

26 October 2015

Before:

MR. N. LAVENDER QC

BETWEEN:

ARTIST COURT COLLECTIVE LIMITED

Claimant

- and -

SARDAR MUHAMMAD ISHAQ KHAN

Defendants

Lawrence Caun (instructed by Ronald Fletcher Baker LLP) appeared on behalf of the Claimant.

Brie Stevens-Hoare QC (instructed by Lee Associates) appeared on behalf of the Defendant.

J U D G M E N T

1. In this action, the Claimant seeks an order against the Defendant pursuant to section 19 of the Landlord and Tenant Act 1987 (“the Act”).
2. The action concerns a property at 167-171 Hoxton Street, London and 2 Homefield Street, London, which is registered with title number EGL 177293 (“the Property”). There are 8 residential flats at the Property (“the Flats”) and 3 commercial units on the ground floor, which are or have been used as shops (“the Shops”).
3. The Defendant, Sardar Muhammad Ishaq Khan, is a criminal lawyer in Pakistan. He bought the freehold to the Property in, I am told, 1992.

4. The Claimant, Artist Court Collective Limited, is a company which was incorporated on 11 February 2013 and formed by the tenants of the majority of the Flats for the purpose of acquiring title to the Property pursuant to the provisions of the Act.
5. These proceedings were initially brought on behalf of 6 tenants of 7 of the 8 flats. (One tenant, Mr. Olivier Hyafil, is the tenant of two flats.) Two tenants have since withdrawn, but the proceedings continue for the benefit of 4 tenants of 5 of the 8 flats. I will refer to this group of 6 or, latterly, 4 tenants as the Majority Tenants.
6. The claim was brought pursuant to CPR Part 8. However, it has resulted in a trial with many disputed issues of fact as well as law. The usual course in such a case, where facts are in dispute, is to order that the case proceed as if it had been commenced under CPR 7. That would have been helpful in this case, as statements of case would have helped to define the issues.
7. However, I am very grateful to Mr. Caun, who appeared for the Claimant, and Miss Stevens-Hoare, who appeared for the Defendant, for identifying the issues so clearly.
8. Another feature of this trial was that many documents which might one might normally have expected to be available were not. For example, I was told that the Defendant's conveyancing files were transferred to a firm of solicitors,

Daybells LLP, who were the subject of a Law Society intervention, and that those files could not subsequently be recovered. Discovery requests and applications were made in advance of trial, but the trial had to proceed on the basis of such documents as were available.

9. Shortly before trial, three individuals (“the Interveners”) applied for permission to intervene. The Interveners were friends of the Defendant, who claimed to have been granted leases of the three Shops by the Defendant in July 2011. This application was refused on 15 May 2015 by HHJ Dight, who ordered that:

“In the event that a properly formulated application for interim relief is served before judgment, the Interveners have permission to appear and be heard at the conclusion of the trial, when Judgment is handed down, so that the trial Judge may give directions to allow any issues as to the Interveners’ rights and interests to be dealt with in due course.”

10. Counsel for the Interveners, Mr. Skelly, attended the trial, which took place on 18 to 20 May 2015. When I reserved judgment I indicated that he would have the opportunity to be heard when judgment was handed down.

Chronology

11. It is convenient to begin by setting out the chronology of the principal relevant events.
12. On 7 August 2002 the Defendant executed a power of attorney appointing Mr. Iftikhar Mehmood as his agent in connection with the Property. Mr. Mehmood is a relative of the Defendant, who was described, perhaps loosely, as the

Defendant's nephew.

13. At various times, Mr. Hyafil expressed to Mr. Mehmood an interest in buying the Property. Those negotiations seemed to be making some, albeit slow, progress between 2009 and 2011, but were called off in June 2011. Both Mr. Hyafil and Mr. Mehmood were cross-examined about those negotiations, but it is unnecessary for me to resolve any of the collateral issues which arose.
14. At the Defendant's request, Mr. Mehmood incorporated a company called SGR Properties (UK) Limited ("SGR") on 7 July 2011. The directors were the Defendant and Mr. Mehmood. The company secretary was Miss Raheela Mumtaz. She is another relative of the Defendant, and also the office manager for the MAT Partnership, Mr. Mehmood's firm of accountants. As at 24 August 2012, there were 10 shares in SGR, 9 held by the Defendant and 1 by Mr. Mehmood.
15. The Defendant visited England in the summer of 2011. It appears that he arrived in England in July 2011.
16. The Interveners claim that between 25 and 28 July 2011 the Defendant granted to each of them a 99-year lease of one of the Shops. These leases have not been registered.
17. 5 August 2011 is the date which appears on a Deed of Trust ("the Trust Deed") which purports to be signed by Mr. Mehmood on behalf of SGR (identified

therein as “the Trustee”) and by the Defendant and, as witness, by Miss Mumtaz. The Trust Deed provides as follows:

“WHEREAS:

(1) This Deed is supplemental to a Transfer and agreement made between Sardar Muhammad Ishaq Khan of the one part and the Trustees of the other part whereby the freehold property situate and known as 167-171 Hoxton Street, London N1 6LP and 2 Homefield Street, London N1 6PX (hereinafter called “the property”) as the same is registered at the Land Registry under Title number EGL177293 will be transferred by Sardar Muhammad Ishaq Khan to the Trustee to be held by them on trust for Sardar Muhammad Ishaq Khan.

(2) The Property will be transferred to the Trustee in consideration of the sum of £225,000 and the costs of purchasing the Property will be paid by Sardar Muhammad Ishaq Khan together with the sum of £225,000 excluding the three shops.

NOW THIS DEED WTINESSETH as follows:

1. The Trustee HEREBY DECLARES that the Trustee will hold the Property upon trust for Sardar Muhammad Ishaq Khan exclusively.

2. The Trustee HEREBY AGREES that they will undertake to transfer the shares in SGR Properties (UK) Limited to Sardar Muhammad Ishaq Khan as well as appoint him as a Director and will develop the shops for the exclusive and sole benefit of Sardar Muhammad Ishaq Khan and collect and pay the rent income to Sardar Muhammad Ishaq Khan as agreed.”

18. The Defendant did not identify the draftsman of the Trust Deed.
19. 9 August 2011 is the date of a contract (“the Contract”) for the sale of the Property by the Defendant to SGR with full title guarantee for a purchase price of £225,000. The Special Conditions in the Contract are as follows:

“1(a) This contract incorporates the Standard Commercial Property Conditions (Second Edition).

(b) The terms used in this contract have the same meaning when used in the conditions.

