**Swift Advances plc v Ahmed and Ahmed**

[2015] EWHC 3265 (Ch)

Chancery Division, Manchester District Registry

Norris J

17 November 2015

Josephine Hayes (instructed by Swift Legal Group Department) for the Applicant

Lisa Feng (instructed by Gateley Plc for the Respondents

Hearing dates: 8 and 21 October 2015

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APPROVED JUDGMENT

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

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MR JUSTICE NORRIS

Mr Justice Norris :

1. The phenomenon of the “deed in the drawer” is one that is now frequently encountered. X appears to be the owner of a property, and people lend to him or otherwise deal with him on the footing that he owns it. But if X becomes bankrupt or the subject of enforcement proceedings a deed is produced which shows that in truth he holds the property upon trust for somebody else. In some cases these deeds are simply not authentic. In other cases they are authentic, but simply not noted in any public register. It is said by Swift Advances PLC (“Swift”), which is now seeking to recover money that it is common ground it lent to Mr Amjul Ahmed (“Mr Ahmed”), that this is such a case - a hidden authentic deed.

2. On 16 November 2006 Mr Ahmed was registered as proprietor of a property at 78a High Elm Road, Hale Barns, Altrincham (“High Elm”). On the 16 April 2007 an application was made to Swift in his name for a loan of £290,000 to be secured by a second legal charge on High Elm. Mr Ahmed says (but I do not have to determine) that the application form was not completed by him or signed by him and that he did not know of its contents. In particular, he says he was not responsible for the statements in it that he was (a) single and (b) the absolute owner of High Elm.

3. This application led to an unregulated credit agreement being offered by Swift, which agreement Mr Ahmed accepts that he signed. He said at trial that it was only in the witness box that he realised that the heading of the agreement said in bold type that it was secured on High Elm. Shortly thereafter a legal charge over High Elm was signed in favour of Swift and dated 2 May 2007: but Mr Ahmed says that it was not signed by him. The money secured by the legal charge was advanced and Mr Ahmed accepts that he received it. The legal charge was duly registered on 4 May 2007 (as a second legal charge ranking behind a first legal charge in favour of Halifax PLC dated 10 November 2006 and also registered on 16 November 2006). Mr Ahmed’s position is that he believed the advance to be (and it was) an unsecured loan. That issue is not for decision by me.

4. On 18 December 2006 Mr Ahmed became the registered proprietor of 6 Hilltop Drive, Hale, Altrincham (“Hilltop”). On 1 October 2007 an application was made to Swift in the name of Mr Ahmed for a loan of £200,000.00 to be secured by a second legal charge on Hilltop. Mr Ahmed says that he did not complete the application form and that the signature on it is not his: and that accordingly he did not make the statement which it contains that he was the only owner of Hilltop. This led to the signature of an unregulated credit agreement which again says in bold at the top that it is secured on Hilltop: at trial Mr Ahmed said that he thinks that the signatures on this agreement are, indeed, his signatures - though he is more doubtful about one of the signatures than about the other. Thereafter a legal charge of Hilltop was signed and dated 29 October 2007: but Mr Ahmed says that it was not signed by him. However, he again accepts that he received the advance. His case is that he understood the advance to be (and it was) an unsecured loan. These issues are not for decision by me. The Swift legal charge was duly registered on 31 October 2007 as a second legal charge ranking behind a first legal charge in favour of Halifax PLC dated 30 November 2006 and registered on 18 December 2006.

5. Mr Ahmed defaulted on these two loans and Swift commenced possession proceedings in relation to each of High Elm and Hilltop. When the letters before action were sent Swift received two letters from Mr Ahmed’s wife, Parveen Ahmed (“Mrs Ahmed”). The first letter (dated 3 January 2014) said:-

“Although we are yet to take full instructions it is our client’s case that, firstly, she has an interest in the properties and, secondly, such interest sits in priority to your client’s interest”.

In the second letter they said:-

“We informed you in our letter dated 3 January 2014 that our client’s claim is based upon that she has an interest in the properties in priority to your client’s interest and, in that regard, our client has informed us that a signed deed of trust exists which we shall produce in due course”.

6. At a hearing of the possession actions on 12 February 2014 the deed that had been referred to was produced. It is dated in manuscript “28/12/06”, and for the purposes of this application is to be taken as having been signed on or around that date. I will refer to it as “the 2006 Deed”. It is described as having been made between Mr Ahmed and Mrs Ahmed and in the interpretation clause Mr Ahmed is defined as “Donor” and Mrs Ahmed is defined as “Beneficiary”. Amongst the other defined terms are “Business Interest” (which is any interest detailed in the Second Schedule) and “Property” (which is described as any property detailed in the First Schedule). Clause 2 of the document says:-

“The purpose of this deed is to bestow upon the Beneficiary all legal and other interest in the Property and Shares and to promote or advance such Property and Shares”.

