**Neutral Citation Number [2025] EWHC 1886 (Ch)**

**BR 2016 000722**

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY AND COMPANIES LIST**
**IN THE MATTER OF JOHN CHARLES DIXON (A BANKRUPT)**
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London EC4A 1NL
Date: 30/07/2025

**Before** :
**ICC JUDGE BARBER**

- - - - - - - - - - - - - - - - - - - - -

**Between :**
**(1) EMMA SAYERS**
**(2) JEREMY WILLMONT**
**(as Joint Trustees in Bankruptcy of the above-named Bankrupt)**
**Applicants**

**- and –**

**(1) JOHN CHARLES DIXON**
**(2) JANET MARIE DIXON**

**Respondents**

**AND**

**Claim Number BL 2023 000860**

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

**BETWEEN**

**(1) EMMA SAYERS**
**(2) JEREMY WILLMONT**
**(as Joint Trustees in Bankruptcy of the above-named Bankrupt)**
**Claimants**

**and**

**(1) JOHN CHARLES DIXON**
**(2) JANET MARIE DIXON**

**Defendants**

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**Jonathan Lopian** (instructed by **Hill Dickinson LLP)** for the **Applicants/Claimants**
**Mr and Mrs Dixon** appeared in person

Hearing dates: 7-9 and 12 May 2025

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# Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.00 a.m. on 30 July 2025

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**ICC Judge Barber**

1. The Applicants/Claimants ('the Trustees') are the joint trustees in bankruptcy of the First Respondent/Defendant ('Mr Dixon'). Mr Dixon was formerly a managing partner and UK head of tax for Ernst & Young ('E&Y'), earning approximately £2 million per annum in the run-up to his departure. He was declared bankrupt on 30 August 2017 on the petition of HMRC in the sum of £627,302 presented on 14 July 2016 in respect of self-assessment tax, NICs, interest charges, surcharges and late filing/late payment penalties for years spanning from 2009/2010 onwards. Mr Dixon remains bankrupt, his automatic discharge having been suspended for non-cooperation with the Official Receiver and for failure to attend his public examination on 5 July 2018. The Trustees were appointed on 14 August 2018.

2. These proceedings relate to six declarations of trust ('DoTs') executed by Mr Dixon on 9 September 2010, by which he purported to divest himself of all present and future assets in favour of his wife, the Second Respondent/Defendant ('Mrs Dixon'). Since being made bankrupt, Mr Dixon has claimed that, by virtue of the DoTs, on 9 September 2010 he became, and has since remained, a man with no assets. He says that any money which he may have had since execution of the DoTs has either been held and applied by him on Mrs Dixon's behalf, paid over to Mrs Dixon, or lent to him by Mrs Dixon pursuant to a loan agreement entered at the same time as the DoTs ('the Loan Agreement').

3. The Trustees maintain that the DoTs and the Loan Agreement are shams. Further or alternatively, the Trustees maintain that the DoTs were transactions at an undervalue entered by Mr Dixon for the purpose of putting assets beyond the reach of a person or persons who may at some time make a claim against him, contrary to s 423 of the Insolvency Act 1986. They seek declarations that the DoTs and Loan Agreement are void and ineffective and orders setting aside the DoTs, along with consequential orders.

4. The Trustees also challenge two property transactions entered into by Mr and Mrs Dixon after the DoTs but prior to the bankruptcy order. These transactions relate to a property in Barbados and a property in Cambridge.

5. The Dixons fully contest these proceedings.

**The DoTs**

6. The DoTs were as follows:

(1) A DoT relating to a six-bedroom house and three-bedroom cottage, known as Pennymore House and Stable Cottage, in the village of Furnace in Argyll, on the north shore of Loch Fyne, registered in the names of Mr and Mrs Dixon on 19 July 2007 ('the Argyll Property'**)**. The Argyll Property was sold in August 2017, a few weeks before the bankruptcy order, for £600,000. The net proceeds of sale, totalling £126,156, were paid into Mrs Dixon's account at the Halifax in two tranches, on 4 August 2017 and 10 April 2018 respectively. Mr Dixon told the Trustees on 28 September 2018 that the property had been sold at a loss, but this was not the case.

(2) A DoT relating to an eight-bedroom period property with a swimming pool, known as The Stonehouse, in Woolhope, Herefordshire ('the Herefordshire Property'). This was purchased in February 2006. It was subsequently sold for £1.2 million, at a loss, on 20 July 2015. There was a £105,283 shortfall on the outstanding mortgage which, together with solicitors' professional charges of £10,020, was covered by a payment made by Mr Dixon from his account at the Halifax.

The DoTs referred to at (1) and (2) above are hereafter, 'the Property DoTs'.

(3) A DoT relating to chattels held at a rented apartment 506 Tea Trade Wharf ('the Chattels DoT').

(4) A DoT relating to four specified vehicles ('the Vehicles DoT').

(5) A DoT relating to Mr Dixon's capital account and undrawn profits with E & Y ('the EY Trust').

(6) A DoT relating to what was described as Mr Dixon's "residual estate" ('the RET').

7. It will be helpful to look a little more closely at the terms of the EY Trust and the RET at this stage.

8. The EY Trust read as follows:

'DECLARATION OF TRUST

DATE:

BY: John Dixon of The Stonehouse, Woolhope, Hereford, HR1 4QR (the 'Owner')

RECITALS:

> (A) The Owner is the legal owner of the John C Dixon Capital Account of the Ernst and Young Limited Liability Partnership ('Ernst and Young'), the accounts of which are currently audited by BDO (the 'Capital Account').
>
> (B) The Owner is the legal owner of the any [sic] undrawn Profits and Tax Retentions of John C Dixon in Ernst and Young (collectively of A and B 'the balances').
>
> (C) The Owner wishes to declare the trusts on which the above balances are now to be held.
>
> OPERATIVE PROVISION:
>
> The Owner irrevocably declares that he holds the balances to the credit of the Capital Account as at the date of this declaration on trust for Janet Dixon of The Stonehouse, Woolhope, Hereford, HR1 4QR absolutely'

9. From the recitals to the EY Trust, the intention appears to have been to declare trusts in respect of both the capital account *and* any undrawn profits/tax retentions. The operative part of the EY Trust, however, arguably extends only to the capital account. In light of the RET, however, the point is largely academic.

10. The RET recites that Mr Dixon (again described as 'The Owner') 'wishes to declare the trusts on which the balance of any assets and income, now or in the future are to be held in conjunction with the Declarations of Trusts of Cars, Properties and Chattels of today's date' and goes on to provide as follows:

> 'OPERATIVE PROVISION
>
> The Owner irrevocably declares that cash representing any future income after taxation income from whatever source and any assets including properties, cars, chattels, insurance policies, pensions, annuities and investments accrue for the benefit of Janet Dixon'.

**The Loan Agreement**

11. Hand in hand with the DoTs is the Loan Agreement, which the Dixons maintain was also prepared and agreed on 9 September 2010. The Loan Agreement was signed by Mr Dixon but not Mrs Dixon. It reads as follows**:**

> 'Dear John,
>
> Deeds of Trust
>
> The purpose of this letter is to acknowledge the various Deeds of Trust we have executed today in relation to all our assets and future income.

> In consideration of the declarations of Trust dated today I detail in this letter the governance of any receipts by you of sums that belong to me under the terms of those Trusts.
>
> I am prepared as the occassion [sic] demands and with my agreement that sums be received by you as long as you recognise by signing this letter that they beneficially belong to me and as soon as practical be paid over to me or on my direction. To the extent that you defray expenditures out of any sums received by you that are governed by the Trust Deeds then to the extent that they represent household expenditures or other expenses for my account you do so as my agent. To the extent any expenditure by you, as agreed by me, is in relation to any expenses that are personal to you then those sums will represent interest free loans by me to you that are repayable on demand.
>
> Yours sincerely
>
> Janet Dixon
>
> Acknowledged
>
> John Dixon'

**The Cambridge and Barbados properties**

12. The Trustees also seek declarations and other relief in respect of two property transactions entered by Mr and Mrs Dixon after the DoTs were executed but prior to the bankruptcy order.

13. The first was the purchase by Mr Dixon of a property in Barbados in the name of Mrs Dixon in November 2014 (an apartment in the Royal Apartments Condominium in Westmoreland, St James) ('the Barbados Property'). The Trustees maintain that this was a transaction at an undervalue within the meaning of s. 339 IA 1986. The Dixons dispute this. The Barbados Property was sold shortly after issue of these proceedings and the net proceeds of sale paid into Mrs Dixon's Coutts' bank account. There is currently a freezing injunction in place preserving what remains of the net proceeds.

14. The second relates to a sale on 4 October 2016 of a property in Cambridge ('the Cambridge Property') purchased and registered in the joint names of Mr and Mrs Dixon in June 2014. The Trustees seek a declaration that this was a void disposition within the meaning of s.284(1) IA 1986, and that one half of the net proceeds of the sale of that property are held by Mrs Dixon for Mr Dixon as part of his bankruptcy estate pursuant to s. 284(2) IA 1986.

**Income Payments Order application**

15. Originally, the Trustees also sought an income payments order against Mr Dixon pursuant to s.310 IA 1986. Directions for Mr Dixon's evidence and the Trustees' evidence in reply in respect of this application were given on 18 September 2023, and

this evidence was duly filed and served on 23 October 2023 and 6 November 2023 respectively. However, following Mr Dixon's dismissal from employment on 13 October 2023, the application was stayed by consent on 14 November 2023. The IPO application is therefore not an issue for determination at this trial.

**Adjournment Applications**

16. On behalf of the Dixons, Mr Dixon made two adjournment applications before me. One was at the start of the trial and the other was during closing submissions. I refused both applications.

17. The first adjournment application was made on the basis that the Dixons had made a last-minute application for committal for contempt of court of the Trustees and their legal team for allegedly misleading the court at a recent PTR. The Dixons sought an adjournment of trial pending determination of that application.

18. This was one of a number of attempts by the Dixons to stall the proceedings in the run-up to trial.

19. At a CMC before ICCJ Mullen on 29 January 2025, the Dixons applied for permission to file further evidence after the existing deadline of 17 January 2025 (which had already been extended on numerous occasions) and applied informally for extended disclosure. ICCJ Mullen dismissed both applications and, in keeping with two earlier orders dated 20 December 2023 and 20 May 2024, directed that the trial of these proceedings be listed on an expedited basis.

20. By application notice dated 26 March 2025 and draft order, supported by an undated witness statement, Mrs Dixon then sought a stay of the proceedings, a vacation of the PTR and the trial, wide ranging disclosure orders against the Trustees encompassing 'all emails and documents in [the Trustees'] possession or control in relation to the above-mentioned cases and also CA 2025 000236, other than emails and documents already supplied…' together with relief pursuant to sections 303 and 304 IA 1986 (the 's.303 application'). By her witness statement in support of the s.303 application she raised a variety of complaints, including alleged delay on the Trustees' part in prosecuting the proceedings and the Trustees' refusal to accept three settlement offers made by the Dixons. She also alleged or implied by her witness statement that the Trustees had leaked details of the proceedings to the press (which the Trustees vehemently deny), causing Mr Dixon to lose his job. The Trustees deny all allegations of wrongdoing and oppose the application in its entirety.

21. At the PTR on 15 April 2025, Chief ICC Judge Briggs told the Dixons that the trial was going ahead notwithstanding Mrs Dixon's s.303 application. He also made clear, as reflected in the recitals to his order, that the Dixons were not entitled to call further witnesses at trial and that only the makers of witness statements filed in accordance with the court's previous directions were permitted to give evidence at trial. As only Ms Sayers, and not Mr Willmont, had filed a trial witness statement on behalf of the Trustees, the judge directed by paragraph 2 of his order that only Ms Sayers could be cross-examined by the Dixons. This was, however, expressly subject to the caveat provided by paragraph 3 of the order, that if the Dixons nonetheless wished to cross-examine Mr Willmont, they could produce a list of questions that they proposed to ask him and seek the trial judge's permission to put those questions to him. The

Trustees made clear at the PTR (and by their skeleton argument filed for the PTR) that they had no objection to Mr Willmont being cross-examined as long as the Dixons kept to their overall cross-examination time allocation under the trial timetable.

22. Following the PTR, the Dixons alleged that the Trustees and their legal team (including Counsel) had misled the court at the PTR when stating that only Ms Sayers had made a trial witness statement. This was on the basis that there was included in the trial bundle (not with the trial statements, but in a different section of the bundle) a copy of a witness statement made by Mr Willmont in support of an earlier IPO application which was no longer being pursued. The failure to draw this witness statement to the attention of Chief ICC Judge Briggs at the PTR was, the Dixons alleged, misleading and a 'contempt in the face of the court'. It was this that formed the basis of the contempt application issued by the Dixons very shortly before the trial was due to commence.

23. The contempt application was plainly misconceived. Mr Willmont had not filed a trial witness statement and the Trustees had not misled the court in confirming this at the PTR.

24. It was against that backdrop that Mr Dixon had made his first adjournment application at trial, arguing that it would be wrong to proceed with the trial until after disposal of the contempt application. The contempt application was, however, misconceived and totally without merit, for the reasons I have indicated. It would not further the overriding objective to adjourn the trial for such a purpose.

25. In the event, Mr Willmont was present in court at trial and, notwithstanding that the Dixons had not produced a list of questions for him, they were offered the opportunity to cross-examine him. They declined that offer.

26. Mr Dixon also argued on the first morning of trial that the trial should be adjourned to allow time for disposal of Mrs Dixon's s.303 application. This argument had already been explored and rejected at the PTR. Even putting that fact to one side, however, on the basis that as trial judge I may consider the matter afresh, in my judgment it would plainly be contrary to the overriding objective to adjourn the trial at such a late stage for such a purpose.

27. The second adjournment application, made during Mr Dixon's closing submissions, was an informal application for (i) a disclosure order against the Trustees requiring them to disclose documents which the Dixons had disclosed to them for the purpose of settlement negotiations (ii) permission to adduce further evidence and (iii) an adjournment pending disclosure and further evidence.

