



Neutral Citation Number: [2026] EWHC 150 (Ch)

Case No: CH-2025-000022

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY APPEALS (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 30/01/2026

**Before :**

**MR JUSTICE ADAM JOHNSON**

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**Between :**

**MR JAMAL UDDIN**

**Appellant**

**- and -**

**MR FAKAR UDDIN**

**Respondent**

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**James Sandham** (instructed by **MTG Solicitors**) for the **Appellant**  
**Wakil Ahmed** (instructed by **Amanah Solicitors**) for the **Respondent**

Hearing date: 3<sup>rd</sup> December 2025  
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**Approved Judgment**

This judgment was handed down at 2pm on Friday 30<sup>th</sup> January 2026 in court and by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Mr Justice Adam Johnson:**

**I. Introduction and Summary**

1. This appeal concerns a dispute about ownership of a property at 120 Yeading Lane, Hayes, UB4 0EZ (“*the Property*”).
2. The dispute is between two brothers, Jamal and Fakar Uddin. It has a long history, stretching back to 1999, when the Property was first acquired.
3. The immediate context is a claim by Jamal against Fakar under the Trusts of Land and Appointment of Trustees Act 1996. In the proceedings, Jamal sought (i) a declaration that he and Fakar were joint beneficial owners of the Property, and (ii) an order for sale and ancillary orders including that Fakar account to him for what Jamal alleged was a disparity in terms of their respective expenditure on, and enjoyment of, the Property.
4. In a detailed judgment handed down on 18 December 2024, Recorder Halford (“*the Judge*”) held that Fakar was the sole beneficial owner of the Property and so dismissed Jamal’s claim.
5. The Judge dealt with the whole story between the brothers and made a number of important findings, including that (i) although the Property when initially acquired in 1999 had been registered solely in Jamal’s name, the intention was that it would be jointly owned by the two brothers with each having a 50% beneficial interest; (ii) that position was formalised in 2002, when Jamal transferred the Property from his sole name into the brothers’ joint names using a TR1 form which contained an express declaration of trust, stating that they intended to hold the Property on trust for themselves as joint tenants; however (iii), at a family meeting known as a “*Bisar*” in December 2007, Jamal and Fakar then orally agreed to vary this express trust such that Fakar would become the sole beneficial owner of the Property. At [339] of his Judgment, the Judge said this final point was determinative of Jamal’s claim in the proceedings for a declaration that he was a joint owner of the Property, and for an order for sale. He said:

*“Jamal’s claim fails because, although he and Jamal agreed to have equal, joint beneficial interests in the Property in 1999 and again in 2002, Jamal then agreed at the Bisar to give his beneficial interest in the 2002 express trust to Fakar, creating a new constructive trust. Fakar was the sole beneficiary of that new trust. Nothing that happened subsequently changed that”.*

6. By means of this appeal Jamal seeks to challenge the Judge’s finding at (iii) above, and thus his overall conclusion that Fakar was to be regarded as the sole beneficial owner of the Property following the Bisar. The basis of the challenge is that Jamal’s 50% beneficial interest in the Property at the time of the Bisar was an existing equitable interest, which could only be disposed of in writing signed by the transferor (see s. 53(1)(c) of the Law of Property Act 1925 (“*LPA 1925*”)), and here there was no written instrument signed by Jamal. Although these formalities do not apply where the interest claimed arises under a constructive trust, here the Judge was wrong to conclude that a “*new constructive trust*” had arisen as a result of the Bisar. There may have been an agreement reached at the Bisar for the transfer of Jamal’s interest to Fakar, but a mere

agreement to change a pre-existing common intention is not enough to give rise to a constructive trust. The party asserting the existence of the trust must also show detrimental reliance on the agreement, and here the Judge did not adequately address the question of detrimental reliance by Fakar. He only focused on whether an agreement had been reached, and not on what had happened afterwards. In any event there was no evidence of substantial later reliance by Fakar.

