IN THE COURT OF APPEAL (CIVIL DIVISION) **App. No. CA-2024-001215**

ON APPEAL FROM THE HIGH COURT OF JUSTICE **Claim No. CL-2022-000383**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
(Sir Nigel Teare, sitting as a Judge of the High Court)

B E T W E E N

CRESCENT GAS CORPORATION LIMITED

Applicant / Judgment Creditor / First Respondent

and

(1) NATIONAL IRANIAN OIL COMPANY

Defendant / Judgment Debtor / Appellant

(2) RETIREMENT, SAVING AND WELFARE FUND OF OIL INDUSTRY WORKERS

Defendant / Second Respondent

APPELLANT'S REPLACEMENT SKELETON ARGUMENT

BANKIM THANKI KC

DAVID MUMFORD KC

LAURA NEWTON

JAMES KINMAN

4 October 2024

A. Introduction

1. The issue in this appeal is whether Crescent Gas Corporation Limited ("**CGC**") is entitled to enforce a judgment debt owed to it by National Iranian Oil Company ("**NIOC**") against an extremely valuable Central London property ("**NIOC House**") currently registered in the name of Retirement, Saving and Welfare Fund of Oil Industry Workers (the "**Fund**"). The Fund is a pension fund for hundreds of thousands of Iranian oil, gas and chemical industry workers (many of whom are NIOC employees), established in Iran in the late 1950s. On the Judge's findings below, it acquired legal personality as a matter of Iranian law in 2019[1].

2. CGC seeks to enforce against NIOC House in part satisfaction of an arbitration award rendered against NIOC in September 2021 in a highly sensitive and complex arbitration, in which Crescent was implicated in corrupt activities. CGC says that it is entitled to enforce against NIOC House because, until 23.08.2022, NIOC House was registered in the name of NIOC and – it alleges – NIOC transferred it to the Fund to frustrate enforcement action against it.

3. NIOC and the Fund say that NIOC House is not an asset against which CGC should be entitled to enforce because – prior to its transfer – it was held on trust by NIOC for the Fund. They rely upon, amongst other things:

   (1) Decades-worth of documents (including declarations of trust) going back to the 1970s, when the property was acquired, making clear that NIOC always regarded NIOC House as an asset of the Fund, and not its own asset.

   (2) The uncontested fact that all rent from NIOC House had been paid to the Fund rather than NIOC and that (as CGC's own case acknowledges – see e.g. ¶7 of its skeleton below **{SB/49/396}**) all economic benefits of the property were exclusively for the Fund.

   (3) The fact that substantial expenditure related to NIOC House had been met by the Fund rather than NIOC.

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[1] NIOC contended below that it had acquired legal personality in 2001; but permission to appeal the Judge's finding on this issue has been refused. The Judge used the term "the Fund" to refer to it both pre- and post- the date on which it acquired legal personality under Iranian law. This skeleton adopts the same approach.

4. In the judgment at first instance handed down on 15.04.2024 ("**the Judgment**"), the Judge accepted that there had been a number of occasions on which NIOC had declared that it held NIOC House on trust for the Fund. Nevertheless, the Judge found that CGC could enforce against it because:

   (1) All but two of those declarations had been made prior to the Fund acquiring legal personality under Iranian law in (on the Judge's findings) 2019.

   (2) The Judge found that the two declarations that post-dated this were without effect because they were signed by authorised agents of NIOC and not directors of NIOC. In the Judge's view, this meant that the trust which he found to have been declared in favour of the Fund could not be enforced, by virtue of s. 53(1)(b) of the Law of Property Act 1925 ("**LPA 1925**").

5. NIOC respectfully submits that the Judge made a number of crucial legal errors as to (a) the requirements of s. 53(1)(b) LPA 1925; (b) what it means for a company to "*sign*" a document; and (c) the consequences of non-compliance with s. 53(1)(b). In particular, and in short summary, NIOC contends:[2]

   (1) Under **Ground 1** of this appeal: that the Judge was wrong to conclude that a document signed by an agent cannot amount to "*writing signed by some person who is able to declare such trust or by his will*" for the purposes of s.53(1)(b). On a proper interpretation of that provision, a document signed by an agent suffices.

   (2) Under **Ground 2**: that even if the Judge were right in his interpretation of s.53(1)(b), he was wrong to conclude that the documents which he found amounted to (and/or manifested) declarations of trust were not signed by NIOC. Applying one or more of: (a) common law principles, (b) s. 44 Companies Act 2006 ("**CA 2006**") and/or (c) s. 74 LPA 1925, they were.

   (3) Under **Ground 3**: that even if the Judge were right to find that there was no document satisfying the requirements of s. 53(1)(b) LPA 1925, he erred in law when he concluded that the effect of NIOC's failure to comply with s. 53(1)(b) was that the Defendants could not rely upon the trust which – on the Judge's own findings – NIOC had declared over NIOC House in favour of the Fund. That is not the consequence of non-compliance with the requirements of the section.

[2] NIOC was refused permission to appeal under Grounds 4-6 and 8.

6. Correcting for these errors, on the Judge's own findings there was a valid declaration of trust in favour of the Fund which satisfied the requirements of s.53(1)(b), or at any rate which effectively vested beneficial title to NIOC House in the Fund, prior to the impugned Transfer. Further, and by parity of reasoning, NIOC's own Defence in the action constituted a document which manifested and proved the relevant trust. Accordingly, NIOC contends:

   (4) Under **Ground 7**: that there was no proper basis for the order made under s.423.