28. No good or persuasive grounds were put forward in support of an adjournment at such a late stage. The Dixons had been given ample opportunity to prepare and file their evidence. The deadline for their evidence had been pushed back by agreement on multiple occasions. The freezing injunctions in place had made generous provision for the funding of legal assistance in preparing witness statements.

29. Moreover, Mr Dixon did not put forward any good or persuasive reason why the Dixons would require a disclosure order against the Trustees in respect of documents

*which the Dixons themselves had earlier disclosed to the Trustees*. I was taken to no evidence to suggest, for example, that the Dixons had lost or inadvertently destroyed their own copies of any such documents.

30. The suggestion by the Dixons that the Trustees had failed to include in the trial bundle relevant documentation disclosed to them by the Dixons was not supported by any evidence.

31. On instruction, Mr Lopian confirmed that Mrs Dixon had (through the Dixons' then solicitors) disclosed her personal and business bank statements to the Trustees on a without prejudice basis within the context of settlement discussions. As they had been disclosed on a without prejudice basis, however, they were not included in the trial bundle.

32. The Dixons maintained that the bank statements in question had been disclosed on an open basis, as a precursor to, rather than within the context of, settlement discussions. The Dixons were however acting by solicitors at the time and (whilst I was not taken to without prejudice correspondence for obvious reasons) I suspect that the solicitor correspondence in question will have made perfectly clear the basis upon which the bank statements were provided.

33. This was in any event an entirely arid debate. The Dixons could see the documents exhibited to the Trustees' witness statements; if they wished the court to consider further documents, they could and should have exhibited those documents to their own witness statements in the usual way, or sought the Trustees' agreement to their inclusion in the trial bundle.

34. In the latter regard, Mr Dixon had been sent a link to the whole proposed trial bundle as long ago as 18 March 2025, as the Trustees' solicitors started the process of agreeing the bundle. The only extra documents the Dixons asked to be added were the appeal papers relating to the freezing injunction and documents relating to Mrs Dixon's s.303 application. The Trustees' solicitors did not consider these documents to be relevant to the present proceedings and so told the Dixons that if they wanted those documents in, they should be set out in a supplemental bundle. Three weeks prior to trial, the Dixons were then sent the final draft trial bundle, including all of Mr Dixon's bank statements from June 2012 to August 2018. If the Dixons had wanted any other sets of bank statements in the bundle, they could and should have said so in the run-up to trial.

35. Mr Dixon also referred in submissions (in generic rather than specific terms) to other documents claimed to be of relevance to the Dixons' case, such as leases, car purchase documents and guarantees. None of these had been supplied by the Dixons to the Trustees in advance of the trial and none were produced at trial. Again, if the Dixons had wanted those documents considered by the Court, they should either have exhibited copies of the same to their own witness statements or sought the Trustees' agreement to inclusion of the same in the bundle.

36. It is for those reasons that I concluded that the Dixons' second adjournment application (and attendant informal applications for disclosure and for permission to adduce further evidence) should be rejected. It would plainly not further the overriding objective to accede to such applications at such a late stage. In my

judgment it was yet another example of the Dixons attempting to delay final disposal of the proceedings.

37. I turn next to consider the substantive matters before me.

**Legal Principles: Sham**

38. In Snook v London and West Riding Investments Ltd [1967] 2 QB 786, Diplock LJ (at p 802) described a sham as:

> 'acts done or documents executed by the parties to the 'sham' 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.'

39. As put by Arden LJ in Stone (Inspector of Taxes) v Hitch [2001] EWCA Civ 63 at [66]:

> 'The parties must have intended to create different rights and obligations from those appearing from (say) the relevant document, and in addition must have intended to give a false impression of those rights and obligations to third parties'

40. Where the declaration of trust is bilateral, there needs to be a common intention that the assets are to be held otherwise than as set out in the trusts (Shalson v Russo [2003] EWHC 163 at [187]-[190]), but a party who goes along with a sham neither knowing or caring what he is signing is to be taken as having the necessary intention: Midland Bank v Wyatt [1996] BPIR 288 at 291; Re Esteem Settlement 2003 JLR 188, cited with approval in A v A [2007] EWHC 99 at para [52].

41. A unilateral declaration of trust may be a sham, where the person making it does not intend in fact to divest themselves of their interest in the relevant asset but makes the declaration for the purpose of inducing third parties to believe that they do: Painter v Hutchinson [2007] EWHC 758.

42. The burden of proof is on the party alleging a sham. The standard of proof is the normal civil standard of balance of probabilities: Bhura v Bhura [2014] EWHC 727 (Fam) at [9].

43. The fact that a transaction is artificial does not necessarily make it a sham. However, the fact that a transaction is artificial is a factor that can properly be taken into account when deciding whether it is a sham: National Westminster Bank v Jones [2000] BPIR 1092 at 1102.

44. There is a presumption, even in the case of an artificial transaction, that the parties to what appear to be perfectly proper agreements on their face intend them to be effective, and that they intend to honour and enjoy their respective obligations and rights. That that is so is supported by the fact that an allegation of sham carries with it a degree of dishonesty, and the court should be slow (but not naively or unrealistically

slow) to find dishonesty: National Westminster Bank v Jones [2000] BPIR 1092 at 1104.

45. In ascertaining whether a transaction or trust is a sham, evidence of subjective intention is admissible. The court may examine external evidence, including the parties' explanations and circumstantial evidence, such as evidence of the subsequent conduct of the parties (Hitch v Stone [2001] EWCA Civ 63 at [65] and Midland Bank v Wyatt [1996] BPIR 288 at p 292) and whether the parties are 'doing one thing and saying another': Belvedere Court Management Limited v Frogmore Developments Limited [1997] QB 858 per Sir Thomas Bingham MR at 876D-F.

46. On the relevance of subsequent conduct, Neuberger J in National Westminster Bank v Jones [2000] BPIR 1092 explained at 1103:

> 'AG Securities [1990] 1 AC 417 … established that, when considering whether a transaction is a sham, the court is not restricted to considering activities which took place before or at the time of the transaction: it is perfectly proper to consider how the parties subsequently acted. In AG Securities [1990] 1 AC 417 at 475E-F, Lord Jauncey said that the defendants contended that:
>
> '[A]lthough the subsequent actions of the parties may not be prayed in aid for the purposes of construing the agreements they may be looked at for the purpose of determining whether or not parts of the agreement are a sham in the sense that they were intended merely as "dressing up" and not as provisions to which any effect would be given.'
>
> It is clear that Lord Jauncey accepted that contention, because he said at 476G: 'When subsequent events are looked at the matter becomes even clearer'.
>
> The same view was taken by Lord Oliver of Aylmerton (with whom Lord Ackner expressly agreed – see at 466E) at 469C:
>
> '[T]hough subsequent conduct is irrelevant as an aid to construction, it is certainly admissible as evidence on the question of whether the documents were or were not genuine documents giving effect to the parties' true intentions.'
>
> Lord Templeman (with whom Lord Ackner also agreed) concurred'.

47. A sham trust is void rather than voidable: Hitch v Stone (supra) at para [87]. Even if void, however, it stands until it is set aside.

**Legal Principles: Section 423 IA 1986**

48. The material parts of section 423 provide:

> (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 some time 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.
>
> …
>
> (5) In relation to a transaction at an undervalue, references here … to a victim of the transaction to a person who is, or is capable of being, prejudiced by it'

49. Section 436 (1) provides that (unless the context requires otherwise) 'transaction':

> 'includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.'

50. To satisfy s 423(3), it is only necessary to establish that putting assets beyond the reach of a person who is making or may make a claim, or otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make, was ***a*** purpose of the transaction. It does not have to be the sole, substantial, or dominant purpose, but it is not sufficient if it is merely a by-product or consequence of the transaction: JSC BTA Bank v Ablyazov [2018] EWCA Civ 1176 at [8]-[16]; Malik v Messalti [2024] EWHC 2713 at paras [33]-[36].

51. Provided that the statutory purpose was a purpose of the transferor in entering into the transaction, the fact that he might also have had some other purpose does not prevent s.423(3) being engaged.

52. The prohibited purpose is a question of fact to be proved, not a matter of presumption. It is a question of subjective intention: the court has to be satisfied that the person entering into the transaction actually had the relevant purpose, not that a reasonable person in their position would have had it.

53. When considering whether the threshold under s.423(3) is cleared, the court is not limited to direct evidence of intention of the person entering into the transaction. The court can also draw inferences from the surrounding facts of the case. It can infer from the evidence as a whole that such a purpose existed even if that person denies it: Hill v Spread Trustee Co Ltd [2006] EWCA Civ 542 at [86]; IRC v Hashmi [2002] EWCA Civ 981: Purkiss v Kennedy [2025] EWCA Civ 268 at [18].

54. Relying on 'professional advice' in entering the transaction does not exclude the transferor having the purpose specified in s.423(3)(a) IA1986: Henderson and Jones Ltd v Ross [2023] EWHC 1276 at para [397], following National Westminster Bank v Jones [2000] BPIR 1092 at page 1123 (per Neuberger J) and Arbutnoth Leasing International Ltd v Havelet Leasing Ltd [1990] BCC 636 at page 644 and cited with approval in Purkiss v Kennedy [2025] EWCA Civ 268.

55. The mental state of the recipient is not relevant in determining the purpose of the transferor when entering the transaction, the crucial question being what the transferor's purpose was: Moon v Franklin [1996] BPIR 196 at page 202.

56. There is no statutory requirement in s.423(3) IA 1986 for the transferor to have had any particular knowledge of persons making a claim or who may a claim at the time he entered into the transaction: Malik v Messalti [2024] EWHC 2713

57. The class of "victims" (as defined in s.423(5) IA1986) is not limited to those who were within the compass of the transferor's purpose when entering into the transaction: Gordian Holdings Ltd v Sofroniou [2021] EWHC 235 at [16(2)-(3)].

58. A party can in principle invoke s.423 IA1986 to challenge a transaction entered into many years previously if the substantive requirements of the section are met. The fact that the particular claimant was not in the contemplation of the transferor at the time of the transaction is immaterial. All that is required is that the claimant was prejudiced by the transaction, albeit at some later date: Sands v Clitheroe [2006] BPIR 1000.

59. Mr and Mrs Dixon also referred me to comments of Rose J at first instance in the case of BAT Industries v Sequana [2016] EWHC 1616 at [517], to which I shall return.

60. By section 424, an application for an order under section 423 may be made by a trustee in bankruptcy or a victim of the transaction.

61. Section 425 sets out various types of orders which may be made under s423. Section 425(2)-(3) provide:

> '(2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order-

> (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
>
> (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
>
> (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.'

62. The court has very wide discretionary powers of relief, which should be exercised to achieve *restoration* to the extent appropriate to protect the interests of creditors. The relief granted should seek to restore the original pre-transaction position: Chohan v Saggar [1994] BCC 134 (CA) at pp140B-C to 141C-D, 4Eng Ltd v Harper [2010] 1 BCLC 176 at [9]. When the position cannot be restored in the literal sense, it can be appropriate to require payment of a sum to compensate for the transaction at an undervalue: Allen v Hurst [2023] BPIR 1 (where it was observed that one of the reasons for the court's wide jurisdiction as to remedy is to allow it flexibility in fashioning relief which is tailored to the justice of the case).

63. The discretion is wide enough to enable the court, if justice so requires, to make no order against the other party to the transaction: Re Paramount Airways [1993] Ch 223.

64. In certain claims based on restitution, a defence of 'change of position' may be available. As explained in Lipkin Gorman v Karpnale Ltd [1992] 2 AC 548 at 580F-G per Lord Goff:

> 'the defence is available to a person whose position has so changed that it would be inequitable in all the circumstances to require him to make restitution, or alternatively restitution in full. I wish to stress however that the mere fact that the defendant has spent the money, in whole or in part, does not of itself render it inequitable that he should be called upon to repay, because the expenditure might in any event have been incurred by him in the ordinary course of things.'

65. It is uncertain whether, as a matter of law, a 'change of position' defence is relevant to the exercise of the court's discretion under s.423 (see 4Eng Ltd v Harper [2010] 1 BCLC 176, Skandinaviska Enskilda Banken AB v Conway [2019] UKPC 36 at paras [113] to [117], Bucknall v Wilson [2021] EWHC 2149). Even if a change of position is a relevant factor to be taken into account in the context of a s.423 claim, however, it is plain that it is not open to one who has changed his position in bad faith, such as where the defendant has paid away the money with knowledge of the facts entitling the claimant to restitution: Lipkin Gorman at 580C per Lord Goff; the defence has to be one based on "good faith": 4Eng (supra) at paras [13]-[14].

## The Evidence- approach

66. The court's approach to assessment of witness evidence has been the subject of numerous explanations and comments in the authorities. For present purposes, I take into account the principles and caselaw summarised in Reynolds v Stanbury [2021] EWHC 2506 at [10]-[13].

67. I also take into account the guidance given by Arden LJ in Re Mumtaz Properties Ltd [2011] EWCA Civ 610, where she said:

> '14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party using oral evidence is responsible for its nonproduction, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.'

## Written Evidence

68. For the purposes of the trial, I have read

(1) the First, Second, Third and Fifth Witness Statements of the First Applicant, Ms Sayers, dated 13 June 2023, 26 June 2023, 10 October 2023, and 26 February 2025 respectively, together with their respective exhibits;

(2) the witness statement of Mr Richard Risino dated 24 February 2025 and its attendant exhibit

(3) the witness statements of Mr John Dixon dated 17 January 2025; and

(4) the witness statement of Mrs Dixon dated 17 January 2025.

69. I also read other documents contained in bundles prepared for use at the hearing, to which reference will be made where appropriate.