7. For the reasons developed below, my opinion is that Jamal is correct in his analysis. It is well established that a common intention constructive trust will arise only where there has been detrimental reliance on the common intention after it was formed, by the party seeking to establish the existence of the trust. Thus here, it was not open to the Judge to find there was a common intention constructive trust, without finding some form of detrimental reliance by Fakar after the Bisar. In my reading of his Judgment, likely because of the way the issues had developed and been framed by the parties, the Judge did not make such a finding. All he did was find that an agreement had been reached, without finding what (if anything) Fakar had done in reliance on it.

## II. Legal Principles

8. A useful starting point is section 53 of the LPA 1925. This provides as follows:

*“53.— Instruments required to be in writing.*

*(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol —*

*(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;*

*(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;*

*(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.*

*(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.”*

9. The law is therefore clear, that any disposition of a *subsisting* equitable interest must be in writing signed by the person disposing of the same or his agent (s.53(1)(c)).
10. However, these formalities do not apply as regards the “*creation or operation*” of a new resulting or constructive trust (s.52(2)). This explains why it is possible, even absent

an agreement in writing, for such a trust to arise under which a party can claim a beneficial interest in property.

11. A typical example of a constructive trust in the context of real property is the common intention constructive trust, which arises when land is acquired on the basis of a shared intention as to how it will be owned beneficially. This often occurs in the matrimonial context. In Stack v. Dowden [2007] UKHL 17, [2007] 2 AC 432 the House of Lords held that in the case of a cohabiting couple, the presumption will be that they intended the beneficial interest to be jointly owned in equal shares, irrespective of the parties' contributions to the purchase price. The presumption can be rebutted though if it is proven that the parties had a common intention when they purchased the house that their shares should be different.
12. The common intention constructive trust is a creature of equity, but settled principles have been developed as to the circumstances in which such a trust will arise. These have recently been analysed by the Court of Appeal in Hudson v. Hathaway [2022] EWCA Civ.1648, in particular in the detailed judgment of Lewison LJ. The specific issue the Court of Appeal was concerned with was whether, in light of Stack v. Dowden and the later decision of the Supreme Court in Jones v. Kernott [2011] UKSC 53, [2012] 1 AC 776, it was still correct to say that for a common intention constructive trust to arise, the party seeking to assert its existence must show not only a common intention, but also detrimental reliance on that intention.
13. After a detailed review of the authorities, Lewison LJ (with whom Andrews LJ and Nugee LJ agreed), held that detrimental reliance was a necessary part of the test. At [107], Lewison LJ noted that the principle of detrimental reliance had not been challenged in either case, and in effect was common ground. He continued: "*I do not ... detect in either Stack v. Dowden or Jones v. Kernott any intention on the part of the court to abrogate the long-standing principle that what makes an unenforceable agreement or promise enforceable in equity is detrimental reliance*".
14. The long-standing principle reflects the nature of the equity being invoked. This stems from the unfairness which would arise, if a party who had indicated a willingness to abide by a common intention, were later to be allowed to resile from that position, the other party in the meantime having acted to their detriment in reliance on the common intention. The point was put as follows by Lord Briggs in Guest v. Guest [2022] UKSC 27, [2022] 2 WLR 911. He said at [10]:

*" ... detriment is relevant both to the arising of the equity and to the remedy. Without reliant detriment there is simply no equity at all. This reflects the notion that it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise"*.
15. The question whether there is a common intention constructive trust of land is perhaps most likely to arise when property is first acquired, but in Grant v. Edwards [1986] Ch 638, Mustill LJ made it clear that the same principles applied both to a common initial intention and also to a change of common intention post-acquisition. In Hudson v. Hathaway at [151], Lewison LJ pointed out that Grant v. Edwards was approved both in Stack v. Dowden and Jones v. Kernott, and he referenced with apparent approval the following statement in Lewin on Trusts (20<sup>th</sup> Edn.) at 10-73:

*“If the parties reach a fresh agreement, arrangement or understanding after the time of the purchase, varying the original beneficial shares, and the claimant acts upon the agreement to his detriment, effect may be given to that agreement as a common intention constructive trust”.*

