

[2019] UKFTT 0053 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2017/1081
BETWEEN

SAID BEGUM
SHAMINA ILYAS

Applicants

and

MOHAMMED ASLAM

Respondent

Property: Land on the south east of Willow Street, Blackburn

Title number: LA286373

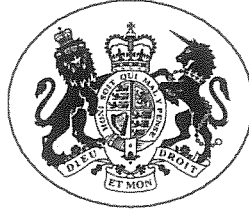
ORDER

The Chief Land Registrar is ordered to give effect to the applications in Form RX3 dated 16 May 2017 and 18 July 2017.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 7th day of December 2018



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Property: Land on the south east side of Willow Street, Blackburn

Title number: LA286373

**Before: Judge McAllister
Manchester Employment Tribunal
15th and 16th November 2018**

Representation: The Applicants were represented by Laura D’Cruz of Counsel instructed by AMT Solicitors; the Respondent was represented by Oliver Caplan instructed by Woodcocks Haworth and Nuttall.

DECISION

Introduction

1. The First Applicant is the Respondent’s mother; the Second Applicant is the Respondent’s sister. The dispute between them relates to the ownership of land and buildings on Willow Street, Blackburn, described by the parties as ‘the Factory’. As I understand it, the Factory consists of a number of units on the ground floor and a gym on the first floor. The value of

the Factory, I am told, is approximately £185,000 (although I note that the figure of £45,000 was given in the Respondent's application to alter the register dated 16 May 2017).

2. The Factory is held under a lease of 999 years (less ten days) from 1 January 1873 and is registered in the name of Mohammed Shafi. Mr Shafi, the former husband of Mrs Begum and the father of Mrs Ilyas and Mr Aslam, died intestate on 25 November 2013. Mrs Begum and Mrs Ilyas are Mr Shafi's personal representatives following the grant of probate on 6 March 2014. Mr Shafi's estate in the United Kingdom was valued at £420,000 odd for probate purposes.
3. The title is subject to a charge in favour of BCCI dated 6 January 1987. Mr Aslam maintains that the charge was discharged in 1990. By letter dated 30 August 2017 the Land Registry stated that they did not have sufficient evidence of a valid discharge. This point was not raised before me, and I do not know whether satisfactory evidence has now been provided.
4. On 17 May 2016 Mrs Begum and Mrs Ilyas executed a Declaration of Trust ('The Trust Deed') declaring that they held the Factory on trust for Mr Aslam absolutely.
5. On 16 June 2016 Mrs Begum and Mrs Ilyas entered a restriction in Form N against the title of the Factory preventing any disposition of the registered estate without their consent.
6. Mr Aslam entered a further restriction in Form B on 14 October 2016 preventing a disposition unless the registered proprietor or one of them made a statutory declaration or a statement of truth or their conveyances provides a certificate to the effect that the disposition is in accordance with the Trust Deed.
7. On 30 January 2017 Mrs Begum and Mrs Ilyas executed a TRI transferring the Factory to Mr Aslam ('the Transfer').
8. By an application dated 16 May 2017 Mr Aslam applied to register the Transfer and to cancel the Form N restriction. On 18 July 2017 Mr Aslam further applied to cancel the

Form B restriction on the grounds that the terms of the Trust Deed had been completed by the Transfer.

9. Mrs Begum and Mrs Ilyas objected to the applications to remove the restrictions by letter dated 14 August 2017. Their case, as set out in their letter of objection, was that they had executed the Trust Deed on the promise made by Mr Aslam that he would in turn arrange for the release of land in Pakistan controlled by his brother in law, Mr Ajmal Javid. As Mr Aslam refused to procure the transfer of the land in Pakistan, the Factory continues to be held on trust for Mr Shaffi's heirs.
10. The application to cancel the restrictions made in Forms RX3 dated 16 May 2017 and 18 July 2017 (but not the application to register the Transfer) were referred to the Tribunal on 21 November 2017.
11. For the reasons set out below I will order the Chief Land Registrar to give effect to the applications to cancel the restrictions. The application to register the Transfer must, it seems to me, await the resolution of the question whether or not the BCCI charge has been discharged. Mr Aslam is clearly entitled to be registered as the owner of the Factory either subject to the BCCI charge or not: this is a question which, as I understand it, has yet to be resolved.