2. Subject to the terms of this contract and to the Standard Commercial Property Conditions, the Seller is to transfer the property with either full title guarantee or limited title guarantee, as specified on the front page.
3. The chattels which are on the property and are set out in any attached list are included in the sale and the buyer is to pay the chattels a price for them.
4. The property is sold subject to Leases or Tenancies of which the Buyer is aware.
5. In the event that a party has proper cause to serve Notice to Complete then the defaulting party shall pay £100.00 plus VAT to the other party's Solicitors being their costs in respect of preparing and serving the said Notice to Complete.
6. The Seller and Director of SGR Properties (UK) Limited are blood relatives and the Seller is the Uncle of the Director of the Company.
7. The sole Director, Iftikhar Mehmood, has for a number of years managed the property portfolio and other business interests of the Seller in the UK through various managing agents and advisors.
8. The Seller has been advised by his professional advisors, his accountants, bankers and property consultants to transfer the property into an investment vehicle being a London based limited company, SGR Properties (UK) Limited and to utilise part of the sale proceeds for the acquisition of other properties in London.
9. The Director and Seller have set up SGR Properties (UK) Limited ("the Company") for the sole purposes of transferring the property into the Company's name.
10. The controlling interest in the Company and the beneficial interest in the land will remain vested in the Seller through his investment vehicle and there will be no mortgage on the property.
11. The majority shareholder of the Company will be the Seller. The Director/Secretary of the Company agree to reflect this in the company's books, accounts and at Companies House.
12. The Company will acquire the Freehold at a nominal sum of £225,000.00 but the sale price will not include the 3 commercial shops, one of which is empty and two which are occupied by tenants.
13. The rental income from the shops will be given to the Seller by the Company subject to company expenses.
14. The Seller will allow the Company to arrange and apply for

change of use and develop the shops as advised by the property consultants, accounts and legal advisor.

15. The Company will be entitled to recover the costs of all expenses and development from the Seller subject to a proper audit of all expenditure which must be agreed and authorised by the Seller.

16. The Seller will provide a written Rent Authority letter to the Company of the tenants.

17. This agreement will not merge on completion and set out the full terms of agreement between the parties.”

20. The Contract was drafted by Lee Associates, who acted as solicitors to both the Defendant and SGR. The Contract does not refer to the Trust Deed, and it appears that Lee Associates were unaware of the Trust Deed when they drafted the Contract.

21. The Defendant did not identify the professional advisors, accountants, bankers and property consultants referred to in paragraph 8 of the Contract. Mr. Mehmood denied that he was one of them. The Defendant did not disclose any written advice from his professional advisors, accountants, bankers or property consultants, nor did he explain in a witness statement the advice which he allegedly received from them.

22. At trial, the Defendant’s counsel was unable to identify any commercial rationale for the transactions effected by the Contract and the Trust Deed.

23. 9 August 2011 was also the date of a Land Registry Form TR1, signed by the Defendant and by Mr. Mehmood on behalf of SGR and by Miss Mumtaz as witness. The form provided for the transfer of the Property by the Defendant

to SGR for £225,000.

24. It seems that this sum was paid by SGR. Mr. Mehmood said that the Defendant lent £225,000 to SGR for this purpose. I have seen no written loan agreement and no banking documents to evidence this payment. However, it is clear that someone had to provide the money to SGR.
25. On 22 November 2011 SGR was registered as the proprietor of the Property. SGR completed a form SDLT1 in connection with the Stamp Duty Land Tax (“stamp duty”) due on this transfer, but no copy was produced at trial. Question 57 in that form asked whether SGR was acting as trustee. Mr. Mehmood said that he answered “yes” to that question, but the Claimant was understandably sceptical.
26. I will refer to the transfer of the Property from the Defendant to SGR as the First Transfer. No notices were served under the Act on the tenants of the Flats in connection with the Contract or the First Transfer. Mr. Mehmood said that his and the Defendant’s understanding was that notices need not be served because Mr. Khan was going to be the shareholder in, and director of, SGR.
27. The tenants of the Flats did not become aware of the First Transfer until mid-2012. The reason why they found out was because they were upset that the Crispy Cod fish and chip shop had opened in one of the Shops, and this prompted them to look into their rights as tenants.

28. The Majority Tenants instructed solicitors, Ronald Fletcher Baker LLP, and on 17 August 2012 they served a notice on SGR under section 11A of the Act. SGR's solicitors, Lee Associates, replied on 12 September 2012, stating that the Defendant "continues to be the beneficial owner of" the Property.
29. On 25 October 2012 Ronald Fletcher Baker LLP wrote to Lee Associates, stating:
- "We require you to provide all documents evidencing the existence of a trust".
30. Lee Associates replied on the same day, stating that they:
- "confirm for the record that there are no other documents in existence to confirm that the beneficial interest remains vested in Mr. Khan."
31. It is the Defendant's case that this statement by his solicitors was incorrect, because they failed to mention the Trust Deed. The Defendant did not disclose the existence of the Trust Deed until after the commencement of these proceedings.
32. On 15 February 2013 the Majority Tenants served a notice on SGR under section 12B of the Act, and on 27 March 2013 the Majority Tenants served a notice on SGR under section 19 of the Act.
33. On 2 April 2013 Lee Associates wrote to Ronald Fletcher Baker LLP and stated, *inter alia*, that SGR:

"holds the property on trust for Mr. Khan and Mr. Khan holds the legal

and beneficial interest in the property solely as he did in his sole name.”

34. On 10 April 2013 Lee Associates wrote to Ronald Fletcher Baker LLP and stated, inter alia:

“With respect the legal and beneficial interest has always vested in Mr. Khan.”

“We are advised that Mr. Khan is happy to re-transfer the property back to his name from his investment vehicle since after all he holds the legal and beneficial interest.”

35. 19 April 2013 is the date of a Form TR1 signed by Mr. Mehmood on behalf of SGR and witnessed by Miss Mumtaz. This form provided for the transfer of the Property by SGR to the Defendant for no consideration. I will refer to this transfer from SGR to the Defendant as the Second Transfer.

36. Mr. Mehmood acknowledged that the Second Transfer was motivated by the actions of the Majority Tenants. He said that he had a conversation with the Defendant and that the Defendant said (in effect) that he wanted:

“to stop the litigation, put it back to satisfy the tenants and close off litigation.”

37. I accept that this was why the Second Transfer took place.

38. On 2 May 2013 SGR’s accounts for the year ended 31 July 2012 were produced. These accounts, which were prepared by Mr. Mehmood, showed the Property (or at least “the value of ground rent for eight flats”, according to a note to the accounts) as an asset of SGR (which, I note, was inconsistent with the Trust Deed) and net current liabilities of £225,618.