16. That moreover was the approach taken in another Court of Appeal decision, determined between Stack v. Dowden and Jones v. Kernott, namely Qayyum v. Hameed [2009] EWCA Civ. 352, [2009] FLR 962 (referenced in Hudson v. Hathaway at [100]).
17. As to what is meant by detriment in this context, there are a number of formulations in the cases. In O’Neill v. Holland [2020] EWCA Civ. 1583 at [62], Henderson LJ described detriment as meaning “*an objective state of affairs which leaves the claimant in a substantially worse position*” than he would otherwise have been in. In Kelly v. Fraser [2012] UKPC 25, [2013] 1 AC 450, a case of estoppel by representation, Lord Sumption said at [17] that “... *the detriment need not be financially quantifiable, let alone quantified, provided that it is substantial and such as to make it unjust for the representor to resile.*” For the detriment to be what Lord Briggs in Guest v. Guest described as “*reliant detriment*”, it must obviously have come about as a consequence of the representation or understanding in question.

### **III. Background**

18. I can state the relevant background relatively briefly, based on the detailed findings made by the Judge.

#### Acquisition of the Property in 1999

19. Fakar and Jamal are the children Mr Monir Uddin and his wife, referred to in the proceedings as Mrs Nessa (Mr Uddin sadly died in October 2000). Two other siblings were also involved in the proceedings, namely Rohima and Shahab. Before the family moved into the Property, they lived together in a council flat.
20. Fakar was the eldest son. It was common ground that Fakar identified the Property for purchase. That was in 1999. At the time Fakar was the primary decision maker for the family, as far as financial matters were concerned. He instructed solicitors in connection with the purchase, but when it came to it he was not able to obtain a mortgage because of difficulties in demonstrating a steady source of income (he was working as a self-employed plumber at the time). His brother Jamal therefore stepped in and acted as the named purchaser. He was registered as sole legal owner.
21. The Judge found however that the intention was for the two brothers each to have a 50% beneficial interest in the Property. Registration of the legal title in Jamal’s name was a matter of convenience only. The underlying intention was that they were to meet the deposit and initial purchase costs in equal shares and own the Property jointly. Jamal had paid an amount of £5,000 by cheque. Fakar had paid for double-glazing, had installed central heating and incurred other costs.

### Transfer and Express Declaration of Trust in 2002

22. The next key event was the October 2002 transfer of the Property into joint names. This was prompted by a remortgage. As already noted, the TR1 reflected an express declaration of trust, as follows: “... *the transferees are to hold the Property on trust for themselves as joint tenants*”.
23. The Judge noted it was common ground that Fakar was the instigator of this step, which Jamal unhesitatingly agreed to. The Judge said that the later transfer and declaration reinforced him in his view about the parties’ common intention in 1999.
24. At [312], the Judge said “... *the transfer came about as a result of the new mortgage being found, Fakar taking joint responsibility for paying it alongside Jamal and the brothers agreeing to meet those costs equally ...*”. He concluded that from this and from the express declaration of trust that there was a “... *common intention, shared by the brothers and communicated to one another that each should have an equal beneficial share in the [Property] ...*”, which had been “... *the brothers’ intention all along*”.

### The December 2007 Bisar

25. The Bisar in December 2007 was a form of family conciliation process, intended to try and resolve a number of outstanding issues. Jamal, Fakar, Rohima and Shahab all participated, together with a family friend, Koyas.
26. One of these issues, described by the Judge, was a falling out between Fakar and Jamal in connection with a possible investment in property in Spain. Jamal had moved to live in Spain in 2006. Fakar’s evidence was that Jamal had hidden from him a secret commission, which would have given Jamal a higher return than the 50:50 split of profits Fakar understood them to be sharing. There were also ongoing issues in relation to the Property, including whether Mrs Nessa would continue to live there, and a dispute as to the ongoing contributions made by Fakar and Jamal in connection with its upkeep.