7. As can be seen, the central issue on this appeal is whether a person can sign a document "manifesting and proving" a declaration of a trust of land for the purposes of s. 53(1)(b) LPA 1925 via an agent. This issue has been the subject of debate for almost a century, but has not been settled. It is an important question, which the Judge accepted was hitherto "*open*". If a document "manifesting and proving" a declaration of trust cannot be signed by an agent, it would not be possible for anyone who is dependent upon agents to interact with the wider world (such as people who lack capacity and act through persons with lasting powers of attorney or deputies appointed under the Mental Capacity Act 2005) to declare an effective trust of land.

B. Background

B.1 NIOC and the Fund

8. NIOC was incorporated in the mid 20th Century. In 1958, it was directed by regulation to establish a separate pension fund, to open a specific account for those funds, and to ensure that those monies did not form part of its assets. By 1962, a bank account in the name of the Fund was opened at Bank Melli Iran. By art. 36(m) of NIOC's articles as approved in 1964, it was stated that the monies in the account were not to be treated as part of NIOC's funds and were to be managed by NIOC's Board of Directors as "*amin*" for the Fund (although trial was approached on the basis that it was actually or effectively NIOC itself which was the "*amin*"). Materially identical provisions appeared in NIOC's 1968 and 1974 articles. An "*amin*" is an Iranian law concept. It is used to describe a person who has been entrusted with an asset for another person, but that other person retains all legal and beneficial interest in the asset. This arrangement is called an *amanat* (Judgment at ¶31-¶38 **{CB/15/172}**.)

B.2 NIOC House

9. On 12.09.1975, NIOC purchased NIOC House. There was a dispute at trial as to how this purchase was funded but there is no dispute that, over the following decades and at all

relevant times, rent paid by tenants of NIOC House was paid to the Fund and not to NIOC (see Judgment at ¶61 **{CB/15/177}**), and on CGC's own case *all* economic benefits of NIOC House were exclusively for the Fund (**{SB/49/416}**). Similarly, the Fund bore all of the very substantial expenses associated with ownership of NIOC House: see, for example, ¶17 **{SB/16/162}** and ¶25-¶28 **{SB/16/164}** of Mr Bayat's Second Witness Statement, which were unchallenged. Further, on many occasions over those decades, NIOC's internal and external documents recorded an understanding and intent that NIOC House was and should be an asset of the Fund rather than an asset of NIOC. These are summarised in the appended Schedule.

B.3 The dispute between the parties

10. CGC and NIOC are engaged in a long-running arbitration relating to lost profits and other claims by Crescent in connection with sales by NIOC of Iranian gas to Crescent for onward sale in the UAE. Exactly why the arbitration has been running for so long is fiercely disputed.[3] The important point is that NIOC was ordered to pay CGC $2,429.97 million by a partial award on remedies dated 27.09.2021 (Judgment at ¶5 **{CB/15/165}**). Permission was given to CGC to enforce that award by order of Knowles J dated 15.08.2022 **{SB/3/71}**[4].

11. On 23.08.2022, NIOC transferred legal title to NIOC House to the Fund (Judgment at ¶8 **{CB/15/166}**) (the "**August Transfer**").

12. On 13.10.2022, CGC filed notice of an application for an interim charging order over NIOC House. That application was granted by Master Brown on 07.11.2022 (see **{SB/4/75}**). However, when CGC attempted to register the interim charging order, it found that NIOC

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[3] Amongst other issues, Crescent's appointed arbitrator resigned at a time when the award on remedies was understood to be imminent, and Crescent subsequently challenged the tribunal president resulting in his removal. These events contributed to several years of delays in issuance of the partial award on remedies between 2018-2021.

[4] There have been very recent developments in litigation in the UAE, and also in ongoing arbitration proceedings between Crescent and NIOC, going to the extent to which CGC and/or related Crescent parties had requisite licences to lawfully undertake *any* commercial activities in the UAE (and without which licences such entities would not have legal personality as a matter of UAE law), which may affect the basis of the arbitration and/or the Knowles J order. The UAE licence issue is currently the subject of a wider appeal before the UAE Federal Supreme Court. NIOC is considering the position and reserves its rights.

House had been transferred to the Fund (see Judgment at ¶8 **{CB/15/166}**). This prompted an amendment to the interim charging order by order of Master Brown on 23.12.2022, by which the interest of the Fund was also made subject to the interim charging order (see **{SB/5/79}**). On 06.03.2023, Master Brown issued directions for a trial of the following questions: (a) whether the Fund was the sole beneficial owner of NIOC House at the time of the August Transfer; (b) whether a final charging order should be made; and (c) whether relief should be granted to CGC pursuant to s. 423 of the Insolvency Act 1986 ("**IA 1986**") **{SB/6/84}**.

13. CGC's position was that the August Transfer was a transaction entered into at an undervalue for the purpose of putting assets beyond its reach or otherwise prejudicing its interests. Accordingly, it applied for an order under s. 423 IA 1986 requiring the Fund to transfer NIOC House to CGC; alternatively, that a final charging order should be made over NIOC House in its favour.