70. The statements filed by Mr and Mrs Dixon had no documents exhibited to them. Mr Dixon told the court (on behalf of himself and his wife) that they had thought the Trustees would produce any documents that they (the Dixons) might wish to rely on in evidence and include them in the trial bundle. I have no hesitation in rejecting that explanation. Mr Dixon is a highly astute intelligent individual. Mrs Dixon is a businesswoman who has run her own business for years. They could see for themselves the documents exhibited to the witness statements relied upon by the Trustees. The Trustees also liaised with the Dixons when preparing the trial bundles and made the draft and the finalised trial bundles available to them in good time before trial. If Mr and Mrs Dixon wished to adduce any further documents in evidence or seek the Trustees' agreement to inclusion of further documents in the trial bundles, they have had ample time in which to do so.

## The Witnesses

71. The court heard oral evidence from Ms Sayers, Mr Risino, Mr Dixon and Mrs Dixon.

72. The Dixons represented themselves at trial. Mr Dixon took the lead in cross-examining Ms Sayers and Mr Risino, as he did in making submissions.

73. As an officeholder, Ms Sayers could only give direct evidence on matters which had come to her attention since taking office. In oral testimony, she responded readily and fully to questions put to her, backing up her answers by accurate reference to her statutory powers where appropriate and to the court bundles. I have every confidence in the veracity of her testimony.

74. Mr Risino was a straightforward and honest witness who did his best to assist the court to the best of his knowledge and recollection. His evidence, too, was plainly reliable.

75. Mr and Mrs Dixon each had to be stopped from taking prompts from each other when in the witness box. Mr Dixon also let slip on his second day of cross examination that he had discussed certain matters relating to the case with Mrs Dixon overnight, notwithstanding having been given a clear warning by the court at close of play on the first day of his evidence that he was not to do so.

76. Mr Dixon's written evidence contained half-truths and falsities for which he was largely unapologetic when challenged in cross examination. By way of example:

(1) At paragraph 37(d) of his statement, he stated that following discussions with Penningtons, incomplete trust deeds were sent to him by Penningtons which he had then completed. This was in context a half-truth; his statement failed to disclose the fact that he had drafted the RET himself, adapting the draft EY trust for that purpose and leaving the Penningtons logo on it, which suggested that Penningtons had drafted the RET. A similar misrepresentation as to Penningtons' involvement with the RET had been made in pre-action correspondence with the Trustees. A statement which Mr Dixon had drafted for his wife and sent back to the Trustees under cover of a letter dated 15 April 2019, for example, stated that the DoTs (in context including the RET) were executed 'after advice'. The statement also stated that 'We were advised that there were some Tax advantages in executing the Deeds' (in context, again, suggesting that tax advice had been taken on the RET). It was only after some pressing by the Trustees for details of what that advice was that, in an undated letter drafted by Mr Dixon for Mrs Dixon to sign, received by the Trustees on 25 June 2019, Mrs Dixon had responded 'Given my husband's historic profession it was not felt necessary to take independent tax advice'. When challenged about this in cross-examination, Mr Dixon stated that Counsel was 'just pulling words apart for [his] own purposes';

(2) At paragraph 39 (d) of his statement, in support of the contention that the RET was increasingly acted upon, albeit over time, he stated that 'for the majority of time when at Reckitt from 2016 to my departure in 2023 my salary was received directly by Janet'. Mr Dixon's statement failed to mention that, from 2016 to 2018, the Reckitt salary was paid, in full, into Mr Dixon's own account – and that it only started being paid into Mrs Dixon's bank account when his own accounts were frozen as a result of

the Trustees writing to his bank to ask for copies of bank statements, thereby alerting the bank to the fact that Mr Dixon was bankrupt;

(3) At paragraph 39(b) of his statement, Mr Dixon stated that 'All decisions subsequent to the Declarations of Trust as to property purchases and sales… were made and handled by Janet alone', when in fact the email correspondence in evidence in the period leading up to the purchase of the Barbados property showed conclusively that it was Mr Dixon who was handling arrangements for the purchase and liaising with the Barbados lawyers, often without even 'copying in' Mrs Dixon. Having been taken in cross-examination to each of the relevant emails in turn, Mr Dixon claimed that Counsel was taking things 'out of context', as 'those emails were sent on behalf of Janet'. When pressed to explain how that was consistent with his statement (at paragraph 39(b)) that all decisions were 'made *and handled* by Janet', he responded: 'it depends what you mean by 'handled'.

77. Overall, Mr Dixon's written evidence was not prepared with the candour and care required of formal evidence bearing a statement of truth.

78. Mr Dixon's oral evidence was also inaccurate in certain material respects, a number of which are addressed where appropriate in this judgment. While aspects of his oral testimony were undoubtedly truthful, he was prepared to deviate from the truth when it suited his purposes. At times, I am satisfied that he told deliberate untruths. His claim that the Penningtons' file note did not accurately reflect what was said in certain respects, for example, did not withstand scrutiny when compared to explanations for the DoTs proffered by Mr Dixon (on his own behalf and via his wife) in correspondence with the Trustees prior to issue of proceedings. At other times in his oral testimony, it appeared that he had simply closed his mind to any facts which did not accord with his chosen narrative. One such example was his claim not to have owed HMRC any material sums until after the purchase of the Barbados property in November 2014. When it was put to him that it was clear from the face of the petition that (among other sums) a sum of £337,310.42 had fallen due for payment on 31 July 2013 in respect of the tax year 2012/13 and had not been paid, he responded 'you can infer that but it is not my recollection'. The sum in question remains unpaid to this day.

79. Overall, having considered the evidence as a whole, I have concluded that save where admitted or supported by context or contemporaneous documentation, Mr Dixon's evidence should be treated with caution.

80. Mrs Dixon's written evidence comprised a short (four paragraph) witness statement adopting Mr Dixon's evidence as her own. By paragraph 4 she confirmed that, (a) in so far as Mr Dixon's statement referred to her and what she did, said, or believed, his statement was accurate and (b) insofar as the Mr Dixon's statement did not refer to her and what she did, said or believed, she believed Mr Dixon's account.

81. Whilst Mrs Dixon engaged with some of the questions put to her in cross-examination, she was guarded in her responses to others. When asked whether Mr Dixon had said that his earnings in the 'consultancy work' years of 2014-16 could be 'routed through' Mrs Dixon's business, Barker & Barker, for example, she rapidly responded: 'Not in those words', adding: 'We discussed that Pure needed someone VAT registered and so used Barker.'

82. Mrs Dixon was evasive when questioned about the tax treatment of the consultancy income of Mr Dixon channelled through her business, Barker & Barker. When asked whether tax was paid by Barker & Barker on Mr Dixon's income, she first replied 'it depends what tax', confirming that VAT was paid. When then asked whether income or corporation tax was paid on that income by Barker, she retreated, saying 'I don't know, you'd have to ask my accountant.' This was not entirely accurate. She knew that income tax was not paid on that income. She had told Mr Dixon that it wasn't the day before, as confirmed by him in oral testimony.

83. When asked about the DoTs, Mrs Dixon remembered signing 'a bunch of documents' in 2010. She said that she had read them through at the time but could not now remember specifically which documents she had signed. She could not recall exactly when she had first seen the Loan Agreement but did remember reading it. She did not know why she hadn't signed it.

84. It was clear from the evidence overall that Mr Dixon drafted other documents for Mrs Dixon to sign. These included letters for Mrs Dixon to sign in her name and send to the Trustees. In cross-examination, Mrs Dixon was unable to explain why she had said certain things in given letters which she had sent to the Trustees and/or their solicitors. In one such letter, sent in 2019, for example, she had said that she would be calling in the loans under the Loan Agreement. In oral testimony, however, she admitted that she had never called in any of the loans and had no intention of doing so. When asked why she had said that she would do so in her letter to the Trustees, she did not know. Similarly, in response to a chasing letter from the Trustees seeking information, Mrs Dixon had signed a letter of reply dated 13 November 2019 drafted by Mr Dixon saying that she would be meeting with solicitors in the next 10 days and would respond to the Trustees' enquiries thereafter. In cross examination, she accepted that she hadn't met with solicitors in 2019. In context it was clear that this was a 'stalling' strategy devised by Mr Dixon, which Mrs Dixon had simply gone along with.

85. Overall, whilst I am satisfied that Mrs Dixon did her best not to tell outright lies in the witness box and for the most part succeeded in that limited objective (with some exceptions, such as saying that she 'did not know' whether income tax was paid by Barker on Mr Dixon's consultancy income), I have considerable reservations as to whether she honoured her oath to tell 'the whole truth' when responding to certain of the questions put to her. She plainly deferred to Mr Dixon in material respects and her wholesale adoption of Mr Dixon's written evidence was unfortunate. These factors do in my judgment temper the reliability of her evidence overall, in the absence of context or supporting documentation.

## Material Background

86. To the extent that the facts and matters set out in paragraphs [87] to [143] of this judgment are not common ground, they constitute findings based on the evidence which I have heard and read.

87. At all material times until 1997, Mr Dixon was a partner at Thornton Baker (which later became Grant Thornton). In 1997, Mr Dixon joined E & Y as a partner.

88. By 2006, Mr Dixon had become a member of Ingenious Film Partners 2 LLP ('Ingenious 2'), one of the tax avoidance schemes which were marketed by the Ingenious Media Group to wealthy individual taxpayers in the tax years 2002/03 to 2009/10 inclusive. Those schemes were later the subject of extensive litigation.

89. In 2008, Mr Dixon was appointed as managing partner and UK head of tax for E & Y.

90. In 2010, Mr Dixon decided to approach a firm of solicitors, Penningtons, with a view to setting up some trusts in favour of his wife. The circumstances in which he did so were later described by Mr and Mrs Dixon in correspondence which they exchanged with the Trustees. When asked by the Trustees to explain why the DoTs were signed, Mr Dixon by email dated 17 December 2018 had responded (with emphasis added):

> 'The declaration of Trust
>
> I instructed Penningtons directly to give advice and draft the relevant Trust Deeds. *It is quite common for Partners in professional services firms to execute such arrangements*. The scope was to ensure that all current and future assets were protected and to ensure that they were held and accrued for the benefit of my wife and by her will, our children. There are *also* some potential tax benefits with these arrangements.'

91. It will be seen that potential tax benefits were mentioned as an aside. When later asked what the tax benefits were, Mr Dixon had responded by email dated 8 January 2019, stating: 'The tax benefits referenced relate to Inheritance Tax'.

92. By a further email dated 13 February 2019, Mr Dixon said of the DoTs:

> 'Deed of Trust
>
> As I recall at the time a number of partners and colleagues were contemplating and talking about similar arrangements and this prompted me to consider. The Trusts were executed so long ago they were clearly (as a matter of timescales) not executed in contemplation of the current situation.
>
> Tax benefits
>
> Gift to spouses are not subject to IHT and reduce the value of the donors estate for IHT purposes. As the likelihood is that females live longer than males (especially given the health history of my family) it also allows for a longer window to make "Potentially Exempt Transfers" for IHT purposes to children and other relatives. There are lots of materials on the Internet if you would like to know more.'

93. Again, it will be noted that the reference to inheritance tax benefits is presented as a secondary consideration.

94. When the Trustees then turned to making enquiries of Mrs Dixon regarding the DoTs and other enquiries, Mr Dixon drafted her responses. One such response took the form

of a document headed 'statement', sent under cover of a letter dated 15 April 2019 which simply enclosed the statement. The statement listed the DoTs and set out a number of reasons why the DoTs were entered. The reasons included a reference to the Dixons having been 'advised that there were some Tax advantages in executing the Deeds' but also stated:

> 'I was concerned about my husband remaining the beneficial owner of family assets when a partner in a professional services firm given the economic environment that had existed since the "credit crunch". The environment was volatile and unpredictable.'

95. When asked to elaborate, Mrs Dixon by an undated letter drafted by Mr Dixon and received by the Trustees on 25 June 2019 ('the June 2019 letter') had stated:

> 'At the time the trusts were created the business world was very volatile - and assets held by a partner in a professional services firm inevitable [sic] would have been exposed to risk of litigation. There was conjecture about whether limited liability status for partners in professional service firms would be respected in any litigation and it has been standard practice for many years for partners in this situation to vest assets in favour of their spouses.'

96. By Mrs Dixon's later letter to the Trustees dated 13 July 2019, again drafted by Mr Dixon, she added:

> 'With regard to the environment when the trusts were executed I can only refer you to the fact that when the trusts were executed the financial markets were coming out of turmoil with the interventions with Northern Rock, HBOS, RBS and Lloyds TSB. The impact on advisers was being actively discussed at the time.
>
> The existence of limited liability partnerships did not provide cast-iron protection against the risks of being in professional practice at this time and indeed there are articles on the internet on this point.
>
> Hence the execution of the trusts was based on real external influences at the time, were in no way in contemplation of the current proceedings, were not a sham and had real benefit for me and my family.'

**The Penningtons call: 2 September 2010**

97. On 2 September 2010, Mr Dixon had a telephone conversation with Laura Dadswell, a partner at Penningtons Solicitors LLP and Richard Risino, an associate at Penningtons and two-year qualified solicitor, to whom he had been introduced by a solicitor at RPC. Mr Risino prepared a file note recording the matters discussed in the telephone conversation on the same day ('the File Note'). For reasons addressed in a

later section of this judgment, I am satisfied that the File Note is an accurate and in all material respects complete record of the matters discussed during that conversation.