### The Critical Finding in relation to the Property

27. The principal issue for the Judge as regards the Bisar was whether Jamal had expressed an intention to give up his share in the Property. There was a dispute on the evidence as to precisely what had been said at the Bisar, Jamal insisting that he had not expressed any firm intention to give up his share, and/or insisting that he had been pressured into saying things which should not be held against him.
28. On this central point, the Judge had no hesitation, having heard evidence from (amongst others) Rohima and Shahab, that Jamal had expressed a firm intention to relinquish his share in the Property. The Judge’s key finding is set out in the Judgment at [323], where he said:

*“The next question is whether Jamal and Fakar agreed to vary the October 2002 express trust at the Bisar such that Fakar would become the sole beneficial owner of the Property. I have no hesitation in finding that they did agree to this as one of the outcomes of the Bisar and in so agreeing, both brothers relied to*

*their detriment on the common intention. Jamal gave up his beneficial interest. Jamal also agreed to Fakar having sole title. Fakar in turn gave up his claims to an accounting for everything he had contributed to the Property.”*

29. At [325], the Judge went on:

*“I have considered whether it matters Jamal did not agree to a specific process whereby Fakar would become sole beneficial owner. I have concluded that this too is legally irrelevant because what happened involved a new agreement coming into being. The substance matters far more than the form, although its legal form was a new constructive trust with Fakar as sole beneficiary. Formal steps would need to be taken for Fakar to have the title, but they would need to come later.”*

### The Aftermath of the Bisar

30. The Judge’s conclusions and reasoning are set out at [286]-[339] of the Judgment. These do not deal in any detail with matters arising after the Bisar. But in an earlier part of his Judgment he set out a chronology of events, and some information about the aftermath of the Bisar is given there, starting at para. [150].

31. One matter noted is that by February 2008, two months after the Bisar in December 2007, Mrs Nessa had been required to leave the Property after a falling out with Fakar. This appears to have fed into a broader dispute between the brothers about distribution of their mothers’ assets once she died (see at [155]). By 12 May 2008, Fakar was taking steps to remortgage the Property. This ran into problems because he had obtained a mortgage offer in his own name but both he and Jamal were still shown as joint owners on the Land Register. Fakar was advised that he would either need to raise a joint mortgage or there would need to be a transfer into his sole name which would cost £262.50 plus VAT and disbursements. He approached Jamal about the latter option, but by this time Jamal was getting cold feet and on 14 May 2008 sent an email to the other family members saying:

*“I think it might be best to leave all the final paperwork and signing et cetera when we have made a final decision on everything with everyone ... That way I think it would be best then for everyone to sign a collective legal document stating what we give and what we take and that we were all happy with the decisions taken. This can be used for any future purposes if there are any uncertainties in the future”.*

32. Shahab was unhappy and sent an angry email on 20 May 2008 saying:

*“I understand that you requested that Fakar delay the proceedings with regard to having Yeading Lane solely in his name. How comes you’ve made this decision?*

*This is also cause (sic.) some concern within the family not least because Fakar has already spent £1,500 of moving forward with*

*this as per your agreement at the time of the bisar. We have discussed at length and all the people that were present at the bisar that day agree that you made a clear statement that you have no issues with, and which content (sic.) to remove your name from the mortgage since it was clearly unfair that the house was not in Fakar's name considering the amount of time, work and money he has invested in it."*

33. Jamal sent a long reply on 24 May 2008, in which he said:

*" ... I want to make sure that everyone is treated fairly in whatever is done or decided and it is for this reason, I have decided to postpone the signing of my part of Yeading over to Fakar until EVERYTHING is fairly decided and EVERYONE is happy".*

#### The Forged TR1

34. Notwithstanding that, as the Judge recorded at [165] of the Judgment, on 30 May 2008, a TR1 form purporting to bear Jamal's signature was filed with the Land Registry, in order to transfer the Property from Jamal and Fakar's joint names, into Fakar's sole name. The transfer was processed and Fakar registered as sole proprietor on 30 June 2008. A new mortgage was also registered, the mortgagee being Royal Bank of Scotland.
35. The Judge's findings are consistent with Jamal not knowing anything about this at the time. Jamal, who was still in Spain at the time, came to realise there was an issue only at some point in 2009. By May 2009, he felt able to allege in an email that Fakar had "*fraudulently and illegally transferred my name off the title deeds and left only his*". The matter was not resolved and so on 28 August 2012, Jamal made an application for correction of the Land Register. The application was determined by Tribunal Judge McAllister on 19 December 2013, who concluded that what purported to be Jamal's signature on the TR1 was indeed a forgery, and that the Register should be rectified to show Jamal as the joint owner. She declined, however, to make any findings as to the brothers' beneficial interests. Neither did she go as far as to say who was actually responsible for the forgery, or to make findings about precisely what Fakar knew about it and when.
36. Recorder Halford endorsed the finding that the TR1 was a forgery, and thus rejected Fakar's case that it was genuine and had been signed by Jamal during a visit to London. In a section of the Judgment dealing with Fakar's credibility as a witness, the Judge specifically criticised Fakar's "*willingness to mislead the court*" in connection with the question of the TR1 (see at [280]). But again, neither did he make any specific finding that Fakar was the forger; or if he was not, as to whether Fakar was nonetheless implicated in a scheme to deploy the forgery or otherwise knew about it, and if so when.

