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TLC/188/09

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

21st January 2010

B e f o r e :

HIS HONOUR JUDGE HODGE QC
(Sitting as a Judge of the High Court)

KYRIACOS COSTAS HAPESHI
Claimant
-v-
ATHENA ALLNATT & ANOTHER
Defendants

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(Official Shorthand Writers to the Court)

MR J GOLDSMITH (instructed by Seifert & Co) appeared on behalf of the Claimant.
MR P CLARKE (instructed by Woolsey, Morris & Kennedy) appeared on behalf of the First Defendant.

HTML VERSION OF JUDGMENT

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1. JUDGE HODGE QC: These proceedings relate to the beneficial ownership of a dwelling house known as and situated at 212 Craven Park Road, Stanford Hill, London N15 6AE. That property is registered with the Land Registry under title number EGL237969.

2. The issue that falls to be determined by the court is whether the property forms part of the estate of the late Chrystalla Hapeshi, and thus falls to be distributed in accordance with the term of her last will dated 27th July 2001, or whether the beneficial interest in that property rests with one of Mrs Hapeshi's sons, the claimant in these proceedings, Mr Kyriacos Costas Hapeshi (who is generally known, and will be referred to in this judgment, as "Kevin"). It is Kevin's case that he is beneficially entitled to the property pursuant to a constructive trust that has arisen to give effect to what is said to have been the common intention, formed at the time of the acquisition of the property, by Mrs

Hapeshi, by his late brother, Michael Costas Hapeshi, and by himself, or, alternatively, pursuant to an equity that is said to arise by reason of the same facts and matters pursuant to the doctrine of proprietary estoppel. Kevin is represented in these proceedings by Mr Joseph Goldsmith, of Counsel, instructed by Seifert & Co of Cobham in Surrey.

3. The background to these proceedings can be stated shortly as follows: Mrs Hapeshi had four children by her first marriage to Mr George Kourtis. Those children were Athena Allnatt, who is the first defendant in these proceedings; Mr Michael Kourtis; Mr Andreas Kourtis; and Georgis Pappou. She had five further children by her second marriage to Costas Hapeshi. Those children were Sotiris Hapeshi; Michael (now deceased); Kevin (the claimant in these proceedings); Demetris Hapeshi; and Despina Leonidou. Mr Costas Hapeshi (Mrs Hapeshi's husband) apparently returned to Cyprus in or about 1991, whereafter he was estranged from his wife; and he apparently died in about 2002.

4. Mrs Hapeshi died on 8th August 2007 in Cyprus. She was survived by eight of her nine children, Michael having predeceased her on 19th January 2001. By her last will dated 27th July 2001 Mrs Hapeshi appointed Kevin (the claimant) and Athena (the first defendant) to be her executors and trustees. She provided for eight-ninths of her residuary estate to be divided equally between her surviving children, with the final ninth share to be divided between Michael's two daughters. Following proceedings in the District Probate Registry at Oxford, probate of the will was granted to Athena, the defendant, with power being reserved to Kevin. Subsequently, a grant of double probate was issued in Kevin's favour pursuant to an order of Mr Registrar De Costa dated 5th September 2008. Athena is represented as first defendant in these proceedings by Mr Paul Clarke of Counsel, instructed by Woolsey, Morris & Kennedy of Sidcup in Kent. Prior to 5th November 2009, Athena was represented in these proceedings by a firm of solicitors called A Nicolaou & Co.

5. The claim form was originally issued in these proceedings on 6th November 2008. By an order of Master Moncaster dated 30th January 2009, Julie Denise Grant-Hapeshi, the widow and sole executrix of Michael Costas Hapeshi, was ordered to be joined as second defendant to the proceedings. The claim form was duly amended on 11th March 2009. Master Moncaster explained his reason for joining Julie Denise Grant-Hapeshi as a party to the proceedings in a letter which he wrote to her, with copies to all other interested parties, on 13th August 2009 (page 249). Master Moncaster explained that he directed that Mrs Grant-Hapeshi should be joined as a defendant to these proceedings in order to represent her late husband's estate. He said he did that because it was possible that she would want to claim an interest in the property on behalf of that estate. She would therefore be a necessary party to the proceedings because it was, and is, necessary that Michael's estate should be bound by any order made in the proceedings. He went on to explain that it was not, however, necessary for her to take any active part in the proceedings; and the joinder was not made on the basis that she was, so to speak, on the same side as the first defendant, Athena. The Master indicated that he was clear that Mrs Allnatt's solicitor was not acting for her or for her two children in any way. He went on to note that Mrs Grant-Hapeshi did not seek to advance any claim at all on behalf of the estate, and she admitted that Mr Kevin Hapeshi was entitled as he claimed. He went on to indicate that, if she took no active part in the proceedings other than appearing as a witness on behalf of the claimant (which in the event she did), then, although it was not absolutely impossible, it was virtually certain that no order for costs would be made against her. He went on to express his sorrow that being joined to the proceedings had caused her any stress; but he expressed the hope that she would realise that it was necessary for it to be established whether or not her late husband's estate had, or was claiming, an interest in the property or not. In the event, Mrs Julie Grant-Hapeshi adduced evidence in the form of a witness statement in support of Kevin's claim. She attended the trial on the second day, but only in the capacity as a witness for the claimant; and in that capacity she was cross-examined by Mr Clarke for the first defendant.

6. In addition to Mrs Julie Grant-Hapeshi, as her late husband's executrix, Kevin's claim is supported by his brother, Sotiris Hapeshi, who adduced evidence in the form of a witness statement on his behalf. He did not attend trial to be cross-examined and is in fact resident in Nicosia in Cyprus. His witness statement, in the form in which it appears before me, is dated 11th January 2010 and is verified by a statement of truth signed by him. There is confirmation that it was translated to him in Greek.

7. The property at 212 Craven Park Road was estimated to be worth about £260,000 at the time of Mrs Hapeshi's death. She had occupied the property since 1975, initially as a tenant of the London Borough of Haringey. She completed the purchase of the property under the "right to buy" scheme established by the Housing Act 1985 on 12th December 1988, legal title being transferred on that day

to herself and to Michael. They were registered as proprietors of the property at the Land Registry on 27th February 1989. It is recorded in the transfer that the discount to which Mrs Hapeshi was entitled as a sitting tenant was £30,740. After this discount, the actual purchase price was £27,260. The bulk of the purchase price, £27,000, was raised by means of a loan from Barclays Bank plc, repayment of which was secured by way of an interest-only charge over the property. That charge in favour of Barclays Bank was subsequently redeemed by way of a remortgage with Abbey National plc, again on an interest-only basis, apparently on or about 20th April 1990. A curious feature, which was not explained at all in evidence, is that, if one goes to the first mortgage statement from Abbey National for the year ended 1990, the opening amount is stated to be £20,250. After various repayments and debits for annual interest, the closing amount was stated to be £20,720.87. However, when one goes to the mortgage statement for the year ended 1991, it records an opening balance of £28,188.63, which accords with the amount of the original Barclays Bank charge. Thereafter, the Abbey National mortgage account statements proceed on the footing of that higher £28,000-odd opening balance. As I have indicated, that discrepancy was not explored in evidence. The property remained subject to the charge in favour of Abbey National. Legal title to the property is apparently still registered in the names of Mrs Hapeshi and Michael, pending the outcome of these proceedings.