14. NIOC's and the Fund's case was that at all relevant times NIOC House was beneficially owned by the Fund, and that – as a consequence – the August Transfer was not at an undervalue and was neither intended to, nor could it, prejudice CGC's interests.

C. NIOC's case at first instance and the Judgment

15. NIOC's primary position at first instance was that NIOC House was paid for with funds from the *amanat* and was held within the *amanat* at all times since. The English Court was bound to give effect to this Iranian law position by art. 11 of the Hague Convention on the Law Applicable to Trusts and on their Recognition.

16. The Judge rejected this case. He held that NIOC House was paid for with monies which had been loaned by the Fund to NIOC, with the consequence that NIOC House was held by NIOC on its own account rather than within the *amanat* (Judgment at ¶44-¶52 **{CB/15/175}**, ¶150-¶157 **{CB/15/192}**). NIOC disagrees with these findings, but recognises that they are the findings of fact and foreign law, and – being realistic about the role of an appellate court in relation to such findings – it did not seek permission to appeal them.

17. NIOC's alternative case was that, even if NIOC House was held by NIOC outside of the *amanat*, the documents produced by NIOC since 1975 demonstrated an intention to hold NIOC House on trust for the Fund, meaning that NIOC divested itself of any beneficial interest in NIOC House well before the August Transfer.

18. As to this, the Judge concluded as follows:

(1) First, and as already noted, the Judge rejected NIOC's case that the Fund obtained legal personality in 2001, finding instead that this only happened on 25.09.2019 (see the Judgment at ¶176 **{CB/15/197}**).

(2) Secondly, the Judge formed the view that documents evincing an intention to hold NIOC House on trust which preceded the date on which the Fund acquired legal personality could not be effective to vest the beneficial interest in the Fund (see the Judgment at ¶185 **{CB/15/199}**).

(3) Thirdly, there were two documents executed after the Fund acquired legal personality which the Judge concluded (correctly) were declarations of trust in favour of the Fund. These were:

a. On 25.09.2019, NIOC, the Fund and Bank Melli entered into a mortgage agreement in relation to NIOC House, cl. 1.4(a) of which stated "[NIOC] *is the legal owner of* [NIOC House] *and the* [Fund] *is the sole beneficial owner of* [NIOC House]" (the "**2019 Mortgage Deed**"). The mortgage was executed by NTT as attorney for NIOC (see Judgment at ¶115-¶116 **{CB/15/186}**; the document is at **{SB/40/273}**).

b. On 09.01.2020, a signed certificate of title was provided to Bank Melli (amongst others) by Eversheds (who were NIOC's and the Fund's solicitors), in which Eversheds recorded that "*The legal interest in* [NIOC House] *is held by* [NIOC]. *The beneficial interest in* [NIOC House] *is held by* [the Fund]" (the "**2020 Certificate of Title**") (see Judgment at ¶117 **{CB/15/187}**; the document is at **{SB/44/334}**).

(4) However, fourthly, the Judge found that the trust was not "*manifested and proved*" by a signed written document in accordance with s. 53(1)(b) LPA 1925. While the 2019 Mortgage Deed and the 2020 Certificate of Title were each signed, the signatures were of authorised agents which, the Judge held, were insufficient for the purposes of s. 53(1)(b) LPA 1925 (Judgment at ¶194-¶200 **{CB/15/200}**). The Judge further found that the consequence of the foregoing was that "*The trust relied upon by NIOC and the Fund cannot be established*" (Judgment at ¶201-¶213 **{CB/15/201}**).

19. Having rejected NIOC's case as to the existence of a trust over NIOC House in favour of the Fund, the Judge went on to find that the August Transfer had been effected, at least in part, in order to put NIOC House beyond the reach of CGC and that it was appropriate to exercise his discretion under s. 423 IA 1986 to require the Fund to transfer NIOC House to

CGC (Judgment at ¶214-¶232 **{CB/15/204}**).

D. Ground One: A document signed by an agent can satisfy the requirements of s. 53(1)(b) LPA 1925

20. It is submitted that the requirements of s. 53(1)(b) LPA 1925 can be satisfied by the signature of an agent of the person over whose property the trust is declared; and that the scattered and unreasoned *obiter* suggestions in case law[5] to the contrary are wrong. Accordingly – and on the Judge's own findings – there was an enforceable declaration of trust by NIOC of NIOC House in favour of the Fund prior to the August Transfer.

21. Section 53 LPA 1925 provides:

> "*(1) Subject to the provision hereinafter contained with respect to the creation of interests in land by parol—*
>
> *(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;*
>
> *(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;*
>
> *(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.*
>
> *(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.*"

22. The default position under English law is that "*at common law a person sufficiently "signs" a document if it is signed in his name and with his authority by somebody else; and in such case the agent's signature is treated as being that of his principal*". This is a manifestation of the common law principle that "He who acts through another does the act himself"[6]: *The Queen v The Justices of Kent* (1872-73) L.R. 8 Q.B. 305 at 307 and *London County Council v Agricultural Food Products Ltd* [1955] 2 QB 218 at 223. Statute may in certain circumstances require that a signature be given by a particular person, and not his agent, but such statutes are "*exceptional*" – see *Northwood Solihull Ltd v Fearn* [2022] EWCA Civ 40; [2022] 1 WLR 1661 at ¶30.