#### IV. Reasons for Allowing the Appeal

##### Introductory Points

37. The parties were agreed for the purposes of the appeal that the beneficial interest in the Property held by Jamal at the point of the Bisar was a subsisting equitable interest, such that ordinarily an assent in writing signed by Jamal would be required for there to be a valid disposition of it: see the LPA 1925, s.53(1)(c).
38. There was no written assent, but as noted, the Judge held that the exchanges at the Bisar had given rise to a new constructive trust.
39. Jamal's Grounds of Appeal challenge that conclusion on two bases: Ground 1 is that the Judge was wrong in relying on detriment suffered by Jamal as part of his analysis; and Ground 2 alleges that the Judge erred in law and fact in concluding that there was any substantial detriment suffered by Fakar.
40. I consider that the Appeal should be allowed on both grounds. I would state my own reasons as follows.

##### Was there detriment in the relevant sense?

41. To start with, I would note the way in which the Judge expressed his conclusion on the constructive trust issue. The critical reasoning is that at [323] of the Judgment, referenced above at [28]. What the Judge said precisely was, "*I have no hesitation in finding that they did agree to this [i.e. to a variation of the 2002 express trust] ... and in so agreeing, both brothers relied to their detriment on the common intention. Jamal gave up his beneficial interest. Jamal also agreed to Fakar having sole title. Fakar in turn gave up his claims to an accounting for everything he had contributed to the Property.*"
42. It is true that the Judge referred to the brothers relying to their detriment on their common intention, but it seems to me that he did so only in general terms, and was really only describing the nature of the bargain they had struck, as opposed to any steps actually taken in reliance on their common understanding. He did not say, for example, that Fakar had actually taken some step (or had failed to take some step, such as missing a deadline) which then rendered him unable to claim an accounting for everything he had contributed to the Property. As noted, the Judge's reasons did not deal with the question of what happened after the Bisar. Instead his focus – understandably, since it was the way the parties themselves had framed the issues – was on whether Jamal had actually made any concession at the Bisar. That was the point his conclusion was addressing, but that being so, in my opinion it was inadequate to support the view that a new constructive trust had come into being. For that to happen, as the authorities show, an additional element had to be satisfied. There had to be detrimental reliance on the common understanding by Fakar.
43. These limitations in the Judge's reasoning are also apparent from the additional points he made in refusing Jamal's application for permission to appeal. These are set out in a further document headed "*Brief reasons for refusal of permission to appeal*". At para. 26 of that document, the Judge dealt with an argument raised by Jamal's counsel, Mr Sandham, that Fakar as the "*statement receiver*" had suffered no detriment in reliance

on anything said by Jamal, because there was nothing to stop him from resuming his claim that Jamal account to him for his expenditure. In rejecting this point, the Judge said at para. 26: “*There was a lengthy, sophisticated discussion at a meeting convened for the purpose with discussion of the parties’ respective positions. It concluded with an agreement*”. And at para. 27, the Judge said: “*Fakar acted in reliance on the agreement, as found in the Judgment*”. That was (I assume) the reference to the detriment mentioned in para. [323] – i.e., the concession that if Jamal gave up his share in the Property, Fakar would give up his claim to an equitable account.