The Applicants' case in more detail

12. In their Statement of Case, the Applicants alleged that the land in dispute in Pakistan consists of one parcel of land, worth, it is said, some £600,000, which is held in the name of Mr Ajmal Javid, even though the monies to purchase the land were provided by Mrs Begum and his late daughter, Rakia Javid. Mr Aslam and Mr Javid agreed to become joint owners of the land in Pakistan on condition that the Applicants would then transfer the Factory to him. This is why Mrs Begum and Mrs Ilyas entered into the Trust Deed. They took the view that although Aslam would receive a greater share of the estate (joint ownership of the land in Pakistan and the Factory) it was still a deal worth making. When it appeared to them that Mr Aslam would not keep to his part of the bargain, they entered the Form N restriction a month later. The relief sought in the Statement of Case was an

order that the Trust Deed was void. As explained below, the Applicants' case is further and significantly expanded in their witness statements.

13. Ms D'Cruz, in her skeleton argument and in opening, put the Applicants case as follows. In effect, she asked that her clients' case be treated as an application under section 108(2) of the Land Registration Act 2002 to set aside both the Trust Deed and the Transfer. Both these documents were only executed in reliance on representations made by Mr Aslam that he would relinquish control over the Pakistan land to them. The Applicants, accordingly, were induced to execute the documents by his fraud or misrepresentation. Mr Aslam has refused to release the land in Pakistan.

14. These submissions raise the question of the Tribunal's jurisdiction. Ms D'Cruz submitted that the Trust Deed on its true construction, is a '*contract to make [a qualifying disposition of a registered estate]*' within section 108(2)(b) of the 2002 Act. If this is wrong, the Tribunal can make findings as to the validity of the Declaration of Trust leaving the Respondent, if so advised to enforce the Declaration in the light of (on this analysis, the adverse) findings of fact.

15. I can deal with this point briefly. The Trust Deed is not, in my judgment, a contract to make a qualifying disposition. A beneficiary entitled to the whole beneficial interest can always put an end to the trust and direct the trustees to hand over the trust property (the rule in *Saunders v Vautier* (1841) 4 Beav. 115). Thus the fact that the Trust Deed explicitly spells out what is in any event a fundamental principle of trust law does not make the Trust Deed a contract. I agree, however, that it is open to me to make findings as to whether or not the Trust Deed is void.

The Respondent's case

16. The Respondent's case is that the Trust Deed and the Transfer are valid, and the necessary orders should be made to ensure that he is registered as the proprietor of the Factory. I have dealt with the point regarding the BCCI charge above.

17. Mr Aslam denied any knowledge of land owned or held by Mr Javid in Pakistan, or that he has any control over any such land. He never agreed to transfer this land to the

Applicants either in return for money or in return for the transfer of the Factory. So far as he is concerned Mrs Begum told him that the Factory would be transferred to him : this is what his father wished. The reason for the Trust Deed was because investigations had to be made regarding the BCCI charge.

Section 110 application.

18. At the outset of the hearing Ms D’Cruz applied for a stay of the proceedings to allow the Applicants to bring proceedings in the County Court. She submitted that the court would have jurisdiction to set aside the Trust Deed and that, in any event, these proceedings are part of a much larger family dispute which also involve, for example, a claim by the Applicants to rent from the Factory (assuming they could set aside the Trust Deed and the Transfer).
19. I refused the application. The matter, as stated above, was referred to the Tribunal on 21 November 2017. The parties had prepared their respective cases. The Applicants had instructed solicitors, certainly since before the filing of the Statement of Case. The issue before me, namely whether or not the restrictions should be removed, is clearly a matter for the Tribunal.

