Neutral Citation Number: [2016] EWHC 1174 (QB)

Claim No: LM 2014-000076

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

LONDON MERCANTILE COURT

Date: 20 May 2016

B e f o r e :

HIS HONOUR JUDGE WAKSMAN QC

(sitting as a Judge of the High Court)

(1) MARC BATAILLON
(2) CYRIL MARQUAIRE

Claimants

and

(1) MICHAEL SHONE
(2) ESTLYN SHARON SHONE

Defendants

Daniel Saoul (instructed by Charles Fussell & Co. LLP, Solicitors) for the Claimant

Asa Jack Tolson (instructed by Benchmark Solicitors) for the Second Defendant

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.

Hearing dates: 15-17 and 21-22 March 2016

INTRODUCTION

1. The Claimants in this action Mr Bataillon and Mr Marquaire, are very significant judgment creditors of the First Defendant, Mr Michael Shone, to the tune of some $2.5m plus accrued interest and costs. The Second Defendant is the wife of Mr Shone although they have been separated since about 2012, and although a divorce petition has now been issued against him by Mrs Shone in Singapore.

2. There were significant transfers of assets from Mr Shone to Mrs Shone in late 2013 and from February to September 2014. The Claimants contend that all such transfers were at an undervalue in that there was no consideration for them and they were made in order to put the assets beyond the reach of Mr Shone's creditors, within the meaning of s423 of the Insolvency Act 1986 ("the Act"), alternatively Mrs Shone is holding some or all of them as a mere nominee for Mr Shone and so he remains their beneficial owner in any event. Therefore those assets or their value should now be transferred into the name of Mr Shone so that the Claimants can execute their judgment against him or, more directly they should simply be transferred to the Claimants.

THE ASSETS MORE PARTICULARLY DEFINED

3. These are as follows:

   (1) properties at 69 Sheet Street, Windsor ("Sheet Street") and at 1 Chapel Hill, Budleigh Salterton, previously in the name of a Panamanian Foundation called Fundacion Pawnee and which were transferred into the name of Mrs Shone on 10 October 2013;

   (2) properties at 1 West Terrace and 1 Chapel Hill, Budleigh Salterton, Devon previously in the name of another Panamanian Foundation called Fundacion Connaught ("Connaught"), also transferred to Mrs Shone on 10 October 2013;

   (3) a further property in Oakley Grove Road Windsor known as "High Trees" which had previously been in the name of Mr and Mrs Shone but which was transferred into the sole name of Mrs Shone in July 2014;

   (4) the proceeds of sale of various cars paid over to Mrs Shone between February and September 2014 in a total amount of £212,500;

   (5) cash with a sterling value of around £140,000 paid by Commercial Intelligence South-East Asia PTE ("CISEA") to Mrs Shone in March 2014;

   (6) the proceeds of the surrender of a life-insurance policy taken out by Mr Shone in favour of Mrs Shone of which about £70,000 was paid to her in November 2014;

   (7) monthly remuneration due to Mr Shone from CIFG Mateen Capital Limited over a six-month period from May 2014 with a total value of about £45,000;

   (8) monies with a sterling value of about £45,000 paid to Mrs Shone from the cashing in of Mr Shone's Singapore pension on 27 June 2014.

4. The Claimants contend that no consideration was given for any of these transfers but Mrs Shone disputes this.

BACKGROUND

5. At all material times until recently Mr and Mrs Shone both lived in Singapore from where Mr Shone, a solicitor, carried on his business. They met in 1988 when they were in Hong Kong. He had recently been divorced from his first wife with whom he had a daughter, Samantha. In 1994

he married Mrs Shone in Singapore. In September 1998 they had a daughter, Camille who is therefore now 17. In 2006 they moved to Geneva where Mr Shone with others was running a small investment fund. His principal business until then had been international debt collection which became very successful. He operated this business through a group of Singapore-based companies called the Commercial Intelligence Funds Group.

6. In August 2012 Mrs Shone discovered that Mr Shone was having an affair with a Ms Veronika Taberner and from late 2012 his contact with Mrs Shone and Camille was very limited other than through email etc. It is thought that he is now with Ms Taberner in Bali. In mid-2014 he was diagnosed with cancer.

7. In the meantime, and as at 2012, Mr Shone had been promoting an investment fund carried on through Global Distressed Assets Fund III Limited Partnership ("GDAF") which purported to focus on complex cross-border litigation in emerging markets. Mr Shone was a shareholder in and principal of GDAF's investment manager namely GDAF Management Ltd and other companies promoting or supplying services to GDAF. Both Claimants, with an extensive background in business and corporate investments and the management thereof, were investors in and limited partners of GDAF through subscription agreements dated 26 April and 7 June 2012 and limited partnership agreements dated as at 2 May 2011 and 2 May 2012. High rates of return were promised by Mr Shone. Mr Bataillon invested around $1.26 million and Mr Marquaire, around $109,000. They remain liable to further capital calls on GDAF.

8. In January 2014, after the publication of GDAF's audited financial statements for the year ended 31 December 2012 the Claimants had serious concerns about its management and the whereabouts of its money (including their contributions) which appeared to have gone to service various third-party dealings. Those concerns were expressed to Mr Shone as soon as they received the accounts and following a meeting in London on 24 January 2014, Mr Shone signed a settlement agreement on 14 February 2014 by which he agreed to buy out their interests in GDAF for around $2 million. However he reneged on this agreement (with English law and jurisdiction clauses) and on 14 April 2014 the Claimants commenced these proceedings against him with permission to serve him out of the jurisdiction. He made it very difficult for the Claimants to serve him in Singapore and refused to accept service through his solicitors here. From late September 2014 onwards the Claimants learned of various transfers made between Mr and Mrs Shone and the fact that a property in Kuala Lumpur known as One KL and High Trees had been put on the market.

9. Following a without notice hearing on 13 February 2015 the Claimants were granted a worldwide freezing order against both Defendants and they were permitted to serve the Defendants by alternative methods. On 18 June 2015 the court rejected Mrs Shone's application to discharge the injunction against her and on 24 July 2015 summary judgement was granted as against Mr Shone. At the same time Mr Shone had sought unsuccessfully to avoid the summary proceedings against him on the basis that he had now declared himself bankrupt in Malaysia. The Claimants are now, in turn, seeking to have that bankruptcy order set aside.

10. Although, as will become clear, Mr Shone has had some communications and/or dealings with Mrs Shone in the course of these proceedings, he has played no official part in the claim against her which is the subject matter of this trial. In particular he has filed no witness statement in relation to the allegations made as against him especially on the question of the impugned transactions (the existence of which is undisputed) and his own intentions at the time. Accordingly, while Mrs Shone can give evidence of her own perception as to his intentions and point to documents which she says throw light upon it, as well as explaining her own intentions (insofar as they are relevant) there is no direct evidence to rebut the Claimants' inferential case

as to what they say Mr Shone's clear intentions were, namely, among other things, to defeat creditors.

THE ISSUES

11. So far as the s423 application is concerned, Mrs Shone's principal arguments by way of defence are these:

    (1) although no consideration is expressed to have been given on the face of the property transactions in particular, there was consideration because they were made pursuant to a prior albeit informal separation agreement in return for which Mrs Shone did not take divorce proceedings or claim financial relief from him, in particular in respect of the properties;

    (2) indeed, in the case of Sheet Street and Budleigh Salterton, she and Mr Shone had agreed that they should go into her sole name back in late 2012 and their eventual transfer into her sole name was only giving effect to that earlier agreement; in any event the prior legal owner thereof was not Mr Shone but rather the Panamanian Foundations referred to above. Accordingly there was no actual transfer of assets to her from him anyway;

    (3) equally on High Trees, although it had originally been purchased in joint names, the intention from the outset was that it should be in her name only and the later transfer to this effect was thus only giving effect to that earlier agreement;

    (4) furthermore, even if there was no consideration for some or all of the transfers, they were effected in order to protect Mr Shone and Camille and not with the intention of defeating creditors;

    (5) further, even if the court had jurisdiction to make an order under s423 it should not do so, or not do so with full effect, as a matter of discretion, having regard to the role of Mrs Shone and her personal circumstances.