8. Mrs Hapeshi continued to occupy the property following its purchase, sharing with various lodgers, until her death in Cyprus on 8th August 2007, following her hospitalisation there for a brief period when she came to visit Cyprus in July 2007. It is common ground that, from time to time, Mrs Hapeshi would take in lodgers at the property, although there was a dispute as to when that practice first started. The most recent lodger, who remains there, having moved into the property before Mrs Hapeshi's death in September 2004, is a Mr Christopher Michaels, who is about 70 years of age and is a retired shopkeeper. He has adduced evidence in support of Kevin's claim.

9. I turn now to summarise Kevin's case. In so doing I do not in any way at this stage thereby indicate my acceptance of the case. It is Kevin's case that, prior to the acquisition of the property under the "right to buy" scheme, there was an express agreement between himself, his brother Michael and his mother that they would own the property jointly, the main purpose of the exercise being to ensure, insofar as possible, that Mrs Hapeshi would be able to occupy the property for the rest of her life and, after her death, to realise a financial benefit for Kevin and Michael. Although Mrs Hapeshi, in her capacity as the sitting tenant, effectively contributed the right to buy discount to the purchase price, which exceeded the actual sum paid, she was in no position to provide the balance herself or to maintain repayments in respect of any mortgage. It is said that other family members were invited to contribute to the purchase but that none accepted the invitation. There is certainly acceptance that at least two members of the family, Sotiris (whose statement I have received under the Civil Evidence Act for the claimant) and also Demetris (who gave evidence for the first defendant), were approached but declined to participate in the purchase. There is an issue of fact as to whether other members of the family were similarly approached.

10. It is said that, in those circumstances, it was agreed that Kevin and Michael would effectively guarantee the future mortgage repayments so as to ensure that their mother was able to remain in the property, in return for which, it is said, they would jointly own the property with her. However, during the course of the purchase process, it became clear that the London Borough of Haringey would not accept Kevin being named as a joint purchaser of the legal title. The solicitors acting on the purchase of the property were Seifert & Co, the same firm who now act for Kevin in this litigation, although at that time Seifert & Co's offices were in Kingsway in London, rather than, as now, Cobham in Surrey. The principal of the firm was Ms Lesley Seifert who, at the time, had been an admitted solicitor for about ten years. She gave evidence for the claimant and indicated that at that time she had two qualified solicitors as additional fee-earners within the firm. It was to Seifert & Co that the London Borough of Haringey wrote on 29th September 1988 relating to the right to buy purchase. The letter stated that it would appear from the contents of an earlier letter from Seifert & Co, which is not in evidence before me, that Mr Kevin Hapeshi did not satisfy the residence qualification and would accordingly not be allowed to join in as a sharer. In order to claim the right to have members of the family included as sharers, his name should have been put on the original application, and he should have resided at the property for one year prior to the application to purchase. The writer, writing on behalf of the acting Borough Solicitor, said that she looked forward to hearing further from Seifert & Co in connection with their client's purchase, bearing in mind that a first notice to complete had been served on them on 15th August. Upon receipt of that letter, on 4th October 1988 Seifert & Co wrote to Michael Hapeshi at the address of his flat (then in Muswell Hill), enclosing a copy of the Council's letter and asking for his instructions as to whether he wished to

proceed or not. I should indicate, first, that although I have a number of letters from Seifert & Co, I do not have a complete range of correspondence to and from that firm. Ms Seifert explained that, understandably over 20 years, she could not locate her firm's file, and those letters that I do have have apparently been provided from the records maintained by Michael Hapeshi through either Kevin, or Michael's widow, Julie Grant-Hapeshi. Secondly, I should make it clear that most of the correspondence was addressed to Michael alone and not to his mother or to Kevin.

11. It is said that, after the news that Kevin could not formally join in the purchase, it was agreed between himself, Michael and their mother that the application would go ahead, but with Michael and Mrs Hapeshi alone being named as purchasers of the legal title, although they were to acknowledge that Kevin, although his name would not be on the legal title from the outset, should be a joint purchaser. It is said that it was for this reason that the loan that was obtained from Barclays Bank was in the names of Michael and his mother alone and not that of Kevin as well. Nevertheless, it is said that it was always agreed between the three of them that Kevin, as a joint owner of the property, would be jointly responsible for the mortgage with his brother. As I have indicated, the mortgage was an interest-only one and therefore Kevin and Michael agreed that they would each take out and maintain an endowment policy on their respective lives to cover the £27,000 capital of the mortgage loan. It is clear that on 7th December 1988 Kevin did take out an endowment policy in his own name with a target of £27,000. That endowment policy was not charged to Barclays Bank as original mortgagee, nor would it appear ever to have been charged to Abbey National as the successor mortgagee. It is submitted on Kevin's behalf that there is no reason why he should have purchased an endowment policy in the very same sum that was being borrowed from Barclays in order to purchase the property a mere five days before the completion of the purchase if there were no pre-existing agreement between himself, his brother and his mother that he was to be a joint owner of the property and jointly responsible for that mortgage.

12. Seifert & Co raised in correspondence with Michael the issue as to how the beneficial ownership of the property was to be vested in Michael and his mother. That query was raised in a letter addressed to both Michael and Mrs Hapeshi, but at the address of Michael's flat in Muswell Hill, on 19th October 1988. That letter stated that Seifert & Co had by then been served with final notice to complete the transaction, the last day realistically being 12th December 1988, which in fact proved to be the actual date of completion. The relevant fee-earner, not Lesley Seifert but Miss Michelle Garcia, stated that she had suggested to the Council that completion should take place on 5th December. That would give one week's leeway if anything should go wrong. She indicated that they should make sure that the rent was paid up to and including the date of completion as soon as possible, as that would be a requirement in order to complete. She indicated that she would be notifying the bank accordingly. She then went on to explain:

    "There are two ways of jointly owning property, either as joint tenants or as tenants in common. I enclose a note explaining the difference and would be grateful if you could return one copy to me, signed by both of you, to indicate which way you would like to hold the property.

    If you have any queries, please do not hesitate to contact me."

    The accompanying note is headed "Joint ownership of property" and explains that when two or more people buy property in their joint names there are two different ways in which the property could be held:

    "(a) As Joint Tenants. This is the usual way that couples buy property. There is a general assumption that it is owned by them in equal shares although it is not conclusive. On the death of one party the whole of the party automatically belongs to the other.

    (b) As Tenants in Common. The parties can hold the property in unequal shares (e.g. one-third and two-thirds). On the death of one of them the deceased's share will fall into their estate which means that it will either go as a bequest under a Will or to the next of kin if they die without a Will. If you wish to hold a property in this way, it is most sensible to enter into a Trust Deed showing what shares each person has and how the property will be maintained and the outgoings provided for.

    You must decide which way you wish to hold the property. Please indicate below by ticking the option you prefer and sending back the duplicate of this form, signed by each of you.

In any event, you are advised to consider making a Will (a) [in which you] wish to hold as Joint Tenants

(b) [you] wish to hold as Tenants in Common."