(There is no definition of “Shares”: but that does not matter).

7. Clause 3 of the 2006 Deed deals with powers. It says:-

“The Donor is given the following powers subject only to making no act or omission that may diminish the interests of the Beneficiary. Where any act or omission may diminish the interests of the Beneficiary, written consent must be obtained from the Beneficiary before such any act or omission is carried out”.

There follows a list of specific powers, such as “to acquire… property of any kind”, “to protect the Business Interest”, “to insure the Property”, “to enter into contracts to provide services…” and

“to do anything else within the law which promotes or helps to promote the Property and/or the Business Interest”.

8. Clause 4 of the 2006 Deed said that the “Donor” took the Property and Business Interest subject to mortgages existing at the date of the deed. This would have been a reference to the two first charges in favour of Halifax then in place in respect of High Elm and Hilltop. The reference to “Donor” is an obvious mistake: the word “Beneficiary” must have been intended.

9. Clause 5 of the 2006 Deed concerned the beneficial interest. It said:-

“The Donor declares that he holds the Property and Business Interest, and the net proceeds of sale of and any income from the Property and/or Business Interest on trust for the Beneficiary absolutely”.

10. Finally clause 6 provided:-

“This deed may be amended by supplemental deed without prior written consent of the Beneficiary”.

In my judgment the effect of that provision was to reserve to Mr Ahmed a general power – to change the definition of “Beneficiary” to anyone (including himself) or indeed simply to revoke the Trust Deed.

11. The First and Second Schedules to the 2006 Deed listed all of the significant property that Mr Ahmed then owned. The First Schedule listed 5 properties (including High Elm and Hilltop). The Second Schedule listed interests in 6 companies. The Deed was not stamped.

12. The circumstances in which the 2006 Deed came into being are explained in the Defence and Counterclaim (signed with a statement of truth) which Mrs Ahmed filed in the Hilltop possession proceedings:-

“(i) in early December 2006 [Mr Ahmed] was flying all over the world on business. [Mrs Ahmed] avers that she had four children and wanted some security;

(ii) in or about early December 2006 the Defendants orally agreed between them that they would enter into a Deed of Trust whereby [Mr Ahmed] would hold the entirety of his beneficial interests in, inter alia, the property on trust for [Mrs Ahmed];

(iii) the Deed of Trust… was prepared using a template provided by Wolstenholmes LLP. [Mrs Ahmed] is not aware herself as to who actually drew up the Deed of Trust…

(iv) the Deed of Trust was witnessed by a Mr Patel…

(v) Once signed, the Deed of Trust was kept in the safe of [Mr Ahmed’s] place of business at 27 Turner Street, Manchester…”

13. The circumstances were further explained in a witness statement filed by Mrs Ahmed in this application on 9 December 2014 in this way:-

“In 1996 (*sic*) my father in law suffered ill health and it is immediately after this event, that as a family, we took the decision to re-evaluate our financial position and affairs. As part of this re-evaluation, one of the aims was to ensure that I and then young children were adequately financially secured in the future. My husband…was at this time also spending prolonged periods of time abroad on business and would often need me to take care of my children alone. As part of the family’s re-evaluation of its financial affairs, it was concluded that it was wise to enter into a deed of trust with my husband… to secure and protect me financially in the event our marital or family circumstances changed”

The witness statement goes on to refer to a trust Deed dated the 1 March 1996 (not earlier mentioned either in correspondence or in the statements of case in the possession proceedings) (“the 1996 Deed”).

14. The 1996 Deed is in identical form to the 2006 Deed, with the same typeface and layout and containing the same mistakes. Mr Ahmed says that the 1996 Deed was used as a “template” for the 2006 Deed. The only difference is that the First Schedule to the 1996 Deed refers to only two properties (one of which is High Elm) and the Schedule refers to only two business interests. But the Schedules again cover all of the significant assets that Mr Ahmed then owned. The 1996 Deed is unstamped.

15. There is in fact a Third Trust Deed (dated 8 April 2008) which is almost identical in content but different in form from the 2006 Deed. It post-dates the transactions with Swift; so I shall say no more about it.