Background and evidence

Mrs Ilyas’ evidence

20. The case turns essentially on the oral evidence of the parties. The background to the dispute is fully set out in Mrs Ilyas’ statement. It is her belief that the total value of her late father’s estate is in the region of £1,000,000, but I have seen no evidence of the value other than the valuation for probate in this country. Following the grant of probate to her and her mother in March 2014, a decision was made that Mr Aslam would travel to Pakistan to sort out their father’s land there. He did not go, so she and her husband went instead in June 2014.
21. While she was there she learnt from an official that in January/February 2014 Mr Javid (Mr Aslam’s brother in law) had attempted to transfer all her father’s land in Pakistan into the names of Mr Aslam and Safdar Javid (the deceased husband of her sister Rakia who

died in October 2013). This did not happen, but, as I understand it, Mr Javid and his brother Shafiq took effective control of her father's land. Further inquiries were made as to the location and value of the land, and it was discovered that some of the land was, as she put it, fraudulently listed as belonging to Mr Javid. The agent who had organised the transfer demanded his commission which, it seems, led to an incident during which Mr Javid attempted to kill him but was later cleared by the police. The land in question is a substantial area of land on which there is a property.

22. A family meeting was called in the UK in June/July 2014 the purpose of which was to establish from Mr Aslam what had been happening in Pakistan. He refused to answer any questions. This in turn led Mrs Ilyas to call in a loan she had made to her late sister Rakia and Safdar Javid and, in due course, to terminate his lease of one of the units at the factory. It is clear, although this issue did not need to be explored during the hearing, that there is an ongoing dispute with Safdar and between members of Safdar's family. According to Mrs Ilyas it was this step which led Mr Aslam to visit her and her mother in about September 2014. He asked them not to evict Safdar, and to transfer the factory to him on the basis that he would ask Mr Javid to release what Mrs Ilyas described as his stronghold over the land in Pakistan. This was the first time, on her evidence, that Mr Aslam admitted that Mr Javid was acting on his instructions in Pakistan. Mrs Ilyas and her mother did not agree to this proposal and Safdar was evicted in March 2015.
23. In June/July 2015 a family member informed Mrs Ilyas and Mrs Begum that a way of unblocking the situation in Pakistan might be to appear before a Chief of Police who could order Mr Javid to relinquish his 'control' over the disputed land in Pakistan.
24. Once again Mrs Ilyas, with her husband and other brother Mohammed Asghar, travelled to Pakistan. They did not succeed in their attempt to persuade the Chief of Police to intercede on their behalf, and therefore began court proceedings against Mr Javid. It is her evidence that although Mr Aslam did not attend he was at the end of the phone and was speaking to Mr Javid who appeared to be taking instructions from him. I should say that no documentation was produced at the hearing in relation to the court proceedings or any of the matters referred to above. I was told by Ms Ilyas that all the relevant documentation is in Pakistan but that it was not obtained for this hearing because of a misunderstanding with her solicitor.