98. Within the File Note, Mr Risino is referred to as 'RLR' and Ms Dadswell is referred to as 'LZD'. The File Note read as follows (with emphasis added):

> 'Date of Event: 2/9/2010
>
> Author: Richard Risino
>
> Client: Temp Client
>
> Matter: Temporary Matter
>
> Matter No: Temp
>
> RLR and LZD calling John Dixon.
>
> John began the conversation by explaining that he had been given RLR's name by Jonathan Levy at RPC. RLR explained that J Levy and RLR knew each other from their time at Berwin Leighton Paisner where they shared an office.
>
> John advised that the nature of his call was to discuss the asset ownership between himself and his wife. *John had been speaking with his fellow partners at EY and it appears that many of them own assets entirely in their wife's name. This is really a method of asset protection to try to avoid those assets being susceptible to attack by creditor [sic] of the LLP in the event that were to happen in such a high risk business.*
>
> *John asked for the general options available to him and his wife to try and safeguard this.*
>
> LZD began by saying that this is possible between a husband and wife and there are no real inheritance tax or capital gains tax implications of the disposal between spouses, *but the issue to be aware of is that any activity put in place with a view to defrauding creditors can be susceptible to being set aside*. LZD was alluding to activity where an individual is aware that they may be subject to pursuit by a creditor or potentially heading towards bankruptcy and transferring assets out of their own name, and then those transactions can be set aside. LZD did not go into an enormous amount of detail but said that the two to five period was the important period and after that transfers tend to be less susceptible to attack. Ultimately there is no guarantee. John accepted this but was happy to hear that it is possible.
>
> John's assets are as follows:

> There are a number of houses which are owned in joint names and although they are mortgaged there is significant equity in them. There are then antiques and possessions and a portfolio of investments.
>
> LZD advised that in order to transfer the houses into John's wife's name, the most appropriate way would be a simple Declaration of Trust. This would avoid having to make any contact with the mortgagor and then giving consent. Although legal title at the Land Registry would not be changed then ultimately the Declaration of Trust is sufficient for the purposes for John wants to achieve.
>
> In terms of the antiques, a similar Declaration of Trust or a letter of gift will be required to affect the transfer.
>
> In terms of investments and again this may be straightforward to achieve, although there may be certain income tax implications of arranging for the transfer.
>
> Following a discussion it appears John is most interested in transferring assets such as movables i.e. houses and antiques and possessions. Portfolio of the time being [sic] he will leave untouched.
>
> LZD then briefly advised John of the risks of transferring assets into his wife's name such as the fact that his wife would have ultimate control of the assets if they were to divorce. This may put John in a less strong position and ultimately the control of estate planning is transferred into his wife's name as she legally owns all of the assets.
>
> *The following conversation did not appear as though a significant amount of estate planning is to be put in place at this juncture so that is not one of John's concerns*.
>
> John would like RLR to email him so that he can begin to put in place arrangements to make to transfer assets into his wife's name.
>
> RLR
>
> Dictated on: 2/9/10'

99. Following this telephone conversation, on 7 September 2010, Penningtons sent their proposed letter of engagement to Mr Dixon. The letter stated:

> 'The purpose of my letter simply to provide an estimate as to costs and for your information on the Standard Terms of Engagement which apply to your instructions in this matter. I understand that you are liaising with my colleague Richard

> Risino as to the assets to be transferred and the issues to consider in respect of each and therefore do not propose going into any further detail here….
>
> Costs and Engagement
>
> Based on you wishing to transfer the beneficial ownership in the assets outlined to Richard by email, I expect the costs to be incurred in preparing the paperwork and liaising with you to be in the region of £1,000 to £1,250 plus VAT. If significant further correspondence is required or there are further assets to transfer, then I may have to revise that estimate….
>
> …I am enclosing with this letter copy of Penningtons' Standard Terms of Engagement which will apply to your instructions in this matter, unless you advise me of otherwise….
>
> I trust the above is self-explanatory. If you would like me to go into further detail on any point, or, if you would like to discuss estate planning further, please do let me know. In the meantime, I will leave Richard to contact you with draft paperwork to put into effect the transfers.'

100. I pause here to note that Mr Dixon's 'email' to Mr Risino, said in Penningtons' letter of 7 September 2010 to have 'outlined' the assets which were to be the subject of the proposed declarations of trusts, was not in evidence. Mr Risino's evidence, which in this regard I accept, was that as Penningtons had not been formally instructed by Mr Dixon (see below), no file had been opened for him, and that absent a client file it would be difficult to identify odd emails on the system.

**Penningtons' draft DoTs**

101. At some point between 2 and 9 September 2010, Mr Risino prepared drafts of the Property DoTs, the Chattels DoT, the Vehicles DoT and a version of the EY Trust which covered simply the capital account. He then sent them to Mr Dixon. Mr Risino's evidence (which I accept) was that the drafts were probably prepared and sent to Mr Dixon ahead of a formal letter of engagement being signed or a file being opened as a gesture of goodwill, as Mr Dixon would have been seen as a potentially valuable client for the firm.

102. In the event, Mr Dixon did not sign the letter of engagement, a formal file was not opened by Penningtons, and Mr Dixon did not pay for the drafts. His relationship with Penningtons did not go any further. Mr Dixon did however make use of the drafts when preparing the DoTs.

**The DoTs as signed: 9 September 2010**

103. Completing the DoTs simply involved Mr Dixon filling in his and Mrs Dixon's personal details. He did, however, make some amendments to the EY Trust, attempting to expand it from covering simply the capital account to capital account and undrawn profits. He also used the EY Trust draft as a template to create the RET.

In their executed form, all six DoTs had a front sheet bearing Penningtons' logo and details, although Penningtons were not involved in the amendment of the EY draft, were not involved at all in the preparation of the RET and were not involved in the execution of the DoTs. Each frontsheet had its own individual Penningtons reference number with the exception of the RET, which bore the same Penningtons reference number as the EY Trust.

104. Mr Dixon's evidence, which in this regard I accept, was that he and Mrs Dixon signed all six DoTs on 9 September 2010. Mrs Dixon gave written and oral evidence broadly supportive of Mr Dixon in this respect. In cross-examination she said that although she could not remember exactly which documents she had signed, she could remember signing 'a bunch of documents' in 2010, having discussed them with Mr Dixon. I was taken to no evidence establishing on a balance of probability a date of signing for any of the DoTs which differed from that shown on its face. In the absence of any evidence establishing on a balance of probabilities a different date of signing, I shall accept Mr Dixon's evidence that he and Mrs Dixon signed all six DoTs on 9 September 2010.

**The preparation of the Loan Agreement**

105. The Loan Agreement was drafted by Mr Dixon. As with the RET, Penningtons did not have any involvement in its preparation. Mr Dixon's evidence, which in this regard I accept, was that the Loan Agreement was signed by him on 9 September 2010, at the same time as the DoTs. Mrs Dixon did not sign it (neither Mr nor Mrs Dixon could recall why she hadn't) but she did recall having read it and the thrust of her evidence was that she had agreed to it. I was taken to no evidence establishing on a balance of probability a date of signing (by Mr Dixon) of the Loan Agreement and agreement by Mrs Dixon to its terms which differed from the date shown on the face of the agreement. In the absence of any evidence establishing on a balance of probabilities a different date, I shall accept the Dixons' evidence that the Loan Agreement was entered on the date shown on its face, 9 September 2010.

**Events after the signing of the DoTs and the Loan Agreement**

106. Having signed the DoTs and Loan Agreement, Mr Dixon remained as managing partner and UK head of tax at E & Y for the next four years or so, earning approximately £2 million per annum, while Mrs Dixon was a housewife alongside managing her fabrics business, known initially as Ruby Rose and later renamed Barker & Barker. I was taken to no documentary evidence to suggest that the Dixons' respective banking arrangements changed in any material respect over the period 2010 to 2014 and in the absence of any such evidence consider it legitimate to conclude that they did not. Mr Dixon confirmed in evidence that his income from E & Y continued to be paid into his own bank account.

107. Notwithstanding his generous income, Mr Dixon failed to make a payment on account of £337,310.42 to HMRC in respect of self-assessed income tax/NIC for the tax year 2012/13 by the due date of 31 July 2013. That sum has never been paid.

### The Chipping Norton Trust: January 2014

108. On 24 January 2014, Mr Dixon executed a declaration of trust in respect of a property occupied by his son and daughter-in-law, Iain and Esther Dixon (6 Alfred Terrace, Chipping Norton – 'the Property'). From the reference 'DC' on the deed, the deed is most likely to have been drafted by Diane Cook of the real estate team at Harrison Clark Rickerbys, who was also instructed on the sale of the Herefordshire Property in July 2015 and the Cambridge Property in October 2016, but on any footing from the drafting of the deed it is clear that it was professionally prepared. This declaration of trust recited that Mr Dixon, together with his son and daughter in law, were the 'legal and beneficial owners' of the Property, and declared that henceforth they held the Property on trust for Iain and Esther as beneficial joint tenants.

109. The Trustees maintain that the recital to the deed and the absence of Mrs Dixon as a party is entirely inconsistent with the RET and supports their case that the RET was a sham.

### The Cambridge Property purchase: May 2014

110. On 30 May 2014, the Cambridge Property was purchased for £375,000 and registered in the joint names of Mr and Mrs Dixon.

### The Barbados property purchase negotiations

111. In the same month (on 12 May 2014), Mr Dixon began to negotiate the purchase of the Barbados Property. It is clear from contemporaneous correspondence and related documentation (and I so find) that, initially, Mr and Mrs Dixon intended to purchase the Barbados Property in their joint names. To the extent that Mr and Mrs Dixon by their evidence sought to suggest otherwise, I reject their evidence. It is inconsistent with the contemporaneous documentation in evidence, which includes an email from Mr Dixon dated 16 June 2014 to the Barbados lawyers, Chancery Chambers, setting out a number of questions in numbered paragraphs; including (at paragraph 18) the question (with emphasis added): 'What happens if one of us or both of us dies *whilst we own*?' The final draft of the sale and purchase agreement, sent to Mr Dixon on 9 July 2014 with exchange slated for the end of that month, was in the names of Mr and Mrs Dixon. At the last moment, on 18 July 2014, Mr Dixon changed his instructions to his Barbadian lawyers and told them that the property would probably be bought in Mrs Dixon's sole name, and the agreement was amended. The Barbadian lawyers instructed on the sale confirmed these arrangements by letter to the Trustees dated 30 May 2019, stating: 'Initially we were instructed that Mr Dixon was purchasing the property jointly with his wife but on July 18, 2014 Mr Dixon instructed us to amend the Agreement for sale to reflect Mrs Dixon as the sole purchaser'.

### Mr Dixon's departure from E & Y: September 2014

112. Mr Dixon left E & Y in September 2014 at the age of 58. The timing of his departure did not tally with the usual retirement age at E & Y of 60 and did not tally with E & Y's accounting year end. In oral testimony Mr Dixon confirmed that he had not retired but had instead left 'by mutual agreement'. He said that the terms of his departure from E & Y are the subject of a non-disclosure agreement.

113. The bank statements in evidence confirm that Mr Dixon received leaver payments of £2.5 million from E & Y following his departure. These comprised payments of £1.5m, £600,000 and £400,000, received into Mr Dixon's bank account on 22 September 2014, 29 January 2015 and 30 July 2015 respectively.

114. Notwithstanding receipt of these significant leaver payments, Mr Dixon did not pay the sum of £337,310.42 due to HMRC on 31 July 2013 in respect of the tax year 2012/13.

**Completion of the Barbados Property purchase: 3 November 2014**

115. The purchase (in Mrs Dixon's name) of the Barbados property eventually completed on 3 November 2014. The purchase price of US$898K was paid from Mr Dixon's bank account, from funds that had originally come into his account from his E & Y account on 22 September 2014.

116. In the period Mr Dixon was negotiating the purchase of the Barbados Property, between May and December 2014, HMRC was writing to him about his self-assessment tax returns for the years 2009/10 to 2011/12, which HMRC maintained had never been received. HMRC was also writing to Mr Dixon over this period about his liability in respect of his membership of Ingenious 2. This culminated in a Partner Payment Notice (PPN) being issued against him on 8 December 2014 in the sum of £250,255, a sum which remains unpaid.

**The Consultancy Years: 2014-16**

117. Having left E & Y, from late 2014-16, Mr Dixon undertook consultancy work. Latterly, (from March to September 2016), Mr Dixon's consultancy work was undertaken via a recruitment consultant known as Pure Search. His written evidence, which in this regard I accept, was that the income from that consultancy work was in excess of £1 million. Mr Dixon maintained (at para 39(c) of his witness statement) that between the end of 2014 and 2016 the income generated from his consultancy work was received directly by Mrs Dixon's business, Barker & Barker. Whilst the banking analysis undertaken by the Trustees suggests that not all the consultancy income generated over this period was received directly by Barker & Barker, it is clear that a significant proportion of it was. In opening submissions, Mr Dixon claimed that Barker & Barker had accounted to HMRC in respect of PAYE/NIC in respect of the same. In oral testimony, however, he retracted that claim, stating that no PAYE/NIC had been paid on that income. His explanation for this was that, pursuant to the terms of the RET, it was not *his* income; he had simply generated it for Barker & Barker.

**HMRC's statutory demand: 23 September 2015**

118. In the meantime, on 23 September 2015, HMRC served a statutory demand on Mr Dixon for the sum of £627,302.59.

**Employment with Reckitt Benckiser**

119. In June 2016, Mr Dixon was offered the role of senior vice president in the tax division of Reckitt Benckiser with a start date of 1 October 2016. The package offered

by Reckitt, which Mr Dixon accepted, included a 'sign-on payment' of £400,000 and a salary of £412,500 comprising base salary of £275,000 and APP target bonus of £137,500.

**Bankruptcy petition: 14 July 2016**

120. On 14 July 2016, HMRC presented a bankruptcy petition against Mr Dixon in the sum of £627,302.59.

**Cambridge property sale: 4 October 2016**

121. On 4 October 2016, the Cambridge property was sold. Of the net proceeds of sale, the sum of £110,212.56 was retained by the Dixons' conveyancing solicitors and (pursuant to a solicitors' undertaking given on Mr Dixon's instructions) was used to pay off an existing overdraft facility on a Barclays bank account in Mr Dixon's name. The balance of the net proceeds, comprising the sum of £126,206.82, was paid to Mrs Dixon.

**Reckitt Benckiser: salary arrangements 2016-18**

122. In October 2016, Mr Dixon took up his role as senior vice president in the tax division of Reckitt Benckiser, reporting to its chief financial officer. In oral testimony Mr Dixon admitted that 'for the first couple of years' of his employment with Reckitt, his salary was paid into his own bank account. This accorded with Mr Dixon's bank statements over the relevant period, copies of which were in evidence. These showed that Mr Dixon's monthly salary from Reckitt was paid into his bank account up to and including August 2018. Between October 2016 and August 2018, Mr Dixon received into his bank account a total of £721,567 from Reckitt. It was only in September 2018 (at the point at which Mr Dixon's bank accounts were frozen, see [131] below) that the salary payments from Reckitt started to be paid into an account in the name of Mrs Dixon.