39. On 14 May 2013 the Claimant issued a Claim Form, seeking an order under section 19 of the Act against SGR as the purchaser under the First Transfer (“the First Proceedings”). Lee Associates responded on 22 May 2013, stating that SGR and Mr. Khan would be defending the claims vigorously. On 24 May 2013 Lee Associates asked for an extension of time for serving evidence until 13 June 2013. In neither letter did Lee Associates mention the Second Transfer.
40. On 28 May 2013 the Defendant was registered as the proprietor of the Property. No stamp duty was paid on the Second Transfer, on the basis that it was for no value.
41. On 11 June 2013 Lee Associates for the first time disclosed the Second Transfer (but not the Trust Deed) to the Majority Tenants. Lee Associates served a witness statement dated 11 June 2013 made by Mr. Mehmood, in paragraph 6 of which Mr. Mehmood stated:
- “[SGR] is no longer the registered proprietor of [the Property] following a transfer of whatever interest [SGR] had in the Property for nil value to [the Defendant].”
42. On 15 July 2013 the Majority Tenants served a notice on the Defendant under section 11A of the Act.
43. On 17 July 2013 Lee Associates wrote to Ronald Fletcher Baker LLP in response to the notice served on 15 July 2013 and stated, inter alia:

“To avoid further escalation of Legal proceedings and costs our client and the director of the investment vehicle decided to transfer the property which our client already has the legal and beneficial interest in and had provided £225,00 to the Investment Vehicle back to him at nil value.”

44. On 15 August 2013 the Majority Tenants served a notice on the Defendant under section 12B of the Act, and on 20 November 2013 the Majority Tenants served a notice on the Defendant under section 19(2) of the Act.
45. The present proceedings were commenced by Claim Form issued on 5 December 2013. It was only after these proceedings were commenced that the Defendant disclosed the Trust Deed.
46. On 24 March 2014 SGR's accounts for the year ended 31 July 2013 were produced. These accounts, which were prepared by Mr. Mehmood, showed the Property as a disposal and showed SGR's current liabilities as £1,224.
47. On 9 March 2015 Lee Associates wrote to HM Revenue & Customs, enclosing an SDLT1 form and a cheque for £2,250. They stated that they had made a mistake in not submitting an SDLT1 form. In a letter of 19 March 2015 to the Land Registry, Lee Associates claimed that the Defendant gave consideration for the Second Transfer by writing off the debt due from SGR and that they erroneously believed the transfer to be at a nil value since money did not pass between the parties.

Witnesses

48. Three witnesses gave evidence before me.
49. The first witness was Mr. Hyafil. He gave evidence in a straightforward manner and I find that he is a witness I can rely on. However, he was not a party to, and indeed was unaware at the time of, the disputed transactions, and therefore his evidence is of limited assistance on some of the key issues which I have to decide. He was cross-examined about a number of collateral matters, but, as I have said, it is unnecessary for me to decide those issues, and I do not do so.
50. The second witness was Ms. Mumtaz. She was called simply to give evidence about the signing of the Trust Deed. I will deal with that issue later.
51. The third witness was Mr. Mehmood. I treat his evidence with caution, for a number of reasons:
- (1) In some respects his recollection was incorrect. For example, he initially stated that Daybells LLP acted for the seller of a property in Stratford which the Defendant bought at the time of the First Transfer, but when shown the documents he realised that this could not be right.
 - (2) He seemed very concerned at times to defend himself and justify his own position.
 - (3) His explanations were unclear, for example when he was asked to explain an email which he sent on 6 April 2011 in connection with the

proposed sale of the property to Mr. Hyafil.

(4) In particular, he was unable to give a clear explanation of the rationale for the Contract and the First Transfer, despite being involved in them as director of SGR.

(5) Some of his answers were difficult to accept. For example, I was not convinced by his suggestion that the reason why it was proposed to transfer ownership of the Property to a company was because the managing agents had been removed and the transfer to a company would enable records to be kept separately.

52. I should add that my assessment of Mr. Mehmood's evidence is based on the evidence which he gave at trial. He was briefly cross-examined about the fact that in 2007 he pleaded guilty to blackmail and was sentenced to 3½ years imprisonment, but I have not relied on that fact in any way in forming my assessment of Mr. Mehmood's evidence.

53. The Defendant did not give evidence. I was told that he was too ill to travel, and shown a copy of a doctor's letter to this effect. Miss Stevens-Hoare did not seek an adjournment of the trial on this basis. She relied upon two statements signed by the Defendant, but:

(1) One was a short joint statement, made with Mr. Mehmood, which merely commented on certain documents disclosed by the Claimant.

(2) The second was a short statement made by Mr. Mehmood concerning the whereabouts of the missing original of the Trust Deed. The Defendant signed this statement without any explanation of the basis on which he was signing someone else's statement.

(3) The Defendant was not cross-examined on either statement.

54. When it became apparent on the last day of the trial that the Claimant wished to allege that the Trust Deed was a sham, Miss Stevens-Hoare objected that, if she had known that this allegation was to be made, she would have applied for an adjournment of the trial so that the Defendant could give evidence. I will return to this issue.

The Landlord & Tenant Act 1987

55. The preamble to the Act describes it as, inter alia:

“An Act to confer on tenants of flats rights with respect to the acquisition by them of their landlord's reversion;”

56. Section 1(1)(a) of the Act provides as follows:

“A landlord shall not make a relevant disposal affecting any premises to which at the time of the disposal this Part applies unless—

(a) he has in accordance with section 5 previously served a notice under that section with respect to the disposal on the qualifying tenants of the flats contained in those premises (being a notice by virtue of which rights of first refusal are conferred on those tenants);”

57. It is not in dispute that:

- (1) At all material times the Property constituted premises to which Part I of the Act applied.
- (2) The Defendant was the landlord at the time of the First Transfer.
- (3) SGR was the landlord at the time of the Second Transfer.
- (4) Neither the Defendant nor SGR served notices in accordance with section 5 of the Act before entering into the Contract, executing the Trust Deed or effecting the Transfers.

58. It was also common ground that the First Transfer was a “relevant disposal”. In fact, however, the provisions of the Act applied to the Contract, rather than to the First Transfer, as I explain below.

59. There was a dispute whether the Second Transfer was a “relevant disposal”. The expression “relevant disposal” is defined in section 4(1) of the Act, which provides as follows:

“In this Part references to a relevant disposal affecting any premises to which this Part applies are references to the disposal by the landlord of any estate or interest (whether legal or equitable) in any such premises, including the disposal of any such estate or interest in any common parts of any such premises but excluding—

(a) the grant of any tenancy under which the demised premises consist of a single flat (whether with or without any appurtenant premises); and

(b) any of the disposals falling within subsection (2).”

60. The Defendant contended that the Second Transfer was a disposal falling within section 4(2)(g) of the Act, which provides as follows:

“The disposals referred to in subsection (1)(b) are—

(g) a disposal consisting of the transfer of an estate or interest held on trust for any person where the disposal is made in connection with the appointment of a new trustee or in connection with the discharge of any trustee;”

61. I raised the question whether the Trust Deed was a “relevant disposal”. I will address this question later. I note, however, that section 4(3) of the Act provides that:

“In this Part “disposal” means a disposal whether by the creation or the transfer of an estate or interest ...”