25. The meeting with the Chief of Police was also attended by Mr Malik Akhtar, who is a legal advocate in Pakistan. He did not attend the hearing but made a statement in which he confirmed Mrs Ilyas and Mr Asghar's recollection of the meeting. Mr Asghar is the brother of Mrs Ilyas and Mr Aslam.
26. Following a series of meetings in Pakistan (not attended by Mrs Ilyas or Mr Aslam) Mrs Ilyas's evidence is that Mr Javid, on Mr Aslam's behalf, agreed to return her father's land in Pakistan to the family in return for a payment of £200,000. It was also agreed that all other proceedings involving Safdar would be brought to an end.
27. The agreement was recorded in Pakistan in a written Deed of Agreement dated 22 December 2015 ('the 2015 Agreement'). The document was written in Urdu. There is a translation of this document in the bundle, certified on 6 April 2018 by Lancashire Interpretation Translation Services.
28. The 2015 Agreement is not altogether easy to follow. It is made by Mohammed Asghar as the first party, and Mohammed Aslam (through Mohammed Shafique) and Ajmal Javid as the second party. It is not in dispute that Mr Aslam was not present when it was drawn up, but it is said by Mrs Ilyas and Mr Asghar (but denied by Mr Aslam) that he on the phone to Mr Javid during the signing of the agreement.
29. The 2015 Agreement appears to provide that after partition of the property in the United Kingdom and on payment of £200,000, Mr Aslam would transfer his share of named property to Mr Asghar and further that Mr Javid, on keeping one 'Kanal' land out of five, would transfer the remaining five Kanals to Mr Asghar and (it seems) Mrs Ilyas. The Agreement concludes by saying that after completion of the agreement there will be no issue to resolve between the parties. At another point in her evidence Mrs Ilyas stated that the agreement was that Mr Aslam would transfer his share of the land in Pakistan to her brother Mr Asghar.
30. It should also be noted that the 2015 Agreement stated that Mr Asghar had a general power of attorney. In evidence Mrs Ilyas stated that this was not correct: he only had his share of her father's estate. It also appears that, whatever else this Agreement may do, it did not purport to transfer land to the Applicants or Ms Ilyas in her capacity as personal representative.

31. In February 2016 Mr Aslam went to Pakistan for a wedding. The Applicants expected that he would finalise the transfer of the land. When he returned he stated that he had changed his mind. Instead of money, he now wanted the Factory to be transferred to him, and a promise that Mrs Ilyas would no longer pursue any claim against her brother in law Safdar, and other agreements made regarding further disputes between Safdar and Safdar's own family.
32. Mrs Ilyas and her mother agreed, and they instructed solicitors to draw up the Trust Deed. The solicitors were AMT Lawyers who continued to act for the Applicants.
33. The Trust Deed is dated 17 May 2016. It was drawn up by the same firm of solicitors now acting for the Applicants. It provides as follows. The trustees (Mrs Ilyas and Mrs Begum) agreed that they held the factory on trust for Mr Aslam absolutely. They further agreed that: *'At the request of the Beneficiary [they would] transfer the Property or any part or parts of it (subject to the Charge) either to the Beneficiary or to anyone else as the Beneficiary directs'* and would also apply to the Land Registry as necessary to give effect to any required transfer or dealing or to enable the interest of the beneficiary to be protected.
34. The trustees also agreed to use reasonable endeavours to procure that the charge registered against the factory (dated 6 January 1987 in favour of BCCI) would be cancelled or withdrawn. They also agreed to the registration of a restriction in favour of the beneficiary preventing the disposition of the factory otherwise than with the consent of the beneficiary. Mr Aslam's case is that the reason the factory was not transferred to him immediately was to allow the charge in favour of BCCI to be discharged. He was able to find evidence that the charge had been discharged which is why, on his case, the Transfer was executed.
35. Mrs Ilyas' evidence was that, following the Trust Deed, agents in Pakistan were instructed by her to market the land. Although there were potential buyers, they all pulled out of the sale once she told Mr Aslam about their interest. Mr Aslam then stated that he would not assist with the sale of the land in Pakistan until the Factory was transferred to him.

36. The Form N restriction was entered by the Applicants a month or so after the Trust Deed.
37. On 8 November 2016 Mr Aslam's solicitors wrote to the Applicants in relation to the transfer of the Factory. A TRI was enclosed. The letter also stated that the writer knew that solicitors had been instructed in relation to the Trust Deed, and was not clear whether solicitors would be instructed again. If not, then they were asked to fill in a Land Registry identification form. These forms were duly completed by the Applicants in the presence of another firm of solicitors.
38. Mrs Ilyas confirmed in evidence that she understood the importance of both the Trust Deed and the Transfer. Asked repeatedly about the absence of any documentation regarding the agreement allegedly made with Mr Aslam, Mrs Ilyas repeated that no documents exist in this country but that she has or can obtain documentation from Pakistan to back up her claims. She did not obtain them, she said, because she was not advised to do so.
39. Following the Transfer the Applicants met Mr Aslam in April 2017. By this stage a further and apparently serious offer had been made for the land in in Pakistan. Mr Aslam offered to buy the land from them at a lower price. On her evidence, he lost his temper and stated that they would not see a penny from the land in Pakistan.