Because we do not have the Seifert & Co original file we do not know whether that form was actually returned; but the inference is that it was returned, duly signed by both parties, indicating that the property was to be held beneficially as joint tenants. That inference flows from the terms of the form of transfer, which was a transfer of part and which provides, at the end of clause 1, that the property was to be held as joint tenants beneficially entitled by Michael and his mother.

13. It is said on behalf of Kevin that, following receipt of that letter, the relevant family members considered how the property should be held. It is said that it was agreed that, given the overriding objective of ensuring that Mrs hAHHHapeshi could remain in the property for the rest of her life, holding it as joint tenants in equity would be preferable. It is said that this was so because if either Kevin or Michael were to die in Mrs Hapeshi's lifetime (as in fact happened in the case of Michael), the deceased brother's family would not be able to force a sale in order to realise his share. The arrangement also meant that if, as was expected happened, both Kevin and Michael should succeed their mother, they could then decide to sell the property and divide the proceeds equally between themselves.

14. It is said that it was originally anticipated that the agreement between Kevin, Michael and Mrs Hapeshi would be embodied in some form of a trust deed. In her witness statement served on behalf of the claimant, Kevin, at paragraph 5, having referred to her colleague Michelle Garcia's letter of 4th October 1988, Ms Seifert concludes that she discussed on the telephone how to protect Kevin, and she told him – I think that is probably a reference to Michael – that the only way would be to draw up a trust deed setting out the agreement to hold the property in trust for Michael and Kevin. Following completion, a letter was sent to Michael on 6th January by Michelle Garcia, asking him to "Please telephone with regard to the trust deed in this matter". A further letter was sent, again by Michelle Garcia and again addressed to Michael at his Muswell Hill flat, on 19th June 1989. In that letter, the writer, Miss Garcia, said that registration had been completed, and she enclosed a copy of the charge certificate, which she had forwarded to Barclays Bank as the mortgagee. She continued:

"I refer to our discussion last week relating to a Trust Deed between yourself, your mother and your brother when I informed you that Trusts relating to property are a minefield from a legal point of view and the terms of any such trust should be carefully considered and embodied in a document. My view is that this could save your family considerable expense, particularly in the event of a death of any one of you.

I trust that you will show this letter and enclosure to your mother and to your brother."

Those are prescient words for in fact no trust deed was ever concluded at any time following that letter of 19th June 1989, at least so far as any documents remain available to the parties. It is the failure to complete that trust deed which has led to the present litigation. It is said that Mrs Hapeshi was not averse to executing such a deed, but the parties simply never got round to it.

15. Kevin also says that, pursuant to the agreement with Michael and his mother, he incurred various costs and expenses in connection with the property. He says that, in addition to meeting the payments on his endowment policy, he also, and jointly with Michael, met the interest instalments in respect of the mortgage, save insofar as they were met by the Benefits Agency on behalf of his mother. In addition, it is said that he was responsible for contributing to the costs of maintenance, insurance, etc in connection with the property. It is said that when Michael fell into financial difficulties, Kevin covered his payments towards the mortgage and other expenses. It is said that when the mortgage fell into arrears, as a result, it is said, of problems with payments made by the Benefits Agency on behalf of Mrs Hapeshi, Kevin made a lump sum contribution to the mortgage account in order to avoid repossession of the property. Kevin submits that none of these financial contributions towards the purchase and the upkeep of the property are explicable save in the context of pre-existing agreement between Kevin, Michael and their mother that Kevin would be an owner of the property jointly with him. That is Kevin's case.

16. The case for the first defendant is that there was no clear agreement between Kevin and their mother that Kevin was to have any share in the property, and there were no clear discussions between them to that effect. It is also said that there is no evidence of Kevin having suffered any real detriment in relation to the property.

17. There was no dispute as to the legal principles applicable to the present claim. They are to be found in the law relating to common intention constructive trusts and in the law relating to the doctrine of proprietary estoppel. It is, I think, common ground that a common intention constructive trust will arise where a person acts to his detriment in reliance upon a common intention that he will acquire an interest in property. In order to establish the existence of such a trust, the claimant must demonstrate, first, a common intention that both parties should have a beneficial interest in the property and, secondly, that the claimant has acted to his detriment on the basis of that common intention, so that it would be inequitable for the legal owner to deny the claimant his interest.

18. Inevitably, I was taken to the decision of the House of Lords in the case of Stack v Dowden [2007] UKHL 17 and reported at [2007] 2 AC 432, and to the later decision of the Privy Council in the case of Abbot v Abbot [2007] UKPC 53. It is unnecessary for me to refer to passages from those authorities. The law is summarised in the 7th edition of Megarry & Wade "The Law of Real Property" (2008). I was taken to passages at paragraphs 11-025 and following. At paragraph 11-025, under the heading of "Common intention", it is said that:

    "It is now clear that common intention is relevant both to whether a party has an interest in the property and to the quantum of that share if he does… The common intention that both A and B should have a beneficial interest in the property may be inferred or it may arise by express agreement. It will be inferred in two situations, the second of which arises from the judgments in Stack v Dowden and Abbott v Abbott: first, where B contributes directly to the purchase price, whether by a cash contribution or its equivalent, or by paying mortgage instalments; secondly, in response to changing social and economic conditions, the common intention may be inferred (or perhaps imputed) from the parties' whole course of conduct in relation to the property. [It is said that] this second approach has generated criticism, not least because it offers little predictability nor certainty for third parties."

    Detrimental reliance is addressed at paragraph 11-026:

    "A constructive trust 'does not come into being merely from a gratuitous intention to transfer or create a beneficial interest', because such an intention would amount to an unenforceable declaration of trust. B must have acted to his detriment in reliance upon the parties' common intention and in the reasonable expectation that he would thereby acquire an interest in the property. It is this detriment that takes the trust outside the formal requirements normally applicable to declarations of trusts of land. The acts of detrimental reliance must amount to 'an irrevocable change of legal position' and be of a kind upon which B could not reasonably have been expected to embark unless he or she was to have an interest in the property. B will therefore acquire no interest if the acts are ones which he or she would have undertaken in any event. In consequence, the performance of normal domestic duties will not suffice. The extent to which acts unrelated to the acquisition or improvement of the property will satisfy the requirement of detriment has not been finally determined. The House of Lords has held that a payment by B to reduce the overdraft of a company that had purchased the property used by A and B as their matrimonial home was not referable to its acquisition. However, where A promised B that he would provide her with a home for the rest of her life, and in reliance upon this B abandoned her flat and a promising academic career in Poland, those acts were considered to be a sufficient detriment to justify the imposition of a constructive trust."

    Quantification of the beneficial interest is addressed at paragraph 11-028 of Megarry & Wade:

    "Although the proportionate shares of the parties may be determined at the time of the express or implied agreement between them, the valuation of those shares takes place on the dissolution of the trust. The trust terminates when the parties' interests are realised (whether on sale or when one party purchases the interest of the other), not as was once thought on the date when the parties separated.

Where the parties have expressly agreed the shares in which they are to hold, that will normally be conclusive, and a court will depart from it only if there is good cause to do so. In the absence of such agreement, the position is less clear, and recently there has been a change in judicial practice from quantification that is determined by reference to the parties' contributions to one that depends upon the common intentions of the parties as deduced from all relevant circumstances."

