NEW SQUARE Chambers

January 2026

MANIFESTING & PROVING TRUSTS UNDER THE LAW OF PROPERTY ACT: NATIONAL IRANIAN OIL COMPANY v CRESCENT GAS CORPORATION

Jessica Powers

KEY POINTS

- For nearly 350 years, there has been a statutory provision in England and Wales that requires a declaration of trust to be manifested and proved in writing. That provision is currently found in s 53(1)(b) of the Law of Property Act 1925 (LPA 1925).

- Following the Court of Appeal's decision in *National Iranian Oil Company v Crescent Gas Corporation* [2025] EWCA Civ 1221, we finally have an authoritative answer to the question of whether such writing can be signed by an agent. The Court of Appeal were unanimous in concluding that the answer is "no".

- The Court of Appeal also wrestled with the issue of whether the transfer to the putative beneficiary of the legal interest in a property where the trust is not manifested and proved in accordance with s 53(1)(b) LPA 1925 is a transaction at an undervalue. The majority concluded that it was.

WHAT WAS THE BACKGROUND TO THE COURT OF APPEAL'S DECISION?

National Iranian Oil Company (NIOC) previously owned NIOC House, a property in London, which it purchased in 1975 and which was registered in NIOC's name until 23 August 2022. NIOC House was purchased with monies loaned to NIOC by the Retirement, Savings and Welfare Fund of Oil Industry Workers Fund (the Fund). From at least 1979, NIOC and the Fund had mistakenly believed that the Fund owned NIOC House.

On 25 September 2019, NIOC granted a mortgage over NIOC House, which included a declaration of trust of NIOC House in favour of the Fund. The mortgage was executed by Naft Trading and Technology Co Ltd (NTT), acting as NIOC's attorney. The mortgage was signed by the managing director of NTT, who was also an authorised representative of the Fund, in the names of NIOC and NTT, and as the authorised signatory of NTT in the presence of a witness.

As part of the same transaction, on 9 January 2020, NIOC's English solicitors provided a Certificate of Title which contained a further declaration of trust of NIOC House in favour of the Fund.

Chambers RANKED IN UK Bar 2026 New Square Chambers
LEADING SET Legal500 UNITED KINGDOM 2026

On 27 September 2021, Crescent Gas Corporation Limited (CGC) obtained an arbitration award against NIOC in the sum of US$2.43bn. Permission to enforce the award was granted by the High Court on 15 August 2022. In November 2022, CGC sought to register an interim charging order, but discovered that NIO had transferred NIOC House to the Fund on 23 August 2022.

THE LEGAL ISSUES

At first instance, Sir Nigel Teare (sitting as a High Court Judge) had concluded that the declarations of trust were unenforceable because they were signed by NIOC's agent, and so did not comply with the requirements of s 53(1)(b) LPA 1925. The consequence of that finding was that NIOC was the beneficial owner of NIOC House on 23 August 2022. The judge further found that NIOC had transferred NIOC House with the intention of putting assets beyond the reach of CGC, and thus concluded that CGC's claim pursuant to s 423 of the Insolvency Act 1986 (IA 1986) was made out. The judge consequently ordered that NIOC House be transferred to CGC.

On appeal, the issues were:

i. Whether the document required by s 53(1)(b) LPA 1925 can be signed by an agent?
ii. If not, how can a company comply with that section, since it can only act by its agents?
iii. What is the status and effect of a declaration of trust if s 53(1)(b) LPA 1925 is not complied with? and
iv. If the trust cannot be manifested and proved, and the settlor/trustee transfers the trust property to the beneficiary, can such a transfer constitute a transaction at undervalue, as defined in the IA 1986?

SIGNATURE BY AN AGENT

Natural persons

In giving the lead judgment on this point, Zacaroli LJ first examined the statutory predecessor to s 53(1)(b) LPA 1925, namely s 7 of the Statute of Frauds 1677 (SoF 1677). Zacaroli construed s 7 SoF 1677 as requiring that the person in whom the beneficial interest in the relevant land, structures on it and/or rights associated with it sign the document proving the trust.

The significant difference between s 7 SoF 1677 and s 53(1)(b) LPA 1925 was the replacement of "the partie" with "some person". Zacaroli LJ was not satisfied that the change was intended to expand the range of persons whose signatures sufficed for these purposes.

Finally, Zacaroli LJ considered the purpose of s 7 SoF 1677 and s 53(1)(b) LPA 1925. His

view was that both sections were intended to protect landowners from the risk that another person would falsely claim that the land, or an interest in it, had been transferred to them, or declared in trust for them.

Zacaroli therefore concluded that s 53(1)(b) LPA 1925 requires written evidence of a declaration of trust to be signed personally by the settlor, or, if relevant, the person holding the relevant interest which is the subject matter of the trust. There was no scope for construing that section as permitting an agent to sign on behalf of the settlor or trustee.

Falk LJ further observed that Parliament had made a deliberate choice not to refer to agents in s 53(1)(b) LPA 1925, as compared to the other sub-ss of s 53(1) LPA 1925 and s 40 LPA 1925, and that the reference to a person "able", as opposed to "authorised", to declare a trust in s 53(1)(b) LPA 1925 more obviously denoted a settlor or trustee, rather than their agent. Falk LJ also made the practical observation that the distinction between s 53(1)(a) and (c) LPA 1925, in permitting agents to execute documents, and s 53(1)(b) LPA 1925 reflects the likelihood that the conveyancing transactions covered by s 53(1)(a) and (c) LPA 1925 would generally be effected by formal legal documents executed by legal representatives.