12. As for the nominee allegation Mrs Shone simply denies this on the facts.

THE LAW

13. Section 423 provides as follows:

> "(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if:
>
> (a) He makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;…
>
> (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for-
>
> (a) Restoring the position to what it would have been if the transaction had not been entered into, and
>
> (b) Protecting the interests of persons who are victims of the transaction
>
> (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose-
>
> (a) of putting assets beyond the reach of a person who is making, or may at sometime make, a claim against him, or
>
> (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make."

14. Section 424 then provides that:

> "(1) An application for an order under section 423 shall not be made in relation to a transaction except-

> (a) In a case where the debtor has been adjudged bankrupt....by the official receiver, by the trustee of the bankrupt's estate or... (with the leave of the court) by a victim of the transaction;…
> (c) In any other case, by a victim of the transaction."

15. It is accepted that the Claimants here have *locus* as alleged victims.

16. Section 425 (2) states that:

> "(2) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)-
> (a) require any property transferred as part of the transaction to be vested in any person...
> (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct."

17. There was no disagreement between the parties as to the following general propositions of law:

(1) for the purposes of s423 it is the intention of the transferor which matters; see e.g. *Moon v Franklin* [1996] BIPR 196 at p202E; the transferee's belief or understanding as to the reason for the transfer is irrelevant at this stage save insofar as it could cast light on the transferor's intention;

(2) it is sufficient if the transaction was entered into for the purpose of putting assets beyond the reach of or prejudicing any creditor or creditors ("the Statutory Purpose"); it does not have to be directed against the particular creditor who is now making the claim under s423 – see *Fortress Value v Blue Skye* [2013] EWHC 14 at paragraph 111;

(3) the Statutory Purpose does not have to be the only or even the dominant one, so long as it is a real and substantial purpose and not merely trivial or simply a by-product or consequence of the transaction; often, for example, a parallel purpose might be to secure the financial interests of members of the family concerned - see the observations of Arden LJ in *IRC v Hashmi* [2002] BCC 943 at paragraphs 23-25 and *Williams v Jones* [2012] EWCA 1443 at paragraph 9 of the judgment of Lloyd LJ;

(4) it is therefore not necessary to show dishonesty on the part of the transferor - see, for example, the observations of Jonathan Parker J in *Re Brabon* [2000] BCC 1171 at 1199E;

(5) So far as the lack of consideration is concerned, if the transferee was already, by the imposition of a constructive trust or otherwise, the beneficial owner of the whole of the asset transferred, then all that is being transferred is the bare legal title which has no real value; in that event, there is in truth no transfer at an undervalue at all. See the observations of Launcelot Henderson QC (as he then was) in *Kubiangha v Ekpenyong* [2002] EWHC 1567 at paragraph 15.

18. Furthermore, consideration can be provided by, for example, a present or former spouse or partner agreeing to renounce his or her right to claim financial relief including for example a property transfer order whether in divorce or separation proceedings or otherwise. So if a spouse forebears from petitioning for divorce and seeking a property order in return for the impugned transfer, this can constitute consideration. See the judgment of HHJ Raynor QC in *Papanicola v Fagan* [2008] EWHC 3348 (Ch) at paragraphs 29-30, where he found that consideration in this form had been provided. See also the decision of Mr Registrar Jones in *Rubin v Dweck* [2012] BPIR 854 in which he found that the impugned transfer was made in response to the transferor's wife who said that otherwise she would divorce him. In fact, the primary finding, on the facts, was that the Statutory Purpose was not made out anyway and so the question of consideration was strictly irrelevant - see paragraph 110 of the judgment.

19. Of course, whether and if so what kind of promise was made in return for the impugned transfer is very much a question of fact turning on the particular circumstances of and evidence in each case. When investigating the facts, the Court will of course look at the true substance of the dealings between the parties; so the fact that on a formal document of transfer it is said that it is made for no consideration will not itself necessarily be determinative.

20. It is plain from the wording of s423 (2) that once the pre-requisites of undervalue and Statutory Purpose have been made out, it is then a matter for the discretion of the Court as to whether and if so what order should be made by way of relief in respect of the assets concerned.

21. No real argument was addressed to me on the law in relation to nominees and none was necessary. It was accepted by Mr Saoul for the Claimants that before his alternative nominee claim could succeed in respect of any particular asset, he would have to show an express or implied agreement between Mr and Mrs Shone that she was to hold the asset only as a nominee for Mr Shone. In other words, she had the bare legal title and the beneficial ownership remained with Mr Shone who would then retain effective control of it and could seek its return.

THE EVIDENCE

22. Both Mr Bataillon and Mr Marquaire gave evidence. I considered them to be reliable and straightforward witnesses. Since their status as creditors of Mr Shone is not in doubt, nor the circumstances leading up to that, there was little they said that could be challenged. But their evidence as to the conduct of Mr Shone is of inferential value when considering his likely state of mind in respect of the transfers.

23. There was extensive evidence at trial from Mrs Shone which I saw and heard her give for some two days. It has to be recognised at the outset that she is in a very difficult position. On any view she was betrayed by her husband who in many respects failed to engage with the domestic situation he left behind, in particular with regard to Camille. The numerous emails from Mrs Shone demonstrate her understandable conflicting emotions. She also faced uncertainty as to her financial future as from the end of 2012; furthermore, and subject to any exercise of my discretion otherwise, if the s423 claim is made out, she stands to lose significant properties and/or will have to find large sums to pay to the Claimants. As explained above, that outcome is possible even if she did not share (or even know of) Mr Shone's intentions giving rise to the Statutory Purpose.

24. That of course does not mean that she would necessarily be a reliable witness. She has a very clear vested interest in defeating this claim whatever she thinks of Mr Shone. She is highly intelligent, sophisticated and articulate and well aware of the nuances of the case against her. While I have considerable sympathy for her predicament, I have to say that I did not generally considered to her be a reliable witness on many of the key issues. I think she was prepared to and did embellish or "spin" her account so as to diminish the role of Mr Shone in a number of transactions and increase her own, in order to support her argument that the property transfers in particular were only giving effect to pre-existing agreements and that in any event Mr Shone could not have had the Statutory Purpose in mind, since she was the driver for the transactions. I also felt that some parts of her evidence were clearly implausible and/or inconsistent with other parts or contemporaneous documents. On other occasions her evidence was little more than argument.

25. I will refer to the matters in context below but by way of some examples, (a) her evidence about the background to the sending of the email of 26 September 2013 instructing lawyers to execute a deed of gift to her from the Panamanian Foundations was very unsatisfactory; (b) she was at times coy about the true extent of her dealings or communications with Mr Shone during the course of these proceedings; these included the sending to her of bank statements by Mr Shone

although she said at first that they went direct to her solicitor, and her inconsistent evidence about funding the joint health-insurance; (c) her inconsistent evidence as to why cars were put into her name; (d) she gave implausible evidence about the transfer of the property at One KL which she said was intended to go into her sole name because she felt she should have an interest in it and yet this then changed to an undocumented oral agreement (apparently with the blessing of her lawyer at the time and made with Mr Shone at a time when there was serious acrimony between them) to split the proceeds of sale; and (e) her unsatisfactory evidence about an alleged agreement from July or August 2013 to transfer Sheet Street and Budleigh Salterton into her sole name, when all the contemporaneous documents at this time referred to them going into joint names. Other examples appear in context below.