62. Section 4A(1) of the Act provides that:

“(1) The provisions of this Part apply to a contract to create or transfer an estate or interest in land, whether conditional or unconditional and whether or not enforceable by specific performance, as they apply in relation to a disposal consisting of the creation or transfer of such an estate or interest.

As they so apply—

- (a) references to a disposal of any description shall be construed as references to a contract to make such a disposal;
- (b) references to making a disposal of any description shall be construed as references to entering into a contract to make such a disposal; and
- (c) references to the transferee under the disposal shall be construed as references to the other party to the contract and include a reference to any other person to whom an estate or interest is to be granted or transferred in pursuance of the contract.”

63. It is pursuant to this provision that the Act applied to the Contract.

64. Section 5(1) and (2) of the Act provide that:

“(1) Where the landlord proposes to make a relevant disposal affecting premises to which this Part applies, he shall serve a notice under this

section (an “offer notice”) on the qualifying tenants of the flats contained in the premises (the “constituent flats”).

(2) An offer notice must comply with the requirements of whichever is applicable of the following sections—

section 5A (requirements in case of contract to be completed by conveyance, &c.),

section 5B (requirements in case of sale at auction),

section 5C (requirements in case of grant of option or right of pre-emption),

section 5D (requirements in case of conveyance not preceded by contract, &c.);

and in the case of a disposal to which section 5E applies (disposal for non-monetary consideration) shall also comply with the requirements of that section.”

65. As stated above, neither the Defendant nor SGR served notices in accordance with section 5 of the Act before entering into the Contract, executing the Trust Deed or effecting the Transfers.

66. In the case of a proposed contract, the offer notice must contain an offer by the landlord to enter into a contract on the terms of the proposed contract. Thus, section 5A of the Act provides, inter alia, as follows:

“(1) The following requirements must be met in relation to an offer notice where the disposal consists of entering into a contract to create or transfer an estate or interest in land.

(2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—

(a) the property, and the estate or interest in that property, to which the contract relates,

(b) the principal terms of the contract (including the deposit and consideration required).

- (3) The notice must state that the notice constitutes an offer by the landlord to enter into a contract on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats.
- (4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.
- (5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.”

67. In the case of a proposed disposal which is not made in pursuance of a contract, the offer notice must contain an offer to dispose of the property on the terms of the proposed disposal. Section 5D of the Act provides, *inter alia*, as follows:

- “(1) The following requirements must be met in relation to an offer notice where the disposal is not made in pursuance of a contract, option or right of pre-emption binding on the landlord.
- (2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—
 - (a) the property to which it relates and the estate or interest in that property proposed to be disposed of, and
 - (b) the consideration required by the landlord for making the disposal.
- (3) The notice must state that the notice constitutes an offer by the landlord to dispose of the property on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats.
- (4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.
- (5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.”

68. Section 10A(1)(a) of the Act provides that:

“A landlord commits an offence if, without reasonable excuse, he makes a relevant disposal affecting premises to which this Part applies—

(a) without having first complied with the requirements of section 5 as regards the service of notices on the qualifying tenants of flats contained in the premises,”

69. Section 11 of the Act provides that:

“(1) The following provisions of this Part apply where a landlord has made a relevant disposal affecting premises to which at the time of the disposal this Part applied (“the original disposal”), and either—

(a) no notice was served by the landlord under section 5 with respect to that disposal, or

(b) the disposal was made in contravention of any provision of sections 6 to 10,

and the premises are still premises to which this Part applies.

(2) In those circumstances the requisite majority of the qualifying tenants of the flats contained in the premises affected by the relevant disposal (the “constituent flats”) have the rights conferred by the following provisions—

section 11A (right to information as to terms of disposal, &c.),

section 12A (right of qualifying tenants to take benefit of contract),

section 12B (right of qualifying tenants to compel sale, &c. by purchaser), and

section 12C (right of qualifying tenants to compel grant of new tenancy by superior landlord).

(3) In those sections the transferee under the original disposal (or, in the case of the surrender of a tenancy, the superior landlord) is referred to as “the purchaser”. This shall not be read as restricting the operation of those provisions to disposals for consideration.”

70. It was not disputed that:

(1) The First and Second Transfers were each original disposals for the

purposes of this and the other provisions of the Act. (In fact, in the case of the First Transfer, it was the Contract rather than the First Transfer which was the original disposal.)

- (2) The purchaser in the case of the First Transfer was SGR and in the case of the Second Transfer was the Defendant.
- (3) The Majority Tenants constituted in each case a majority of qualifying tenants of the constituent flats.

71. Section 11A(1) of the Act provides as follows:

“The requisite majority of qualifying tenants of the constituent flats may serve a notice on the purchaser requiring him—

(a) to give particulars of the terms on which the original disposal was made (including the deposit and consideration required) and the date on which it was made, and

(b) where the disposal consisted of entering into a contract, to provide a copy of the contract.”

72. It was not disputed that the notices served by the Majority Tenants on 17 August 2012 in the case of the First Transfer and on 15 July 2013 in the case of the Second Transfer were valid notices under section 11(1) of the Act.

73. Section 12B(1) and (2) of the Act provides as follows:

“(1) This section applies where—

(a) the original disposal consisted of entering into a contract and no notice has been served under section 12A (right of qualifying tenants to take benefit of contract), or

(b) the original disposal did not consist of entering into a contract.

(2) The requisite majority of qualifying tenants of the constituent flats may serve a notice (a “purchase notice”) on the purchaser requiring him to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable), to a person or persons nominated for the purposes of this section by any such majority of qualifying tenants of those flats.”

74. It was not disputed that the notice served by the Majority Tenants on 15 February 2013 in the case of the First Transfer was a valid purchase notice under section 12B of the Act. There was, however, a potential issue as to the validity of the notice served by the Majority Tenants on 15 August 2013 in the case of the Second Transfer. That issue, to which I will return, concerned the description of the Property in the Schedule to the purchase notice.
75. In each case, the person nominated by the Majority Tenants for the purposes of section 12B was the Claimant.
76. The Claimant contended that the Defendant, as the purchaser in relation to the Second Transfer, is required to dispose of the estate or interest which was the subject matter of the Second Transfer to the Claimant and to do so on the terms of the Second Transfer. There was an issue as to what those terms were. The Claimant contended that the Second Transfer was a transfer for no consideration. The Defendant contended that the consideration for the Second Transfer was £225,000.
77. Section 19(1) and (2) of the Act provides as follows:

“(1) The court may, on the application of any person interested, make an order requiring any person who has made default in complying with any duty imposed on him by any provision of this Part to make good the default within such time as is specified in the order.