16. The present application was made by Swift on the 24 October 2014 and asks the Court, in exercise of its powers under section 423 of the Insolvency Act 1986, to set aside the 2006 Deed (and by an agreed amendment, also the 1996 Deed) or to make such other order as the Court thinks fit to restore the position to what it would have been but for the entering into of those Deeds.

17. To grant relief under s.423 I must be satisfied:-

a) That the 1996 Deed or the 2006 Deed was a transaction entered into at an undervalue;

b) That the 1996 Deed or the 2006 Deed (as the case may be) was entered into by Mr Ahmed for the purpose of putting assets beyond the reach (or otherwise prejudicing the interests) of someone who might at some time make a claim against him;

c) That purpose of Mr Ahmed must have been a real and substantial purpose of his executing the 1996 Deed or the 2006 Deed (so that it is not enough that the prejudicing of the interests of the potential claimant is simply a by-product or consequence of the transaction which of itself made no contribution of importance to Mr Ahmed’s decision to undertake the transaction);

d) That it is appropriate in all the circumstances to grant the relief sought.

18. Mr Ahmed’s purpose in entering the relevant transaction is a question of fact, to be decided both upon the direct written and oral evidence of the witnesses called and the content of the documents adduced in evidence (and any proper inferences to be drawn from those documents). The latter is important because direct evidence of a disponor’s purpose in entering a transaction nine years earlier may well not be reliable. People rarely dissect and prioritise their reasons for action at the time of acting, and their later recollection of their thinking at the time is inevitably viewed through the prism of subsequent events.

19. In his oral evidence Mr Ahmed explained that in 1996 he was travelling a lot and wondered what would happen if he had a crash or if he became ill (as his father had done). He wanted to be sure that his wife and children had something (“food on the table”) and were secure. He did not think of making a will, but took advice from someone (he cannot remember who, but it might have been a friend or a family member) who suggested a trust deed. So he entered into the 1996 Deed. At that time he and his business both had debts: but his business was booming. He was insistent that although the Land Registry entries showed that he became the registered proprietor of High Elm in 2006 he had in fact bought it in his sole name in 1995 and could offer no explanation as to why the proprietorship register showed what it did.

20. By 2006 he said that he had acquired further properties and had set up further companies. The same considerations led him to update the 1996 Deed by executing the 2006 Deed. He explained that the 2006 borrowing secured on High Elm was to enable him to buy Hilltop: and the 2007 borrowing from Swift secured on High Elm and on Hilltop was to enable him to pay for fitting out Hilltop which he said was a recently completed shell.

21. He was unable to explain why providing security for his wife and children necessitated him giving *everything* to his wife outright in 1996, leaving himself and his children with nothing. He was unable to explain why having made substantial provision for his wife in 1996 it was necessary to provide her with yet more (indeed, everything else he owned) in 2006. Mr Ahmed’s shareholdings were unencumbered, and so could simply have been transferred to Mrs Ahmed if she was to become their real owner. His explanation for why he put the entirety of his shareholdings in his businesses in trust for his wife, rather than simply transferring them to her, was “for tax reasons” (on which he did not elaborate).

22. Mr Ahmed said that it did not trouble him that publicly he would appear to be the owner of High Elm and Hilltop and of all the shares (although really Mrs Ahmed was their owner) because he did not intend to do anything wrong. In that connection he referred to a somewhat stilted exchange of correspondence with the Habib Bank AG Zurich in September 2007. Habib provided working capital for Mr Ahmed’s businesses. In December 2007 the bank took a third charge over High Elm (which Mr Ahmed requested Swift to permit by a letter which he says he signed without reading); and in March 2008 it took a third charge over Hilltop. On 3 September 2007 Mr Ahmed wrote to the Habib Bank saying:-

“I have been asked by your senior management to send you again the trust deeds that were made from me Anjum Ahmed to my wife Parveen Ahmed….I am sure you have got these on your file as we disclosed these and gave them to the bank when they were made in 1996 and then renewed in 2006…..”.

On 6 September 2007 the bank replied:-

“I have received in the post the trust deeds and a letter from [Mr Ahmed] which is attached. I confirm we already have these trust deeds on file and the bank is fully aware of them from when we received them before previously. There was no need for them to be sent again”.

Oddly, Habib went on (as I have indicated) to accept legal charges over High Elm and Hilltop granted by a sole trustee. It is difficult to place this exchange of correspondence in any context because although on 15 December 2014 District Judge Richmond had ordered that Mr and Mrs Ahmed must give specific disclosure of all documents relating to the creation of the 1996 and 2006 Deeds (including all documents in the files of Wolstenholmes LLP and of the mortgage brokers) no disclosure at all had been given.