26. Moreover her evidence on many matters was uncorroborated, not least because the First Defendant did not appear as a witness.

27. Overall, therefore, unless her evidence is supported by the contemporaneous documents, it is to be treated with considerable caution.

28. As to the contemporaneous documents themselves, there is a very large body of them mainly emails and mainly from Mrs Shone herself. But in addition and although we do not have them, but as Mrs Shone accepted, there would have been other communications with Mr Shone by text as well as on the telephone.

GDAF

29. The annual report for GDAF for the year ending 31 December 2012, being the first complete year of the Claimants' investment, was not produced until 13 November 2013 and was not sent to them until January 2014. It revealed numerous "related party transactions" with the total due to GDAF in this respect being some $9.3 million, an increase from $1 million the previous year. This is a remarkable figure given that the total net assets of GDAF (including these debts) was just under $25 million.

30. Mr Bataillon, a very experienced investor, unsurprisingly wrote to Mr Shone asking for an explanation of all these third-party dealings, remarking that there were so many "red flags" that anyone "with an IQ of above room temperature" should be very concerned. See his email of 13 January 2014. Mr Shone later agreed to meet with Mr Bataillon and Mr Marquaire at the RAC Club in London on 24 January and this led to the settlement agreement signed shortly afterwards on 14 February. In those circumstances it can easily be inferred that there were no valid explanations for these transactions.

31. One can also infer from this episode that (a) Mr Shone was clearly engaging in highly irregular conduct with regard to the funds of GDAF which itself suggests that he was the sort of person who was capable of intending to avoid creditors and (b) those irregularities were so obvious and glaring that he must have been aware of them as they took place, in the course of 2012. He must also have known that once revealed to investors, such as the Claimant's, investors would react as the Claimants, and ask for their money back or other compensation.

TRANSFER OF BUDLEIGH SALTERTON AND SHEET STREET

The Panamanian Foundations

32. Before dealing with the transfers to Mrs Shone of Sheet Street and Budleigh Salterton, it is necessary to deal with a preliminary question which is who their beneficial owner was, prior to their transfer, as opposed to their legal owner.

33. As at October 2009 Sheet Street and one of the Budleigh Salterton properties were owned by Pawnee and the other Budleigh Salterton property was owned by Connaught. The Regulations for both of them are the same, save in one respect referred to below. They provide, among other things, as follows: there are three beneficiaries, Mrs Shone, Samantha and Camille. Mrs Shone is said to be entitled to the use and enjoyment of the properties and to the income thereof. The Founder is expressed to be a company called Fundaservicios SA. In the event of the "death" of the Founder they would become entitled to the assets in defined percentages. In the case of Mrs Shone this was 50%. In the case of Pawnee the other 50% would go to Camille, while in the case of Connaught 25% would go to Samantha and 25% to Camille. Since Samantha was also expressed to be a beneficiary in the case of Pawnee, it is not clear if there is an error here. The Founder can change the beneficiaries at any time.

34. If one pauses there, and ignoring for one moment the fact that the Founder here appears to be a company and not an individual, the intention of this document appears to be that the Foundations property is held on trust until the death of the founder when it is distributed to whoever are presently the beneficiaries - and so it is at least in part a form of Will.

35. The management section provides among other things as follows:-...

> "The Foundation Council shall manage the assets or property comprised in the Foundation assets.
>
> Both the management of funds and the investments made therewith shall be conducted in good faith and subject to the rules governing the concept of a prudent *paterfamilias.*
>
> The Foundation Council may dispose of the assets of the Foundation, and also encumber them by way of security for the Foundation's own obligations or for obligations of third parties.
>
> The Foundation Council is under a duty of care in respect of looking after and preserving the assets of the Foundation."

36. This suggests that the Foundation Council can deal in the assets although it would be odd if it could simply give them away. To do that would be to deplete the "estate" intended for the beneficiaries.

37. In the section dealing with the Protector, the powers granted suggests that the Protector is to act as an administrator or manager of the Foundation. In this case the Protector is a solicitor, Mr Eddlestone.

38. In fact, since the Foundation here is expressed to be a company and not an individual the whole scheme makes little sense since the company is not capable of "dying". There is no expert evidence as to Panamanian law adduced by either side. I do have a copy of the Private Interest Foundation Law of Panama being law No. 25 of 12 June 1995 which makes clear that such Foundations are recognised entities under Panamanian law and it sets out the basic provisions for the operation. Many appear in the Regulations of the Foundations described above.

39. Mrs Shone's short point is to say that the later transfer of Budleigh Salterton and Sheet Street by Pawnee and Connaught are irrelevant because they were not transactions made by Mr Shone but rather the Foundations. She further contends that the only way in which Mr Shone could be said to be the other party is if the Foundations and their documents are to be regarded as "shams" in the sense set out by Lord Denning MR in *Snook v West Riding Investments Ltd* [1972] 2 QB 786, namely "acts done or documents executed by the parties… which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create… all the parties thereto must have a common intention that the acts or documents are

not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affects the right of a party whom he deceived."

40. The Claimants' principal riposte to this is to say that in order to engage s423 in respect of these property transfers, it is not necessary to show that the Panamanian Foundations or the documents relating thereto were shams. All that needs to be shown is that despite these Foundations being the legal owners, in truth the beneficial owners of the properties were Mr Shone or possibly Mr and Mrs Shone. I agree. Moreover, on the evidence, it seems clear to me that regardless of the formal structure and terms of the Foundations, they were in truth controlled directly by Mr Shone (who was not even strictly, the Founder) and who directed the transfer into Mrs Shone's own name as explained below.

41. By an email dated 26 September 2013 Mrs Shone stated as follows to Alan Taylor at the firm of Hamilton Quinn, being Mr Eddlestone's firm:

> ".. Part of the financial package involves the transfer of Fundacion Pawnee to my name of 69 Sheet Street and the land cert is with your office. Walton is the protector of the Foundation and Panamanian lawyers act as the Trustees. Please arrange for a deed of gift by the Trust to me thereby minimising stamp duty. Separately 1 West Terrace, Budleigh Salterton, is also in the name of the Foundation and should be gifted to me."

42. There is then a handwritten note from Mr Shone dated 1 October 2013 which states:

> "please send letter to Alan Taylor the Certificates of Title for Sheet Street and for 1 West Terrace are with Walton.… The certificate for 1 Chapel Hill is with John Orchard in Exmouth.… Has anyone asked John Orchard to transfer this to Sharon's name? If not this should be done immediately."

43. On 3 October 2013 Mr Shone emailed Mr Eddlestone to confirm that "it is my wish that the properties known as 1 Chapel Hill, 1 West Terrace … and 69 Sheet Street be gifted to Sharon by the Foundations in whose name they are registered, and I would be much obliged if you would in due course execute the various Deeds of Gift from the Foundations to Sharon." One notes here his reference to the properties not being owned by the Foundations but being "registered" in their name. There is no evidence that any deeds of gift were produced. There was a deed of transfer from the Foundations to Mrs Shone dated 9 October 2013 and pursuant to that she was registered as sole owner at the Land Registry on 10 October 2013.

44. This transfer was highly irregular from the Foundation's point of view:

    (1) it was clearly done on the direct instruction of Mr Shone who, strictly, is not the Founder;

    (2) but in any event, while the Founder has a power to change a beneficiary he does not have a power to effect transfers of the Foundation's assets;

    (3) indeed, while the Foundations' Regulations contemplate the possibility that assets might be disposed of they do not suggest that they can be simply gifted whether to a beneficiary or not during the lifetime of the Founder.

