THE “EQUITABLE MECHANICS” OF CONSTRUCTIVE TRUSTS AND SECTION 53(1)(c) OF THE LAW OF PROPERTY ACT

Frenkel v LA Micro Group (UK) Ltd [2024] UKSC 42, [2025] 2 W.L.R 1 should have been a simple case about the scope of s 53(1)(c) of the Law of Property Act 1925 (“the LPA 1925”). The issue for the Supreme Court was whether a transaction (by which the beneficiaries of two trusts of shares in a private company agree that, from then on, the trustees are to hold the shares absolutely) required signed writing so as to comply with that section. It was held that the answer to that question was “no”. However, the route it took to get there was less than straightforward. The resulting judgment raises a number of questions about equity and the “equitable mechanics” of constructive trusts.

The case concerned a transaction involving two shares in LA Micro Group (UK) Ltd (“the UK company”). The first was held by Mr Bell on trust for LA Micro Group Inc (“the US company”) as to 51% and for himself as to 49%. The second was held by Mr Lyampert on trust as to 51% for the US company and 49% for Mr Bell.

By a 2010 restructuring agreement, Bell and Lyampert—in their individual capacities and on behalf of both companies—orally agreed that they would, from then on, share the profits in the UK company equally. The courts below held that the 2010 agreement also contained an implied term that the shares in the UK company were from then on to be held absolutely by their legal owners. In other words, the first share would be held by Bell absolutely and the second share would be held by Lyampert absolutely.

The issue was whether this agreement could have its intended effect without writing and, in particular, whether the US company ceased to have an equitable interest in the shares of the UK company (there was no dispute about Mr Bell’s former equitable interest in the share held by Mr Lyampert). Whether this transaction required writing turned on s. 53(1)(c) of the LPA 1925, which provides that “a disposition of an equitable interest … subsisting at the time of the disposition, must be in writing signed by the person disposing of the same". Without such writing, the disposition is void. Section 53(1)(c) is subject to the qualification in s. 53(2) that it "does not affect the creation or operation of resulting, implied or constructive trusts."

At first instance ([2022] EWHC 1304 (Ch)), Judge Jarman held that the 2010 agreement amounted to a contractual surrender of the US company's equitable interest and, because a surrender amounted to a disposition, it needed to be in writing to take effect. The claim based on surrender therefore failed for lack of writing, albeit a claim based on proprietary estoppel succeeded.

The Court of Appeal ([2023] EWCA Civ 214; [2024] Ch 1) upheld the trial judge's decision, though on different grounds. It held that the 2010 agreement amounted to a specifically enforceable contract to "transfer" the US company's equitable interests in each of the two shares to Bell and Lyampert respectively, and that this gave rise to two vendor-purchaser constructive trusts in their favour, each of which was "sufficient to carry the equitable interest" formerly held by the US company in the shares to the respective shareholder ("notwithstanding the absence of signed writing") because of s. 53(2) of the LPA 1925 ([2023] EWCA Civ 214 at [92]).

The Supreme Court (Lord Briggs, with whom Lord Hodge, Lord Sales, Lord Burrows, and Lord Richards agreed) dismissed an appeal against the Court of Appeal's decision. Lord Briggs, based on a concession "rightly made" by the parties (at [16]), held that, although the 2010 agreement involved a disposition of an equitable interest within the meaning of s 53(1)(c), on entry into the agreement a vendor-purchaser constructive trust arose—"albeit only momentarily" (at [15])—which was exempt from the requirement of writing by s. 53(2) of the LPA 1925 and which therefore conferred the US company's "beneficial interest" in the shares on Bell and Lyampert. The result was that the constructive trust was "sufficient without more to concentrate the whole beneficial interest in each share in its legal owner, and thereby bring about the merger of legal and equitable interests in each share" (at [30]).

The decision is the first time in over 50 years that the UK's ultimate appellate court has considered the scope of s. 53(1)(c) of the LPA 1925. Lord Briggs noted that the issue raised by the case was "not greatly affected by reference to section 53 itself, since … the effect of section 53(2) must be that, where equity recognises a relevant constructive trust, the regime for formalities contained in section 53 is simply disapplied" (at [23]). He therefore decided that the issue was to be resolved "by reference to first principles" (at [23]). Unfortunately, in applying those principles, Lord Briggs made a number of missteps, the effect of which is to raise various questions and cast the operation of other related areas of law into doubt.

There are at least five problems with the judgment. The first concerns the term "beneficial interest." At an early point, Lord Briggs distinguished between "equitable interests" and "beneficial interests", saying:

> "[N]either of the parties used the expressions 'beneficial interest' and 'equitable interest' entirely interchangeably, and nor do I. Both legal and equitable interests may or may not be beneficial interests. Thus a legal owner may hold a 100% beneficial interest in a company's share. If it is 100%, then the legal title carries with it and confers full beneficial ownership, without the need for any intervention by equity, whether by the interposition of a trust or otherwise. But if there is any difference between the identity of the legal title holder and the beneficial owner (or owners) then the legal title will be that of a trustee and the beneficial interests will all be equitable interests arising under that trust." (at [20]).

