is likely, I find, that the Respondents have communicated about this application and that, earlier, they communicated about the financial remedy proceedings, including the final order of Mostyn J and the enforcement proceedings. I discount the possibility that they did not communicate in detail about those matters when deciding upon the disposition of the property with which I am concerned. They are good friends and business associates. According to Mr Hooker they discussed the First Respondent's personal finances to the extent that the Second Respondent agreed to loan money to the First Respondent from, at the latest, May 2023. Mr Hooker says that he was concerned about securing repayments from the First Respondent. Mr Hooker had benefited from a substantial investment from the Second Respondent in his business.

g. The Second Respondent claimed not to have been aware of the application herein until shortly before the first hearing before Simon Colton KC. He then said that he wanted time to produce evidence to resist the application but has now produced virtually no documentary evidence to assist the Court. He dispensed with the services of his then solicitors not long after the first hearing and instructed new solicitors only shortly before this hearing, taking no steps in the application in the meantime, and failing to comply with the order of Mr Colton KC. His conduct has all the hallmarks of a deliberate attempt to delay the proceedings rather than a genuine effort to inform the Court of the truth about the AST.

h. The exhibits to the Mr Hooker's second statement amount to no more than evidence that the Second Respondent made monthly payments to

the First Respondent of the equivalent of US$10,000 in the months of January, and March to May 2024. As it happens the Applicant has been able to provide evidence, which Mr Hooker accepted, that the Second Respondent had paid the same amounts to the First Respondent in most months from April 2023. The Court only has Mr Hooker's word for the claim that the four payments he has provided screenshots of were indeed for rent under the AST.

i. The idea that the First Respondent, a self-proclaimed billionaire, needed the Second Respondent to make the rental payment of £35,000 due by 1 June 2024 early because he was "low on capital" is risible. In any event the First Respondent has chosen not to seek to corroborate that account. There is no evidence of any communications about that matter between the Respondents or their agents.

j. Neither Respondent has provided any evidence of marketing the property to holidaymakers, of bookings through the Second Respondent or Mr Harrison, or of income to the Second Respondent from renting out the property. The only evidence the Court has of anyone marketing and managing the rental of the property comes from Ms Wilde. REML marketed and managed the property both before and after June 2024. It received the rental payments on behalf of the First Respondent and then, following Knowles J's order, on behalf of the Applicant. Ms Wilde and REML had no knowledge of the Second Respondent who claims to be the tenant of the property from 1 June 2024 and who claims to have marketed the property itself and to have secured bookings for it.

k. The evidence of Ms Wilde demonstrates that the property has not been marketed by Lakes by Yoo on behalf of the Second Respondent contrary to Mr Hooker's claims.

l. The utilities have not been paid on the property as the Second Respondent was obliged to do under the AST. There is no evidence of a notice by the Second Respondent tenant of non-occupation as it was required to do under the AST.

m. There is no paperwork trail about negotiations for the lease, about arrangements for marketing the property, liaison with REML or any other letting manager, receipt of rent, payments of bills or any other practical arrangements regarding the lease.

n. An AST cannot be granted to a company – s1(1)(a) Housing Act 1988. The form used for this agreement in September 2023 was an Assured

Tenancy Agreement purporting to be, as it states on its face, an Assured Shorthold Tenancy as defined by s19A Housing Act 1988. It is not an assured shorthold tenancy but it can yet be an effective agreement between the parties. This was a commercial agreement reached between the Respondents, very experienced in property deals. Mr Hooker says that he was venturing into the UK market for the first time (at least for the first time through the vehicle of the Second Respondent). On Mr Hooker's own account he was already lending money to the First Respondent and wanted security via this lease. Nevertheless, he invites the court to accept that he did not notice what kind of tenancy it purported to be, did not check any of the legalities, received the copy of the lease for him to sign through the post in Dubai, and handed over the signed lease, when signed by him, to the First Respondent's partner. Hence, the wrong form of agreement was used and there is no electronic paper, or real paper, trail for this agreement.

o. The AST purports to commence nine months after it was entered into without any discernible commercial justification for that delay. Mr Hooker says that the property was only an asset during the summer months but he also said in his November 2024 statement that he expected £375,000 income from rental bookings already made for use of the property to the end of 2025. He had anticipated rent of just over £60,000 for a booking for the whole of August 2024. Clearly, therefore the property had commercial value beyond the months of June to August and so the nine month gap between entering the AST and the commencement of the tenancy is not satisfactorily explained.

36. Mr Hooker was somewhat impatient with the questions put to him in cross-examination and reluctant to assist the court with any details of his dealings with the First Respondent. Reviewing all the evidence, I find that Mr Hooker's evidence has been inconsistent, for example over the rental monies paid to the First Respondent. It is almost wholly uncorroborated by documentary or other witness evidence that could be expected to be available. His evidence has been evasive, for example about the names of his advisers helping him in negotiations with the First Respondent and his late and vague evidence of a loan arrangement with the First Respondent. His evidence has been contradicted by other reliable evidence, for example from Ms Wilde. I am unable to rely on the evidence given by Mr Hooker to the court.