Paragraph 11-029 addresses the situation where the quantification of the beneficial interest is to be by reference to common intention. It is said that subsequent and more recent authorities suggest a different approach to relying upon contributions.

"Where the court infers a common intention that the contributor should have an interest in the property, whether by direct contribution or on the basis of the parties' entire course of conduct, it may then have regard to the whole course of conduct between the parties to determine the shares of the parties."

There is then a quotation from Midland Bank v Cooke, per Waite LJ:

"That scrutiny will not confine itself to the limited range of acts of direct contribution of the sort that are needed to found a beneficial interest in the first place. It will take into consideration all conduct which throws light on the question what shares were intended. Only if that search proves inconclusive does the court fall back on the maxim that 'equality is equity.'"

The editors of Megarry & Wade go on to state that:

"This approach does in fact accord with a number of earlier authorities which suggested that the common intention as to the extent of a claimant's beneficial interest did not have to be ascertained 'once and for all at the date of its acquisition' and there is now little doubt that this should be the approach adopted. In both Stack and Abbott the court approved the approach presented by the Law Commission in its discussion paper on 'Sharing Homes' that:

'If the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended.'"

Of course, that only arises where the parties have not expressly agreed the shares in which they are to hold the property in question.

19. It is appropriate against that background, both factual and legal, for me now to refer to the witnesses who gave evidence before me and to my assessment of them.

20. The trial began on Monday of this week, 18th January 2010. It continued over the following three days. The first witness to give evidence before me was the claimant, Kevin. His witness statement is dated 30th November 2009. He gave evidence on the morning of day one of the trial for about two hours. He was recalled at the conclusion of the first defendant's case in order to deal with certain additional documents that had come to light during the course of the trial; and he gave further evidence for an additional 30 minutes on day 3 of the trial. I propose to defer any expression of my assessment of him until after I have outlined my assessment of the other witnesses in the case. I do so because my assessment of Kevin was at the heart of the case, and I should only undertake it after I have taken due account of the evidence of all the other witnesses. I bear in mind, however, two things. First, that Kevin is the only surviving party to the alleged discussions between himself, his mother and Michael at the time the property was purchased pursuant to the right to buy provisions. The second matter that I bear in mind is this. In English law there is no rule that there must be corroboration to establish a case advanced by a living person against the estate of a deceased person. However, the authorities make it clear that the court will carefully scrutinise the evidence where such a claim is made, particularly if it is supported only by the claimant's uncorroborated evidence. With Kevin, it is said that that is not the situation here. It is said that there is corroboration of his case to be found in the evidence of other witnesses.

21. After Kevin, the next witness to give evidence was his wife, Julie Elizabeth Hapeshi. She should not be confused with Julie Denise Grant-Hapeshi, who is the widow of the late Michael Hapeshi. (To distinguish between them, I shall refer to Kevin's wife as Mrs Julie Hapeshi, and to Michael's widow as Mrs Grant-Hapeshi. Hopefully confusion will thereby be avoided.) Mrs Julie Hapeshi's witness statement was dated 2nd November 2009, and she gave evidence for about 20 minutes on the afternoon of day one. It is fair to say that Mrs Julie Hapeshi corroborates the account of her husband with regard to the ownership of the property; but that corroboration has to be viewed against the fact that she only arrived on the scene in or about June 1994, and thus more than five years after the completion of the purchase of the property. She was not, therefore, a direct witness to the discussions that preceded the completion of the purchase, or indeed even the remortgage with the Abbey National.

22. The third witness who gave evidence for the claimant, again on the afternoon of day one, was Ms Lesley Seifert, the solicitor and principal of Seifert & Co, the claimant's present solicitors and the firm that acted on the purchase of the property. Her witness statement is dated 10th October 2009, and she gave evidence before me for about just over an hour. It was inevitably difficult for Ms Seifert to give evidence, first, in relation to events that took place more than 20 years ago and, secondly, without the benefit of her firm's entire file and records. The letters before the court all appear to be copies of original letters sent out by the firm. It is quite clear, from internal references in those letters to the fact, that there are other letters which are missing. Moreover, because the file is not available, there is no accounting documentation either. Nor are there any attendance notes. What was, however, clear from Ms Seifert's evidence was that the only communication she appears to have had was with Michael. She could not recall ever speaking to Mrs Hapeshi. I have already, however, referred to an important passage in her witness statement at the end of paragraph 5. In that passage she said that, following the letter of 4th October from her colleague Miss Garcia, "Mike told her that the property would be held in his and his mother's names until the title could be changed." She then adds:

    "We discussed on the telephone how to protect Kevin, and I told him"

    Which in this context must be Michael.

    "that the only way would be to draw up a trust deed setting out the agreement to hold the property in trust for him and Kevin."

    That, of course, was never done. In her evidence, Ms Seifert said that the conversation on the telephone, to which I have just referred, had been after Michael had received her letter. She then went on to say that

    "Kevin would not have gone ahead if he had not thought he would get half the property. That is what Michael told me. Kevin and Michael had agreed it was a 50/50 split."

    I have no doubt that Ms Seifert is expressing her genuine recollection in that regard, but it must be very difficult for her to recall exactly what was said over 20 years before without any contemporaneous attendance note. Moreover, her contact was with Michael alone and not also with Kevin. As I have said, Ms Seifert could not recall ever having spoken to Mrs Hapeshi herself; and it was clear from the evidence that she would have had great difficulty in communicating effectively and intelligently with Mrs Hapeshi unless she had resorted to the services of a Greek interpreter. The evidence was that Mrs Hapeshi could not read English and understood very little of what was said in English, being reliant upon fellow members of the Greek Cypriot community, who were bilingual in Greek and English, to assist her in that regard.

23. I accept Ms Seifert as an honest witness; but, given the constraints to which I have referred, I find her of only limited assistance in the resolution of the issues I have to decide.

24. That concluded the evidence on day one. On the morning of day two I heard from the claimant's remaining witnesses. The first of them was the current tenant of the property, who had been lodging there since September 2004, Mr Christopher Michaels. His witness statement is dated 26th October 2009, although he had also signed a typewritten letter, which he thought had been drawn up for him by his son, on 14th September 2008. Mr Michaels gave evidence that he had had discussions with

the late Mrs Hapeshi in which she had said that the house would go to her two sons after her death. He said that Mrs Hapeshi said that it was right for Kevin and Michael to own the house after her death, "because they had bought the house". Mr Michaels confirmed that Mrs Hapeshi could not speak English. So there is corroboration from Mr Michaels of an expressed wish, some time after September 2004, on the part of Mrs Hapeshi that she wanted the property to go to her two sons, rather than devolving in favour of all of her children in accordance with the terms of her will. That supports Kevin's case; but I have to bear in mind also that Mr Michaels was clearly partial towards Kevin and, as is apparent from what he said in paragraph 7 of his witness statement, on which I do not think he was cross-examined, he clearly has no reason to like either the first defendant, Athena, or her brother and witness Demetris Hapeshi. Mr Michaels gave evidence before me for about 15 minutes.