**Substituted service of the petition: January 2017**

123. On 17 January 2017, an order for substituted service of the bankruptcy petition was granted, permitting service on Mr Dixon by post at his (then) new address, Arrichar, Merton, Bicester OX25 2NF ('the Bicester address') and time for hearing of the petition was extended to 20 March 2017.

124. Service on Mr Dixon at the Bicester address was effective. From the attendance sheets on the court file, it is clear that Mr Dixon attended the hearing of the petition on 20 March 2017 and a further hearing on 2 May 2017, at the latter of which directions were given for him to file and serve a notice of opposition and evidence in answer to the petition. On 13 June 2017 Mr Dixon filed a short, 8 line notice of opposition, giving the Bicester address as his address. The notice of opposition, which was not supported by a witness statement, asserted simply that penalties and interest claimed in the petition were 'incorrectly charged' without giving reasons, that the particulars of debt claimed did not 'take into account overpayment relief claims submitted to HMRC of £1,931,307.49' and that it was 'inappropriate to issue Statutory Demands and Bankruptcy Petitions when amounts are in dispute and issues of Tax Law are in dispute' – presumably a reference to the Ingenious litigation by then under way.

**Argyll property sale: early August 2017**

125. In early August 2017, the Argyll property was sold. The net proceeds of sale, totalling £126,156, were paid into Mrs Dixon's bank account in two tranches, on 4 August 2017 and 10 April 2018 respectively.

**Bankruptcy Order: 30 August 2017**

126. At a hearing on 30 August 2017 which Mr Dixon did not attend, Mr Dixon was made bankrupt.

**Events since the Bankruptcy Order**

**Suspension of discharge: 5 July 2018**

127. On 5 July 2018, an order suspending Mr Dixon's automatic discharge was made, following Mr Dixon's failure to cooperate with the Official Receiver and his failure to attend a public examination ordered to take place that day. The suspension of discharge is still in place.

**Correspondence with the Trustees**

128. On 14 August 2018, the Trustees were appointed by the Secretary of State.

129. By letter dated 24 August 2018, the Trustees wrote to Mr Dixon confirming their appointment. The letter noted, among other things, that Mr Dixon had failed to provide the Official Receiver with a completed bankruptcy questionnaire, statement of affairs or income and expenditure form. The letter warned that unless such documentation was provided within 14 days, the Trustees would commence their own enquiries, including enquiries of his employer requesting details of his salary.

130. The Trustees' letter dated 24 August 2018 also noted that Mr Dixon remained registered as a director of a number of companies and expressly warned him that under Section 11 of the Company Directors Disqualification Act 1986, it was an offence for an undischarged bankrupt to hold directorships without the permission of the court. The letter stated that Mr Dixon 'should make immediate arrangements to resign these directorships'. Mr Dixon did not do so. In oral testimony he claimed that the need to resign his directorships 'didn't register with [him] at the time'. He took on a further 8 directorships within 3 months of the letter. By the end of 2021, he held 28 directorships.

131. In September 2018, Mr Dixon's bank accounts were frozen. This was a result of the Trustees writing to his bankers asking for copies of bank statements. Mr Dixon had not informed his bankers (or his employer) that he had been made bankrupt.

132. On 28 September 2018, Mr Dixon supplied copies of the DoTs to the Trustees. Shortly thereafter, in October 2018, Mr Dixon sent the Trustees his completed Bankruptcy and Preliminary Information Questionnaire and Income and Expenditure form.

133. In reliance upon the DoTs, Mr Dixon has maintained to the Trustees that he is a person of no means:

i) In his personal income and expenditure form submitted on 22 October 2018, he declared a monthly net income of £20,822.23, but nil surplus income, owing to the *"Application of Trust Deed"* and in his covering letter he stated that the form *"reflects the Trust arrangements you have been supplied with"*.

ii) In his Bankruptcy Preliminary Information Questionnaire completed on 21 October 2018 and submitted on 22 October 2018, he listed his assets as Nil, referring to *"Declaration of Trust"* in answer to Q2.1 relating to his cash in hand, cash in bank/building society, household furniture, fixtures and fittings, stocks, shares and other investments, jewellery, and computers. He answered *"No because all assets held in trust"* to QQ 2.2 and 2.3, and, listing the properties he had owned, rented, leased or occupied in the preceding five years (Q7.1), added *"Please note not beneficial owner of these properties"*. In his covering letter he wrote that *"Pursuant to the Deeds of Trust sent to you on 28 September 2018 I have not beneficially owned any properties in the last 5 Years. I have for completeness however summarized the properties where I have had legal ownership in the attached PIQB form"* and stated that *"the PQIB [sic] reflects the application of the Deeds of Trust that have already been forwarded to you"*.

134. On 15 November 2018, the Trustees queried why, despite the RET, some £12,000 - £15,000 of Mr Dixon's (then) monthly income (of between £29,399-£34,955) had been routinely retained in his bank account up to September 2018 and asked Mr Dixon whether any formal agreement had been entered into with Mrs Dixon in relation to his retention and use of these funds. Mr Dixon's response, on 17 December 2018, was that *"some funds have been retained historically in my account to enable some household and personal expenditure to be directly defrayed"* and that *"they represent loans which are governed by an agreement dated the same time as the original trust deed"*.

135. Some time later, on 8 January 2019, Mr Dixon provided the Trustees with a copy of the Loan Agreement. In oral testimony, Mr Dixon claimed that he had had to retrieve the document from storage.

136. Between January and November 2019, the Trustees tried unsuccessfully to get Mr and Mrs Dixon to explain how exactly the Loan Agreement operated. They asked how Mr Dixon would have been able to repay the 'loans' to Mrs Dixon, when the DoTs provided that all his assets and future income had been beneficially transferred to her. They asked Mrs Dixon whether she maintained records of the amounts constituting Mr Dixon's 'personal expenditure'. On 29 April 2019, Mrs Dixon was asked to provide details of the nature of this expenditure and its usual cost, with illustrative examples. The Trustees noted that Mr Dixon routinely retained more than more than one third of his income in his bank account (and overall, 56% of his income between June 2012 and August 2018)**.** After two months of chasing letters, Mrs Dixon responded (in June 2019) saying that she needed more time to respond to the Trustees' analysis of Mr Dixon's bank account but stated that she was *"now going to claim from him [Mr Dixon] a repayment of that loan"*. She did not do so however. In oral testimony she admitted that she did not keep or have any record of how much she had 'loaned' Mr Dixon over the years and that she had never called in the loans. She said that she had 'no intention of calling in the loans'.

137. In 2021, the Ingenious litigation reached the Court of Appeal. Mr Dixon claimed in submissions that HMRC ultimately 'lost' the case. This is not an entirely accurate summary of the outcome. As noted by the Court of Appeal ([2021] STC 1791 at [43]), having been refused permission to appeal on the 'income or capital' issue, the most that Ingenious 1 and Ingenious 2 could hope to achieve from a successful appeal to the Court of Appeal on the 'trading' and 'view to profit' issues was the restoration of the very limited trading losses which the FTT had found to be available to them, amounting to approximately 4% of the total claimed. Ingenious managed this, but no more.

138. On 15 June 2023, the present proceedings were issued.

139. On 25 July 2023, the Barbados property was sold for BDS$1.2m and the sale proceeds were paid into Mrs Dixon's bank account with Coutts.

140. On 9 September 2023, an article was published in the Daily Telegraph concerning these proceedings. The article was entitled 'Bankrupt accountant accused of transferring luxury properties to wife to avoid taxman.' The article flagged, among other things, the fact that Mr Dixon continued to hold directorships notwithstanding being an undischarged bankrupt.

141. On 11 September 2023, Mr Dixon resigned his directorships.

142. It was only after publication of the Daily Telegraph article on 9 September 2023 that Mr Dixon's employer, Reckitt Benckiser, discovered that Mr Dixon was bankrupt. Mr Dixon had not informed his employer of that fact at any stage. On 13 October 2023, following a disciplinary hearing on 4 October 2023, Mr Dixon was dismissed from his position with Reckitt Benckiser.

143. The sale of the Barbados Property first came to the Trustees' attention in or about November 2023. This triggered an application by the Trustees in December 2023 for a freezing injunction against Mrs Dixon. Injunctive relief was granted and has since been continued.

**The Dixons' defence: overview**

144. The Dixons deny that the DoTs and corresponding Loan Agreement are shams. They say that the DoTs and Loan Agreement were intended by both Mr and Mrs Dixon to have the effect which on their face they purported to have and were subsequently acted on, relying on the following averments, as set out at paragraph 10(1) of their Points of Defence

> '(a) Funds well in excess of £1 million (sourced from Mr Dixon's income at the relevant time) from the trust were invested by Mrs Dixon into her businesses, namely Ruby Rose Fabrics and Barker & Barker. These were significant businesses in fabric design and manufacturing, which employed 4-5 people, with design studios and a network of distributors in the UK and abroad. These businesses were directly managed by Mrs Dixon without any direction from Mr Dixon.

(b) All decisions subsequent to the Declarations of Trust as to which properties to purchase, how to renovate them, whether to let them, the insurance of them, and whether to dispose of them and if so at what price, as well as the implementation of such decisions, were made and handled by Mrs Dixon alone. For example, a number of lettings of properties after the Declarations of Trust were made in Mrs Dixon's sole name having been negotiated and executed by her alone.

(c) When, having left EY, Mr Dixon undertook various consultancy roles, the income from those roles (around £1 million) was received directly by Barker and Barker.

(d) For the majority of his time at Reckitt Benckiser Mr Dixon salary has been received directly by Mrs Dixon.

(e) Mrs Dixon handled and negotiated all subsequent car purchases, which were acquired in her sole name, and all car insurance policies.

(f) Mrs Dixon has satisfied liabilities of the Dixons' children, including but not limited to: (i) making maintenance payments to their eldest son's ex-wife and children, which she has guaranteed in her own name; and (ii) rental payments and other liabilities under leases for a number of their children, including in relation to the lease of a public house run by their eldest son. Mrs Dixon has been the sole guarantor of a number of these properties.

(g) Mrs Dixon paid for the professional care of the Dixons' son, Patrick, who was severely disabled, until his death in 2017, as well as funding proceedings concerning his care and also proceedings concerning the circumstances surrounding his death, including the use of Counsel.

(h) All family direct debits and standing orders are in Mrs Dixon's name and have come out of Mrs Dixon's bank account. Mr and Mrs Dixon have separate bank accounts. There is one bank account in their joint names that has not been used. For the avoidance of doubt, Mr Dixon does not have any login details relating to Mrs Dixon's bank accounts nor any access to the same.

(i) All insurance policies and utility bills have been in Mrs Dixon's name and any associated payments have been paid by her directly. Mrs Dixon has also paid all relevant council tax bills directly.

(j) Disposals of chattels have been directed by Mrs Dixon and the proceeds of the same received by Mrs Dixon directly.

> (k) Mrs Dixon has, since the Declarations of Trust were executed, paid Mr Dixon modest amounts in order to deal with incidental expenses as and when they arose (e.g. car fuel costs and food bills).'

145. The Dixons also deny the s.423 claim, maintaining that: (1) the DoTs were not transactions for no consideration, on the basis that 'as consideration for the [DoTs], Mrs Dixon entered into the Loan Agreement' (PoD, para 3(2)) and (2) the DoTs and Loan Agreement were not entered for the prohibited purpose.

146. In relation to (2) (prohibited purpose), the Dixons put their case (at PoD 10(2)) as follows:

> 'Mr and (to the extent relevant) Mrs Dixon's purposes in entering into the Declarations of Trust were:
>
> (a) To ensure that their family were protected against economic risk at a time of potential economic turmoil.
>
> (b) Avoidance of inheritance tax by transferring Mr Dixon's assets to his spouse, Mrs Dixon, who they believed was likely to live longer.
>
> (c) To ensure that, in the event that anything happened to Mr Dixon, Mrs Dixon would be able to provide, and afford professional care for Patrick.
>
> (d) To ensure that Mrs Dixon had access to income and assets to launch and support her business ventures, referred to above.
>
> (e) To reflect and facilitate the pre-existing position, which was that Mrs Dixon had control of all of the family's assets and financial affairs.'

147. Paragraph 10 of the PoD continued:

> (3) Their purpose in entering into the Loan Agreement was to recognise that in the early years of the trust arrangement sums which were beneficially owned by Mrs Dixon would be dispersed out of accounts owned by Mr Dixon. By 2014, the majority of expenditures were incurred directly by Mrs Dixon.
>
> (4) It is the Defendants' case that none of those are purposes within the scope of Section 423 of the Insolvency Act 1986.
>
> (5) It is admitted that Mr Dixon had, in advance of the transactions, had discussions with his work colleagues concerning the hypothetical risk of a hypothetical creditor of the (EY) LLP seeking in the future to pierce the corporate veil, and that those discussions were one factor which caused him to think about the need to protect his family's assets. However:

> (a) Prejudicing the interests of such a hypothetical creditor, whilst a foreseeable consequence of the transactions, was not Mr Dixon's purpose in carrying them out. Rather his purposes were those set out above.
>
> (b) Mr Dixon was only one of many partners in the EY LLP (with the partnership numbers running into the hundreds). He had not given, and had no plans to give, any personal guarantees or indemnities for its debts. There was no specific creditor, nor any specific type of creditor (in the sense of there being any anticipated type of claimant or claim or cause of action) either in existence or on Mr Dixon's mind, whom he had any reason to think may bring a claim against EY, far less him personally, and to whom he thought he would be unable to make payment. Nor has any such creditor of EY in the event made or threatened a claim at any time since the transaction. Accordingly, there was at the time of the transactions no "person" who "may make a claim" against Mr Dixon for the purposes of section 423.
>
> It is therefore denied that Mr (or, to the extent relevant, Mrs) Dixon had a purpose in effecting the Declarations of Trust or Loan Agreement that was within the scope of section 423.'