Mrs Begum's evidence

40. Mrs Begum did not attend to give evidence. She is 84 and in poor health. Her statement deposes to the fact that her husband bought land in Pakistan by providing money to Mr Javid to do so, but that she then discovered that he, Mr Javid had been putting land in his own name. She also confirmed that the agreement with Mr Aslam changed over time from paying him £200,000 for the land in Pakistan to transferring the Factory to him. In her statement she said that she had no reservations about signing the Trust Deed, although Mr Asghar did. She told Mr Asghar that she trusted Mr Aslam. She confirmed her daughter's evidence regarding the family meeting after the Transfer was signed. In conclusion she stated the transfer of the Factory was always on the understanding and agreement that in return Mr Aslam would give them the land in Pakistan or, as I understand it, would make sure that Mr Javid would give them the land.

Mr Asghar's evidence

41. Mr Asghar gave evidence in support of the Applicants' case. In simple terms, Mr Javid would not deal with the land in Pakistan without Mr Aslam's agreement. This applied to land held in Mr Javid's name (but bought with money from his father) and land held in Mr Aslam's name. He also stated that at the meeting with the Chief of Police in Pakistan Mr Javid made it absolutely clear that he could not deal with the land unless and until Mr Aslam authorised him to do so. The 2015 Agreement was the culmination of talks through November and December 2015 between himself, Mr Javid, Shafiq Javid and others. Throughout the talks Mr Aslam was directing what should be done. The Agreement clearly provided, he said, that Mr Aslam would transfer land in Pakistan to him and to his sister if they gave him £200,000 and discontinued all other cases in the UK against Safdar.
42. . The agreement was amended so that, instead of money, Mr Aslam would get the Factory. They agreed to this, as the value of the factory and the land in Pakistan was about the same (and it seems to me therefore unlikely that the land in Pakistan was valued at £600,000). He stated that whilst he had some reservations he was convinced by his mother and sister that Mr Aslam would not attempt to, as he put it, dishonour the agreement.
43. Asked about 2015 Agreement, Mr Asghar stated that whilst he did not have a general power of attorney he was acting on behalf of the family. The agreement was entered into on Mr Aslam's behalf and with his consent. The variation was made in England and was not documented, he said, because the agreement was made only with members of the family and not with (in his words) a criminal in Pakistan (Mr Javid).
44. In his witness statement, Mr Asghar stated that no condition or qualification was written into the Trust Deed because he (and the others) did not realise this could be done. As for the Transfer, he stated that although by then both he and his sister and mother were concerned by Mr Aslam's behaviour (his refusal to go to Pakistan to arrange for the sale of the land, and the fact that all the buyers seemed to disappear) they felt that, as they had completed the Trust Deed, they had no option but to transfer the Factory.

45. In April 2017 a buyer was found in Pakistan, offering a very good price for the land. Mr Aslam reacted angrily saying he would buy the land at half the price. He flew into a rage and has not spoken to his mother, brother or sister since.
46. Mr Asghar concluded his evidence by saying that there was no difficulty in transferring the factory to Mr Aslam as part of a wider agreement that he would release his stronghold over the land in Pakistan. But if Mr Aslam gets the Factory, and keeps the land, they would be left with nothing. On any footing this is not quite correct: in addition to the factory, Mr Shaffi's estate includes the family home, and, as I understand it, a couple of shops and money in the bank.
47. Mr Aslam insisted that nothing should be written down regarding the terms on which the Transfer would be made or 'he would walk out of the door'. Mr Asghar did not think it was necessary to inform the other parties to the 2015 Agreement, and he did not believe he could go to solicitors about the nature of the agreement made with his brother (but a restriction was placed on the title). As things stand, the dispute is continuing in Pakistan and they cannot sell any land because it is controlled by Mr Aslam.