25. The next witness was Terry Britnell, a plumbing engineer, whose witness statement was dated 10th November 2009. He gave evidence for about ten minutes. He had been a friend rather of Michael than of Kevin; and he corroborated Kevin's case that his understanding had always been that both Kevin and Michael were to be the owners of the property. He also gave evidence which supported Kevin's case to the effect that Kevin had taken over certain payments for the property when Michael went through a bad patch financially. He said that the financial difficulties extended even to Michael cancelling the insurance on his own property.

26. The next witness was Mary-Anne Morris, an independent financial advisor. Her witness statement is dated 19th November 2009. She gave evidence before me for about 30 minutes. Annexed to her witness statement was a document headed "Notes of a meeting" that took place on 22nd December 2005, which was attended by Kevin and his wife, by Kevin's mother, by Mrs Morris and by a Greek speaker acting as translator, a Mrs Loula Christadoulou. It became apparent during the course of Mrs Morris's evidence that, as suggested by the terms of the note itself, it was not a contemporaneous record of the meeting, but had been prepared at Kevin's request some time after the event. I found Mrs Morris, who was an entirely disinterested witness, to be knowledgeable and efficient. I found her to be a reliable witness in whom I can place confidence. She provided independent corroboration that, as at December 2005, Mrs Hapeshi regarded her son Kevin as a joint owner with her of the property. It was clear in answer to questions that she appreciated, and accurately appreciated, the distinction between joint tenancy and tenancy in common. However, she also said that at the meeting on 22nd December neither Kevin nor his mother gave any indication that they had made any decision about whether the property was to be held as joint tenants or as tenants in common. What she said was:

    "I think I explained the distinction to them. They gave no indication that they had made a decision as to which was to apply."

    I accept everything that Mrs Morris says about the meeting that took place on 22nd December and the subsequent completion of the enduring power of attorney that Mrs Hapeshi executed. It is clear from the dates on it, and to some extent slightly reconstituted by reference to those dates, that Mrs Morris's evidence is that after the meeting she prepared an enduring power of attorney, that that document was executed by Mrs Hapeshi on Christmas Day 2005, and that Mrs Morris arranged specially to meet Kevin and his wife at her offices on 28th December 2005, when she witnessed their execution of the enduring power of attorney in their capacity as attorneys. I accept all of her evidence.

27. The claimant's final live witness was Mrs Julie Grant-Hapeshi, Michael's widow. Her witness statement is dated 15th October 2009. She gave evidence before me on the morning of day two for about 25 minutes. I found her to be a thoroughly decent and honest person, and I have no doubt that she was giving evidence to the best of her recollection and belief. It was in fact Julie Grant-Hapeshi who, in her former name of Julie Grant, apparently witnessed the execution of the transfer by both her future husband, Michael, and also by her future mother-in-law Mrs Hapeshi, although she was not asked anything about the circumstances in which that execution took place; but it is quite apparent from the name and the address given there that it was she who acted as witness. I have no doubt that she was entirely genuine in her attempts to recall what was said; but at times I am not sure that she was entirely reliable in her recollection. At paragraph 8 of her witness statement she had said that "Mike had not prepared a will". In fact she produced the will when she came to give evidence.

28. After Michael's death on 19th January 2001, Mrs Julie Grant-Hapeshi had been in touch with Seifert & Co. She had prepared a response in her own hand to various standard-form questions contained in a form submitted to her by Seifert & Co headed "Questionnaire for personal representative clients." In that document, Part 2 is headed, "Only complete this part if there is a will", and she answered, "The will was made a year before we married", and the will was then said to be in the possession of Seifert & Co. Later in that form, in answer to question 24, "Was the deceased the joint owner of any property not mentioned above?" she had answered, "Yes, jointly with brother, Kevin Hapeshi. Property, 212 Craven Park Road, London N15." In a later document that she prepared to assist Seifert & Co and which was exhibited to Ms Seifert's witness statement, Miss Julie Grant-Hapeshi produced a schedule of monies said to have been received by the estate of Michael Hapeshi. That included a reference to a "one-third share of 212 Craven Park Road, W15" – that should, of course, have been "N15" – as being "£30,000." Mrs Julie Grant-Hapeshi made it clear that she did not mean she had received £30,000 in respect of her share; merely that she had anticipated receiving this on the basis that the property in 2001 was thought to be worth in the order of £90,000.

29. There was indeed a will. The will was dated 8th August 1993, and it gave all of Michael's property to Julie Denise Grant (as Mrs Grant-Hapeshi then was). She explained that she had made a similar simple will leaving everything of hers to Michael. What both of them appear to have overlooked is that a will is revoked by subsequent marriage unless the will is expressly said to be in contemplation of a particular marriage to a particular individual, which this will was not. Despite that, the will was apparently admitted to probate on 17th May 2001 with Julie Denise Hapeshi being named as the sole executrix. I make it clear that I make no criticism of Mrs Julie Grant-Hapeshi for having taken that grant because she relied entirely on Seifert & Co to act for her in connection with the administration of the estate. But the fact is that the Probate Registry must have issued that grant in ignorance of the fact that, subsequent to the date of that will, Michael had in fact married Julie Grant-Hapeshi, which would have had the effect of revoking the will.

30. For present purposes, it is sufficient to say that Miss Julie Grant-Hapeshi was mistaken in the evidence she gave in paragraph 8 that Michael had not prepared a will. She also said at paragraph 10 that she remembered Michael having explained to her that he and his brother had set up a joint tenancy arrangement in order to protect their mother. Initially in evidence she said that that was a mistake on her part. The fact that it is a mistake is consistent with a letter that she had written to Kevin and his various siblings on 6th October 2007 (pages 416 to 417 of the trial bundle). In the fourth paragraph of that letter she said:

    "I naturally assumed that as Mike had set up and contributed to the purchase of the house that I would be entitled to a third share of the house as valued at January 2001. Lesley Seifert listed it on the probate on my understanding that this was an asset of Mike's. I was not aware until after"

    She has then put "Chrystalla's death", but she corrected that in evidence to say that that was a mistake and it should be "Mike's death"

    "that the deed had been drawn up as 'Joint Tenancy'. At the time of purchase no one could envisage that Mike would die before his elderly mother. I can now understand why it was set up as Joint Tenancy. It was a safeguard for Chrystalla so that she could be secure that no one could force her to move in the event of Mike or Kev's death. Both Mike and Kev were unmarried at the time. If it had been set up as 'Tenants in Common' her position would have been vulnerable with the likelihood of being forced to sell."

    So in that letter, written in October 2007, she was saying that it was only after Michael's death (as she later corrected it) that she became aware that the deed had been drawn up as a joint tenancy.

31. In evidence what she said about that discrepant evidence was that she had prepared the form referring to the third share of the property probably before she had spoken about the property to Kevin. She said:

    "I did not then have an understanding of tenants in common and joint tenants. When it was explained to me by Kevin I fully accepted it was joint tenants. I knew it was money I would receive down the line. That would be the share in future when Chrystalla passed away."

She later went on to say that the reference to Michael explaining it is a mistake.

"I think that when Kevin explained it clicked that Michael had told me. When Kevin explained it made total sense."

Later she said;

"It is highly likely that Mike explained to me, but I did not hold on to that explanation."