23. The question is whether s. 53(1)(b), properly construed, excludes the possibility of signature by an agent. As to the relevant principles of statutory construction:

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5 See e.g. *St Ermins Property Co Ltd v Tingay* [2002] EWHC 1673 (Ch); [2003] L&TR 6 at ¶26.

6 Or, as it used to be put, *Qui facit per alium facit per se*

(1) The primary indication of legislative intention is the legislative text, read in context and having regard to its purpose. For this purpose, Parliament is assumed to be a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner (*Bennion* at ¶11.1).

(2) Part of the above assumption is that Parliament is generally not taken to have intended a construction which is impracticable, irrational or causative of unjustifiable inconvenience (*Bennion* at ¶13.3-¶13.5).

(3) Further, statutes are to be construed in the context of the common law, one aspect of which is that "*Where there is a provision in a statute requiring a document to be "signed" by a particular person, with nothing in the subject-matter or context to indicate that personal signature is necessary, then, in accordance with the common law rule, a person may sign by the hand of another authorised for that purpose*" (*Bennion* at ¶25.2).

24. Applying these principles, the answer to the question posed above is plainly "no". All that the statute requires is the signature of "*some person who is able to declare*" a trust over land. An agent who is authorised to declare a trust over his principal's property is "*some person who is able to declare*" that trust, as has been noted by a number of distinguished commentators, including Dr Charles Harpum (then Head of the Property and Trust Law Team at the Law Commission) in *Modern Studies in Property Law Vol 1* (2001) at p. 12; Thomas & Hudson in *The Law of Trusts* 2nd Ed. (2010) at ft. 38 to ¶5.11 and Prof. Youdan in *Formalities for Trusts of Land, and the Doctrine in Rochefoucauld v Boustead* (1984) CLJ 43(2) at ft. 51:

(1) A properly authorised agent can transfer property to be held on trust; see e.g. *High Commissioner for Pakistan in the United Kingdom v Prince Muffakham Jah* [2019] EWHC 2551(Ch); [2020] Ch 421 at ¶246-¶247; or create a trust over property in its principal's hands: see *Pennington v Waine* [2002] 1 WLR 2075 at ¶67.

(2) Agents can and do generate trusts over land owned by their principals when they enter into contracts for sale of land on their principal's behalf (see *Megarry & Wade* (10th Ed.) at ¶14-051 to ¶14-055).

25. In the Judgment at ¶197 **{CB/15/201}**, the Judge reached the contrary conclusion by contrasting the wording of s. 53(1)(a) ("*the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing*") and s. 53(1)(c) ("*the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will*") and reasoning that the difference in wording was to make clear that an agent could sign the documents contemplated by s.

53(1)(a) and s. 53(1)(c) but only the principal could sign the documents contemplated by s. 53(1)(b). This reasoning is flawed in four respects.

26. First, it overlooks the reason why agents are specifically referred to in sections 53(1)(a) and 53(1)(c) LPA 1925: i.e. to provide that a document executed by an agent will only be effective if the agent is itself authorised in writing. This is obviously necessary in the context of provisions which require the conveyance or disposal of interests in land or equitable interests to themselves be in writing. If express provision were not made for the mode by which agents could be authorised for the purposes of sections 53(1)(a) and 53(1)(c) LPA 1925, the general rule articulated in *London CC*[7] would apply, and it would be possible to authorise agents orally to execute such conveyances or disposals, fatally undermining the policy of those sections which are derived from the Statute of Frauds. In other words, express provision is made in relation to agents in sections 53(1)(a) and 53(1)(c) to *narrow* the class of potential signatories, not to expand it.

27. As noted by Dr Harpum, no such policy arises in the case of s. 53(1)(b):

(1) Section 53(1)(b) is concerned with how one evidences (or "manifests and proves") declarations of trust. It does not prescribe how one actually declares a trust. As it is put by Prof. Virgo in *The Principles of Equity & Trusts* (5th Ed.) at pp 123-124: "*If express trusts of land are not proved by signed writing, the trust is unenforceable rather than void. In other words, the trust is valid, but it cannot be enforced by the beneficiary. So, if the trustees wish to be bound by the trust, they can be, but they cannot be compelled to fulfil their trust obligations if they do not wish to do so* [subject to certain exceptions]". The practical consequences of this fact are illustrated by *Gardner v Rowe* (1825) 2 S. & S. 346, in which Mr Wilkinson took the lease of a mine and subsequently committed an act of bankruptcy. It was established that he took the lease as trustee for Mr Rowe, but did not sign any document which satisfied s. 7 of the Statute of Frauds (the predecessor to s. 53(1)(b)) until after he had committed the act of bankruptcy, which caused his estate to vest in his assignees in bankruptcy. The Court found that the post-bankruptcy document proved a pre-bankruptcy trust which had been validly subsisting at all times since the acquisition of the lease, and so Mr Rowe took its benefit, and not Mr Wilkinson's assignees.

(2) Further, a document does not need to have been created for the purpose of "manifesting and proving a trust" in order to do so. So, in *Forster v Hale* (1798) 3 Ves. Jun. 696, letters were written by a trustee to his beneficiaries incidentally adverting to

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7 See paragraph 22 above.

the existence of an orally declared trust of a colliery, and they were held to satisfy s. 7 of the Statute of Frauds.

28. Given that s. 53(1)(b) allows for trusts to be declared orally, and does not require any documents of any particular nature to prove that trust, there is no fundamental objection to orally authorised agents being involved in the creation or evidencing of the trust (unlike in the context of s. 53(1)(a) and s. 53(1)(c)).