45. That the transfer was irregular was picked up at least in some respects by the Panamanian lawyers, Quijano and Associates ("Quijano") when they were notified by Hamilton Quinn of the transfer after it had taken place on 12 October 2013. Their response, and Mr Shone's follow-up email, are illuminating:

    (1) Quijano replied as follows:

    > "We would like to let you know that the act of transfer by Foundation Pawnee, in favour of Sharon Shone, should have been previously approved by the members of its foundation council. Therefore, it shall be necessary to prepare the relevant council resolution, to be dated retroactively, in order to basically ratify the aforementioned transfer…Furthermore, we would like to point out that our fees and expenses for the preparation of the required opinion, for the elaboration of the required council members resolution and related services shall amount to approximately U.S. S 1,400.00."

(2) And then Mr Shone replied:

> "Thank you for your mail. The fee quote is acceptable. Please transmit the invoice to Singapore as usual, for my attention."

46. Therefore, Quijano were prepared to create a backdated document from the Foundation Council approving a transfer they were unaware of at the time and which was not obviously within their powers anyway as it amounted on its face to a simple gift. Moreover the person to be billed for this was not the Founder or Protector or the beneficiaries, but Mr Shone himself.

47. The subsequent letter from Quijano dated 17 October 2013 shows that they indeed prepared minutes of a meeting on 8 October 2013 which did not take place, and a Council resolution approving the same. I note there is a reference to Mr Shone and Mr Eddlestone being given Powers of Attorney in respect of the Foundation. However no separate argument was addressed to me in respect of that and it remains the case that Mr Shone is not in fact the Founder.

48. Furthermore, Mr Shone clearly treated the properties as belonging to him. Not only did he ignore the Foundation Council when instructing the transfer, he included the properties in the final version of his Declaration of Wealth and Source of Funds dated 10 September 2013 to Butterfield Bank in connection with the financing for the purchase of High Trees. He did say that he had "settled these properties in Private Interest Foundations" but there was no point in putting these items in this list unless he wanted to represent that they formed part of his personal assets. In addition, the application form to UTB for loan finance to be secured on Budleigh Salterton completed by Mr and Mrs Shone describes the properties as "already owned" i.e. by them as opposed to saying that they were "owned by another".

49. Apart from signing this application form, Mrs Shone referred in previous documents to the properties as being owned by both of them when communicating with mortgage brokers. See in particular her emails with Adrian Anderson in August 2013. She refers to the properties being "in" Panamanian companies for tax reasons but says that they could easily be transferred "into our names" if necessary. See also her email to another broker Mr Sheriff to the same effect of 25 September 2013. Moreover Mrs Shone's entire case on consideration was that she had a prior agreement with Mr Shone personally to transfer the properties to her dating from late 2012 "discussed below" - see paragraph 5 of the defence.

50. Since, despite the terms of the Foundations, Mr and Mrs Shone were clearly able to do as they wished with the properties, it is wholly unrealistic to say that the true beneficial owners here were the Foundations.

51. That remains the case even if (as contended for by Mrs Shone) the Panamanian Foundations were themselves genuine and were indeed the legal owners of the properties. So the fact that the "correct" paperwork was later obtained (albeit backdated) and seen as necessary to satisfy the banks etc is nothing to the point. Mr Tolson also makes the point that in the event, the transfer was to the largest single beneficiary i.e. Mrs Shone who had a putative 50% interest in the assets of the Foundation. But that cannot assist because (a) the Foundation appears not to have any power to distribute to the beneficiary at that stage anyway and (b) if it did, it rode roughshod over the interests of the other beneficiaries and in particular Samantha, Mr Shone's daughter from his first marriage.

52. It is pointed out that the Foundations were in all probability established for tax reasons and that seems to have been Mrs Shone's understanding. I see that and I accept that many parties may choose to enter into complex but nonetheless genuine transactions for such purposes, and ones which would not be classified as "shams" because there is no dishonesty - see in this context paragraph 63 of the judgement of Neuberger J (as he then was) in *Nat West v Jones* [2001] 1 BCLC 98; but in my judgement, that does not prevent a Court from finding, on the particular

facts of a given case, that the true beneficial interest in the properties held by the relevant entity, lay elsewhere.

53. Mrs Shone's evidence as to the original purchase of the properties was that she and Mr Shone wanted some property in England as "security" although they were non-resident there and as they could not own any property in Asia. But all that suggests is that in truth she saw the properties as theirs. The involvement of the Panamanian Foundations for tax reasons does not advance her case.

54. In my judgement, therefore, the true analysis is that notwithstanding the existence and formal nature of the Panamanian Foundations, the beneficial owners of Budleigh Salterton and Sheet Street were Mr and Mrs Shone. Accordingly, upon transfer of them and their legal title into the sole name of Mrs Shone and without (as I find it) any reservation to Mr Shone of any beneficial interest, he transferred or brought about the transfer of his beneficial interest therein to her. There is no reason, absent any evidence to the contrary, not to put his prior beneficial interest at 50%.

55. Accordingly, it is not necessary to deal with the separate argument (if in truth it is separate) that the Foundations were a sham. But having regard to the dicta of Lord Denning in *Snook* (supra) if necessary, I would conclude that it was, in this sense:-

    (1) in the light of my findings above, both Mr and Mrs Shone knew that in reality, both of them were and remained the beneficial owners of the properties to do with them, as they saw fit;

    (2) they are the key parties because in this case the "real rights" said to be obscured or disguised by the sham i.e. the Panamanian Foundations and their documents, are theirs as beneficial owners of the properties; I quite take the point that in the context of a bilateral agreement like a contract or what is in truth a lease (as opposed to a licence) the two parties to the underlying "real" transaction must both share the relevant intention; but this is not a case about such contracts;

    (3) insofar as it is necessary for the other parties in the Panamanian Foundations who have any active role i.e. other than Camille and Samantha who are beneficiaries only, Quijano, the Panamanian lawyers were prepared to issue backdated documents obviously designed to give the impression of a proper resolution which it was not, and Mr Eddlestone or his firm appears to have been willing (and able) to do Mr Shone's bidding to transfer the properties outside the terms of the Foundations without regard to them at all; so if necessary I would find that they too, knew that the Panamanian Foundation and its terms did not represent the reality of the position as to the beneficial ownership of the properties notwithstanding that, as a matter of English property law, the Foundations were unquestionably the legal owners and even if *qua* Panamanian Foundations, they clearly existed.

    (4) For all those reasons, I treat the transfer of Budleigh Salterton and Sheet Street as a transfer by or on behalf of Mr Shone to Mrs Shone of his beneficial interest therein namely 50%.

Consideration

56. Mrs Shone's next point is that this transfer only gave effect to a pre-existing agreement between Mr Shone and herself to the effect that she should take the entire beneficial ownership of the properties and the consideration for that was her agreeing not to take divorce proceedings against him and/or claim financial relief not least in respect of those properties.

57. After Mrs Shone's discovery of Mr Shone's affair, she had a meeting with him in Singapore on 29 November 2012. She says that he agreed to transfer the properties to her in order to give her and Camille some financial security. She said as much in her follow-up email of 5 December 2012. Mr Shone replied to say that he had discussed it with Walter agreeing it would give her security and it should be included in a deed of separation. In her response she rejected any suggestion of a separation deed, saying she had not agreed to it but wanted him to follow up on the transfer of the properties. But in fact, at that point, nothing further happened. It cannot be said that any promise about the properties made by Mr Shone at that point was in exchange for Mrs Shone agreeing not to divorce him or to seek financial relief because shortly afterwards on 21 December 2012 she issued a divorce petition relying on his affair, and sought the full range of financial relief, including a property adjustment order, even though the divorce petition was not actually served and the application for financial relief was later withdrawn.

58. In early 2013 Mrs Shone thought at various points that there may have been some hope of reconciliation and she accepted in cross examination that at this stage at least the idea of any transfer to her was dropped.