148. Paragraph 11 of the PoD went onto to provide that Mr Dixon did not believe that the file note dated 2 September 2010 of his discussion with Pennington was an accurate record and stated that Mr Dixon would 'address the full extent of his disagreement with the contents of the Pennington note in his evidence.' In the event, Mr Dixon did not 'address the full extent of his disagreement' with the Pennington note in his written evidence.

149. The Dixons' fallback position as pleaded at paragraph 13 PoD was that (1) as Mr Dixon's spouse, Mrs Dixon should be entitled to retain at least 50% of the sums paid to her; (2) Mrs Dixon acted at all times in good faith and did not believe that the DoTs and Loan Agreement were shams or transactions defrauding creditors; (3) Mrs Dixon relied on the defence of change of position, 'by her use of the trust funds in the period since the [DoTs] were entered into, including but not limited to the payments referred to in paragraph 10(1)' of the PoD, in the light of which, it was averred, 'it is no longer possible or just for the position to be restored to what it would have been had those transactions not taken place.'

150. The PoD concluded by stating that 'full details' would be provided in evidence as to the extent of the cash and the properties referred to in the PoC, that were currently held by Mrs Dixon. In the event, the 'full details' promised by the PoD were not provided in the Dixons' evidence.

151. Mr Dixon's witness statement dated 17 January 2025 (which Mrs Dixon adopted) opened by complaining about the deadline of 4pm on 17 January 2025 that the Dixons had to meet for the filing of their written evidence and the fact that they had limited professional assistance in preparing the same. To put this in context, proceedings commenced in 2023. The Dixons were served with both sets of proceedings (ie the

Part 7 claim and the Insolvency Act application notice), together with Ms Sayers' detailed first witness statement in support of both, in June 2023. Numerous extensions of their deadline for filing evidence in answer were agreed. In the later freezing injunction proceedings, specific provision was also made to cater for the cost of legal assistance for the Dixons in the preparation of their written evidence. Viewed in that context, I am satisfied that the Dixons have had ample time in which to prepare their evidence and have been appropriately resourced to do so.

152. Mr Dixon's statement reflected the professionally drawn PoD to an extent. At paragraph 31 of his statement, for example, he stated that:

> 'We entered into the Declarations of Trust for the following reasons:
>
> (a) To ensure that our family were protected against economic risk at a time of significant economic turmoil by centralising ownership of all assets in favour of Janet. There was much speculation in 2010 of a double-dip recession and the 2010's saw four separate periods of quarter on quarter falls in growth. Several economists predicted the recession was going to be the worst since the Great Depression in the 1930's.
>
> (b) Mitigation of inheritance tax by transferring assets into Janet's name.
>
> (c) To ensure that if anything happened to John, Janet would have the immediate financial ability to support her disabled son, Patrick, who had severe learning difficulties and autism. He needed 24/7 care and this required significant financial outlays.
>
> (d) To ensure that Janet had the economic resources to support her business ventures.
>
> (e) To reflect and facilitate the position at the time the Trusts were created which was Janet effectively had day-to-day control of the family's assets and financial affairs.
>
> (f) In September 2010 there was a lively debate in John's workplace about the benefits of centralising ownership of assets in the name of the nonworking spouse. This debate was uniformed. There was also gossip about the longevity of LLPs as a legal vehicle and these facts again were issues that informed the decision to create the Trusts but were not the predominant driver'.

153. Paragraphs 32 to 35 of Mr Dixon's statement went on to provide:

> 32 We knew at the time the Trusts were established that for practical reasons it would take some time for all income to be received directly by Janet and the loan agreement was a

> reflection of this expectation. The fact that it took some time for the Trusts to be fully effective because of external factors beyond our control does not detract from their efficacy.
>
> 33 In 2010 all income was directly received by JCD [Mr Dixon]. By the end of 2014 all income and the majority of expenditures were being directly incurred by JMD [Mrs Dixon]. The period from the Declaration of Trusts to date has seen greater income gains and control of assets and income to be ceded to JMD as envisioned by the Trusts.
>
> 34 At the time the Trusts were established there were no debt claims being pursued against me and my earnings were significantly in excess of the amount subsequently claimed by HMRC: at the time the trusts were created I was earning approximately £2m per annum and had the prospect and real likelihood of earning £12m up to my retirement age of 60. It is inconceivable that - in the event that no claims were being made against me in 2010 and given the amount of my earnings- the trusts were established to avoid creditors.
>
> 35 The petition debt of £627,302.59 was insignificant compared with my earnings. In short, avoidance of the debt claims that were the subject of the bankruptcy cannot have been a motive behind the creation of the Trusts.'

154. Mr Dixon referred (at paragraph 37 of his statement) to the Penningtons' File Note but stated simply that it was 'factually inaccurate', without identifying any particular respects in which it was said to be inaccurate. The warning reflected in the File Note that trusts may not be effective if used to avoid creditors was dismissed by Mr Dixon in his statement as 'merely a "boiler plate" clause' that was 'not as a result of anything that [he] said to Penningtons.'

155. Mr Dixon stated (at paragraphs 38-39 of his statement) that the DoTs were not a sham, citing largely the same factors as those listed at paragraph 10(1) of the PoD, summarised at paragraph 39 of his statement as follows:

> '(a) Funds well in excess of £1m received from my income were invested by Janet at her direction into businesses she controlled. The relevant accounts of those businesses have been supplied to the Claimants.
>
> (b) All decisions subsequent to the [DoTs] as to property purchases and sales, lettings, insurance, were made and handled by Janet alone.
>
> (c) Between the end of 2014 and 2016 I undertook a number of consultancy roles where the income (in excess of £1m) was received directly by a business Janet controlled and in which I had no interest. The monies were then expended at her direction.

> (d) For the majority of time when at Reckitt from 2016 to my departure in 2023 my salary was received directly by Janet. This income was significant and was earned over 7 years.
>
> (e) Janet has purchased and maintained in her own name motor vehicles used by me, herself and other family members.
>
> (f) Janet has supported and maintained her children financially including guaranteeing a number of property leases on their behalf.
>
> (g) Janet & I have had separate bank accounts for over 30 years. I do not have access to funds in Janet accounts. There has been one joint account that is not being used - the last operating joint account was closed many years before the [DoTs].
>
> (h) All insurances and utility bills have since the [DoTs] been in Janet's sole name.
>
> (i) Janet directly funded care for her autistic son until his death in 2017, and then she directly funded legal costs into the proceedings and inquest into his death including the use of Counsel.
>
> (j) A specific mention should be made in this regard to the Barbados property….. Janet managed the lettings, upkeep and sale of the property alone.'

156. By paragraph 43 of his statement, Mr Dixon stated that the Barbados property was 'purchased by Janet by funds supplied by me'. He maintained that 'this is entirely consistent with the operation of the Trusts'.

157. Mr Dixon also contended by paragraph 40 of his statement that as his spouse, Janet had a 'natural share' of the value of any assets.

**The Penningtons File Note**

158. Mr Dixon claimed by his witness statement that the File Note of the call of 2 September 2010 was inaccurate but did not specify the respects in which he maintained that it was inaccurate.

159. On the evidence which I have heard and read, I am satisfied that the Penningtons File Note is an accurate and in all material respects complete record of the matters discussed during Mr Dixon's conversation with Ms Dadswell and Mr Risino of Penningtons on 2 September 2010. Mr Risino's written evidence, which in this regard I accept, was that as Ms Dadswell was a partner in the department at the time and Mr Dixon was a senior tax professional, it was Ms Dadswell who led the call, leaving Mr Risino free to take a note of the call as it was ongoing. On the evidence which I have heard and read, I am satisfied on a balance of probabilities that Mr Risino did take a note of the call as it was ongoing and that Mr Risino then dictated the File Note on the

same date as the call. Mr Risino's evidence, which I accept, was that he had no reason to believe that the File Note does not accurately reflect the discussion during the call. As a relatively newly qualified solicitor (admitted to the Roll on 1 September 2008) who had joined Penningtons in 2009, Mr Risino had every motivation to take a full and accurate note of Pennington's first call with a potentially valuable client and to dictate an accurate attendance note of that call on the same day. On the evidence as a whole, I am satisfied that he did so.

160. Mr Dixon was given the opportunity to cross-examine Mr Risino but save for putting to Mr Risino that the s.423 warning contained in it was a 'boilerplate' provision (a suggestion that Mr Risino vehemently rejected), did not challenge the accuracy of the File Note in any material respect.

161. When cross-examined himself, Mr Dixon did claim that the File Note was inaccurate, although he struggled to identify in what respects he claimed it to be so. He denied that he had referred during the call to a portfolio of investments, even though the File Note referred to an investment portfolio on three occasions, including a reference to potential income tax implications on disposal. He claimed 'there wasn't a portfolio. I dispute that part of the note' but could not explain why Mr Risino would want to make up such references. He also sought to brush aside the reference to 'investments' in the RET, saying he had intended to refer to any investments he might hold *in the future*. I reject Mr Dixon's evidence on this issue. On the evidence as a whole I am satisfied that Mr Dixon did inform Penningtons that his assets included an investment portfolio and that the File Note accurately reflects what was said during the call on the issue of his investments.

162. During his own cross-examination, Mr Dixon also sought to challenge the accuracy of the third paragraph of the File Note which, as will be recalled, stated (with emphasis added):

> 'John advised that the nature of his call was to discuss the asset ownership between himself and his wife. John had been speaking with his fellow partners at EY and it appears that many of them own assets entirely in their wife's name. This is really a method of asset protection to try to avoid those assets being susceptible to attack by creditor [sic] of the LLP in the event that were to happen in such a high risk business' [the 'Purpose passage']

163. When taken to passages of the PoD (such as para 10(2)(a)) and his own witness statement (such as paras 31(a) and (f)) that were entirely consistent with the Purpose passage, however, he had no persuasive explanation. Similarly, when taken to the explanations for the DoTs which both he and his wife had given in correspondence with the Trustees prior to issue of proceedings, such as those quoted at [90] – [96] of this judgment, which again, were entirely consistent with the Purpose passage, he had no persuasive explanation, ultimately seeking to retreat to a position of challenging the last sentence of the Purpose passage, which stated 'This is really a method of asset protection to try to avoid those assets being susceptible to attack by creditor of the LLP in the event that were to happen in such a high risk business'. This sentence, however, is entirely consistent with explanations proffered by the Dixons in correspondence with the Trustees: see by way of example the correspondence quoted

at [94], [95] and [96] of this judgment. It was also consistent with the point in the call with Penningtons on 2 September 2010 at which Ms Dadswell gave the s.423 warning. On the evidence as a whole, I am satisfied that this was not simply a 'boilerplate' warning on the part of Ms Dadswell but was instead a response to what she had just been told by Mr Dixon during the call.

164. For all these reasons, I am satisfied that the File Note accurately records in all material respects what was said during the call on 2 September 2010. I find that Mr Dixon did inform Ms Dadswell and Mr Risino during the call on 2 September 2010 (i) that he wished to discuss the asset ownership between himself and his wife (ii) that the reason for this was that he had been speaking with his fellow partners at EY and it appeared that many of them owned assets entirely in their wife's name and (iii) that this was a form of asset protection to try to avoid those assets being susceptible to attack by creditors of the LLP in the event that were to happen in such a high risk business.

**The Section 423 claim: discussion and conclusions**

165. On the evidence which I have heard and read, I am satisfied that Mr Dixon entered into each of the DoTs (i) on terms that provided for him to receive no consideration and (ii) for the purpose of putting assets beyond the reach of a person who may at some time make a claim against him or of otherwise prejudicing the interests of a person in relation to the claim which he may make.

166. On the issue of consideration, I reject the Dixons' argument that the Loan Agreement comprised consideration for the DoTs. This was an afterthought. There is no mention of the Loan Agreement in any of the DoTs themselves. I was taken to no document prior to the professionally drafted PoD that suggested the Loan Agreement to be consideration for the DoTs. Moreover, for reasons I shall come onto, the Loan Agreement is in any event a sham.

167. On the issue of purpose, in my judgment the File Note provides clear, direct, near-contemporaneous evidence of Mr Dixon's purpose in executing the DoTs, only a matter of days before signing. Considered in the context of the File Note read as a whole, in my judgment the Purpose passage speaks for itself.

168. The fact that the full suite of DoTs, including the RET, was signed at the same time, also independently supports my conclusion that the statutory purpose is made out. In executing that suite of DoTs, Mr Dixon plainly intended to render himself 'judgment-proof'.

169. The Dixons' correspondence with the Trustees, as quoted at paragraphs [90]-[96] of this judgment, also supports my conclusion that the statutory purpose is made out.

170. I reject the Dixons' later attempts to recast Mr Dixon's purpose in entering the DoTs as inheritance tax planning. This is not supported by the Pennington's File Note. Quite the contrary; the File Note stated that it 'did not appear that a significant amount of estate planning is to be put in place at this juncture so that is not one of John's concerns'.

171. The Dixons' attempts to recast Mr Dixon's purpose in entering the DoTs as inheritance tax planning were not supported by events after the signing of the DoTs either. When Mr Dixon was asked in cross-examination what active inheritance tax planning had been undertaken in the last 15 years, he simply mentioned acts such as helping their children with deposits on their houses, payment of rents on leases, maintenance payments and some guarantees. Even leaving to one side the fact that (i) no mention had been made of helping children with deposits on their houses in either the (professionally drawn) PoD or Mr Dixon's witness statement and (ii) no substantiating documentation had been adduced in relation to any of the acts relied upon in this context, pleaded or otherwise, the acts relied upon did not represent any significant shift in wealth from one generation to another; they were simply a selection of acts consistent with the sort of help most parents (if able) give their children along the way. When it was put to Mr Dixon that these were not examples of inheritance tax planning, he said that that did not mean that inheritance tax planning would not happen 'in the future'. This, as Mr Lopian correctly observed in closing, was an odd answer in context, if the purpose of the DoTs, entered as long ago as 2010, was to allow Mrs Dixon to exploit inheritance tax allowances and make full use of the 'potentially exempt transfer' regime.