37. I have little hesitation in concluding that the lease agreement purportedly entered into on 5 September 2023 between the Respondents is a sham. This is an agreement which was designed to defeat the financial remedy order. The Respondents have long known each other well and worked together on

various business projects. The First Respondent had invested heavily in Mr Hooker's business. The Second Respondent was paying US$10,000 a month to the First Respondent from at least April 2023. The First Respondent's contentious divorce proceedings were well known to Mr Hooker. The lease agreement has all the appearance of being hastily put together. I have heard no evidence from any other person involved or knowing about it and received no documentary evidence of the involvement or knowledge of the lease by any other person. The First Respondent has chosen not to give an account of the creation of the lease. Mr Hooker's evidence about it has been inconsistent and incredible. There is no evidence of any money exchanging hands as a result of the lease being agreed. The evidence of four screenshots only shows that payments were made by the Second Respondent to the First Respondent. The only evidence that they are connected to the AST comes from Mr Hooker and I find his evidence in that respect not to be reliable. He could not satisfactorily explain why he had previously said that he had paid US$80,000 not US$40,000 and he had not disclosed the loan payments or repayments, also for US$10,000 per month in most months from April 2023. Together the Respondents have engineered delay in concluding the application herein. Mr Hooker in particular pleaded with the Court in November to give him time to gather documentation and put his case forward. He has conspicuously failed to do so. The Second Respondent's conduct of the application is consistent with a desire to defeat the financial remedy claim for the benefit of his friend and investor, the First Respondent, and to avoid scrutiny of the creation of the AST.

38. In all the circumstances, it is clear to me that the AST was a hastily conceived and ill-thought out means to defeat the claim for financial relief and to frustrate or impede enforcement of the orders. There is no evidence of the AST having been entered into in September 2023 other than the date on the face of the agreement produced, and the evidence of Mr Hooker which I find to be unreliable. There is no surrounding documentation. Assuming however that the agreement was entered into in September 2023, that was shortly after Mostyn J's final order. The First Respondent did not disclose the AST to the Applicant or the Court until after the enforcement proceedings before Knowles J which concluded with an order for sale including of the Cotswolds Property in April 2024. He did not reveal the existence of the AST until August 2024. His conduct has all the hallmarks of a deliberate attempt to defeat the Applicant's claim for financial relief. It is part of a pattern of similar behaviour by him. I have no hesitation in concluding that the First Respondent set about trying to frustrate and impede the enforcement of that order and that one of the steps he took in that endeavour was to enter into the AST with the Second Respondent.

39. I find that on the balance of probabilities Mr Hooker, who acted on behalf of the Second Respondent for the purposes of the relevant transaction, knew that the First Respondent was acting with that intent. They had been friends and business associates for many years. The First Defendant's divorce and the contentious divorce proceedings were well known to Mr Hooker. When the First Respondent proposed the agreement about the Cotswolds Property it would have been quite clear to Mr Hooker, even if the First Respondent did not spell it out to him, that the transaction was to be part of his attempt to defeat the Applicant's claims. The AST was a peculiar arrangement. Firstly, if it was entered into in September 2023, it was not to take effect for nine months. Second, it was stated to be an Assured Shorthold Tenancy when the Second Defendant could not be granted such a tenancy. It must have been obvious to Mr Hooker that this transaction was being proposed by the First Respondent as a mechanism to defeat the Applicant's claim for financial relief.

40. Given the complete absence of corroboration of the entering of the AST in September 2023, the unexplained gap between the entering of the agreement and the commencement of the tenancy itself, the lack of any evidence of the lease being put into effect, the internal inconsistencies of Mr Hooker's evidence, its inconsistency with other reliable evidence, the conduct of the First Respondent in relation to the financial remedy order and enforcement, and the absence of any evidence from the First Respondent on this application, I conclude that the Second Respondent was a knowing party to a sham agreement. I cannot conclude that it was in fact entered into in September 2023. It may well have been entered into in early 2024. It was a sham whenever it was created and there was a lack of good faith on the part of the Second Respondent whenever it was created. The First Respondent wanted to create a device to defeat the financial remedy order and frustrate and impede its enforcement. The Second Respondent agreed to help him. There was never any intention for the lease to have legal effect or to be binding upon either of the Respondents. The evidence to support this conclusion is strong.

41. It is of course a serious allegation to make that the Second Respondent, more particularly Mr Hooker himself, did not act in good faith and knowingly entered into a sham agreement for the purpose of assisting the First Respondent to defeat the financial remedy claim. I find that he did so on the balance of probabilities but the evidential burden of establishing the exception under MCA 1973 s37(4) falls on the Respondents and, in this case, effectively on the Second Respondent. The evidential burden relates to whether at the time of the transaction the Second Respondent acted in good faith and without notice of the First Respondent's relevant intention. From my findings about the AST being a sham it follows that the Respondents have not discharged the

evidential burden and, for the avoidance of doubt I find that the Second Respondent did not act in good faith at the time of the making of the AST and had actual knowledge, not merely constructive knowledge, of the First Respondent's intention to defeat the claim for financial relief.

42. Mr Hooker's conduct since the disposition in question supports the findings I have made. His attempts to delay these proceedings demonstrate his continued knowledge that the disposition was a sham intended to defeat the Applicant's claim and his continued determination to assist the First Respondent to achieve that end.

43. The conduct of both Respondents to this application – and by this, I mean Mr Fuchs and Mr Hooker personally - is of great discredit to them.

44. I have a discretion whether to set aside the AST but given my findings I have no hesitation in granting the application to set aside the AST with immediate effect. That order is necessary to give effect to Knowles J's order of April 2024 for the sale of the Cotswolds Property.

45. In the circumstances I do not need to consider set aside under the Insolvency Act 1986 s423. One difficulty for the Applicant in seeking an order under that provision is that she would have to establish that the transaction in question was entered into at an undervalue. The transaction may have been a sham and a device to defeat the claim for financial relief and to frustrate or impede the enforcement order for the sale of the Cotswolds Property, and designed to put that property out of reach of the Applicant or to prejudice her interests, but it is not clear to me that it can be said that it was entered into at an undervalue. I do not have evidence before me at this hearing of the true or market value of the lease. Mr Warshaw KC made it clear that this was very much an alternative case which he might have pursued depending on what evidence the Respondents gave at the hearing. In the event he had no need to do so.