59. However she then said that the idea of the transfer, based on the agreement in late 2012, was revived around the middle of 2013 and formed the basis for the eventual actual transfer in October 2013. To deal with this point in context it is necessary to set out some of the facts concerning a different property, namely High Trees.

60. In 2013 Mrs Shone discovered that Mr Shone had bought a villa for Ms Taberner. She said that she then acted upon the advice of a psychiatrist in Singapore whom she had seen called Dr Siew who suggested that she "anchor" family assets and keep them from Ms Taberner and she discussed with Dr Siew the notion of buying a family home in England. I have to say that I found this evidence rather odd - Dr Siew's role was a psychiatrist and not a financial adviser - but it probably does not matter since on any view by June 2013 Mrs Shone had suggested the purchase of a property worth up to £2 million. She says that at this point Mr Shone agreed at once and that it should go into her sole name, although there is no email or other document to that effect at the time. She found a suitable property in Windsor called High Trees and in her witness statement she said that she thought that only a small mortgage would be required because Mr Shone would provide most of the purchase price in cash.

61. By 31 July Mrs Shone had some telephone conversations with Mr Hampton at SPF a broker. His lengthy email of that date recounts that she said she needed a mortgage of £1 million and that the intention was to buy High Trees in joint names. She put forward Budleigh Salterton and Sheet Street as security for any loan and Mr Hampton advised that to that end they would have to be transferred to Mr and Mrs Shone before they could act as security.

62. There is absolutely no evidence at this or any stage prior to the transfer of 9 October 2013 to suggest that any transfer of Budleigh Salterton or Sheet Street to Mrs Shone was the result of an agreement made back in 2012. All the contemporaneous documents show that the reason why any transfer came up then was to provide security for the purchase of High Trees. Moreover, in June and August, the intention was to transfer those properties into their joint names which is completely inconsistent with a prior agreement still operative, to transfer them to her. Indeed her emails to and discussions with brokers to this effect were not disclosed when Mrs Shone originally sought the discharge of the freezing order against her. And as late as 25 September, she was still suggesting the transfer of the properties into joint names. In cross-examination she could not really explain this.

63. On 26 September however, she did write an email requesting a gift of the properties to her alone and Mr Shone followed suit later. Although in her witness statement she asserts that the resulting transfer was simply to give effect to the 2012 agreement, this was not really borne out by her oral

evidence. As to why she wrote the 26 September email in those terms, showing some knowledge of the Panamanian Foundations, deeds of gift etc she then said that the email had actually been drafted for her by Stewarts, her solicitors. When asked to produce the note from them containing such advice as might be expected to have existed, she then said that she might have been given the advice on the telephone. I found all of this very unconvincing - I think she introduced the notion of legal advice simply to counter any suggestion that the language of the email showed she was familiar with matters such as the deed of gift and the Foundations. Equally, when asked whether she had spoken to Mr Shone prior to sending the email, she first said "not really" but then later said she had. I felt that this was an example of where she would give an answer depending on what she thought at the moment would best suit her case. In reality, I do not accept that the email was sent without having spoken to Mr Shone in detail about it first. And I do not accept that it was driven by her insisting that it was done to give effect to an agreement in 2012.

64. I must return to this period below, when considering the question of intention, but at this stage, my conclusion is that any informal agreement or promise made in late 2012 about the transfer of properties into her sole name, was long gone and redundant by late 2013 and there is no independent evidence to suggest otherwise nor is there any evidence of demands from her that unless the transfer was made the divorce petition would be served or the claim for financial relief revived or such like. In my judgement, the facts of this case are far removed from those such as *Papanicola*.

65. Accordingly, I find that the transfer of the properties into her sole name was at an undervalue in the sense required by s423.

Intention

66. The starting point is that by late 2013, Mr Shone knew perfectly well that he was in serious financial difficulties and that claims would be likely to be made against him in relation to the financial affairs of GDAF as indeed they later were. Although Mr Bataillon could not, of course, give any direct evidence on the matter, his view, as an experienced investor and having seen the accounts when they were released, was that Mr Shone must have appreciated he would soon face a financial crisis. After all, almost as soon as he was taxed about GDAF by the Claimants, he signed the settlement agreement and almost as soon thereafter, he failed to honour it. Indeed, another investor called Talisman had already asked to see the minutes of the Advisory Committee of GDAF which was intended to police the investments therein, on 3 October 2013.

67. By 18 September, Mrs Shone was aware in general terms of Mr Shone's financial difficulties, because she said that there was no money in the bank for so many debts and that he had got into arrears.

68. If (as I have already found) the purpose of the transfer (which arose fairly suddenly) into Mrs Shone's sole name was not to give effect to some agreement in 2012, the question is what it was. Obviously, the properties were going to be used (at least in short-term in the short term) as security for the financing of the acquisition of High Trees but as to that, they could equally have been put into joint names or into the name of Mr Shone alone.

69. There is no reliable evidence from Mrs Shone (and none from Mr Shone) to suggest the purpose did not at least include in a real way, an intention to put those properties beyond the reach of actual or likely creditors or those likely to make a claim against him, whether the Claimants or otherwise. And after all, Mr Shone himself was an intelligent and experienced international operator well used to moving assets and money around the world and had been involved in financial irregularities. He was in my judgement well capable of having the requisite intent, just as he sought later to take steps to avoid the legal proceedings against him once they started. Indeed, in an email to Ms Cortes on 25 September 2014 and in relation to Budleigh Salterton,

which had been on the market for 10 months, Mrs Shone said that “we" almost sold it which is odd if she had acquired it pursuant to an agreement that it should be hers alone.

70. I accept, as Mrs Shone would say in any event, that in the turmoil Mr Shone may well also have intended that ultimately the properties would give Mrs Shone and Camille some financial security (as he had said in 2012) and that this may also have been a purpose of the transfer in October 2013. But that is not inconsistent with the existence of the Statutory Purpose being a real and substantial one at the same time, and indeed the two may often go hand-in-hand, as noted above.

71. For all those reasons, I consider that the Statutory Purpose is established and thus the Claimants are entitled to relief under s423. As with the later claims to be dealt with below I deal with the question of discretion and the form of any relief that I should grant later in this judgment.

Nominee

72. In those circumstances it is not necessary for me to deal with the question of Mrs Shone as nominee. In my judgment it is academic. For her to act as a nominee she would impliedly or expressly have had to agree to do so. And the only conceivable reason for this would be to assist Mr Shone in placing his assets, at least on their face, beyond the reach of creditors. But if all of that is established, then the s423 claim would inevitably have been proved as well. I cannot conceive of any outcome here whereby the nominee claim is made out but not the s423 claim.

73. Moreover I could not be clear that on the evidence, the agreement to act as nominee was made out. After all, the truth is that Mr Shone was in many respects leading a chaotic lifestyle by late 2013 and in my judgment was sometimes out of control.

74. But on any view, and as the emails reveal and as I thought emerged in Mrs Shone's evidence (even with its inadequacies), Mr Shone had treated Mrs Shone and Camille disgracefully and in my judgment it would go too far to suggest that despite all of that and the lack of any serious prospect of a reconciliation or that he would give up Ms Taberner, Mrs Shone would willingly have agreed to hold the properties entirely for him and (it must be assumed) on the basis that they could or would go back to him on demand, as it were, at some point in the future. In the context of this case it makes no sense to say that she would remain a nominee for ever because of course, they were no longer sharing a life together.

75. The fact that in the course of this litigation Mrs Shone has been in occasional contact with Mr Shone and that he has tried to assist by the provision of certain documents is not necessarily evidence of the fact that from 2013 she was his nominee. This is because it is in any event in her interest to have him help her to defend this claim if she can.