(2) An application shall not be made under subsection (1) unless—

(a) a notice has been previously served on the person in question requiring him to make good the default, and

(b) more than 14 days have elapsed since the date of service of that notice without his having done so.”

78. It was not disputed that the notices served by the Majority Tenants on 27 March 2013 in the case of the First Transfer and on 20 November 2013 in the case of the Second Transfer were valid notices under section 19(2) of the Act.

79. The Claimant invites the Court to exercise the power under section 19(1) of the Act, on the basis that:

(1) The Defendant has a duty under section 12B of the Act to transfer the Property to the Claimant for no consideration (alternatively for £225,000).

(2) The Defendant is in default in complying with that duty.

(3) The Court should order the Defendant to make good that default by ordering the Defendant to transfer the Property to the Claimant for no consideration (alternatively for £225,000).

80. At a late stage in the trial, Mr. Caun suggested that the Court should also direct the Defendant to account to the Claimant for any rent received from the occupiers of the Shops. This is the sort of issue which might have been

pleaded if this case had proceeded under CPR Part 7, but which was not pleaded. Moreover, since it concerns the Shops, it is an issue on which the Interveners may wish to be heard. Accordingly, I indicated that I would not attempt to resolve this issue in this Judgment, and that I would, if necessary, hear further submissions as to the form of the order to be made in consequence of my Judgment.

81. Miss Stevens-Hoare drew attention to the word “may” in section 19(1) of the Act, which has the effect that the power to make an order under section 19(1) is a discretionary one. She invited me to exercise my discretion so as not to make such an order. I will return to this issue later.
82. In the light of some of the issues which were explored at trial, it is worth making two further points about the Act:
 - (1) The first is that the intention of the landlord and of the purchaser is irrelevant. All that is required is that they were party to a relevant disposal. Allegations that the Defendant and/or Mr. Mehmood were seeking to avoid the operation of the Act are therefore irrelevant (save perhaps to the exercise of the Court’s discretion under section 19(1)).
 - (2) The same applies to the conduct of the qualifying tenants, including the allegation that Mr. Hyafil is seeking to obtain a windfall. The Act simply confers certain rights on the qualifying tenants, provided that

they serve the requisite notices.

Issues

83. The parties helpfully provided a list of agreed issues. However, it emerged at trial that not all of those issues would require my decision. In this judgment, I address the following issues:

- (1) What interest was transferred to SGR?
- (2) Was the Second Transfer a relevant disposal?
- (3) Was the notice of 15 August 2013 a valid purchase notice?
- (4) What interest is the Defendant obliged to transfer to the Claimant?
- (5) What was the consideration for the transfer to the Defendant?

84. I now address these issues in turn.

(1) What Interest was Transferred to SGR?

85. It was agreed that the first issue for me to decide was “What beneficial interest in the Property, if any, was transferred to SGR by the First Transfer?”

86. Three possibilities were suggested:

- (1) The Claimant’s case is that the Defendant transferred the entire legal estate and beneficial interest in the Property to SGR.

- (2) The Defendant's primary case was that he only transferred the legal estate, but not any beneficial interest, in the Property to SGR.
- (3) The Defendant's alternative case was that he transferred the legal estate in the Property, together with the beneficial interest in the residential parts of the Property, but not in the commercial parts.
87. The Claimant's case is simply expressed. Prior to the Contract and the First Transfer, the Defendant was the owner of the Property. The Defendant entered into a contract to sell the Property to SGR. By the Form TRI, he transferred the Property to SGR. Accordingly, the Claimant submits, what was transferred was, as in the normal case of a sale and transfer of land, the legal and beneficial ownership of the Property.
88. The Defendant's primary case depends upon the Trust Deed, to which I will return. The Defendant's alternative case depends upon the terms of the Contract, and in particular those provisions of the Contract which concern the Shops, i.e. Conditions 12 to 16.

The Contract

89. It is perhaps surprising that the Defendant should have entered into a contract of sale at all if the Property was to be held on trust for him by SGR. However, the Contract was undoubtedly a contract of sale.
90. Moreover, the Property to be sold was registered property and was identified

by its title number. There can be no doubt that the intention was to transfer title to the whole of the Property.

91. The Defendant's case that he retained a beneficial interest in the Shops faces a formidable conceptual problem. Before the Contract was signed, the Defendant was the absolute owner of the Property. As such, he had no separate equitable interest in the Property. As Lord Browne-Wilkinson said in *Westdeutsche Landesbank Girozentrale Respondent v Islington London Borough Council* [1996] A.C. 669 (a case in which a bank claimed restitution of money paid under a contract subsequently found to be ultra vires), at p. 706E:

“A person solely entitled to the full beneficial ownership of money or property, both at law and in equity, does not enjoy an equitable interest in that property. The legal title carries with it all rights. Unless and until there is a separation of the legal and equitable estates, there is no separate equitable title. Therefore to talk about the bank "retaining" its equitable interest is meaningless. The only question is whether the circumstances under which the money was paid were such as, in equity, to impose a trust on the local authority. If so, an equitable interest arose for the first time under that trust.”

92. It follows that the Contract cannot have had the effect that the Defendant “retained” an equitable interest in the Shops.
93. Moreover, in my judgment conditions 12 to 16 of the Contract were not, on their true construction, intended to have the effect of withholding from the sale an equitable interest in the Shops. They were intended instead to give the Defendant a contractual right, after the sale, to receive from SGR the rent

received (less expenses) from the Shops. Thus:

- (1) Condition 17 provided that the contract would not merge on completion. That would allow its terms to be enforced notwithstanding the transfer of title to the Property.
- (2) Condition 12 stated that the sale price did not include the Shops. That was a reference to the price of £225,000, not to the extent of the Property being sold.
- (3) Condition 13 provided that SGR would give the rental income from the Shops (“subject to company expenses”) to the Defendant. That presupposed that SGR had a right to that rental income.
- (4) Condition 14 provided that the Defendant would allow SGR to arrange and apply for change of use and develop the Shops. That can perhaps best be seen as a derogation from the right to receive rental income provided for by condition 13.
- (5) Condition 15 provided that SGR could recover the costs of expenses and development from the Defendant. That was an obligation on the part of the Defendant to pay money to SGR.
- (6) Condition 16 provided that the Defendant would provide a written Rent Authority letter to SGR for the tenants. That was no doubt a useful thing to provide for on change of ownership.

94. Accordingly, I reject the Defendant's alternative case.

The Trust Deed

95. At the outset of the trial, Mr. Caun sought to challenge the authenticity of the Trust Deed. Miss Stevens-Hoare contended that the Claimant was precluded by CPR 32.19 from disputing the authenticity of the Trust Deed. I rejected this submission, for reasons which I gave at the time, but I allowed the Defendant to call the witness to the Trust Deed, Ms. Mumtaz, to give evidence.