23. In her oral evidence Mrs Ahmed followed that of her husband. She explained that she had not mentioned the 1996 Deed earlier than in her written evidence dated 9 December 2014 because she thought that the 2006 Deed covered everything.

24. The closing speeches concluded at the end of the day, and I reserved judgment. Shortly thereafter I received a letter from Swift explaining that, in view of Mr Ahmed’s insistence that he had bought High Elm in 1995 in his own name notwithstanding what the registered title said, a review had been undertaken (the day following trial) of all documents obtained by Swift relating to High Elm. That review had revealed a Transfer dated 10 November 2006 whereby Mr Ahmed and Mrs Ahmed as joint proprietors had transferred High Elm to Mr Ahmed alone. This explained why the proprietorship register showed Mr Ahmed as being registered as title owner on 16 November 2006. It contained the following provision:-

“The Transferors as Trustees and by direction of Parveen Ahmed directing as to all her interest therein both legal and beneficial hereby transfers to the Transferee with full title guarantee the land comprised in the above title.”

25. I held a further hearing. At that hearing:-

a) Ms Hayes submitted that although she could not say that the document had only come into the possession of Swift after the close of evidence it was the case that it was only Mr Ahmed’s inability to explain in cross examination the disparity between the register and his evidence that he bought High Elm in his own name in 1995 that prompted further investigation;

b) Ms Hayes argued that 2006 Transfer ought to have been disclosed in any event;

c) Ms Hayes submitted that the matter was one for the discretion of the Court and although the evidence had closed it was possible to re-open the case without prejudice to Mr and Mrs Ahmed because they could if they wished offer themselves for cross-examination (though that was not a course she herself wished to be taken);

d) Ms Feng argued that evidence in the case had closed without Swift relying on a document which it acknowledges it had in its possession and that I should decide the case on the evidence led at trial;

e) Ms Feng observed that the 1996 Deed (which for the purposes of this application is accepted as authentic) treated Mr Ahmed as the sole owner of High Elm and able to settle it on Mrs Ahmed so that the puzzle of the state of the register of title was apparent from December 2014 when the 1996 Deed was first mentioned;

f) Ms Feng informed me that her instructions were that Mr and Mrs Ahmed did not wish to attend to be cross-examined on the 2006 Transfer (but I directed that they should at least have the opportunity to proffer in a witness statement any explanation for the oversight in not mentioning the 2006 Transfer in their written or oral evidence, in case I decided to admit it).

26. I shall admit the 2006 Transfer as evidence in the case. The principle that there must be finality in litigation must of course weigh heavily. But at the time the 2006 Transfer was sought to be introduced I had not made my assessment of the evidence and the trial had not concluded. As Lord Wilberforce said in Mulholland v Mitchell [1971] AC 666 (in the context of admitting evidence after the trial had concluded, which is a stronger case than this) at 679-680:-

“..it may be expected that courts will allow fresh evidence when to refuse it would affront common sense, or a sense of justice.”

In my judgment it would be an affront to common sense and to any sense of justice to exclude from consideration the 2006 Transfer.

27. Further, I do not consider that Mr Ahmed or Mrs Ahmed can properly object to its being adduced. Their evidence was that the 2006 Deed was a simply an updating of the 1996 Deed to include extra property. That evidence is liable to mislead, because the 2006 Deed was in truth a reinstatement of the 1996 Deed (which had in effect been set aside by the terms of the 2006 Transfer that reconveyed to Mr Ahmed whatever beneficial interest Mrs Ahmed acquired under the 1996 Deed). As Stuart-Smith LJ said in Vernon v Bosley (No.2) [1999] QB 18 at 37D:-

“It is the duty of every litigant not to mislead the Court or his opponent. He will obviously mislead the Court if he gives evidence which he knows to be untrue. But he will also do so if, having led the Court to believe a fact to be true, he fails to correct it when he discovers it to be false. This duty continues…until the judge has given judgment.”

28. I can fairly admit the 2006 Transfer because Mr Ahmed and Mrs Ahmed have been afforded the chance to put in further witness statements (which opportunity they have taken) and have declined to be cross-examined further.

29. Having admitted the 2006 Transfer in evidence I find and hold it to be an authentic document and (having been registered) effective according to its terms. It is therefore unnecessary to consider the 1996 Deed at all in relation to High Elm, since whatever the effect of that document it was entirely undone as regards High Elm by the 2006 Transfer.