32. I have no doubt that Julie Grant-Hapeshi was trying to give evidence to the best of her recollection and belief. I accept that she understood that both Kevin and Michael were to be joint owners of the property with their mother; but I cannot accept that she had a genuine understanding and recollection, before Kevin spoke to her, that the property was to be held beneficially as joint tenants rather than as tenants in common. I simply find that she did not know the precise basis upon which it was to be held. So her evidence is, in part, corroborative of Kevin's case, insofar as it supports his case that he was to be a joint owner of the property; but I do not find that it supports that part of his case which says that it was to be as beneficial joint tenants.

33. The final witness for the claimant, who did not give evidence before me, was Sotiris Hapeshi. He, as I have said, is resident in Nicosia. His signed witness statement is dated 11th January 2010. He is supportive of the claimant's case to this extent. He says he was always aware that both Michael and Kevin had purchased the property for their mother to live in. He says that Michael telephoned him and told him of the chance to buy the house and he wanted everyone to help, but Sotiris had not wanted to do this as he had his own family to support and his own business to run, and he could not get involved in paying for a house in London as well. Michael then told him that he and Kevin were going to do this anyway. So he was aware that they had purchased the property jointly from the start. He goes on to say that only Michael and Kevin were prepared to carry out the purchase. Nobody else, including him, wanted to be involved or to make any financial contribution towards it. Of course, Sotiris was not available to be cross-examined by Mr Clarke for the first defendant.

34. Following the conclusion of the claimant's case, I heard from the first defendant and her witnesses. The first witness was the first defendant herself, Athena Allnatt, whose witness statement is dated 26th November 2009. She gave evidence before me for about 1 hour and 35 minutes. On occasions she contradicted her own witness statement. It was clear from her evidence that she had never really taken any great interest in who owned the property. She accepted, however, that, initially at least, Kevin had been intended to be one of the purchasers. I derive little real assistance from Athena's evidence and I did not find her to be a particularly reliable witness.

35. The next of the first defendant's witnesses was Andreas Kourtis. His witness statement is dated 27th November 2009, and he gave evidence through an interpreter in the Greek language. It seemed to me that he had little real knowledge of what had been happening at the time of the purchase of the property. Mr Goldsmith characterised his evidence as unhelpful and unforthcoming and went so far as to describe him as evasive. I think there was some force in those criticisms. Mr Kourtis was particularly evasive in relation to details of the bank account of which he is one of the co-holders in Cyprus. I derived little real assistance from his evidence.

36. The final witness on day 2 of the trial was Demetris Hapeshi. His witness statement is dated 30th November 2009. He gave evidence for about 40.minutes. He was the closest of the children to his mother in terms of geographical location, living not too far from her. I found him to be a convincing and an impressive witness. I accept his evidence as reliable. But his evidence was not entirely unhelpful to Kevin. Demetris said that Michael had approached him with a view to joining in the purchase of the property, but that he had declined to participate; and, having declined to participate, he did not feel that he should have much more involvement in the purchase itself. He confirmed that Michael had told him that he was going to phone every other family member, and Demetris assumed that Michael had actually done that. He confirmed that Kevin had been invited and that Kevin had been hoping to be involved and, because of that, and not knowing that the Council had refused to accept Kevin as a participator in the purchase, Demetris had incorrectly assumed, for the next 20 years or so, until after his mother's death, that Kevin had been involved in the purchase. To that extent, Demetris's evidence was of assistance to Kevin. At a later point in his evidence he said that, before his mother's death, he had understood that Michael, Kevin and his mother had entered into a

tenancy in common in relation to the property. He said that everything his mother had said confirmed his belief that, after her death, she would be able to leave her share in the property to the other children. He said that she understood that she shared the house with whoever she had purchased with; and he assumed, in the event wrongly, that that included Kevin. He said that nothing until his mother's death had led him to believe that Kevin had made no contribution to the property. He said that she never mentioned Kevin in relation to the house at all. That is of some assistance to Kevin; but Demetris also gave evidence that was inconsistent with Kevin's case. Demetris said that, contrary to Kevin's evidence, his mother had taken in paying lodgers before Mr Bodur, and she had done so as early as 1989. I accept that evidence from Kevin. The fact that his mother took in lodgers soon after completion of the purchase seems to me to be consistent with the financial difficulties that were clearly being experienced in relation to the payment of the mortgage. I also accept Demetris's evidence that he received complaints from his mother about Michael not paying the mortgage.

37. The first defendant's last live witness was another of the siblings, Mrs Despina Leonidou. Her witness statement is dated 2nd December 2009, and she gave evidence for about 20 minutes. She did so early on the morning of day 3 of the trial. I found her to be a somewhat bitter and aggressive witness. It is clear that she had little contact with, and little liking for, her brother Kevin. She was not in the United Kingdom at the time of the purchase in 1988/1989. I fear that I must give little credence to her evidence, save insofar as it is corroborated by other evidence which I find to be reliable. However, she did confirm the evidence of Demetris that there were lodgers before Mr Bodur. She also identified an individual called George as the first lodger in or about 1989. She also, and again in this regard I accept her evidence, corroborated the evidence given by Demetris about his mother making complaints about Michael not paying the mortgage. Despina said that she had never been approached with regard to participating in the purchase of the property. I find that I cannot accept that part of her evidence. I am sure that she has simply forgotten that she was approached, but she had no interest whatsoever in it and it therefore slipped her mind with the passage of 20 years. I do not think she is deliberately lying on the point; but, given that Demetris had said that Michael was intending to approach other members of the family, it seems to me, on a balance of probabilities, likely that he would have done so. Clearly, he and Kevin were anticipating financial difficulties in servicing the mortgage, and it was therefore sensible to approach as many members of the family as they could to share the burden of it.

38. Finally, there is the witness statement of Eleni, or Helen, Dimitriou. That is dated 12th May 2009, and it was translated for her. That is corroborative of the first defendant's case; but I bear in mind that she was not tendered as a witness for cross-examination and, therefore, Mr Goldsmith has had no opportunity to challenge her evidence. Nor was any real explanation offered as to why she was not being tendered for cross-examination. Her address is given as 84 The Avenue, Tottenham, London N17, and no evidence was given as to why she could not attend court. It may have been because of her age, it may have been because of her lack of command of English, but it would be mere speculation on my part, given that I was not informed of the reason.

39. So that is my assessment of the witnesses and certain findings of fact arising from their evidence. What of Kevin himself against that background?

40. In his closing submissions, Mr Goldsmith submitted that this is not a case where the court can conclude that Kevin is truthful and honest, but simply mistaken or wrong. He said that I must approach this case on the footing that Kevin is either deliberately lying in his evidence, or is telling the truth. I found Kevin to be superficially plausible; but aspects of his evidence did not seem to me to withstand sustained and detailed analysis. I am not sure that he has deliberately set out to lie in support of his case. Parts of his case, I find, are well-founded. But I do think that at times he was prone to exaggerate the extent to which he had actually implemented such intentions as there may have been at the time of the original purchase; and I do think that he exaggerated too the extent of his financial contribution to the purchase of the property and his mother's living there. I find that I must treat his evidence with considerable caution where it is not corroborated by other reliable evidence or by contemporaneous documents which I find to be documents that accurately reflect the situation at the time.