96. Ms Mumtaz gave evidence that she signed the Trust Deed on 5 August 2011, after the Defendant and Mr. Mehmood had signed in her presence. It was not suggested her that she did not sign the Trust Deed. What was suggested was that she was mistaken as to the date, and that she might have signed it in 2012 or 2013. But she said that she remembered the date because it was the day before a friend's wedding.

97. In the light of that evidence, Mr. Caun did not press his challenge to the authenticity of the Trust Deed. Instead, he sought to argue that the Trust Deed was a sham.

98. Miss Stevens-Hoare objected to his making this allegation. She said that she had not been aware until the last day of the trial that this allegation would be made and that, had she been aware of it earlier, she would have applied for the adjournment of the trial to enable the Defendant to give evidence in response

to this allegation.

99. This is the sort of problem which can arise if a case involving disputed issues of fact is allowed to proceed under CPR Part 8 rather than Part 7. If the case had been ordered to proceed under CPR Part 7, then the Claimant would have set out its case in relation to the Trust Deed in a statement of case. As it was, there were no statements of case and the nature of the Claimant's case was unclear to the Defendant.
100. Were it necessary for me to decide the sham allegation, I would have adjourned the trial to allow the Defendant to give evidence. However, it is not necessary for me to decide that issue. For the purposes of this judgment, I assume, without deciding, that the Trust Deed was not a sham.

The Effect of the Trust Deed

101. When the Trust Deed was executed, SGR had no title to the Property. Accordingly, the declaration of trust contained in paragraph 1 of the Trust Deed could not take effect over the Property until SGR acquired an interest in the Property, i.e. when the Contract was made and given effect by the First Transfer. At that point, the Trust Deed operated to create a trust of the Property, conferring a beneficial interest on the Defendant.
102. I have already referred to the judgment of Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale Respondent v Islington London*

Borough Council [1996] A.C. 669. This was not a case, as the Defendant contends, of the Defendant retaining the beneficial interest in the Property, but rather of the Defendant selling his absolute interest in the Property to SGR, and of SGR conferring an equitable interest in the Property on the Defendant.

103. Miss Stevens-Hoare sought to rely on condition 10 of the Contract, which states that the beneficial interest in the Property will remain vested in the Defendant “through his investment vehicle.” However, this provision did not in itself create a trust and is to be read as merely descriptive of an arrangement whereby the Defendant would have an indirect interest in the Property through his shareholding in SGR.

What Interest was Transferred to SGR: Conclusion

104. Consequently, my conclusion on this first issue is that I find that the Contract and the First Transfer pursuant thereto had the effect of transferring to SGR absolute ownership of the whole of the Property, in return for £225,000 plus whatever sum might be due under clause 13 of the Contract. However, by the Trust Deed SGR had declared a trust of the Property which then took effect in favour of the Defendant.

(2) Was the Second Transfer a Relevant Disposal?

105. I turn now to the issue whether:

(1) as the Claimant alleges, the Second Transfer was a “relevant disposal”

for the purposes of the Act; or

- (2) as the Defendant alleges, the Second Transfer was excluded from the definition of a “relevant disposal” because it fell within section 4(2)(g) of the Act.

106. I do not consider that the Second Transfer was:

“a disposal consisting of the transfer of an estate or interest held on trust for any person where the disposal is made in connection with the appointment of a new trustee or in connection with the discharge of any trustee;”

107. The Defendant’s argument was that the transfer of the Property from SGR to the Defendant brought about the end of the trust and thereby discharged SGR as trustee. However, it seems to me that this does not fall within the scope of section 4(2)(g), for the following reasons:

- (1) Section 4(2)(g) applies to the transfer of an estate or interest held on trust for any person. This means that the property transferred must be held on trust both before and after the transfer.
- (2) Section 4(2)(g) applies where the transfer is made in connection with the discharge of a trustee. This refers to the situation where a trustee is discharged from a continuing trust pursuant to sections 36 or 39 of the Trustee Act 1925.
- (3) If section 4(2)(g) had been intended to apply to the transfer of property

to the beneficiary of a trust on the termination of a trust, then the subsection would have used words which more clearly expressed this intent.

108. Accordingly the Second Transfer was a relevant disposal for the purposes of the Act.

(3) Was the Notice of 15 August 2013 a valid Purchase Notice?

109. The Defendant contended that the purchase notice served by the Majority Tenants on 15 August 2013 was not a valid notice for the purposes of section 12B of the Act. As stated above, section 12B(2) of the Act provides as follows;

“(2) The requisite majority of qualifying tenants of the constituent flats may serve a notice (a “purchase notice”) on the purchaser requiring him to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable), to a person or persons nominated for the purposes of this section by any such majority of qualifying tenants of those flats.”

110. The purchase notice served on 15 August 2013 stated as follows;

“THIS IS NOTICE THAT the requisite majority of qualifying tenants of the constituent flats in [the Property] ... require you to dispose of the estate or interest in the Property that was the subject matter of the original disposal on the terms on which the original disposal was made, including those relating to the consideration payable, to [the Claimant].”

111. In my judgment, this was sufficient to comply with section 12B. It adopted the language of section 12B and made clear to the Defendant that the Majority Tenants were asserting their rights under that section.

112. The purchase notice fulfilled the purpose of a purchase notice as stated by Aldous L.J. in *Kay Green v. Twinsectra* [1996] 1 W.L.R. 1587, at 1599H, i.e.:

“to give the new landlord adequate notice that the qualifying tenants of the building wish to acquire the freehold upon the terms of the original disposal or upon terms to be decided by the leasehold valuation tribunal.”

113. In that case, Aldous L.J. said (at 1600B, and see also 1601E and 1602F-G and *Kensington Heights Ltd. v. Campden Hill Developments Ltd.* [2007] Ch 118 at paragraphs 87) that what was imperative (as opposed to merely directory) in what was then section 12 of the Act was that:

“A purchase notice must give adequate notice to the new landlord of the qualifying tenants’ desire to purchase the estate or interest that they should have been offered by the original landlord.”

114. That is what the purchase notice in the present case did.

115. As Sir Nicolas Browne-Wilkinson V-C said in *Danetower v Toop* [1991] 1 W.L.R. 945, at 953, once a notice had been served which gives to the new landlords adequate notice of the claim:

“The details of the property to be acquired and the terms of the acquisition can in default of agreement be sorted out by the rent assessment committee [*now the leasehold valuation tribunal*] on an application under section 13(1).”

116. The purchase notice went on to state as follows:

“The subject-matter of the disposal and the terms on which it is to be made are specified in Schedule 2 below.”