By itself, this statement is unobjectionable. Understood correctly, the term "beneficial interest" does not refer to a third kind of interest, sitting alongside the legal and equitable interests, but rather is simply a label used to describe whichever of these interests (or combination thereof) gives a person the ultimate economic benefit of an asset in question (see, e.g., Swadling (2008) 124 L.Q.R. 72 at 90–91). But the label "beneficial interest" is sometimes misleadingly used to suggest that there is some third kind of interest. To use Lord Briggs' example, a person who holds shares absolutely may be described as holding a "100% beneficial interest in a company's share", but this only means that they enjoy the ultimate economic benefit of the share; not that they hold some kind of separate interest in the share.

Unfortunately, in parts of his judgment, Lord Briggs' use of the term "beneficial interest" was unclear. For example, when describing the purpose of the 2010 agreement, Lord Briggs said that the US Company's "beneficial interest was to become beneficially owned by each of Mr Bell and Mr Lyampert" (at [38])—seemingly treating the "beneficial interest" as a third kind of interest. And when describing the effect of the constructive trust, he said that it "concentrate[d] the whole beneficial interest in each share in its legal owner, and thereby [brought] about the merger of legal and equitable interests" (at [30]). But if the label "beneficial interest" simply describes the ultimate economic benefit of the right in question, then its movement to the legal owners does not require or imply any movement in the underlying equitable interests so as to bring about a merger.

The second problem is that Lord Briggs assumed that the vendor-purchaser constructive trust of the equitable interests was "self-executing", in the sense that it resulted in the merger of the legal and equitable interests. It would have been sufficient if he had found that the equitable interests remained as they were, but that, because of the vendor-purchaser constructive trust, the equitable-interest holders held those interests on *sub-trust* for the legal shareholders. It would then be for the shareholders to compel the sub-trustees to release the equitable interests to them, thereby collapsing the trusts. Any required writing (depending on the characterisation of that transaction) could be provided at that time.

Lord Briggs did note that it had been "debated during the hearing whether the [vendor-purchaser constructive trust] operated in this case by way of sub-trust", but because it had been assumed to be self-executing, said that "nothing turns on that aspect of the technical detail" (at [31]). But it makes all the difference. If the vendor-purchaser constructive trust merely operated by way of sub-trust, and was not self-executing, it would have to be assessed whether the purchaser was still entitled to an order of specific performance at the time of judgment, or whether supervening considerations, such as laches, would result in its denial. One of the unique features of the vendor-purchaser constructive trust is that "if the right to specific performance has been lost by the subsequent conduct of the party in whose favour specific performance might originally have been granted, the vendor … has ceased to be … a trustee in any sense at all": *Central Trust and Safe Deposit Company v Harvey G Snider* [1916] 1 A.C. 266 at 272. If specific performance were not available, the result would be that the agreement between the parties could not have its intended effect.

Moreover, holding that vendor-purchaser constructive trusts of equitable interests are self-executing in this case raises the possibility that they are self-executing in all cases dealing with equitable interests, i.e. where the "transfer" of the equitable interest is not to the trustee but a third party. While noting that it had not been argued in the appeal, and that "its correctness must await determination in a case in which it matters" (at [32]), Lord Briggs said:

> "It may be arguable that every oral agreement for consideration to transfer an equitable interest in shares (or other property attracting the remedy of specific performance, but not land) is self-executing in the sense that nothing further need be done to transfer the full beneficial interest to the purchaser, apart from notifying the trustee under the rule in *Dearle v Hall* (1828) 3 Russ 1. This may be because the [vendor-purchaser constructive trust] does all the necessary heavy lifting once notice is given to the trustee, even where the purchaser is not the legal owner." (at [32]).

If correct, this would have serious implications. On a conceptual level, it would transform the way in which sub-trusts (which is, in essence, what a vendor-purchaser constructive trust of an equitable interest is) are understood to operate. If the effect of a sub-trust were to transfer the equitable interest to the sub-beneficiary, this would have the effect that the sub-trustee "drops out". But the currently accepted view is that the sub-trustee does not drop out. As Lawrence Collins L.J. explained in *Nelson v Greening & Sykes (Builders) Ltd* [2007] EWCA Civ 1358, [2008] 1

E.G.L.R 59, while “the practical effect would seem to amount to … ‘getting rid’ of the trust of the equitable interest then subsisting, [this] is not the same as saying that as a matter of law it does get rid of the intermediate trust” (at [57]). As a matter of equitable “mechanics”, the equitable interest under a vendor-purchaser constructive trust of an equitable interest remains with the original vendor, who holds this equitable interest on trust for the purchaser.

On a practical level, if the self-executing analysis extended to sub-trusts generally, this would have significant consequences for the structuring of intermediated securities. As Briggs J. (as he then was) himself explained in *Re Lehman Brothers International (Europe)* [2012] EWHC 2997 (Ch), [2014] 2 B.C.L.C 295, “[i]t is an essential part of the English law analysis of the ownership of dematerialised securities that the interest of the ultimate beneficial owner is an equitable interest, held under a series of trusts and sub-trusts” (at [163]). If sub-trusts were self-executing, it would be impossible to create the long chain of trusts employed in intermediated securities. It may, of course, be that only vendor-purchaser constructive sub-trusts have this self-executing effect, and not express sub-trusts. But this requires an explanation for how and why they should differ. The judgment in *LA Micro Group* offers no such answers.