Mr Aslam's evidence

48. Mr Aslam's evidence was, in effect, that although he was the eldest son he had little or no knowledge of the distribution of the estate. He had been asked by the Applicants to speak to Mr Javid about land in Pakistan allegedly owned by his father, but told them that he did not want to get involved and that he knew nothing of this land. He has since spoken to Mr Javid who told him that the land was held in Mr Shafi's name and that it therefore passed to his mother and sister on his death. Mr Javid was merely looking after the land on a temporary basis.
49. In or about April 2016 Mr Aslam was approached by his mother stating that she wanted him to have the Factory. He believes that the Applicants instructed solicitors who discovered that the charge in favour of BCCI was still registered against the title. It was for this reason that the Trust Deed was entered into preserving the position until such time as clear title could be obtained. He was not aware of the June 2016 restriction. He instructed his solicitors to enter a restriction in September 2016 due to what he described as an unrelated family dispute. When he had obtained confirmation of the discharge of the charge he instructed his solicitors to prepare the TRI.

50. As for the 2015 Agreement, it is his case that he was unaware of its existence until it was shown to him in the course of these proceedings. He believes it was fabricated in the course of these proceedings. As far as he is concerned, the only people authorised to deal with his father's estate in Pakistan are the Applicants.
51. In cross examination he stated that it was his father's wish that he should have the Factory, although it is not correct to say that it was always held on trust for him (as suggested in his solicitor's email to the Land Registry on 26 April 2017 and in a letter dated 26 September 2017 from his solicitors to the Applicants).He repeated that he was not involved in discussions about the distribution of the estate, and that his knowledge of land in Pakistan comes only from what he heard from his parents. He knew nothing of the proposal to transfer land in Pakistan in exchange for the Factory, and only went to Pakistan for his daughter's wedding. As he said, he has no interest in the land: it all goes to his mother. Any suggestion that he was involved in land in Pakistan is a lie. So far as he is concerned there is no problem regarding the land in Pakistan: if there are court proceedings against Mr Javid, the courts will decide.
52. Asked why the Applicants would agree to transfer the Factory to him while there are still problems with land in Pakistan he repeated that he does not know what is happening to his father's estate. He denied that there was any meeting in April 2016 or that he ever agreed to give up land in Pakistan in return for the factory. It was simply a coincidence that he found the papers relating to the discharge of the BCCI charge.

Issues and conclusion

53. The central issue in this case, as framed by the Applicants, is whether the Applicants can set aside the Trust Deed and the Transfer on the grounds of misrepresentation. I have dealt with the jurisdiction point above. The case is not concerned with whether or not the estate has been properly administered in this country.
54. The misrepresentation need not be fraudulent. The test is well known. Was there a false statement? Was it relied upon by the Applicants to their detriment? In some cases a statement of intention may amount to a misrepresentation if, at the time it was made, the

person making the statement did not in fact intend to do what he said or knew that he did not have the ability to do so.