41. Against that background, I turn to my findings of fact.

42. I am satisfied that Michael did approach at least some, and probably all, of the children to join in the purchase. That is supported by the evidence of Sotiris and also Demetris. I have already referred to Demetris's oral evidence on the point. In addition, in his witness statement he said (at paragraph 6) that Michael had telephoned and informed him that their late mother, he (Michael), and any other family member wishing to do so, were planning to take advantage of his mother's right to buy her council house, and that Michael informed him that Kevin had participated in the purchase. As I have said, I accept that evidence, and I find that Michael did in fact approach some, and probably all, of the children. If he did not approach any of them, it was simply because of difficulties in getting in touch with them, some being resident in Cyprus. I find that the original intention was that Kevin should participate in the purchase. I find that that intention that Kevin should participate survived the news that Haringey would not accept his name on the legal title to the property. However, I do not accept that Kevin made the full financial contributions to the initial purchase, and to payment of outgoings thereafter, to which he has spoken. I do not accept that the £180 that was withdrawn from his account on 24th February, or the £1,200 that was withdrawn from his account on 10th August 1988, were applied in connection with the purchase of the property. I simply fail to see why he should have been contributing those sums towards the purchase of the property on or around those particular dates. There is no contemporaneous documentation evidencing payment of those sums in connection with the proposed purchase of the property. The withdrawal of £180 on 24th February 1988 preceded a letter from Seifert & Co to Michael of 9th March, in which Lesley Seifert said that she had then received all the papers from the London Borough of Haringey in connection with his proposed purchase under the right to buy. Miss Seifert went on to say:

"As I know you are arranging a mortgage, I will wait to hear from you when you have completed your arrangements. In the meantime, I shall take no further action."

There is no reference there to having received any money at that point in time from Kevin; and I do not see why Ms Seifert should have received any such money. Ms Seifert in evidence said that her firm's fees, which she estimated – and it could be no more than an estimate – would have been in the order of £500 to £600, would have been payable on completion; and completion did not take place until December of that year. Similarly with regard to the withdrawal of £1,200 on 10th August 1988. There is a letter from Seifert & Co to Michael of 18th August, saying that she had received a notice to complete from Haringey which gave the deadline to complete of 11th October, and that she was still waiting to hear from Michael as to his mortgage arrangements. That letter notifying Michael of receipt of the notice to complete postdated the withdrawal by just over a week. I find it difficult to see why Kevin should have had to be furnishing £1,200 in connection with the purchase of the property at that point in time. Ms Seifert had said that, so far as she could see, nothing had been happening in the period between her firm's two letters of 9th March and 18th August. Based on the evidence, limited though it is, in the Halifax account book for Mr Hapeshi, it is clear that there had been withdrawals of similar amounts the previous year which were nothing to do with the purchase of the property. Moreover, looking at the fact that the withdrawal of £1,200 operated to reduce the balance in the account to a mere £17, I really fail to see why Kevin should have been withdrawing money from an interest-bearing account before he needed to do so. It seems to me inherently implausible that he would withdraw money from an interest-bearing account before he actually needed to provide money. So I simply cannot accept that either the £180 or the £1,200 were referable to the purchase of the property. Moreover, I find it difficult to see why sums totalling nearly £1,400 should have been required to be provided by Kevin in connection with the purchase of the property. The purchase price was £27,260, of which £27,000 was to be provided by way of mortgage advance from Barclays. Kevin referred to valuation fees and mortgage arrangement fees and solicitors' costs. Ms Seifert said, understandably, that the solicitors' costs would have come at the end of the transaction, and would have been in the order of £500 to £600. We in fact know from the additional documents that were produced on the morning of day 3 of the trial that those monies in respect of the balance of Seifert & Co's account, and amounting to £491.30, came from the proceeds of the part surrender of a general portfolio bond. There may be some uncertainty as to whether that bond had been funded by monies provided by Michael. It was clearly in the name of Mrs Hapeshi. It may have been funded by monies from Michael; but there was never any suggestion that it had been funded in any way by Kevin. It is clear that it was that that was the source of the payment of the balance of Seifert & Co's account. There was no stamp duty payable on the conveyance, which was for a price of £27,260. The letter from Barclays Bank dated 30th November 1988 (page 120) does not give any figure as "The following expenses – home mortgage fee, mortgage valuation fee or other expenses". So far as the documentation is concerned, there would appear to have been no bank valuation fee and no mortgage arrangement fee. So I simply cannot

accept the evidence of Kevin that the £180, which he did not appear initially to identify relating to the purchase, or the later £1,200 which he originally did, in fact related to the purchase of the property.

43. Thereafter, there is, as Mr Goldsmith accepted in his closing speech, not an awful lot of documentary evidence of Kevin making payments in connection with the purchase of the property. There is some documentary evidence that he contributed to electricity and gas bills and assisted with the purchase of certain household items and paid some household insurance, in particular in the years 1995, 2004 and 2006; but there is no documentary evidence supporting Kevin's case, and I am not satisfied that he consistently contributed monies towards payment of the mortgage. It is clear from the evidence he gave that he had limited income in 1988 and 1989; and, against that income, he was having to pay the mortgage for a property in Cardiff, and he later acquired a second property on which there was a mortgage, for a time running simultaneously, when he moved from Cardiff to Bristol. There are no bank statements for the period when the mortgage was being funded from Barclays. There are bank statements from the time when the Abbey National took over the mortgage. As I have said, there is an initial discrepancy in the opening balance; but if one goes to the Abbey National statement for 1991, there would appear to have been a shortfall on mortgage interest against repayments of some £750, and during 1992 there would appear to have been a shortfall of some £900. I arrive at those figures by deducting the opening balance from the closing balance in each case. So clearly mortgage interest was not being paid in full during the period 1991/1992 because that is clear from the Abbey National statements. In October 1993 it is clear from the Abbey National statements that benefit payments start being received by Mrs Hapeshi. It is at about this time that the Barclays No 2 account is opened by Kevin. If one goes to page 160, one sees there a chequebook stub for 19th November 1993, and the fact it is chequebook stub No 2 suggests that the account had been opened shortly before that time.

44. It is clear from the Abbey National statements that from 1996 to 2001 all repayments to Abbey National of interest appear to have been derived from the benefits that Mrs Hapeshi was receiving. Thereafter, the interest would appear to have been funded from both benefits and rents. I have accepted the evidence of Demetris that there were lodgers before 1993; and it therefore seems to me that part of the monies which were being used in part only to defray mortgage interest payments were being derived from rent from paying lodgers.