Companies

The principle that a company may only act by its agents is long established and often stated. It was on that principle that NIOC and the Fund founded their averment that, even if s 53(1)(b) LPA 1925 did not allow for the agent of a natural person to evidence the declaration of a trust, it must permit the agent of a company to do so.

The fundamental problem with that submission, though, was that s 44 of the Companies Act 2006 (CA 2006) sets out how a document can be executed by a company, ie by affixing its common seal, or by signature in accordance with the provisions of that section. Thus, even though execution can, and often is, effected by a director of the company signing in the presence of a witness, that execution is, by virtue of s 44 CA 2006, by the company, and not by its agent.

Zacaroli was satisfied that written evidence of a trust serves a sufficiently important legal function that s 44 CA 2006 is engaged.

It was therefore held that: (i) the signature of an agent of a company cannot fulfil the requirements of s 53(1)(b) LPA 1925; and (ii) signature by a duly authorised agent of the company does not equate to signature by the company (unless, of course, execution is in accordance with s 44 CA 2006).

It followed that, since neither declaration of trust was evidenced in documents signed by NIOC, the requirements of s 53(1)(b) LPA 1925 were not fulfilled.

EFFECT OF NON-COMPLIANCE WITH S 53(1)(B) LPA 1925

In the case of a valid and enforceable trust, the transfer of the legal interest from the trustee to the beneficiary will not be caught by s 423 IA 1986 (see, eg *Re Schuppan (No. 2)* [1997] 1 B.C.L.C. 256, and *Kubiangha v Ekpenyong* [2002] EWHC 1567 (Ch); [2002] 2 B.C.L.C.597]). The Court of Appeal, therefore, had to grapple with whether s 423 IA 1986 was engaged in this case, having found that the trust in question had not been proved.

The consistent view in the leading textbooks is that a trust which has not been proved in accordance with s 53(1)(b) LPA 1925 is valid, but not enforceable. That is because, to quote Zacaroli LJ, "sufficient writing is required to evidence the trust, not to perfect it". The Court of Appeal were content that the textbooks were right in this respect: the orthodox view that a trust is valid absent sufficient evidence to prove it is clearly established in law.

The majority of the Court of Appeal held that, if a trust is unenforceable because of an absence of evidence satisfying s 53(1)(b) LPA 1925, then the court must proceed on the basis that the trust does not exist. Applying that conclusion to the facts of this case, NIOC remained the beneficial owner of NIOC House immediately before the transfer of that property to the Fund.

The final issue, therefore, was whether that transfer amounted to a transaction at undervalue. When asked to identify what consideration NIOC received from the Fund in return for the transfer, NIOC could only pray in aid its "prior moral obligation under the unenforceable trust". Unsurprisingly, the majority of the Court of Appeal rejected the submission that, as a matter of fact, such a moral obligation had an equivalent value to a property asset. The transfer was, therefore, a transaction at undervalue.

It is also worth noting that the idea that s 53(1)(b) LPA 1925 only applies in a case where the trustee denies the trust was resoundingly rejected.

THE IMPLICATIONS OF THE JUDGMENT

This case was a "self-declaration" case, ie one where the owner of the beneficial interest in property declares a trust of that property. The Court of Appeal confirmed that, in such cases, there is no scope to avoid the requirements of s 53(1)(b) LPA 1925 by proving the trust through parol evidence. "Self-declaration" cases are frequently encountered in insolvency cases. In many cases, the primary issue is whether the declaration of trust is genuine, but s 53(1) (b) LPA 1925 may also have a role to play in determining whether, or to what extent, the asset is available for the benefit of the insolvent estate.

A simple and obvious example is the case where a (now) bankrupt and their spouse purchased a property but omitted to complete the "declaration of trust" box on Form TR1. Such failure usually results in the Land Registry entering a Form A restriction by default, and making enquiries in correspondence of the purchasers' conveyancing solicitors. Such correspondence will almost certainly elicit a response manifesting and proving a declaration

of trust. However, if that correspondence is signed only by the conveyancing solicitor, acting as the purchasers' agent, it will not fulfil the requirements of s 53(1)(b) LPA 1925. In other words, such correspondence will not be of assistance in displacing the presumption of mirrored legal and equitable interests.

One point which is hinted at in Falk LJ's judgment, but not addressed or resolved, is whether the provision of evidence satisfying s 53(1)(b) LPA 1925, where none existed before, might itself be caught by s 423 IA 1986. Falk LJ noted that providing such evidence would give something of substantial value to the beneficiary, since before that point the beneficiary would be unable to, for example, take legal action to obtain the income or require an asset to be transferred to them. Further, she expressly equated the provision of a signed document evidencing the trust with perfecting the trust by transferring the trust property to the beneficiary.

Perhaps the most significant takeaway for those practising in the insolvency sphere is that, once again, the English courts have shown themselves to be "creditor-friendly" in strictly applying legal formalities to ensure that insolvent estates are not denuded of assets, particularly in circumstances where it is established that the purpose of the impugned transaction was to put assets beyond the reach of creditors.

JESSICA POWERS

jessica.powers@newsquarechambers.co.uk

https://newsquarechambers.co.uk/barrister/jessica-powers/

linkedin.com/in/jessicapowersbarrister/