29. Secondly, the Judge overlooked crucial differences in language between s. 53(1)(b) on the one hand and s. 53(1)(a) and s. 53(1)(c) on the other. Sections 53(1)(a) and 53(1)(c) refer to the person effecting the conveyance or disposal as "*the person*". The statute does not use the same language in s. 53(1)(b). Instead, it talks of "*some person who is able*". The discrepancy in language in three closely related sections must be intentional. In sections 53(1)(a) and 53(1)(c), the draughtsman must mean the principal when he refers to "*the person*" (given the distinction between "*the person*" and "*his agent lawfully authorised in writing*"), which suggests that something else must be meant by "*some person who is able*". The obvious meaning to attach to those words is their plain one: i.e. anyone who actually can declare a trust over the property, including the beneficial owner of the property and its authorised agents.

30. Thirdly, there was a tension at the heart of the Judgment: the Judge found (at ¶188 **{CB/15/199}**, ¶191 and ¶194-¶213 **{CB/15/200}**) that the 2019 Mortgage Deed and 2020 Certificate of Title were declarations of trust by NIOC over NIOC House, but also that those declarations of trust could not be proved, because they were not signed by "*some person who is able*" to declare those trusts. It is difficult to reconcile these findings. If, as the Judge rightly found, the 2019 Mortgage Deed and the 2020 Certificate of Title were declarations of trust, they must have been signed by some person who was able to declare them.

31. Fourth, the Judge rightly recognised at ¶197 **{CB/15/201}** that a company could sign a s. 53(1)(b) document by having a director do so on its behalf. However, he failed to recognise that individual directors (as opposed to a company's board) are only able to bind a company to the extent that they are authorised to do so, and the reason why they are able to bind a company is because they are acting as agents, not because of their office (see e.g. *Mitchell & Hobbs (UK) Ltd v Mill* [1996] 2 BCLC 102 at 107-108).

32. For the above reasons, the Judge should have found that NIOC could satisfy s. 53(1)(b) LPA 1925 by producing evidence of a declaration of trust signed by its agent. Had he done so, on the Judge's findings, the 2019 Mortgage Deed and the 2020 Certificate of Title would have been evidence (in each case post-dating the Judge's finding of the Fund obtaining legal

personality) of the trust which the Judge found to be declared in the Fund's favour, which complied with s. 53(1)(b), with the consequence that the Fund was the beneficial owner of NIOC House well in advance of the August Transfer.

33. On the above basis, the requirements of s. 53(1)(b) LPA 1925 were also met by NIOC's Amended Defence, which set out the existence and the terms of the trust which the Judge found to be declared and was signed by Mr Howarth of NIOC's solicitors in these proceedings, Eversheds Sutherland (International) LLP, under the authority of NIOC (see ¶86(9)-(10) **{CB/20/309}**). The fact that the Amended Defence was only created after NIOC had divested itself of NIOC House makes no difference (see *Gardner v Rowe* (1825) 2 S. & S. 346, in which a document satisfied s. 7 of the Statute of Frauds notwithstanding the fact that it was created after the declarant had committed an act of bankruptcy). Nor does the fact that the Amended Defence was created during the course of proceedings prevent it from satisfying those requirements. A s. 53(1)(b) document can be generated at any time (see *Rochefoucauld v Boustead* [1897] 1 Ch 196 at 206), including during proceedings as to whether or not a disputed trust exists[8] (see *Nab v Nab* (1717) 10 Mod 404).

E. Ground Two: NIOC had signed declarations of trust as principal

34. Even if the Judge were right to find that a document manifesting and proving a declaration of trust for the purposes of s. 53(1)(b) LPA 1925 must be signed by the person over whose property the trust is being declared, that raises the question of how a company is to comply with s. 53(1)(b) LPA 1925, given that – as a legal fiction – a company can only ever act

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[8] There is first instance authority to the contrary: *Close Invoice Finance Ltd v Abaowa* [2010] EWHC 1920 (QB), in which Mr Picken QC found (as a deputy) that no document generated for the purposes of proceedings as to the existence of a trust could satisfy s. 53(1)(b) LPA 1925 – see ¶87. However, that decision was contrary to earlier authority (cited above), to which the Judge was not taken. It is also wrong as a matter of analysis. The basis on which the Judge appears to have thought that producing such documents during the course of proceedings was not permitted by s. 53(1)(b) was that such documents would be self-serving. That might arguably be a reason to treat such documents with circumspection, not a reason to impose an evidential bar upon them. Further, such a bar would create unworkable and unprincipled distinctions depending on when the bar would fall. Would it bar the creation of such documents as soon as there was a dispute as to the existence of the trust? Once proceedings were in contemplation? Or once proceedings were actually issued? Wherever it fell, it is easy to contemplate circumstances in which it would generate arbitrary injustices.

through the intermediation of human agents.

35. The Judge's answer to this question was that a company could sign a declaration of trust by the signature of a director, on the basis that "*A corporate body acts by its officers*". The correct analysis is that, at common law, a company signs documents via duly authorised agents and, when it does so, the document is treated as signed "*by*" the company and not merely its agent. This was established by the Court of Appeal in *UBAF Ltd v European American Banking Corp* [1984] QB 713:

    (1) This case concerned the question of whether a document had been signed "*by*" a company for the purposes of s. 6 of the Statute of Frauds Amendment Act 1828.