30. It is common ground that the 2006 Deed was a transaction at an undervalue for the purposes of s.423. The sole question is therefore whether Swift has established on the balance of probabilities that a real and substantial purpose of Mr Ahmed in entering the 2006 Deed was to place assets beyond the reach of (or otherwise prejudice the interests of) those who might have a claim upon him. In this connection the authorities make clear that Swift does not have to demonstrate that Mr Ahmed had *it* in mind: Fortress Value Recovery Fund v Blue Skye [2013] EWHC 14 (Comm).

31. In my judgment Swift has discharged that burden.

32. I start with the indisputable. The chain of events now disclosed by the documents (including historic copies of the register obtained in the light of what was disclosed by the 2006 Transfer) is as follows:-

a) In 1996 Mr Ahmed made the 1996 Deed;

b) In February 2000 Mr Ahmed, who had hitherto been the sole registered proprietor (if the 1996 Deed is right), transferred High Elm into the joint names of himself and his wife and they raised money from UCB on the jointly owned property;

c) On 10 November 2006 High Elm was transferred legally and beneficially back to Mr Ahmed;

d) On 10 November 2006 Mr Ahmed granted a first charge over High Elm in favour of Halifax;

e) On 16 November 2006 Mr Ahmed was registered as proprietor of High Elm;

f) On 30 November 2006 Mr Ahmed acquired Hilltop as sole legal and beneficial owner;

g) On 30 November 2006 Mr Ahmed granted a first charge over Hilltop in favour of Halifax;

h) On 18 December 2006 Mr Ahmed was registered as proprietor of Hilltop;

i) On 28 December 2006 Mr Ahmed executed the 2006 Deed (prepared from a template provided by his solicitors but not with their assistance) transferring his entire beneficial interest in High Elm and Hilltop to Mrs Ahmed subject to the Halifax mortgages;

j) No restrictions were entered on the registered title of High Elm or Hilltop indicating the existence of any trust, and the 2006 Deed was kept in the safe at Mr Ahmed’s workplace;

k) On 2 May 2007 Mr Ahmed received £297,000 from Swift pursuant to an application made earlier in his name and to a credit agreement that refers to High Elm;

l) On 3 September 2007 Mr Ahmed sent a copy of the 2006 Deed (and the “revoked” 1996 Deed) to his bankers;

m) On 29 October 2007 Mr Ahmed received £200,000 from Swift pursuant to an application made earlier in his name and to a credit agreement that refers to Hilltop.

33. Amongst the inferences that may be drawn from this documentary history are:-

a) Mr Ahmed understood the importance of the borrower being the beneficial owner at the time of the borrowing (which is why High Elm was transferred to him in November 2006 to enable him to borrow from Halifax to help fund the acquisition of Hilltop; and why Hilltop was acquired in his sole name with the aid of further borrowing from Halifax);

b) Mr Ahmed knew that lenders would be concerned about the identity of the beneficial owner (which is why he sent the 2006 Deed to Habib Bank).

34. Mr Ahmed entered into the 2006 Deed transferring the entire beneficial ownership from himself to Mrs Ahmed shortly before seeking further loans from Swift. Even if he thought those loans were unsecured (and did not notice the clear references on the credit agreements to security being taken over High Elm and Hilltop and did not read the letters by which he sought consent from Swift to the registering of third charges by Habib) - issues which the parties do not want me to decide because they are central to concurrent possession proceedings which are not before me - it is as plain as plain can be that Mr Ahmed knew that the true ownership of High Elm and Hilltop was a relevant consideration for a lender. That must be why he provided the 2006 Deed to Habib Bank, and why (as he says) he provided the 2006 Deed to the mortgage broker when seeking loans from Swift.

35. However, although appreciating this, Mr Ahmed did not record in any way on any public register what that true ownership was. He kept the Deed in a safe and controlled to whom and by what means its effect might be disclosed. In Hashmi [2002] EWCA Civ 981 the Court of Appeal accepted that failure to register dealings with the beneficial ownership is a factor which a judge is entitled to take into account when assessing the evidence as a whole in the course of reaching a decision about the substantial purposes of a transaction. In my judgment it is a very significant factor.