“SCHEDULE 2

THE SUBJECT MATTER OF THE DISPOSAL AND THE TERMS
ON WHICH IT IS TO MADE ARE AS FOLLOWS

1. Subject Matter: Freehold of 167-171 Hoxton Street, London, N1 6JP and 2 Homefield, London, N1 6PX.
2. Title number: EGL 177293.
3. Consideration: nil.
4. Title Guarantee: Full.
5. For the avoidance of doubt the subject matter of the disposal includes the residential and commercial premises at the Property.
6. This disposal is a disposal of the entire legal and beneficial interest in the Property without encumbrance or third party claim and subject only to the leases of the requisite majority of qualifying tenants and Charlotte Jennings and the leases of the commercial tenants at rack rents.”

117. The Defendant contended that the purchase notice was defective because it stated in paragraph 6 of Schedule 2 that the disposal required by the Majority Tenants was a disposal of the entire legal and beneficial interest in the Property, whereas it is the Defendant’s case (which I consider below) that the Second Transfer was merely a disposal by SGR of the legal title to the Property.

118. This is an unattractive submission, since the Defendant’s case that by the Second Transfer SGR only transferred the legal title to the Property depends upon the Trust Deed, which the Defendant had not disclosed when the purchase notice was sent. Indeed:

- (1) The Defendant had not disclosed the Trust Deed despite the request made by Ronald Fletcher Baker LLP in their letter of 25 October 2012 to

Lee Associates for all documents evidencing the existence of a trust.

- (2) Lee Associates' letter of 25 October 2012 had effectively denied the existence of the Trust Deed.

119. In effect, therefore, the Defendant's case is that the Majority Tenants should lose their rights under section 12B because their purchase notice failed to take account of a document which the Defendant had not only failed to disclose, but whose very existence his solicitors had denied.

120. The Defendant did not identify any authority which supported an interpretation of section 12B which would lead to such an unjust result. I see no reason why I should interpret section 12B in such a way.

121. In the light of submissions made in response to the draft of this Judgment, it may be helpful to point out that I do not regard the purchase notice of 15 August 2013 as limited to the Second Transfer:

- (1) As I have said, the purchase notice required the Defendant "to dispose of the estate or interest in the Property that was the subject matter of the original disposal on the terms on which the original disposal was made".
- (2) If the only original disposal by SGR to the Defendant was the Second Transfer, then the purchase notice could be read as saying, in effect, that it required the Defendant "to dispose of the estate or interest in the Property that was the subject matter of the Second Transfer on the terms

on which the Second Transfer was made”.

- (3) But the purchase notice itself was not necessarily limited in this way to the Second Transfer (and, indeed, did not even refer to the Second Transfer).
- (4) In particular, as I will explain, it is possible that the correct analysis is that there were two “original disposals” by SGR to the Defendant. If that is right, then in my judgment the purchase notice was apt to require the Defendant to dispose of the estate or interest in the Property that was the subject matter of both original disposals, and not just one of them.

(4) What interest is the Defendant obliged to Transfer to the Claimant?

- 122. Although section 12B of the Act does not expressly say so, a person who receives a valid purchase notice is obliged “to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable)”: see *Kay Green v Twinsectra Ltd* [1996] 1 W.L.R. 1587, at 1597B-H and 1603B-G.
- 123. In the words of section 12B, the purchase notice of 15 August 2013 required the Defendant “to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable)”.
- 124. The purchase notice of 15 August 2013 did not specifically identify the

“original disposal” to which it related. When that notice was served, and when the present proceedings were commenced, the only disposal to the Defendant of which the Claimant was aware was the Second Transfer. However, following the commencement of the present proceedings, the Defendant disclosed the Trust Deed.

125. There was an issue between the parties whether the subject-matter of the Second Transfer was, as the Claimant contended, the entire legal and beneficial interest in the Property or, as the Defendant contended, the bare legal title to the Property.
126. The Defendant’s case was that, because the Defendant had always retained the beneficial ownership of the Property, SGR only transferred to him by the Second Transfer the bare legal title, and consequently all that he could be required by the Act to transfer to the Claimant was the bare legal title to the Property.
127. It was agreed that any remedy for the Claimant under the Act would, in those circumstances, be an empty one. The Claimant would be entitled to acquire the legal title to the Property, but would hold it on trust for the Defendant, who would be entitled to call for a transfer of the legal title to himself.
128. However, in the light of my finding above that the effect of the Contract and the First Transfer was to transfer absolute title to the Property to SGR, the

remaining differences between the parties' respective positions was not great. On both the Claimant's and the Defendant's case, SGR has transferred absolute title to the Property back to the Defendant. The principal difference between the parties was as follows:

- (1) The Defendant alleged that the transfer was in two stages, i.e.:
 - (a) the Trust Deed transferred the beneficial interest in the Property;
and
 - (b) the Second Transfer transferred legal title to the Property.
- (2) The Claimant alleged that, at least for the purposes of the Act, the Second Transfer alone transferred the entire interest in the Property from SGR to the Defendant. The Claimant contended that this was the case either:
 - (a) because the Trust Deed was a sham and of no effect (which I assume it was not); or
 - (b) because, for the purposes of the Act, the Trust Deed was to be disregarded: it was not a "disposal" and the only "disposal" (and the disposal of the absolute interest in the Property) was the Second Transfer.

129. I see force in this latter submission by the Claimant. I doubt whether the Act

was intended to apply to a situation where the registered owner of freehold property declares himself trustee of that property for another, while remaining, so far as his tenants are concerned, their landlord.

130. However, it is not necessary for me to decide this point. I see no reason why the Act should be interpreted in such a way as to deny the Claimant the right to acquire the absolute title to the Property on the same terms as the Defendant has acquired it, even if I assume, in the Defendant's favour, that absolute title to the Property was transferred to him in two stages, i.e. by the Trust Deed and then by the Second Transfer.

131. As I have stated, I raised at trial the question whether a declaration of trust was a "disposal" for the purposes of the Act. The Defendant's position was that it was a disposal. So the Defendant's position (on the basis, as I have found, that he did not "retain" the beneficial interest in the Property at the time of the First Transfer) was that there were two disposals by SGR to him, i.e.:

- (1) the Trust Deed, which transferred the beneficial interest in the Property;
and
- (2) the Second Transfer, which transferred the legal title to the Property.

132. Assuming this to be correct:

- (1) There were two "original disposals".

- (2) SGR did not comply with its obligation to serve notices under section 5 of the Act in respect of either disposal. (I reject Miss Stevens-Hoare's argument that the Act did not apply to SGR because it was not the landlord when it executed the Trust Deed. SGR was the landlord when the Trust Deed took effect over the Property.)
- (3) On receipt of a valid purchase notice, the Defendant was obliged "to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable)".
- (4) This provision applies just as much to a disposal of the absolute interest made in two stages as to a disposal of that interest made in one stage.
- (5) As I have found, the notice of 15 August 2013 was a valid purchase notice and it applied to both disposals.
- (6) Moreover, it was not realistically and sensibly open to the Defendant to argue that two purchase notices should have been served when:
 - (a) The Defendant had not disclosed the Trust Deed when the purchase notice was sent, despite the request made by Ronald Fletcher Baker LLP in their letter of 25 October 2012 to Lee Associates for all documents evidencing the existence of a trust
 - (b) Lee Associates had, in their letter of 25 October 2012, effectively

denied the existence of the Trust Deed.