45. At the end of the day, there is little evidence of either Michael or Kevin making the payments that they had promised on a regular basis towards the interest on the mortgage. Hence, the complaints which, consistently with the evidence of both Demetris and his sister Despina, their mother was making about Michael not performing in accordance with his agreement. There is some documentary evidence of payments. There is £200 on 19th November 1993 and £300 on 7th January 1994; but those payments seem to have come from the Barclays No 2 account and, therefore, the funds were not necessarily derived from Kevin's own pocket. I am prepared to accept, although I find it difficult to explain the almost month's delay in it being credited to the mortgage account, that Kevin did provide £800 on 7th October 1994, which formed part of a personal loan of £3,000 which he had taken out and had withdrawn on 6th September 1994. It also became apparent on the morning of the third day of the trial, from documents produced on that day, but foreshadowed by the terms of Kevin's witness statement, that he had provided £1,000 on 18th April 1996 which was used to pay off mortgage interest arrears, and which was derived from Kevin's Halifax account in Cardiff. That payment was no doubt prompted by the letter that the Abbey wrote on 10th April 1996 (page 215), addressed to Michael and Mrs Hapeshi, complaining of mortgage arrears then of £707-odd. That letter is dated 10th April, and the relevant mortgage statement at 196 shows that £1,000 was paid in on the 18th, and the document produced on the morning of the third day of the trial shows that that came from Mr Hapeshi's Halifax account. But I am not satisfied that Kevin made substantially more payments than those I have indicated. I am satisfied, because even Demetris accepts that this was the case, and indeed it was accepted by the first defendant, that originally Kevin was going to join in the purchase. I am satisfied that even though Haringey would not accept him as a legal purchaser, Kevin agreed with Michael and his mother that he would continue to participate in the purchase, even though his name would not appear on the title deeds. That is consistent with the terms of the letters from Seifert & Co written after completion, the first on 6th January 1989, "Would you please telephone me with regard to the trust deed in this matter" (page 148), and, more particularly, the letter of 19th June (page 300). Clearly there was still talk going on about some form of trust deed regulating the shares of Michael, his mother and also Kevin in the property. However, Ms Seifert herself in her witness statement said that she had made it clear that the only way to protect Kevin would be to draw up a trust deed setting out the agreement to hold the property in trust for Michael and Kevin. That was,

however, never done. Nothing was done in that regard in response to the letter from Miss Garcia of 19th June 1989. Nothing was done when Barclays' mortgage was redeemed and the property was remortgaged with the Abbey National in April 1990. Nothing was done after the death of Michael in 2001. In that regard, an attendance note (page 311) produced by Ms Seifert shows that on 13th March 2001 Kevin had had a conversation with her in which he is recorded as having said that he has a third share in the property, "that Mike owned a third and that mum owned a third". I do not attach any particular significance to the tenses used in that attendance note. It seems to me that it may simply have been referring to the time immediately before Michael's death, since it records him as "owning" a third. But, nevertheless, it is surprising that following the death of Michael nothing was done if there was firm agreement as to the terms of any trust. Again nothing is done when Mrs Hapeshi makes her will later in 2001. I do bear in mind that that will appears to have been prepared by the firm of solicitors who, until November of last year, was acting for the first defendant in this litigation, and yet no will file was ever produced on disclosure in this matter. Nevertheless, it is surprising that nothing was done at any time. Most surprising of all, nothing was done with regard to producing a trust deed after the meeting between Kevin and his wife, his mother and Miss Mary-Anne Morris in December 2005. There was no satisfactory explanation provided as to why nothing was done. The only inkling of any explanation may come from something that Kevin said in the course of cross-examination: that if he had changed the title deeds, he would have become liable for the mortgage. It may well be that he was not prepared to commit himself to the Abbey National; and that may have been the explanation.

46. Related to that, however, is the fact that, although Kevin took out an endowment policy just before the purchase of the property, and for the very amount which had been borrowed from Barclays to finance the purchase, £27,000, that policy was never ever charged as security for the financing of the purchase of the property. It is too great a coincidence that it was taken out in that amount and at that time for the court to conclude otherwise than that it was related to the property purchase; but the fact remains that it was never charged as security. Equally, Kevin never contractually committed himself in any way to payment of the mortgage. There was no document produced by way of comfort to either his mother or his brother saying that he would be bearing any particular part of the mortgage.

47. Against all of that background, I am unable to find that there was any express discussion and agreement between Kevin, his brother and his mother as to the precise extent of any beneficial interest he would have in the property. I cannot accept that there was an express agreement that they would hold as beneficial joint tenants. True it is that in the transfer Mrs Hapeshi and Michael declared that they held as beneficial joint tenants, but it is quite clear that Mrs Hapeshi herself could not understand written English. It is quite clear from Ms Seifert's evidence that Mrs Hapeshi never received any explanation direct from Seifert & Co as to the basis on which the property should be held. It is quite clear that she would not have understood (if she had been shown it) the document that Miss Garcia sent enquiring whether it should be held as beneficial joint tenants or tenants in common. So even if that document was returned, it does not indicate or connote an understanding and intention on Mrs Hapeshi's part that the property should necessarily be held in that way.

48. Moreover, although the concept of joint tenancy and tenancy in common was explained to Michael and his mother, there is no suggestion in either the contemporaneous documents or in the evidence that there was ever any indication given that joint tenancy was not an irrevocable matter. To a lawyer practising in the field of real property, it will be known that a joint tenancy can be severed by written notice and without too much difficulty; but there is no indication that that was known to, or appreciated by, any of the relevant actors in this drama. Therefore, the concept of survivorship would not necessarily have been seen as a finite consideration.

49. For all those reasons, therefore, it seems to me that Kevin has not made out his case that there was any express discussion or agreement as to the shares in which the property should be held, or as to whether it should be held as tenants in common in those shares, or as beneficial joint tenants with the consequent right of survivorship.

50. I therefore have to undertake the exercise of quantifying the extent of the interest of Kevin, and also of Michael's estate and of the mother's estate, in the absence of any such express agreement. It seems to me that I should adopt what has been described as the "holistic approach", undertaking a survey of the whole course of dealing between the parties, and taking account of all conduct which throws light on the question of what shares were intended; and I should undertake that exercise in

relation to the period at which the trust is to be treated as being dissolved, namely the death of Mrs Hapeshi. I bear in mind that the discount that Mrs Hapeshi effectively provided exceeded the amount of the cash consideration paid to the local authority. I bear in mind the fact that Mrs Hapeshi remained in occupation of the property throughout, but, as I have also indicated, from 1993 she was providing part of the interest by way of benefits, and even before that she had been receiving an income from lodgers, which I am sure went towards payment of the mortgage interest when it was, and to the extent that it was, being paid, which was not in full. As I have indicated, it is clear that from 1996 onwards the mortgage was being effectively financed out of the benefits and the rents from lodgers. I bear in mind that it is clear that Michael and Kevin did not honour in full their commitment to pay the mortgage because arrears arose on the mortgage, although Kevin did assist in paying off those arrears. I bear in mind that each of Michael and Kevin did take out endowment policies; but I also bear in mind that Kevin's policy was not charged as security for the finance, and that in or about February 2006, for valid reasons, he surrendered that mortgage endowment policy and received the proceeds himself and applied them for his own benefit, and not in any way connected with the purchase of the property.

51. Bearing all of those facts in mind, and undertaking a difficult exercise without the assistance of any real authority, it seems to me that, adopting the holistic approach commended by the Law Commission and accepted in both Stack and Abbott, what I should say by way of quantification of the shares is that the share of the estate of Mrs Hapeshi should be quantified at 50% and that the shares of each of Kevin and of Michael's estate should be quantified at 25% each.

52. That is my judgment in the matter.