36. Public registers are maintained to inform the world at large about ownership of property. Commercial dealings depend upon them recording the truth. Although under the Land Registration Act 2002 the Registrar is not to be affected with notice of a trust (s.78) (so that the terms of the trust are not brought onto the face of the title and the trust can be overreached) the existence of a trust is apparent from restrictions noted on the title in order that those dealing with a registered proprietor might know with whom they must deal in relation to the payment of capital money. Indeed, Land Registration Rule 94(1)(a) provides:-

“A proprietor of a registered estate must apply for a restriction in Form A where (a) the estate becomes subject to a trust of land, other than on a registrable disposition, and the proprietor….will not be able to give a valid receipt for capital money……”

37. Under the 2006 Deed High Elm and Hilltop became subject to a trust of land: but Mr Ahmed did not comply with the requirements of the Land Registration Act. In my judgment the Court is entitled to ask why Mr Ahmed chose to undertake this transaction without using a conveyancing solicitor and availing himself of the advice to which that would have given access and why he did not himself seek to communicate with the Land Registry: and in the absence of a compelling answer to infer that a reason for not doing so was to keep knowledge of the transaction private and the information subject to his control. Such an inference might suffice to found an inference that the statutory purpose has been established. Or it might (as here) go to support other evidence tending the same direction.

38. The 2006 Deed (if effective) does in fact prejudice the interests of those who might have a claim against Mr Ahmed. An inference is raised that that obvious result was its purpose to a substantial degree: an obvious result of an action is generally an intended result. That inference is reinforced by the failure to record the transaction publicly or submit it to scrutiny. That provisional assessment is not outweighed by any evidence adduced by Mr Ahmed. I am unconvinced that, having obtained the entire beneficial interest in High Elm from his wife a few weeks before, he felt compelled to give the entirety and more back to her almost immediately “as security for her”. In the light of the conveyancing history now disclosed the story that the 2006 Deed was simply an updating of the 1996 Deed designed to bring in after-acquired property is simply incoherent. I do not accept that unspecified “tax reasons” lie behind the decision not to transfer legal ownership of the shares to Mrs Ahmed when she became their legal owner: I consider it more likely that the object was to enable Mr Ahmed to continue to act as if he were the legal owner so far as the outside world was concerned and not to reveal to that outside world the intended change of ownership. In my view the terms of the 2006 Deed (in particular the extensive powers) were designed to enable Mr Ahmed to act in relation to the outside world as if he were the true owner. Even if, as Mr Ahmed says but I am not to determine in these proceedings, he provided his mortgage broker with the 2006 Deed in support of his applications for unsecured loans from Swift (and it is the fault of the mortgage broker that they did not reach Swift) this shows only that Mr Ahmed understood the prejudicial effect of the 2006 Deed but wished to control who knew about the transaction. No explanation has been afforded as why Mr Ahmed procured the transfer of High Elm into his sole name and acquired Hilltop in his sole name immediately before the Halifax charges, only to reverse the transaction by a “private” deed immediately before borrowing more money from Swift.

39. Upon a review of all the evidence I am satisfied that Swift has established on the balance of probabilities that a substantial purpose of the 2006 Deed was to place assets beyond the reach of creditors or otherwise to prejudice the interest of those who might have a claim upon him.

40. Being so satisfied, and having considered all the circumstances I shall make an order restoring the position to what it would have been if the transaction had not been entered into: I shall set aside the 2006 Deed. The effect of this will be to revest in Mr Ahmed beneficially both High Elm and Hilltop.

41. I should make specific reference to Lees Hall Crescent Fallowfield, to the shares in Utocroft Building Limited and to the shares in NikNak Clothing Limited. These assets were originally included in the Schedules to the 1996 Deed but are not affected by the re-vesting provisions of the 2006 Transfer. They were then included again in the 2006 Deed. If the 2006 Deed is set aside, what is to become of them?

42. In my judgment they would revest in Mr Ahmed if either (i) the 1996 Deed were also to be set aside under s.423; or (ii) their inclusion in the 2006 Deed is to be treated as a resettlement (following a revocation of the 1996 Deed under an implicit exercise of the clause 6 power), which may be the only sensible way to read the 2006 Deed according to its terms and was the way Mrs Ahmed certainly understood matters (viz. that the 2006 deed covered everything and the 1996 Deed did not have to be mentioned).

43. This was not the subject of argument and it would be unfair to adjudicate on the question at this stage. Setting aside the 2006 Deed clearly revests High Elm and Hilltop (along with the additional shares) in Mr Ahmed and that may well suffice (whether Swift is a secured or an unsecured lender). I will give Swift permission to apply for relief in respect of the 1996 Deed within six months after the final disposal of the possession proceedings.

44. No attendance is required when this judgment is handed down. So far as costs are concerned I invite short written submissions by 4.00pm 20 November 2015.