133. For these reasons, I conclude that the Defendant was obliged by the Act to transfer absolute title to the Property to the Claimant.

134. In the light of submissions made in response to the draft of this Judgment, I should point out that I have not found it necessary to make any findings on the Claimant's argument that the Defendant is estopped from asserting that the Trust Deed was a genuine document and/or took effect in accordance with its terms.

(5) What was the Consideration for the Transfer to the Defendant?

135. The next issue for me to decide is whether SGR transferred the Property to the Defendant for no consideration or for £225,000, being the amount of the debt said to have been released by the Defendant.

136. The evidence on this issue was as follows:

(1) The Defendant's case is that beneficial ownership of the Property was transferred to him by the Trust Deed. But it was not suggested that the Defendant gave any consideration for the Trust Deed. It was the Defendant's own case that this was a voluntary declaration of trust by SGR.

(2) Thereafter, on the Defendant's case, SGR held only the bare legal title to

the Property. It follows that, on the Defendant's case, he had no reason to pay £225,000 to SGR for the Second Transfer.

- (3) There was no contract in the case of the Second Transfer.
- (4) Mr. Mehmood made a witness statement on 11 June 2003 in which he said that the Second Transfer was for nil value
- (5) As I have said, Mr. Mehmood's evidence at trial was that he had a conversation with the Defendant and that the Defendant said (in effect) that he wanted:

“to stop the litigation, put it back to satisfy the tenants and close off litigation.”

- (6) I accept that this was the real reason for the Second Transfer. But this evidence did not involve, and indeed was inconsistent with, the formation of any contract between SGR and the Defendant. I find that there was no contract whereby the Defendant agreed to pay (or give value to) SGR for the transfer of title to the Property from SGR to the Defendant.
- (7) The form TR 1 stated that “The transfer is not for money or anything that has a monetary value.” Whoever completed this form believed that statement to be true, and they did not give evidence to say that they were mistaken or to explain how they came to be mistaken.

- (8) On 17 July 2013 Lee Associates wrote to Ronald Fletcher Baker LLP and stated, inter alia:

“To avoid further escalation of Legal proceedings and costs our client and the director of the investment vehicle decided to transfer the property which our client already has the legal and beneficial interest in and had provided £225,000 to the Investment Vehicle back to him at nil value.”

- (9) I can only assume that Lee Associates believed it to be true when they said that the decision had been made to transfer the Property to the Defendant at nil value. No-one from Lee Associates gave evidence to state that they were mistaken when they wrote this letter or to explain how any such mistake could have come about.
- (10) The Defendant has produced no document by which he released the debt due to him from SGR (although it is fair to say that the original loan was not documented either).
- (11) The debt was no longer shown as a liability in SGR’s accounts for 2013, which were drawn up by Mr. Mehmood on 24 March 2014. That shows, at best, Mr. Mehmood’s understanding of the position. But Mr. Mehmood’s understanding is of limited significance, since he had shown the Property as an asset of SGR in the 2012 accounts, when, according to the Defendant, SGR held the Property on trust for the Defendant.
- (12) On 9 March 2015, long after these proceedings were brought, Lee Associates wrote to HMRC to offer to pay stamp duty on the basis that

the consideration for the Second Transfer was £225,000. Unsurprisingly, HMRC accepted the payment of the stamp duty offered. The mere fact of the offer and acceptance of payment of stamp duty does not assist as to what was really agreed when the Second Transfer was effected in 2013, since that fact is consistent with a desire on the part of the Defendant, formed after these proceedings had been brought, to seek to present the Second Transfer as one which was made for consideration.

- (13) Miss Stevens-Hoare stressed the fact that Lee Associates stated, in their letter of 19 March 2015 to the Land Registry, that they had been mistaken when that said that the Second Transfer was made for no value. However, as I have already noted, no-one from Lee Associates gave evidence to explain the nature of any alleged mistake or to explain how any such mistake could have come about.

137. Consequently, I am not satisfied that the Defendant gave any consideration for the transfer to him by SGR of the Property.

Remedies

138. For the reasons set out above, I find that the Defendant was obliged by the Act to transfer absolute title to the Property to the Claimant for no consideration.
139. The Defendant has failed to comply with that obligation. Section 19(1) of the Act provides that the Court may make an order requiring the Defendant to

make good his default. It is appropriate to make such an order, subject to four points:

(1) As Miss Stevens-Hoare pointed out, the power to make an order under section 19(1) is a discretionary one. However, subject to any submissions which may be made in the light of this judgment:

(a) I do not consider that I should exercise my discretion so as decline to make an order, as that would be to deprive the Majority Tenants of the benefit of their rights under the Act.

(b) Moreover, the Defendant has brought this situation upon himself. In all the circumstances, I see no good reason to relieve him from the operation of the Act. Those circumstances include the following

(1) In August 2011 the Defendant entered into transactions for which his own counsel could identify no commercial rationale.

(2) According to Mr. Mehmood, the Defendant was aware of the provisions of the Act when he did so.

(3) Mr. Mehmood said that the Defendant understood (incorrectly) that notices need not be served under the Act. The Defendant himself did not give evidence to this effect,

nor did he explain whether such mistake (if any) as he may have made was the result of his own misreading of the Act, bad advice from some third party, or some other cause.

- (4) When the Majority Tenants sought to assert their rights under the Act, the Defendant's solicitors failed to disclose, and denied the existence of, the Trust Deed on which the Defendant now relies.
 - (5) Moreover, the Defendant and Mr. Mehmood agreed to effect the Second Transfer with the intention of "stopping" or "closing off" the proceedings which were about to be brought against SGR by the Claimant.
- (2) As I have said, before making any order, I will allow the Intervenors an opportunity to consider this Judgment and to make such application as they see fit in the light of this Judgment.
 - (3) At the same time, the Claimant will have an opportunity to make an application for an order in respect of the rent from the Shops.
 - (4) The Parties will have the opportunity to make such other submissions as they see fit in the light of this Judgment as to the appropriate remedy. For example, in submissions made in response to the draft of this Judgment:

- (a) Miss Stevens-Hoare contended that account will need to be taken of the provisions of the Contract concerning the Shops and my findings in relation thereto.
- (b) Mr. Caun submitted that this was unnecessary and inappropriate.

I will consider argument on these points before making any order.