172. The other purposes pleaded at paragraph 10(2)(c)-(e) of the PoD ([146] above), as mirrored in Mr Dixon's witness statement at paragraph 31(c)-(e) ([152] above), were plainly not the drivers prompting the execution of the full suite of DoTs in 2010 either. Mr Dixon could not explain in cross-examination why he needed to transfer *all* his assets, income and capital, present and future, to Mrs Dixon in order to achieve the purposes presented at paragraph 31(c) and (d) of his statement, for example. His reasoning made no sense. Nor was it remotely credible to suggest (as stated at paragraph 31(e)) that Mrs Dixon had control of the family's financial affairs; Mr Dixon was at all material times the wealth creator and it was he who decided how much to give to or spend on Mrs Dixon and when. Even if Mrs Dixon *had* been in control of the family's financial affairs, no plausible explanation was put forward in evidence why Mr Dixon would need to transfer all his assets, present and future, to Mrs Dixon, in order for that to continue, when it had not been necessary in the past.

173. Nothing changed regarding the Dixons' respective banking arrangements for a considerable time (four years) following the execution of the DoTs in 2010. Mr Dixon's income of c£2m per annum from E & Y continued to be paid into his own bank account until he left E & Y 'by mutual agreement' in 2014; a departure which triggered entitlement to additional 'leavers' payments. Between September 2010 and September 2014, Mr Dixon received £10.2m gross from E & Y, all of which was paid into his own bank accounts. Whilst, following his departure from E & Y, some of his consultancy income, from late 2014 to 2016, was paid directly to Mrs Dixon's business, Barker & Barker, on the evidence as a whole I am satisfied that this was simply to avoid Mr Dixon paying income tax on that income. I am fortified in that conclusion by the manner in which Mr Dixon's income was dealt with from 2016-2018. When Mr Dixon took up his *salaried* appointment with Reckitts in October 2016, his salary from Reckitts was again paid, in full, into his own bank account – from October 2016 to August 2018 inclusive. This only changed in September 2018 when his own bank accounts were frozen as a result of the Trustees writing to his bankers seeking copies of bank statements. This timing was confirmed by Mr Dixon's responses in his bankruptcy questionnaire dated 21 October 2018. It was only as of

September 2018, following the freezing of his own bank accounts, that Mr Dixon arranged for his Reckitts salary to be paid into his wife's bank account; a move assisted, no doubt, by the fact that Mr and Mrs Dixon have the same first initial and surname.

174. The Trustees have carefully analysed Mr Dixon's bank statements for the period from June 2012 to August 2018 and have set out their findings in a schedule appearing in evidence. It is readily apparent from that schedule, which I accept to be an accurate summary of income received by Mr Dixon and sums transferred by him to Mrs Dixon over the period June 2012 to August 2018, that Mr Dixon retained a very large percentage of income in his own bank account; a total overall of approximately 56%.

175. The foregoing pattern of banking arrangements is not, in my judgment, consistent with the Dixons' claims that Mr Dixon entered the DoTs in 2010 for the purposes set out at paragraph 31(b) to (e) of Mr Dixon's witness statement. Other steps taken after the signing of the DoTs were not readily consistent with such purposes either. The purchase of the Cambridge property in joint names in June 2014 and the initial steps taken to purchase the Barbados property in joint names are but two examples.

176. For all these reasons, I reject the Dixons' evidence that Mr Dixon entered into each (or indeed any) of the DoTs for the purposes set out at paragraphs 31(b) to (e) of his statement.

177. Moreover, even if, contrary to my conclusion set out at [176] above, the factors set out at paragraph 31(b)-(e) did play some part in Mr Dixon's decision to enter the DoTs, that of itself is not fatal to the Trustees' s.423 claim. Section 423 only requires the prohibited purpose to be ***a*** purpose of the transaction in question; it does not need to be the ***sole*** purpose. On the evidence which I have heard and read, I am satisfied that the prohibited purpose was not only ***a*** purpose, but (at the very least) ***the primary*** purpose, behind Mr Dixon's entering each of the DoTs. I so find.

178. The fact that Mr Dixon commanded a high income at the time that the DoTs were created does not assist him. Mr Dixon argued (at paragraph 42 of the Dixons' skeleton), for example, that it was inconceivable at the date of the DoTs 'that Mr Dixon was in any way considering bankruptcy or indeed transferring assets to avoid a claim by HMRC given his financial position at the time the Trusts were created'.

179. In this regard reference was made to the comments of Rose J (as she then was) in BAT Industries v Sequana [2016] EWHC 1616 at [517], in which the judge had said:

> 'The first limb of the s 423 purpose – putting assets beyond the reach of a person who is making or may at some time make a claim against him – has inherent in it the assumption that following the transaction, the person does not have sufficient funds remaining with him to satisfy the actual or potential claim made against him. If a person … has plenty of assets left with which to meet the claim, then however many additional assets are gifted to people, he … cannot have the s 423 purpose.'

180. The Dixons draw analogies with their own case, arguing that at the time the trusts were established, Mr Dixon was earning approximately £2m per year and observing that, even by 2016, the petition debt was 'only' £627,302.59. They invited the court to note that, in the period from the establishment of the trusts to presentation of the bankruptcy petition, Mr Dixon had earned approximately £10 million and the fact that the assets forming the subject of the RET were expressed to be 'after taxation'. They contended that in such circumstances it was 'inconceivable' that Mr Dixon had a section 423 purpose at the time the trusts were established in 2010.

181. As noted by Joanne Wicks KC sitting as a High Court judge in Lemos v Church Bay Trust [2023] EWHC 2384 (Ch), however, when taken to the comments of Rose J in BAT Sequana at [517], 'the enquiry into the purposes for which a transaction is entered into is highly fact-specific and generalising from the facts of any other case should be avoided.' I respectfully agree.

182. To the extent that the Dixons were seeking to argue that Rose J in BAT Industries was seeking to establish or acknowledge a threshold or gateway condition to s.423, to the effect that the statutory test cannot be satisfied in a situation where, after the impugned transaction, the debtor is left with sufficient assets to meet the liability owed to the victim, I reject that contention. It does not accord with prevailing authority: see for example the observations of Singh LJ in El-Husseiny [2023] EWCA Civ 555 at [67]:

> 'The important point for present purposes is that, although section 423 finds itself in the same Act as those provisions which are concerned with bankruptcy or corporate insolvency, its scope is wider. There is no need for there to be any insolvency. The unfortunate reality of life is that even very wealthy debtors are sometimes unwilling, rather than unable, to pay their debts. They may well make strenuous efforts to use various instruments, including a limited company, for the purpose of putting their assets beyond the reach of a person who is making, or may make, a claim against them; or otherwise prejudicing the interests of such a person.'

183. I would add that the issue whether Mr Dixon had HMRC in mind when entering the DoTs is irrelevant. The fact that the ultimate claimant was not in the contemplation of the transferor at the time of the transaction is immaterial; the class of "victims" (as defined in s.423(5) IA1986) is not limited to those who were within the compass of the transferor's purpose when entering into the transaction: Gordian Holdings Ltd v Sofroniou [2021] EWHC 235 at [16(2)-(3)]. There is no statutory requirement in s.423(3) IA 1986 for the transferor to have had any particular knowledge of persons who may make a claim at the time he entered into the transaction: Malik v Messalti [2024] EWHC 2713.

184. Mr Dixon also maintained that Penningtons had not expressed any concern about what he proposed to do and had not suggested to him that it was wrong. That is not entirely accurate, however. Penningtons had given Mr Dixon a clear 's.423 warning' during the course of the call, as reflected in the File Note. When Mr Dixon put to Mr Risino that the s.423 warning given during the call was simply a 'boilerplate' gesture, Mr Risino was adamant in his rejection of that suggestion. Mr Risino's evidence,

which in this regard I accept, was that it was *not* boilerplate and that it was genuinely important that Mr Dixon understood the risks.

185. Moreover, Mr Dixon had not given Penningtons the full picture; on the evidence before me I am satisfied that at no material time were Penningtons informed of Mr Dixon's plan to execute the *full* suite of DoTs, including the amended version of the EY Trust and the RET. To the extent that Mr Dixon at times in his oral testimony sought to suggest or imply otherwise in his evidence, I reject his evidence. It was inconsistent with the File Note and also with the scope of the works referred to in the proposed engagement letter sent after the call. It was also clear from Mr Risino's evidence that he would have had considerable reservations in accepting instructions to prepare a trust in the final form of the EY Trust or a trust in the form of the RET.

186. In any event, relying on 'professional advice' in entering a transaction does not exclude the transferor having the purpose specified in s.423(3)(a) IA 1986: Henderson and Jones Ltd v Ross [2023] EWHC 1276 at para [397], following National Westminster Bank v Jones [2000] BPIR 1092 at page 1123 (per Neuberger J) and Arbutnoth Leasing International Ltd v Havelet Leasing Ltd [1990] BCC 636 at page 644 and cited with approval in Purkiss v Kennedy [2025] EWCA Civ 268. For similar reasons, an *absence* of professional advice *not* to enter a transaction does not exclude the transferor having the purpose in s.423(3)(a) IA 1986.

187. For all these reasons, on the evidence which I have heard and read I am satisfied that the Trustees' s.423 claim in relation to each of the DoTs is made out.

188. The Dixons maintained that even if the Trustees' s.423 claim was made out, Mrs Dixon should be entitled to retain 'at least 50% of the sums so paid' as Mr Dixon's spouse: PoD paragraph 13(2) and Mr Dixon's statement at paragraph 40. Paragraph 48 of the Dixons' skeleton argument repeats this argument.

189. If by this the Dixons are seeking to suggest that by virtue of their long marriage, Mrs Dixon is entitled to half of Mr Dixon's assets, I reject that suggestion. No such entitlement arises unless it is applied for and ordered by the Family Court. I was taken to no evidence to suggest that Mrs Dixon has ever applied for ancillary relief, still less been granted the same. A similar point was raised and rejected in 4Eng Ltd v Roger Harper [2009] EWHC 2633 at [57]-[60]. I also note that Mrs Dixon raised the same argument in respect of the Barbados Property at the inter partes hearing of the freezing injunction in December 2023 and in his approved judgment dated 20 December 2023 at [16] Fancourt J rejected that argument, reasoning as follows:

> 'I reject that argument. The 898,000 US dollars used to buy a Barbados property came from Mr Dixon's own bank account, but the property was put into the name of the respondent. Assuming that the Trustees' case on the declarations of trust and a transaction at an undervalue succeeds, the money used to buy the property cannot be argued to have been a joint asset. It is not held in a joint bank account and there was no other relevant trust of the bank account. The fact that on a divorce the respondent might have had a claim to one-half of the assets of her husband does not mean that while they were married she

> beneficially owned half the money in his bank account from time to time.'

190. For similar reasons, to the extent that the Dixons seek to argue that Mrs Dixon is entitled to a one-half share of Mr Dixon's assets by virtue of a 'right to be maintained', I reject that argument. I was taken to no evidence to suggest that Mrs Dixon has made any claim for maintenance, whether under common law or statute, still less that an order for the same had been made in her favour: see Trustee in Bankruptcy of Claridge v Claridge [2011] EWHC 2047 at [36]-[38].

191. The Dixons also maintained by their PoD that Mrs Dixon had acted at all times 'in good faith' and 'did not believe' that the DoTs were transactions defrauding creditors. Mrs Dixon also raised 'change of position' as a defence: PoD at 13 (3)-(5); paragraph [149] of this judgment. In this regard by paragraph 49 of their skeleton argument the Dixons referred to 4Eng v Harper [2009] EWHC 2633.

192. The Dixons also invited the court to take into account the assets remaining available. They maintained that the net proceeds of sale of the Cambridge property and the Argyll property have been 'long since dissipated' and that the net sales proceeds of the Barbados property have been 'expended on legal fees in relation to these proceedings': skeleton para 50. Reference was made to the guidance given by Lord Goff in the case of Lipkin Gorman v Karpnale [1992] 2 AC 548 and to the later case of Dextra Bank v Bank of America [2002] 1 All ER 193. Mrs Dixon's expenditure on legal fees in defending these proceedings, including the freezing order applications, they argued, was 'extraordinary expenditure' within the meaning of the Dextra Bank case.

193. Whether, as a matter of law, a change of position defence is in principle available in the context of a s.423 claim is uncertain on the authorities as they stand: see [64]-[65] above. Even assuming that it is available, however, it is clear from 4Eng that the court must take into account the degree of involvement of the transferee in the transferor's scheme to put assets out of the reach of his creditors: 4Eng at [13]-[14].

194. Mr Lopian contended that, on the Dixons' own pleaded case, Mrs Dixon signed the DoTs knowing that the assets which formed the subject of the DoTs were being transferred to her for a prohibited purpose. In this regard he relied upon paragraph 10(2)(a) PoD , which, as will be recalled, reads as follows:

> '(2) Mr and (to the extent relevant) Mrs Dixon's purposes in entering into the Declarations of Trust were:
>
> (a) To ensure that their family were protected against economic risk at a time of potential economic turmoil.'

195. I see the force in that argument. In cross-examination, Mr Dixon was in considerable difficulty seeking to explain how transferring his assets into his wife's name, (or 'centralising ownership of all assets in favour of Janet', as it was put at para 31(a) of his witness statement, as adopted by Mrs Dixon), 'protected' his family against 'economic risk' in any way *other than* by ensuring that they were put out of reach of any person who may make a claim against Mr Dixon in the future.