HIGH TREES

76. The circumstances of the transfer are as follows. As noted above, although Mrs Shone asserted that the original intention had been to put High Trees in her own name at the outset, as apparently encouraged by Dr Siew, there is no contemporaneous evidence to support this at all. By 31 July 2013 she was telling Mr Hampton that the purchase would be in joint names. In and of itself that is inconsistent with her case that the plan to put it in joint names only arose at and after the meeting with Ms Cortes of Butterfield Bank later, on 16 August.

77. But her evidence as to why joint names arose even at that later meeting, I found implausible and indeed somewhat incomprehensible. Her witness statement said that she had wished to conceal her “real intention” from Mr Shone by suggesting joint names, but if he had agreed previously that it should go into her sole name, there was nothing to conceal. She also accepted that if, before the meeting, she thought that she would be the sole owner, then it would be she who would be

responsible for the mortgage on High Trees. Yet she also said that one purpose for buying High Trees was to give him some financial responsibility. None of this makes any sense.

78. The purchase of High Trees was eventually completed on 3 December 2013 in joint names.

79. It is correct that there was a suggestion from Mrs Shone, prior to completion, that the purchase might be in her own name while the mortgage would nonetheless remain Mr Shone's responsibility - see her email to Ms Cortes on 15 October, some three months after she said Mr Shone had agreed to such a transfer. At paragraph 68 of her witness statement she said that this arose at that point because she "rationalised that I could actually afford a mortgage on High Trees as I now owned Devon and Sheet Street properties". But her email did not suggest that she should take the mortgage but rather Mr Shone. So this explanation makes no sense. The inevitable response from Ms Cortes was that this could not be effected because the mortgagor had to be the legal owner. Indeed in the very next paragraph of her witness statement, 69, Mrs Shone then said she had no income and could therefore not support the mortgage on High Trees.

80. Obviously, for some reason at that stage, Mrs Shone did suggest sole ownership but the question is why. Her own evidence on the point is unsatisfactory and it remains the case that there is nothing to connect that request to the alleged prior agreement with Mr Shone. And by October 2013 of course, as I have already found, Mrs Shone was aware of Mr Shone's financial difficulties and more to the point, he had already intended the Statutory Purpose in relation to the transfer on 9 October of Budleigh Salterton and Sheet Street.

81. By February 2014 the Claimants had expressed their concerns to Mr Shone and he had signed the settlement agreement. By 16 March he had defaulted. On 19 March Mrs Shone got a call from Stewarts to say that they had received a potential instruction to make a claim against Mr Shone (it was in fact the Claimants). On the same day she wrote to Ms Cortes asking whether High Trees could go into her sole name and Mr Shone would act as guarantor (for the mortgage). That suggests that the idea of sole ownership was now because of potential claims against Mr Shone. To be fair to her, Mrs Shone had actually written the previous day to Hamilton Quinn about a transfer into her sole name but that does not really help; she could only have done this, in my view, after speaking to Mr Shone and she was in any event aware generally of his financial position. I do not accept that she was not aware of the Claimants' claims until May or later in 2014.

82. Moreover, if the true intention behind the transfer into her sole name in early 2014 was in recognition of some earlier agreement, it is difficult to see why she could not have said as much to the Bank. After all, whatever the reason, the key point would have been whether she could service the mortgage herself and/or whether Mr Shone would be acceptable simply as guarantor. Instead, on 19 March, she told the bank (wrongly) that the reason was "Tax!". She later said that this was just a flippant remark. But it then transpired that she had emailed Mr Shone on 29 March to tell him to tell Ms Cortes that the transfer was for "tax reasons". If so, it does not seem to have been flippant but rather an impression she wished strongly to create for some reason, albeit a false one.

83. At around the same time, Mr Shone was writing to Mr Eddlestone that he was depending on him to "fight off the barbarians and safeguard the assets I have left" and that he could not ensure provision for Mrs Shone and Camille to live and for his medical expenses and living costs if he just paid what was demanded by Mr Bataillon. And in late March and early April Mrs Shone was urging Mr Shone to hurry through the transfer.

84. Moreover, by the time of the transfer of High Trees it is unquestionably the case that Mrs Shone was aware of the real possibility of creditors going after Mr Shone. Stewarts had informed her of a potential claim on 19 March. And then on 19 April she emailed Stewarts referring to the process

of transferring High Trees and she asked whether if “by chance" there was a creditor pursuing Mr Shone the property would be safe or whether there was anything else she could do. This led to Stewarts preparing a research note which referred to s423 and summarised the law much along the lines of what I have set out above. It made specific reference to cases like *Papanicola* and *Kubiangha* and the possibility of consideration being provided by settling divorce proceedings.

85. Her evidence as to why she did this was inconsistent. She said at one point that it was a reaction to Stewarts’ earlier call about being instructed by a creditor of Mr Shone but that was a month earlier. She forwarded Stewarts’ advice to Mr Shone and checked later as to whether he had read it. When asked why it was sent to him, she suggested this was advised by Stewarts though later on she said merely that Stewarts saw no reason why he should not get it. When it was put to her that he did not need to have it, she suggested it was academic anyway because the transfer process was already in train; but that only raised the question why she wanted the advice at that stage at all. She then said that she thought that by sending the advice to Mr Shone he would focus on his financial responsibilities but it was unclear to me how that would work.

86. When it was suggested that she continued with the transfer despite the advice from Stewarts and in particular because by then she knew of the Claimants’ claim against Mr Shone, she denied such knowledge at the time.

87. But she was then showed an email from Mr Shone to his secretary about the claimant’s claim against him. Mrs Shone had obtained access to Mr Shone’s email inbox and opened it from time to time when she was able to and she would then forward relevant emails to herself at the time. However she denied seeing this one at the time namely 15th May, or forwarding it to herself even though it was in the same format as all the others which she forwarded. The same applies to an email from him containing a letter drafted on his behalf by Antonio Bueno QC in respect of the Claimants’ claim.

88. I found the above evidence unsatisfactory. I have no doubt that she was discussing the issues dealt with by Stewarts with Mr Shone fully which is why she forwarded the advice to him once she got it. I also think she was aware by then of the Claimants’ claims against Mr Shone and the gist of them. It was in the interests of both of them to try and see them off if they could. Moreover, and whether unconsciously or otherwise, I think that Mrs Shone must have been influenced by the references in the advice to questions of consideration and intention when preparing her evidence about the alleged earlier agreements divorce claims and so on in the way that it emerged. I fully accept that there is one contemporaneous reference to an agreement or promise to transfer Budleigh Salterton and Sheet Street in 2012 but in my view an edifice has been constructed upon it which it cannot support.

89. It is of course fair to ask, rhetorically, why Mr Shone would have agreed to High Trees going into joint names in late 2013 if (as with Budleigh Salterton and Sheet Street) he had by then formed an intention to put the latter into Mrs Shone’s sole name to avoid creditors. It might be said that this rebuts any suggestion of the Statutory Purpose in respect of High Trees when it was later put into her sole name, or indeed counteract the Statutory Purpose in connection with the other properties.

90. I think the answer is that with Budleigh Salterton and Sheet Street, since the properties were mortgage-free there was no real obstacle to them going into Mrs Shone's sole name. But for High Trees to be serviced by a substantial mortgage and initially a bridging loan, and where therefore lenders were involved, it is likely that there would have to have been joint ownership because in truth Mrs Shone could not service the mortgage loan (as at one point she accepted). Indeed we know that she did suggest on 15 October that it go into her sole name but this was refused because Mr Shone was still to service the mortgage. I suspect therefore that even if Mr Shone would have preferred High Trees to go into her sole name, it could not easily be done at least at the outset.