44. It is clear from this reasoning that what the Judge found determinative was the fact that an agreement had been reached between the brothers. But that is not the same as concluding there was detriment of the type that gives rise to an equity, and supports the imposition of a constructive trust. The “*detriment*” the Judge described was really no more than the consideration Fakar was to supply as his part of the bargain with Jamal – that is to say, what the Judge described was the *quid pro quo* Fakar was to provide in return for Jamal’s agreement to give up his beneficial interest. Here, though, we are not concerned with whether there was an agreement. The question is a different one, which is not to do with what Jamal and Fakar agreed to do vis-à-vis each other, but instead is to do with whether, in light of any detriment actually suffered by Fakar in reliance on their common understanding, it would be inequitable to allow Jamal to resile from it. In my opinion, in order for such an equity to arise, Fakar had to do more than show what the common understanding was. He also had to show what he had done (or had not done) in reliance on it. This was not part of his case, or part of the Judge’s reasoning.
45. The logic of this point to my mind ties in with Jamal’s Ground 1: i.e., the point that the Judge was wrong to consider, as part of his analysis, any detriment suffered by Jamal himself, rather than by Fakar. I agree with that submission. Identifying what Jamal had agreed to give up as part of the bargain struck at the Bisar was a necessary part of identifying the parties’ common intention, but what mattered thereafter in terms of detriment was only what Fakar did or did not do in pursuance of it. That is because of the nature of the equity in play. To quote again from Lord Briggs in Guest v. Guest (see [14] above): “... *it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise*”. There was no reliant detriment until Fakar did something (or refrained from doing something) which left him substantially worse off. The Judgment did not grapple with this point, and instead assumed that identifying what Fakar said he was willing to give up as part of his arrangement with Jamal was enough. In my view, however, that reasoning did not go far enough.

#### Fakar’s submissions

46. Faced with these limitations in the Judge’s reasoning, the main argument deployed by Mr Ahmed for Fakar was that the Judge, having heard all the evidence, had plainly formed the view that Fakar had suffered detriment. Mr Ahmed argued that the circumstances in which an appellate court will interfere with an evaluative assessment are limited. In Winter v. Winter [2024] EWCA Civ. 688 at [31], Newey LJ explained that the court will do so “*only if it considers the decision under appeal to have been an unreasonable one or wrong as a result of some identifiable flaw in the reasoning*”. Here, Mr Ahmed argued that conclusion on the constructive trust point was just such an evaluative decision, and the Judge had been entitled to come to the view he did. In stating his conclusions, the Judge did not need to identify the nature of the detriment in

granular detail. It was clear from the Judge's overall findings that Fakar was the one who had invested time and money in the Property. The Judge had found expressly that the only material contribution made by Jamal was payment of the sum of £5,000 at the time of the acquisition (Judgment at [304]). After that, Fakar was the one who had been responsible for the Property and had kept it in good repair. In doing so, he had obviously given up other benefits which would have accrued to him had he chosen to deploy his money elsewhere.

47. In his oral submissions. Mr Ahmed drew attention to certain specific items of expenditure, which appeared to have been incurred after the date of the Bisar. One was the sum of £1,500 spent by Fakar "*moving forward ... as per your agreement at the time of the Bisar*", referenced in Shahab's email to Jamal of 20 May 2008 (above at [32]). Mr Ahmed also invited attention to Fakar's Second Witness Statement, which exhibited a Schedule setting out the principal sums expended by Fakar in connection with the Property in the 25 years since its acquisition. This was designed to support the submission that he, and not Jamal, had been responsible for its upkeep from the beginning. Among the items in the Schedule were the following, which Mr Ahmed emphasised:
- i. An amount of £229 paid in 2008, described as "*Solicitors costs for Re Mortgages*".
  - ii. An amount of £136.39 paid between 30 May 2010 and 30 May 2011 described as "*Unknown estimated*".
  - iii. An amount of some £9,000 paid in 2008, described as "*Design/Install Ikea Kitchen complete*".
  - iv. Various redecoration and building costs incurred in 2008, including an item totalling £2,400 described as "*Redecorate Whole House*".
48. Although these points were very ably argued by Mr Ahmed, I am not persuaded by them.
49. I accept of course that an evaluative decision can be overturned only in limited circumstances, but as the quotation relied on by Mr Ahmed accepts, those circumstances include where there is an identifiable flaw in the Judge's reasoning. In my opinion, respectfully, that is the case here, because before concluding that there was a new constructive trust, the Judge did not ask himself whether there had been reliance on the new common intention by Fakar. All he identified by way of detriment was the concession Fakar himself was willing to make as his side as the bargain struck with Jamal. But identifying the nature of the agreement reached is not the same as identifying what was actually done in reliance on it.
50. As to the items of expenditure Mr Ahmed drew attention to, plainly only those incurred after the Bisar could be relevant. However, none of these can rescue the position as far as the Judge's reasoning is concerned. It is true there is a well-established principle that a Judge, having heard the evidence at trial, is assumed to have had it in mind in making their decision, and need not spell it all out in detail (see for example the well-known comments of Lewison LJ in *Volpi v. Volpi* [2022] EWCA Civ. 464 at [2]). All the same, it seems to me there must be limits to that principle, and a submission that the Judge must have had in mind aspects of the evidence which were not mentioned