55. Ms D'Cruz rightly accepted that there is no documentary evidence in this country to support her case, and accepted that there is no evidence of ownership of land in Pakistan. But, she submitted, overall the Applicants presented a coherent and consistent picture. There is land in Pakistan belonging to the estate which needs to be properly distributed: Mr Aslam has some kind of a hold on land there either directly or indirectly through Mr Javid; he promised to release land there in return initially for money, and then in return for the transfer to him of the Factory. The importance of the 2015 Agreement is the reference to £200,000, and the reference to transfer of land to Mr Asghar and in part to Mrs Ilyas.
56. This document was clearly the result of discussions in Pakistan and it is inherently unlikely that Mr Aslam not involved. He was named a party. The 2015 Agreement was referred to obliquely in the Applicants' Statement of Case (though not attached as a document). That arrangement was replaced by the agreement to transfer the Factory, on the basis of the same representation, ie that the land in Pakistan would return to the estate of Mr Shafi or that in any event Mr Aslam would procure its release.
57. It is not surprising, Ms D'Cruz submitted, that there nothing in writing recording the agreement as valid. This is a family arrangement. The Applicants had also been told that once the TR1 had been signed it would be difficult to challenge. By contrast the Respondent's evidence amounted to a bare denial without any attempt to explain even why he should be getting the Factory. It was only in oral evidence that he said that this represented his father's wishes. If I find against the Applicants, I am forced to conclude, she submits, that they are not telling the truth.
58. Notwithstanding these submissions, I have concluded that neither the Trust Deed nor the Transfer are to be or could be set aside on the grounds of misrepresentation. My reasons are as follows. I have no doubt that there is a real and bitter dispute in the family following the death of Mr Shafi. I also was not impressed by the evidence of Mr Aslam. I find his protestation of almost indifference to the distribution of the estate far from convincing. As the eldest son, I have no doubt that he took and still takes a keen interest in what is to happen to the estate in this country and in Pakistan. I have no reason to doubt the evidence that there is land in Pakistan which, in one way or another, belonged to Mr

Shafi. Mr Aslam did not offer any explanation as to why his mother and sister, having executed the Deed of Trust, and the Transfer, should now be objecting to the registration of the factory in his name.

59. But I accept Mr Caplan's submission that it is not possible, on the evidence, to point to a clear and unequivocal false statement of fact or even of intention which was in turn relied upon by the Applicants inducing them to execute the Trust Deed and then the Transfer. The Applicants' case has not been consistent throughout. There are inconsistencies in the evidence as set out above. I appreciate that the Applicants may not have had legal advice at the time of the Transfer (though they clearly did at time of the Trust Deed, and the ID1 forms were completed in the presence of other solicitors), but the various explanations given as to why these were executed without any reference to the promises allegedly made by Mr Aslam were not, in my view, satisfactory. If the Applicants knew enough to register a restriction between the Deed of Trust and the Transfer (I assume with the assistance of their solicitors) it makes little sense that they agreed to execute the Transfer, without at least ensuring that the basis of their agreement with Mr Aslam was recorded in writing.
60. The December 2015 Agreement is not signed by Mr Aslam, and there is no evidence that Mr Shafique had authority to act on his behalf. More fundamentally, the Agreement does not unequivocally state that the land in Pakistan would be transferred to the personal representatives of Mr Shafi's estate.
61. I find that Mrs Ilyas, Mrs Begum and Mr Asghar honestly believe that they reached some agreement or understanding with Mr Aslam regarding land in Pakistan, but it seems to me that, at best, this agreement amounted to no more than a possible statement of intention, to be seen, too, in the context of a wider family dispute. Discussions within a family, even expectations that a certain course might be followed, are not enough to amount to a misrepresentation such as to vitiate the Deed of Trust and the Transfer. Mrs Ilyas is clever and articulate and would not, in my judgment, execute the Deed of Trust or the Transfer lightly, and would, if her agreement to do so was based on unequivocal representations, ensure that these were recorded.
62. The position regarding land in Pakistan is far from straightforward. It is not clear how much land there is, what it is worth, and whether it is made up of one or more parcels. The role of Mr Javid remains unclear. The evidence given by and on behalf of the Applicants

testifies to the confusion surrounding this land, and raises very real doubts as the extent of Mr Aslam's ability, if any, to deal with it.

63. In short, it is not possible to identify a false statement of fact or intention made by Mr Aslam, nor is there sufficient evidence that the Applicants relied on whatever indications might have been given by Mr Aslam regarding the land in Pakistan to enable the conclusion to be drawn that these indications were material to their decision to transfer the Factory to him.

Costs

64. Mr Aslam, as the successful party, is in principle entitled to his costs. A schedule in Form N260 or the like is to be filed and served by 21 December 2019, and the Applicants may respond within 21 days of receipt of this document. I will then consider what order to make.

BY ORDER OF THE TRIBUNAL

Ben McAllister

Dated this 6th day of December 2018