Indeed, when it eventually did go into her name the following year, it was a protracted process involving consideration by the Bank's Credit Committee. In any event, there is no evidence from Mr Shone on the point and it is still the case that the initial suggestion of joint names runs counter to the earlier alleged agreement. Finally, by the time of the actual transfer of High Trees to her, Mr Shone's motivation, amounting to the Statutory Purpose, is compelling, as stated above.

91. In the light of all of that evidence, the following conclusions are in my judgement irresistible:

    (1) there is no reason to suppose that Mr and Mrs Shone were not each beneficially entitled to 50% of High Trees, they being joint legal owners initially;

    (2) the transfer of Mr Shone's 50% interest in High Trees to Mrs Shone was clearly at an undervalue; I reject any suggestion of consideration being provided because of an earlier agreement between them or forbearance from divorce etc;

    (3) a real and substantial purpose on the part of Mr Shone was plainly to put High Trees beyond creditors and by now there were very visible and pressing creditors in the form of the Claimants at least. The emails make clear the linkage between Mr Shone's own financial circumstances and the transfer.

92. As with Budleigh Salterton and Sheet Street, it may well be that another purpose was Mr Shone's desire to protect Mrs Shone and Camille by giving them a property outside the reach of creditors that cannot make any difference for reasons already given.

93. Accordingly, and again subject to relief and discretion the s423 claim is made out here.

94. I do not make any finding on the alternative nominee case for the reasons given in respect of Budleigh Salterton and Sheet Street.

OTHER ASSETS

General Points

95. Where I find below that the claim under s423 succeeds, as stated above, I will deal with the question of discretion separately at the end of the judgement along with the form of any relief to be granted. Likewise, in so far as the alternative nominee argument is made, I make no finding about it for the reasons already given.

Cars

96. In the course of 2014, various cars were sold. It is common ground that the total proceeds of sale of £212,500 were paid to Mrs Shone. All of the cars had been registered in the name of Mr Shone. The Claimants contend that all such cars were indeed owned by him and that the transfer of the proceeds of sale to Mrs Shone (in some instances preceded by a formal change of keeper was for no consideration and the Statutory Purpose is made out.

97. Of the total proceeds of sale, £78,000 came from the proceeds of sale of an Aston Martin registration number 78 MS. In relation to this car only, Mrs Shone contends it had nonetheless been a wedding anniversary gift to her from him some years previously. Given the fact of registration to Mr Shone and the fact (belatedly accepted by Mrs Shone) that the personalised number plate belongs to him, and various references in emails to "we" selling all of the cars including this one, one might well approach her assertion with some scepticism. However, on this particular matter I thought that her oral evidence had the ring of truth. It was the sort of extravagant gesture which - in his heyday - Mr Shone was well capable of. And importantly, when she learned of his initial desire to sell some cars in late 2013 she emailed him on 15th November to say "are you planning to sell some cars? The Aston is mine!" That immediate

reaction corroborates her oral evidence. The Claimants say in the alternative that if I consider there is anything in Mrs Shone's account I should at least find that the Aston Martin was jointly owned. However there is no logic in that suggestion; if her account is accepted, and it is, then it follows that she was the sole owner of the Aston Martin and the proceeds of its sale must be regarded as hers in any event. That reduces the proceeds of sale in question down to £134,500 (plus interest).

98. As for the other cars, the reason why they were to be transferred into her name, if unsold was said to be to help expedite that sale process. But as Mrs Shone later accepted in cross-examination that made no sense because if there had to be a change of registered keeper all this would take time and the sale process would be delayed and not expedited, as pointed out by the manager of Mr Shone's car collection in England, Mr Hayman, later on. There is really no evidence as to why these transfers to Mrs Shone of the cars or their proceeds were made.

99. In my judgement the answer is obvious from the timing. On 16 February, two days after signing the settlement agreement, Mr Shone wrote to Mr Heymann that there would have to be a "serious cull" of the cars. On 16th April Mr Shone received the Claim Form and Particulars of Claim and on 24 April he emailed his secretary to say that the cars should be sold or moved to High Trees and the unsold cars should go into the name of Mrs Shone. He instructed Mr Hayman to transfer all the cars into her name on 4 May. The Aston Martin had been sold by then. Although Mr Hayman said that to change the name of the registered keeper on two of the cars currently for sale would delay matters Mrs Shone told him on 14 June to put all the cars in her name. By now these proceedings were underway.

100. In the light of the above evidence, there is an overwhelming case that the decision to undertake the sales and transfer the cars and/or the proceeds to Mrs Shone was motivated by Mr Shone's desire to put them out of the reach of creditors which by now included the Claimants. While this may also have been motivated by a desire to keep Mrs Shone financially secure, this does not help for the reasons already given.

CISEA Payments

101. CISEA was a Singapore company owned and controlled by Mr Shone. On 6 March 2014 Mrs Shone received SG$30,000 from it and a second payment of SG$ 250,400 on 31 March 2014 making SG$280,400 (about £140,000). She accepted in evidence that the latter payment was larger than any her husband had made to her before. As to the true nature of CISEA, Mrs Shone's evidence was that she believed that this was her husband's money coming to her. In her written evidence she said that these sums were commissions due to Mr Shone but paid to her.

102. Notwithstanding that, Mr Tolson contended that for such monies to be regarded as paid to her by Mr Shone or pursuant to a transaction with him, I would have to find that CISEA was a sham company. I disagree. The evidence plainly establishes that any monies coming out of CISEA (other than payment of company debts etc) would be due to and usually received by Mr Shone. He has simply directed them to be paid to her as owner and controller of the company. There is nothing to suggest that otherwise these monies were not for his account.

103. Accordingly, it is not necessary for me to find a sham but lest there is any doubt about it, I would have found, if necessary, that CISEA was the "alter ego" of Mr Shone and one could accordingly pierce the corporate veil here. This is because in practice and through his control, the company was used for various domestic purposes, for example it was the lessee on the house in Singapore and it was the actual entity that received the fee notes for the Panamanian lawyers' work in respect of the Foundations, as well as making payments for the property at One KL and for car hire payments, and the lease for the Rolls-Royce was in its name. However, as noted above, such a conclusion is not strictly necessary.

104. Accordingly there were transfers to her by or on behalf of Mr Shone for no consideration.

105. Given the timing, the Statutory Purpose is clearly made out. In fact it was Mrs Shone who was chasing the larger payment on 19 March, which was the day she was notified by Stewarts of the potential claim against Mr Shone. In paragraph 103 of her witness statement she says that she had secured the payment of his commission to her so she could pay bills directly because she did not want the money to go to Mr Shone and thence to Ms Taberner. Insofar as she is suggesting that she and not Mr Shone procured the payments to her I do not accept it. She may well have wanted the money but he had to authorise its payment.

106. Mrs Shone does not say that she was owed this money by Mr Shone. She said it went to pay existing debts although there is no breakdown provided. So it is not as if it can be shown for example that all of the monies were sent to her simply as Mr Shone's agent, to pay his debts, so that she did not receive them in her own right as it were; and that particular contention was not made. Although she may well have spent some or all of the monies on expenses, this does not mean that there was any consideration for the monies. On the face of it there was not.

107. As to intention, again the timing is crucial. I do not accept that it was a coincidence. I am quite satisfied that the Statutory Purpose was made out here even if another purpose existed i.e. to provide for Mrs Shone and Camille or (so far as she was concerned) to stop Ms Taberner getting any of it. Accordingly this part of the s423 claim succeeds.

Insurance Policies

108. In November 2014 Mrs Shone received a total of $140,000 (about £70,000) out of a total of $190,000 payable to Mr Shone on the cancellation of his life insurance policy. Mrs Shone was the main beneficiary thereunder but of course that interest would only crystallise upon Mr Shone's death. As the policy was cancelled as opposed to paying out on his death, the money was due to Mr Shone as policyholder as a return of funds. He had instructed his secretary to obtain the surrender of the policy on 7 April 2014 two days after Mr Bataillon refused his request for more time to come up with a plan to pay the monies due under the settlement agreement.