should be accepted only where it is consistent with the reasons the Judge actually expressed. The problem here is that the Judge's reasoning was simply not concerned with any question of reliance in the period post the Bisar. He did not think it relevant, because the question he was addressing was what had been conceded at the Bisar. Whatever evidence he may have read or been shown as to later periods cannot have been in his mind in reaching the conclusion he did.

51. In any event, it seems to me there are real difficulties with the items of expenditure Mr Ahmed drew attention to, and indeed with the whole story of the period post the Bisar. None of this was explored. In my opinion, it cannot safely be assumed on the basis of current knowledge that anything that happened must have been in reliance on the common intention expressed at the Bisar.
52. The high watermark may be the expenditure of £1,500 mentioned by Shahab in his email of 20 May 2008, said in the email to have been incurred "*moving forward with this as per your agreement at the bisar*". However, neither the background nor the detail of this are explored in the Judgment, and so it is not clear what this amount relates to and thus whether some or all of it would likely have been incurred anyway, irrespective of what had happened at the Bisar. A payment in that amount is not mentioned in the Schedule to Fakar's Second Witness Statement, although the Schedule was designed to be comprehensive.
53. Perhaps a more fundamental question arises with the other individual items mentioned at [47] above, which is how they correlate with Jamal's apparent change of mind in his email of 14 May 2008 (see above at [31]), and with the steps then taken to procure the removal of his name from the Land Register by means of the forged TR1 lodged on 30 May 2008 (see above at [34]). I do not see that, without further investigation, it is safe to assume that any steps taken by Fakar after 14 May 2008 were taken in reliance on the assurance given at the Bisar, because by then Jamal was equivocating about it, and certainly if Fakar knew about the forgery at the time it was happening, it would be more accurate to say that he was relying on that in relation to any later actions or expenditure. As matters stand in my view, this later period in the chronology has not been sufficiently explored for any clear conclusions to be stated on the issue of detrimental reliance by Fakar.

## **V. Conclusion**

54. My conclusion is therefore that the Appeal must be allowed.
55. I will need to hear submissions from the parties as to the appropriate course to follow in light of that conclusion. Provisionally, it seems to me there are two possibilities. One is for the matter to be remitted to the County Court, for the Court to determine the question of detrimental reliance which was left open on the Judge's reasoning. The other is for Fakar to accept that on the face of it Jamal has a 50% beneficial interest in the Property, but for the matter to be remitted to the County Court to consider further whether the Property should be sold and whether there should be an accounting as between Fakar and Jamal given the apparent disparities in their expenditure on, and enjoyment of, the Property over time. I would invite the parties to consider these matters and, if possible, to present an agreed form of Order to the Court for consideration.

56. Finally, I wish to conclude this judgment by paying tribute to the Judge, who produced an impressively detailed judgment dealing with many issues in this long-running and complex family dispute. There was no appeal against any of the nuanced and careful evaluations he made in determining the factual background, following a trial which was obviously managed with sensitivity and care. I have differed from him on only one point, and only then because it has developed a focus it did not have during the trial, and because I have had the benefit of detailed submissions which were not available to him. I suspect that the Judge acted from the entirely understandable impulse to try and end the unfortunate dispute which has separated the members of the Uddin family now for many years. I applaud that sentiment, and am sorry that my view of what the law requires has compelled me to reach a different result.