    (2) Section 6 requires a representation as to the creditworthiness of a person to be in writing and signed "*by*" the person giving the representation in order to establish liability. Signature by an agent does not suffice (*Swift v Jewsbury and Goddard* (1873-74) LR 9 QB 301 at 312).

    (3) However, the Court of Appeal in *UBAF* held that – where a company's authorised agent signed a document on behalf of the company – that constituted a signature "*by*" the company (and not merely that of its agent), for the obvious reason that that is the only way in which a company can sign anything: "*Since a company, not being a physical entity, can only act in relation to the outside world by its agents, no one nowadays would question that the signature of the duly authorised agent of the company, acting in the course of the company's business, is the signature of the company.*" (at 724).

36. The 2019 Mortgage and the 2020 Certificate of Title were each signed by NIOC's agents. They were therefore written evidence of the trust declared by NIOC signed "*by*" NIOC for the purposes of s. 53(1)(b). So too was NIOC's Amended Defence.

37. Further, a document will also be signed "*by*" a company (and not merely by its agent) where it is signed in accordance with s. 44 CA 2006, as demonstrated by:

    (1) *Hilmi & Associates Ltd v 20 Pembridge Villas Freehold Ltd* [2010] EWCA Civ 314; [2010] 1 WLR 2750: this case concerned s. 99(5)(a) of the Leasehold Reform, Housing and Urban Development Act 1993 which, as it then stood, required certain notices to be "signed by" a person, as opposed to by that person's agent[9]. The Court of Appeal held

[9] This was because of a contrast between s. 99(5)(a), which referred to notices signed "*by each of the tenants*" and s. 99(5)(b) which referred to notices signed "*by or on behalf of each of the*

that a company could sign such a notice by complying with what was then s. 36A of the Companies Act 1985 (the statutory predecessor of s. 44 CA 2006). (The Court did not consider *UBAF*; had it done so, it would also have found that a company could sign such a notice via an authorised agent.)

(2) *Schechter v HMRC* [2017] UKFTT 189: this was a tax appeal during the course of which a question arose as to whether a "declaration of trust" and a "nominee agreement" had been validly signed "by" a company for the purposes of s. 53(1)(b) of the LPA 1925[10]. The Tribunal found that the company had complied with the requirements of s. 53(1)(b) by signing the documents in accordance with s. 44 CA 2006.

38. These requirements were met in respect of the 2019 Mortgage Deed and the Amended Defence:

(1) Section 44 CA 2006, as it applies to overseas companies such as NIOC, is set out in reg. 4 of the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009:

> *"(1) Under the law of England and Wales or Northern Ireland a document is executed by an overseas company—*
>
> *(a) by the affixing of its common seal …*
>
> *(2) A document which—*
>
> *(a) is signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company, and*
>
> *(b) is expressed (in whatever form of words) to be executed by the company,*
>
> *has the same effect in relation to that company as it would have in relation to a company incorporated in England and Wales or Northern Ireland if executed under the common seal of a company so incorporated…*"

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tenants". The consequence was found to be that notices under s. 99(5)(a) must be signed personally: *St Ermins Property Co Ltd v Tingay* at ¶28-¶38. Parliament saw this as an error and corrected it with the Leasehold Reform (Amendment) Act 2014, bemoaning the fact that it had taken them 20 years to do so (see HL Vol 752 Col. 361, 369).

[10] No consideration was given to the prior question of whether s. 53(1)(b) LPA 1925 could be satisfied by a document signed by an agent, and *UBAF* was not considered.

(2) The 2019 Mortgage Deed was signed by a person who was acting under the authority of NIOC; specifically, as found by the Judge at ¶116 **{CB/15/187}**, it was signed by NIOC's attorney, NTT (acting in the person of Mr Rahgozar) expressly in accordance with the laws of Iran. It was also expressed to be executed by NIOC. It follows that – by operation of s. 44 CA 2006 – the 2019 Mortgage Deed was signed "*by*" NIOC (and not merely by an agent).

(3) Likewise, the Amended Defence was signed by Mr Howarth acting under the authority of NIOC and was expressed to be executed by NIOC (in that it was its Defence and it confirmed the truth of the statements therein).

39. Further, sections 74(3)-(4) LPA 1925 provide:

> "*(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness who attests the signature, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.*
>
> *(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the instrument by signing it in the name of such other person or, if the instrument is to be a deed, by so signing it in the presence of a witness who attests the signature …*"

40. The 2019 Mortgage Deed was signed by Mr Rahgozar, who was appointed for that purpose by NTT (NIOC's attorney) to sign the 2019 Mortgage Deed in the name of NIOC, which he did in the presence of a witness (Mr Bayat)[11]. On this basis too, the 2019 Mortgage Deed is to be treated as having been signed by NIOC.

41. Accordingly, had the Judge taken into account and applied (a) *UBAF*, (b) s. 44 CA 2006 and/or (c) s. 74 LPA 1925, he would have found that – even on his construction of s. 53(1)(b) LPA 1925 – the 2019 Mortgage Deed, the 2020 Certificate of Title and/or the Amended Defence constituted evidence of the trust which the Judge found to be declared

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[11] The fact that he used his own signature to do so rather than inventing some signature for NIOC is nothing to the point. His signature was clearly stated to be a "*Signature in the name of the company*" and its form is irrelevant – see *McRae v Coulton* (1986) 7 NSWLR 644 at 664.

in the Fund's favour, and which complied with s. 53(1)(b). As a consequence, it ought to have been established that the Fund was the beneficial owner of NIOC House well in advance of the August Transfer.