109. At paragraph 144 of her witness statement Mrs Shone said that apart from $20,000 to pay the mortgage on One KL the rest was set aside for Camille's school fees which is what she had said she had promised Mr Shone in return for getting the life-insurance surrender proceeds - see her paragraph 117. In cross-examination however, she accepted that this did not occur and she spent the balance of the money on legal fees in this action or other expenses because the sums which would have been used to pay those expenses went on legal fees. She accepted that none of the balance was in fact reserved for or spent on school fees. There is no explanation why this was not put into her witness statement to correct the misleading impression given in paragraph 144.

110. In those circumstances I consider that no consideration was given for these monies. And since the process of surrendering the policies was put in train from April 2014 onwards, the Statutory Purpose is made out. Yet again, any parallel desire to provide for Mrs Shone and Camille also is irrelevant.

CIFG Mateen Payments

111. On 28 May 2014 Mr Shone directed that his salary (in the form of a $15,000 per month Chairman's stipend) from CIFG Mateen, another of his companies, should be paid to Mrs Shone. Over a period of six months, she received a total of $90,000 (about £45,000) in this way. To the extent that it matters, Mrs Shone said that these were payments previously made to Ms Taberner, although in fact it would seem from Mr Shone's email dated 28 April 2014 to Charterbank he had directed payment of a different salary to Ms Taberner.

112. In any event, on the face of it, these were payments for no consideration and the Statutory Purpose is made out. Any ancillary domestic purpose does not assist Mrs Shone.

Pension Payments

113. On 27 June 2014 Mrs Shone received SG$91,000 (about £45,000) which was almost all of the proceeds of his pension with the Singapore Central Provident Fund, which he withdrew in its entirety. Mrs Shone also emailed a representative of the Fund to get the process under way. And in fact it was Mrs Shone who received the withdrawal form which Mr Shone needed to sign. In paragraph 129 of her witness statement Mrs Shone puts the timing of this down to the fact that under the Fund's rules, the pension had to be drawn before Mr Shone left Singapore and she believed he was about to depart to Bali. But at the same time Mrs Shone was telling Ms Cortes that Mr Shone and she were both moving to a new property in Singapore by the sea called Sentosa and indeed in the lease they are both described as the tenant. Mr Shone also provided his new address to Butterfield Bank as being this one. In cross-examination Mrs Shone emphasised that nonetheless Mr Shone did not in fact reside at Sentosa and did go to Bali. In the events that happened this may well have been true but at the time she and he was certainly suggesting that he would be remaining in Singapore, nor did she have any real explanation as to why he would give the airline he often used the Sentosa address as his new one for the purpose of his frequent flyer points.

114. For all the reasons already given I do not consider there to be any consideration for the payments made here to Mrs Shone and the Statutory Purpose is made out.

HEALTH INSURANCE PAYMENTS AND OTHER PAYMENTS INVOLVING MR SHONE

115. I mention here an issue concerned with health insurance and related matters. An entry in her bank statements was put to her which showed a payment to her in September 2015 of £1,475. Then there is a reference to Chris Cheney and "Interglobal". Mr Cheney was an associate of Mr Shone and Interglobal was the medical insurer. It therefore suggested that this money came to her so that she could then pay for Mr Shone's medical insurance, the freezing order by then being in place. In answer to this initially she said that this was not right because the policy had expired in 2014 and she made no payments thereafter. However in a witness statement made in these proceedings in March 2015 on the question of her expenses she said that she was (still) paying $2,500 per month to Inter-global for the family policy. In cross-examination she then accepted that she must have been paying until June 2015 but not later. I regarded her evidence on this topic also as inconsistent and unsatisfactory.

116. She also received £12,000 from Mr Cheney which she said was a loan from him even though he is an undischarged bankrupt in Singapore. I think it much more likely that this was a payment made to her on behalf of Mr Shone who of course could not be seen to be doing so in his own name. Indeed she accepted in March 2015 that she had made some payments to him, apparently by way of loan, to assist with his legal fees and she had earlier sent monies to assist with the mortgage on One KL. I think that all of this shows that there was a significant amount of "traffic" between them during these proceedings.

117. In this context it must be remembered that she was in breach of the freezing order a very short time after it was served upon her, by making a payment out of the frozen monies, although the monies were later returned after she had taken legal advice. Nonetheless it was a clear breach and she must have been aware that it was such. All she said by way of explanation was that she "panicked" which I did not find very convincing.

DISCRETION

118. I now turn to the question of discretion which I consider compendiously in relation to all claims.

119. Mr Tolson submits that I should not in fact make any order under s423, even if the claims thereunder are made out, for the following reasons:

(1) Mrs Shone is effectively an innocent party, and has got caught up in Mr Shone's illicit activities and moreover was placed in a financially precarious position by him;

(2) She was not actually complicit in any of Mr Shone's wrongdoing and acted at all times in good faith in reliance upon transfers of assets to her to give her and Camille some security;

(3) The money she spent was wholly or mainly to pay expenses and liabilities of her or Mr Shone as opposed to extravagant living;

(4) There was innocent "change of position" on her part in reliance upon the assets she received;

(5) At one stage at least, Mr Shone had agreed to give her Budleigh Salterton and Sheet Street and/or she could have had more than a 50% beneficial interest in them anyway as a matter of constructive trust on *Stack v Dowden* principles.

120. On the other hand Mr Saoul submits:

(1) While she may not have been actually complicit she knew or must have known what was going on with Mr Shone's financial position certainly from early 2014 and she participated in the transfer of High Trees after she became aware of these proceedings;

(2) She has not always been frank with the Court and was prepared at one point to flout a court order;

(3) The Claimants are individuals who have lost a great deal of money - it is not as if they are a corporation which can write off the loss in its accounts and there is no prospect of a full recovery against Mr Shone on any view;

(4) According to Mrs Shone, Mr Shone has other assets in other parts of the world and she has the chance to make some recovery here with the Singapore divorce proceedings.

121. Overall, I think that Mr Saoul's points are more persuasive. The infelicities in Mrs Shone's evidence and her true state of knowledge of what Mr Shone was up to, and when, are all set out above. I do not see this is as a case of change of position. Mrs Shone also has the advantage of a finding that she always had a 50% beneficial interest in Sheet Street and Budleigh Salterton and High Trees anyway. And any arguments about constructive trust are speculative at best. Mrs Shone has also said that she is now working. I am not, in all the circumstances prepared, to make no or no substantial order at all. Indeed I propose to grant the relief sought in respect of the s423 claims which have been made out subject only to making some provision for Camille whom it can truly be said is an innocent victim of all of this. Very much as a fall back position, the Claimants said that they would be prepared to reduce the amount due to them by US$50,000 in this regard. Camille has another year at school after this academic year and Mrs Shone's intention is to move back here in 2017 because it is too expensive to remain in Singapore. In my view the appropriate figure to retain out of monies otherwise due to the Claimants is £100,000.

RELIEF

122. I will hear detailed submissions on the form of relief hereafter but broadly the position seems to me to be as follows:

    (1) The Claimants will receive 50% of the net equity in High Trees left after its present sale; the net equity is thought to be about £455,000 so 50% is £227,500;

    (2) Equally they will receive 50% of the net equity in Sheet Street and Budleigh Salterton after their sales, the net equity is expected to be about £925,000 so 50% is £462,500;

    (3) Mrs Shone must pay a further sum of £434,500 in respect of the other claims, plus interest;

    (4) The sum payable of £434,500 will be reduced by £100,000 to £334,500.

123. I am grateful to Counsel for their most helpful oral and written submissions.