196. In my judgment, however, it is unnecessary to base a decision on this issue on a narrow pleading point. On the evidence which I have heard and read, including Mrs Dixon's own evidence and that of Mr Dixon, I am satisfied that Mrs Dixon did sign the DoTs knowing that a purpose of the same was to put the assets forming the subject matter of the DoTs out of reach of persons who may make a claim against Mr Dixon. She was at all material times fully and knowingly involved in Mr Dixon's attempts to put his assets out of the reach of creditors. I so find. In correspondence with the Trustees, Mrs Dixon said that she was 'an independent person in the execution of the Trust arrangements' and that, having run her own business for many years, could 'take an independent view on the merits of the actions proposed': see the June 2019 letter. Whilst this was undoubtedly a letter drafted by Mr Dixon for Mrs Dixon to send, both she and Mr Dixon confirmed that Mrs Dixon read through and discussed any proposed letters to be sent out to the Trustees in her name with Mr Dixon and agreed them with him before they were sent. She also explained her understanding of the purpose of the DoTs in correspondence with the Trustees: see, by way of example, the quoted passages set out at [94]-[96] of this judgment. Mrs Dixon is an intelligent woman who has run her own business for many years. In my judgment she at all material times knew that a purpose of the DoTs was to put Mr Dixon's assets out of the reach of any person who may make a claim against him. Mrs Dixon also actively joined with Mr Dixon in seeking to fend off and stall the Trustees' later enquiries; her claims in correspondence that she was about to call in the loans and was about to instruct solicitors at given times are but two examples of many in this regard: see [84] of this judgment.

197. In light of my findings, in my judgment it is not open to Mrs Dixon to rely on a defence of change of position, even assuming as a matter of principle the defence of change of position to be available in a s.423 context, as she cannot clear the threshold requirement of good faith: 4Eng at [13]-[14].

198. I would add that Mrs Dixon has adduced no persuasive documentary evidence supporting, still less establishing, a defence of change of position in any event. In this regard I remind myself that the mere fact that given monies may have been spent does not, without more, suffice for such purposes: Lipkin Gorman v Karpnale Ltd [1992] 2 AC 548.

199. Any monies spent on lawyers, whether from the proceeds of sale of the Barbados property or from any other assets (or their proceeds of sale) forming the subject matter of the DoTs, after the Dixons were on notice of the Trustees' claim, could not be the subject of a change of position defence in any event.

200. This is of particular importance in the case of the Barbados property. Mr Dixon maintained that a significant proportion of the proceeds of sale of the Barbados property had been spent on solicitors. The Barbados property, however, was sold *after* issue of proceedings and thus at a time when the Dixons, (in particular, Mrs Dixon, in the context of a change of position defence), were plainly on notice of the Trustees' claim, which included a claim regarding the Barbados property. The Trustees had in fact asked Mrs Dixon for an undertaking *not* to deal with the Barbados property pending final disposal of the proceedings but had received no response to that request. The Trustees later discovered that the Barbados property had been sold. In such circumstances, even if payment of solicitors' fees out of the Barbados property

proceeds could in principle form the basis of a defence of change of position, on the facts of this case it was not a change of position in good faith.

**Sham**

201. In the light of my conclusions on the Trustees' s423 claim, it is strictly unnecessary for me to address the issue of whether the DoTs were shams. As I have read and heard evidence and submissions on this issue, however, I shall briefly set out my conclusions on the same.

202. In reaching my conclusions on this issue I confirm that I have applied the guidance given in the authorities summarised at [38] – [47] above.

203. On the evidence which I have heard and read, I am satisfied that the EY Trust, the RET and the Loan Agreement were shams. I find that Mr and Mrs Dixon entered into the EY Trust, the RET and the Loan Agreement intending to give to third parties the appearance of creating between Mr and Mrs Dixon legal rights and obligations different from the actual legal rights and obligations which they intended to create. In my judgment Mr Dixon's intentions with regard to the EY Trust, the RET and the Loan Agreement are plain from the Penningtons' call (see [98] above) taken together with the factors set out at [204]-[214] below. On the evidence which I have heard and read, I find that Mrs Dixon simply 'went along' with the sham, signing the EY Trust and the RET and agreeing to the Loan Agreement without caring whether these documents were true or how the Loan Agreement could possibly work in light of the RET. In these circumstances, taken together with those set out at [204] to [214] below, Mrs Dixon is in my judgment to be taken as having the necessary intention in relation to each of the EY Trust, the RET and the Loan Agreement.

204. In reaching these conclusions on intention, I take into account the subsequent conduct of the parties and their complicit explanations for these transactions in correspondence with the Trustees.

205. From the outset, there was a fundamental divergence between the terms of the EY Trust and the RET and the way in which they were administered in practice. There was no change at all to the Dixons' banking arrangements for four years after the DoTs were signed: see [106] of this judgment. A large percentage (approximately 56%) of funds were retained in Mr Dixon's bank accounts from 2012 to 2018: see [173] – [174] of this judgment. I was taken to no evidence to suggest that Mrs Dixon objected to the level of these retentions at any material time. In the absence of any such evidence, I consider it legitimate to conclude that she did not.

206. In my judgment the absence of any change in banking arrangements for four years after the DoTs were signed, the large percentage of retained funds in Mr Dixon's bank accounts, the artificiality of the terms of the Loan Agreement, Mrs Dixon's unwillingness or inability to provide even basic information regarding its operation, and the wholesale incompatibility of the RET and the Loan Agreement, all strongly support the conclusion that the EY Trust, the RET and Loan Agreement were shams.

207. Mr and Mrs Dixon have each been given ample opportunity, both in correspondence spanning several years prior to issue of these proceedings and latterly within the context of these proceedings themselves, on full notice of the specific allegations

made, to explain the large retentions by Mr Dixon in light of the EY Trust and the RET. Their responses simply did not make sense. They maintained (at paragraph 32 of Mr Dixon's statement, adopted by Mrs Dixon) that (unparticularised and undocumented) 'external factors' beyond their control meant that the income could not all be received directly by Mrs Dixon immediately. Mr Dixon also said in evidence that the RET 'needed some regulation around it', which had given rise to the Loan Agreement.

208. There were several problems with the Dixons' explanations for the large retentions by Mr Dixon. Firstly, even if there had been practical difficulties in E & Y paying Mrs Dixon directly, Mr Dixon had no persuasive explanation why he didn't transfer to Mrs Dixon all sums received by him from E & Y from 2010 onwards immediately upon receipt. Secondly, the size of the retentions (56%, as calculated from Mr Dixon's available bank statements over the period 2012-2018) was not explained by day-to-day expenditure on household bills, petrol and the like and was inconsistent with paragraphs 10(1)(h), (i) and (k) of the Dixon's professionally drawn defence, even if one generously treats those provisions as tempered or qualified by paragraph 10(3). Both Mr and Mrs Dixon were each given a further opportunity in cross-examination to explain these retentions. Each singularly failed to come up with any persuasive explanation. Thirdly, it was plain from the evidence overall that the direct receipt by Barker & Barker of consultancy income generated by Mr Dixon between 2014 and 2016 was not an arrangement put in place to honour the RET but rather, as I have found, an arrangement designed to avoid Mr Dixon paying income tax on that income. Fourthly, when Mr Dixon moved back to a *salaried* position (with Reckitts) in 2016, his whole salary was paid into his own account again, until 2018, when his bank froze his accounts on discovery that he was bankrupt. At that stage (2018) Mr Dixon was very easily able to give Reckitts an instruction to pay his salary directly into Mrs Dixons account; he proffered no persuasive explanation why he could not have done that at a much earlier stage.

209. The terms of the Loan Agreement are also relevant in this regard. Taken at face value, the Loan Agreement required sums received by Mr Dixon 'as soon as practical' to be 'paid over' to Mrs Dixon or 'on [her] direction'. This plainly did not occur. The Dixons had no good explanation for why it did not occur in practice.

210. As will be recalled, the Loan Agreement went on to state that

> 'To the extent that you defray expenditures out of any sums received by you that are governed by the Trust Deeds then to the extent that they represent household expenditures or other expenses for my account you do so as my agent. To the extent any expenditure by you, as agreed by me, is in relation to any expenses that are personal to you then those sums will represent interest free loans by me to you that are repayable on demand'.

211. In reality, however, the Loan Agreement was never acted on. Mrs Dixon said that she did not keep any records of the loans that she had made. She tried to put the Trustees off the scent for a while, saying in correspondence with the Trustees that she would reclaim the loans, but in cross-examination she admitted that she had taken no steps to reclaim the loans and that she had no intention of doing so.

212. The Loan Agreement was also impossible to perform. The loans could never be repaid as, by operation of the RET, if taken at face value, Mr Dixon would never have any assets from which to do so. When this was pointed out by the Trustees in correspondence with the Dixons spanning 2018 and 2019, the Dixons' response was that it was open to Mrs Dixon to waive the loan or gift the money. The Dixons each said similar in cross-examination. Gifting the money, however, would not work as, by operation of the RET, any money so gifted would revert to Mrs Dixon. The only theoretical option was waiver, but this made a complete nonsense of the Loan Agreement.

213. The RET is also inconsistent with the manner in which other asset transactions have been dealt with since 2010, including the Cambridge property purchase, the 2014 Chipping Norton trust, and the Barbados purchase negotiations, which had been dealt with almost exclusively by Mr Dixon.

214. For all these reasons, I am satisfied that Mr and Mrs Dixon entered into the EY Trust, the RET and the Loan Agreement intending to give to third parties the appearance of creating between Mr and Mrs Dixon legal rights and obligations different from the actual legal rights and obligations which they intended to create. The fact that some monies have been given by Mr Dixon to Mrs Dixon, applied in her favour, or channelled through her business, Barker & Barker, from time to time along the way since 2010 does not detract from that conclusion. The reality is that, notwithstanding entering into the EY Trust, the RET and the Loan Agreement, Mr Dixon retained as much of the subject matter of the EY Trust and the RET as he wanted to at any given time, and chose how much of that subject matter he made available to Mrs Dixon at any given time, whilst keeping both trusts and the Loan Agreement in the drawer for a rainy day. Mrs Dixon was fully complicit in these arrangements. She went along with the sham. To use the time-honoured phrase, the Dixons were 'doing one thing and saying another': Belvedere Court Management Limited v Frogmore Developments Limited [1997] QB 858 per Sir Thomas Bingham MR at 876D-F.

215. Mr Dixon argued that it was not possible for a transaction to be found to be both a sham and to fall foul of s423, citing In re Yates [2005] BPIR 476. If Mr Dixon is seeking to argue that under no circumstances are both findings possible, I reject this argument. The case of Midland Bank v Wyatt [1996] BPIR 288 is an example of a case in which the court found transactions both to be shams and to have fallen foul of section 423. In re Yates, the judge considered the approach adopted in Midland Bank plc v Wyatt [1996] BPIR 288 and simply distinguished it.

216. As made clear by Bhura v Bhura [2014] EWHC 727 (Fam) at 9 (i) and (ii), it is not a threshold requirement of establishing a sham that the parties should intend the transaction to be of *no effect at all*; simply that they should intend to give to third parties or to the court the appearance of creating between them legal rights and obligations *different* from the actual legal rights and obligations (if any) that they intend to create. In relation to the EY Trust and the RET, this is such a case: see [214] above.

217. Ultimately, however, in the context of this case, any debate on whether a given transaction may be found to have been a sham and to fall foul of s423 is largely academic. The Trustees have made out their s.423 claim in respect of each of the DoTs and, for reasons already explored, the defence of change of position is not open

to Mrs Dixon. It follows that, even if I am wrong in concluding that the EY Trust and the RET are also shams, the Trustees are still entitled to relief pursuant to ss423-425 in respect of each of the DoTs, together with consequential relief.

218. For the sake of completeness, I would add that the Trustees have not made out their case that the remaining DoTs (the Property, Chattels and Vehicles DoTs) are shams. There was insufficient evidence of the Dixons' subsequent conduct in relation to the Property, Chattels and Vehicles DoTs for the Trustees to establish on a balance of probabilities that these DoTs were shams. In light of my findings on the s.423 claim in respect of all six DoTs, however, this does not materially impact the ultimate outcome in these proceedings.

219. In light of my findings and conclusions in respect of the DoTs, in my judgment the DoTs should be set aside.

**The Barbados Property**

220. On the evidence which I have heard and read, and in light of my findings and conclusions in respect of the DoTs, the Trustees have also made out their s.339 claim in respect of the Barbados property. The Barbados property was purchased in Mrs Dixon's sole name with funds provided by Mr Dixon. On the evidence before me, the requirements of s339(3)(a) and s.341(1)(a) are met and, as Mrs Dixon is an 'associate' for the purposes of s.341(2), a presumption of insolvency arises, which presumption has not been rebutted on the evidence.

**The Cambridge and Argyll Properties**

221. On the evidence which I have heard and read, and in light of my findings and conclusions in respect of the DoTs, the Trustees have also made out their claims in respect of Mr Dixon's 50% share in each of the Argyll and Cambridge properties and the proceeds of sale thereof. Both properties were sold between the date of presentation of the bankruptcy petition and the date of the bankruptcy order. In the absence of a successful application for retrospective validation, Section 284 is plainly engaged.

**Other arguments**

222. In reaching the conclusions set out in this judgment I confirm that I have not taken into account an argument run by the Trustees at trial that as Mr Dixon's signature on the RET was not witnessed, it was not validly executed as a deed (s.1(2) Law of Property (Miscellaneous Provisions) Act 1989) and that, as no consideration was provided, could not take effect in contract either. This point was not pleaded and it would be unjust to permit the Trustees to rely upon it.

223. In reaching the conclusions set out in this judgment I also leave out of account an argument run by the Trustees as to whether future income can properly form the subject matter of a trust. Whilst this was touched on in Ms Sayer's first witness statement at paragraph 31, it was not pleaded and in my judgment it would be unjust to allow the Trustees to rely on it.

## The way forward

224. In light of my findings and conclusions, I propose to grant the declarations sought in respect of the DoTs and to order that the DoTs be set aside. I propose also to grant the declarations sought (i) that the purchase by Mr Dixon of the Barbados Property in the name of Mrs Dixon in November 2014 was a transaction at an undervalue within the meaning of s339 IA 1986 and (ii) that 50% of the net proceeds of sale of the Argyll and Cambridge properties belong to the bankruptcy estate.

225. I will hear submissions on any attendant orders and consequential relief sought on the handing down of this judgment.

**ICC Judge Barber**