F. Ground Three: The consequences of non-compliance with s. 53(1)(b) LPA 1925

42. Even if the Judge were right to find that there was no document satisfying the requirements of s. 53(1)(b) LPA 1925, he erred in law when he concluded that the effect of NIOC's failure to comply with s. 53(1)(b) was that the Defendants could not rely upon the trust which – on the Judge's own findings – NIOC had declared over NIOC House in favour of the Fund.

43. Section 53(1)(b) LPA 1925 is a provision concerned with how one manifests and proves a trust for the purposes of enforcing that trust (as made clear by the quotations in ¶202-¶206 of the Judgment **{CB/15/202}**). It does not alter the true disposition of property rights in any particular land. This is clear from *Gardner v Rowe*, in which property rights in the mine did not pass to Mr Wilkinson's assignees because he held it on an orally declared trust for Mr Rowe, notwithstanding that at the time of his act of bankruptcy he had not manifested the trust in writing. Similarly in *Rochefoucauld v Boustead*, at 206, 212, the Court of Appeal held that there was a valid express trust of land in favour of the Comtesse de la Rochefoucauld, notwithstanding the absence of writing, which she could rely on in certain circumstances. The textbooks are accordingly correct to conclude that compliance with s. 53(1)(b) LPA is not a rule of validity but of evidence: as Snell makes clear "*an unwritten declaration of trust is valid but unenforceable by the beneficiary against the trustee*"[12].

44. The Judge refused to have regard to the above on the basis that it would amount to "enforcement" of the trust declared by NIOC in favour of the Fund in circumstances in which (in his view) s. 53(1)(b) provided that that was not possible (see ¶212 of the Judgment **{CB/15/203}**). This was an error: the trust had been concluded upon transfer of legal title to the beneficiary, so no question of enforcement, whether by the beneficiary or otherwise, arises.

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12 Snell's *Equity* (34th Ed), para 22-036. See also Thomas and Hudson, *The Law of Trusts* (2nd Ed), para 5.12; Underhill and Hayton, *The Law of Trusts and Trustees* (20th Ed), paras 14.1, 14.14; Burrows, *English Private Law* (3rd Ed.) para 4.205; W. Swadling. *The Nature of the Trust in Rochefoucauld v Boustead*' in Charles Mitchell (ed), *Resulting and Constructive Trusts* (2010), p. 104; Prof. Virgo in *The Principles of Equity & Trusts* (5th Ed.) at pp 123-124.

45. The consequence of the above is that – on the basis of the Judge's findings – irrespective of s. 53(1)(b) LPA 1925, the true position is that NIOC had no beneficial interest in NIOC House at the time of its transfer to the Fund.

G. Ground Seven: The s. 423 Order

46. For the reasons set out above, the Judge should have concluded that NIOC House was held on trust for the Fund prior to the August Transfer. This would have rendered the Order made under s. 423 IA 1986 unsustainable.

47. The first consequence of the above Grounds of Appeal is that the Judge should have found that NIOC had no beneficial interest in the property, and therefore CGC could not enforce against it. As a consequence: (a) CGC's interests were not prejudiced by the transaction; (b) it was not a "victim" of the transfer within the meaning of s. 423(5) IA 1986; and therefore (c) CGC would lack standing to apply for s. 423 relief pursuant to s. 424 IA 1986.

48. The second is that the Judge should have found that the August Transfer was not made at an undervalue within the meaning of s. 423(1) IA 1986, on the basis that it was made on the basis of an antecedent obligation, that NIOC received consideration in the form of release from its obligations as a trustee, and/or that conveyance of a bare legal title of property to its beneficiary cannot be properly characterised as either a gift or a "*transaction*" entered into on "*terms*".

49. The third is that the order made would have been wholly inappropriate. As made clear by s. 423(2), the purpose of a s. 423 order is to restore the position to what it would have been if the transaction had not been entered into. The Judge's order (i.e. transferring NIOC House to CGC) can only be justified (and was purportedly justified) on the basis that, had NIOC House remained in NIOC's hands, CGC could have enforced against it. If the Judge had found (as, but for the above legal errors, he was compelled to) that it was owned beneficially by the Fund, CGC could not have enforced against it, and there is no basis on which CGC should be entitled to it. To the contrary, the s. 423 order constitutes the expropriation of the Fund's assets to satisfy a debt for which it is not liable, at the expense of hundreds of thousands of members of the Iranian oil industry pension scheme.

Bankim Thanki KC
David Mumford KC
Laura Newton
James Kinman

SCHEDULE

Documents recording an understanding and intent that NIOC House was and should be an asset of the Fund rather than an asset of NIOC (prior to 2019).[13]

1. Minutes of a meeting of the NIOC board on 15.12.1979, signed by the attendees, recorded that it "… *it was concluded that* [NIOC House] *is the property of the Pension Fund*…" (Judgment at ¶56 **{CB/15/176}**; the document at **{SB/17/169}**). The Judge found that this reflected a genuine, albeit in his view mistaken, belief that NIOC House did belong to the Fund (Judgment at ¶60 **{CB/15/177}**).

2. Signed minutes of a meeting of the NIOC board on 20.06.1982 recorded that NIOC House was "*under ownership*" of the Fund (Judgment at ¶63 **{CB/15/177}**; the document is at **{SB/18/173}**; the signatures can be seen on the original at **{SB/18/170}**).

3. In a document created at some point after 1984 and signed by the "head" of the Fund, Mr Nasehi, it was stated that the Fund was "*recognised as the owner of the building*" (Judgment at ¶66 **{CB/15/178}**; the document is at **{SB/19/178}**).

4. On 29.04.1985, a signed letter from NIOC's "Supervisor of Internal Auditorship" to NIOC's "Chief of pipelines, exploration and loan's auditorship" recorded that it had been decided on 15.12.1979 that NIOC House "*belongs to the* [Fund]", and that the "*belonging of the building to the* [Fund]" was "*re-emphasized by NIOC's board of directors*" on 20.06.1982 (Judgment at ¶70 **{CB/15/178}**; the document is at **{SB/20/192}**).

5. On 19.01.1994, Mr Fathinejad, NIOC's Director of Administrative Affairs, sent a letter to NIOC's board, referring to a wholly owned subsidiary of NIOC called Kala Limited which was leasing NIOC House. That letter referred to NIOC House as "*the Fund's building in London*" (the document is at **{SB/21/195}**).

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[13] There were, in the late 1970s, some references to the purchase having been funded by a "loan" from the Fund to NIOC, and – on the Judge's findings at ¶64 **{CB/15/178}** – 1982 was the first occasion on which NIOC House was referred to as an asset of the Fund in its accounts. From that point on, the Fund's and NIOC's internal documents consistently referred to NIOC House as belonging to the Fund.

6. On 12.06.1994, NIOC's board met, and a subsequent note signed by the secretary of the board meeting dated 21.06.1994 referred to discussions relating the "*the Fund's building in London*" **{SB/22/197}**.

7. On 14.06.2004, NIOC issued a certificate, signed by Mr Mirmoezi, NIOC's then-managing director, stating that NIOC House belonged to the Fund (Judgment at ¶80 **{CB/15/181}**; the document is at **{SB/23/199}**).

8. On 29.05.2007, NIOC issued a certificate, signed by Dr Zeinoddin, then director of NIOC and chair of its legal affairs, stating that NIOC House "*belongs to the* [Fund]" (Judgment at ¶84 **{CB/15/181}**; the document is at **{SB/24/201}**).

9. On 20.06.2011[14], NIOC's legal affairs directorate sent a letter to its board of directors stating that, although NIOC House "*had been registered in the name of NIOC*", it "*belongs to mentiond Fund*" (sic), and directed "*the arrangement of ownership documents of mentiond building's tranfer to* [the Fund]" (sic) (Judgment at ¶85 **{CB/15/182}**; the document is at **{SB/25/203}**).

10. On 03.07.2011, a meeting of the NIOC board took place. A note of that meeting (signed by Mr Pam, the secretary of the board of NIOC) dated 16.08.2011 recorded that it had been "*resolved that the Legal Affairs Department of the National Iranian Oil Company 'NIOC' shall take action to have the title deeds of the foregoing building transferred to the* [original or main] *owner of the said building, i.e., the* [Fund]" (see Judgment at ¶88 **{CB/15/182}**; the document is at **{SB/26/207}**).

11. On 12.11.2012, Cathcarts solicitors (the Fund's solicitors) ("**Cathcarts**") wrote to HMLR on behalf of NIOC and the Fund stating that "*We wish to draw to your attention the fact that* [NIOC House] *does not belong to* [NIOC]. *It actually belongs to and has always belonged to* [the Fund]. *It is held by NIOC as Custodian Trustee for the … Fund.*" (see Judgment at ¶183 **{CB/15/198}**; the document is at **{SB/27/209}**).

12. On 01.02.2014, Mr Firoozmand, NIOC's Director of Legal Affairs, wrote to Cathcarts in conjunction with the Fund saying "*We hereby authorize and request you to apply to HM Land Registry to change the designation of ownership of 4 Victoria Street so that in future it confirms that NIOC holds the land as Custodian Trustee for* [the Fund]" (see Judgment at ¶100 **{CB/15/184}**; the document is at **{SB/28/210}**).

13. On 11.02.2014, Cathcarts solicitors wrote to HMLR on behalf of each of NIOC and the

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[14] Owing to differing translations, the Judgment records this as dated 23.06.2011 **{CB/15/182}**.

Fund and stated that "*This property does not belong to* [NIOC] *per se. The property is held by* [NIOC] *as custodian trustee for* [the Fund]". The letter went on to ask HMLR to reflect this fact on the register. HMLR did not comply with this request on the basis that trusts (as such) are not registrable (see Judgment at ¶102-¶104 **{CB/15/184}** and ¶183 **{CB/15/198}**; the letter of 11.02.2014 is at **{SB/30/213}**).

14. On 18.03.2014, Cathcarts solicitors wrote to HMLR on behalf of NIOC and the Fund stating that NIOC House had been "*held on trust for the … Fund*" since 1975 (see Judgment at ¶183 **{CB/15/198}**; the letter is at **{SB/31/221}**).