The third problem is that even if the self-execution analysis is confined to this case (that is, vendor-purchaser constructive trusts where the equitable interest is to be “transferred” to the legal right holder) this only reinforces the appellants’ argument that “the 2010 Agreement was simply for the destruction of [the US company’s] equitable interest in each of the two shares in [the UK company]” (at [37]).

But Lord Briggs rejected that argument. He said that the substance of the agreement was the “conferring” of the US company’s “51% beneficial share upon each of Mr Bell and Mr Lyampert” (at [39]). But even if the “beneficial share” here refers to the US company’s equitable interest in the shares, this was not something that could ever be held by Bell or Lyampert. The effect of transferring it to them as the legal right holders is that the equitable interest is simply destroyed. As Lord Browne-Wilkinson pointed out in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] A.C. 669, 706; [1996] 2 All ER 961, 989: “[a] person solely entitled to the full beneficial ownership of money or property, both at law and in equity, does not enjoy an equitable interest in that property. The legal title carries with it all the rights.”

Lord Briggs tried to get around this argument by saying that “[e]ven if the substance is ignored, and the transaction looked at merely as a matter of equitable mechanics”, it was only once the equitable interest in the shares became vested in Bell and Lyampert as a result of the vendor-purchaser constructive trust that “their status as sole trustees of each share [led] to the result that the equitable interest merged in the legal title” (at [43]). He said that the vendor-purchaser constructive trust “had only a momentary existence, occupying what the appellants called a scintilla temporis” but that this was “no obstacle to the recognition of a [vendor-purchaser constructive trust] in this context” (at [43]).

The difficulty with this is that, unlike the concept of a “scintilla temporis” in other contexts, here the relevant “spark of time” is a conceptual impossibility. It is simply never possible, even in theory, for the sole legal right holder to hold both the legal interest and the equitable interest at the same time. As Lord Browne-Wilkinson’s comment in *Westdeutsche* shows, Bell and Lyampert could never hold 100% of the legal interest (i.e. the shares) and 100% of the equitable interest simultaneously. Trusts are obligational and one cannot owe a duty to oneself. The effect of the 2010 agreement as a matter of substance and mechanics was simply to destroy the equitable interests in the shares.

The fourth problem is that the judgment also casts doubt on the correctness of other decisions on s. 53(1)(c). Lord Briggs agreed with the concession of the parties that a “destruction” is included within the meaning of “disposition” in s. 53(1)(c) (at [16]). But this conflicts with *Vandervell v Inland Revenue Commissioners* [1967] 2 A.C. 291. In that case, Mr Vandervell directed his bank trustee, which held shares on trust for him, to transfer those shares to the Royal College of Surgeons. The House of Lords held that this did not amount to a disposition of an equitable interest. One explanation was that the transfer of the shares "included" the equitable interest. On this view, however, there was a disposition of the equitable interest (English and Al-Sibaie [2024] Conv. 140 at 150). An alternative explanation has usually been that Vandervell's equitable interest was "overreached" (i.e. destroyed) so that the Royal College of Surgeons simply took the shares free of any trust: Nolan [2002] C.L.J. 169. But if the destruction of an equitable interest also amounts to a disposition, then *Vandervell* looks wrongly decided.

Finally, although unnecessary to dispose of the appeal, Lord Briggs considered and rejected an argument that the oral agreement could take effect even if there were no vendor-purchaser constructive trust because s. 53(1)(c) applied only to equitable interests in land and not personalty (e.g. shares). The Court refused permission to advance this (new) argument because it has been assumed "for over half a century" (at [4]) by courts, commentators, and practitioners that s. 53(1)(c) did apply to interests in personalty. Lord Briggs said:

> "There comes a time in the life of a statutory provision when a particular construction becomes so well settled and for such a long time, that the contrary construction becomes unarguable, however attractive it might have been when the statute was originally enacted. That is, in my view, the case in relation to the applicability of section 53(1)(c) to equitable interests in property other than land, and certainly to such interests in shares." (at [53]).

It is unfortunate that Lord Briggs did not engage more closely with the argument: "a subsequent court is not bound by a proposition of law assumed by an earlier court that was not the subject of argument before or consideration by that court" (*R (Khadim) v Brent London Borough Council Housing Benefit Review Board* [2001] Q.B. 955 at [33]). There may be good reasons why the section should apply to dispositions of equitable interests in relation to personalty, but that this has been assumed by previous courts is not one of them.

The issues raised by *LA Micro Group* could have been dealt with concisely. The 2010 agreement in substance and in form was an agreement for the destruction of an equitable interest. The answer to the dispute should have turned on whether a “destruction” amounts to a “disposition”. In our view, it should not (see English and Al-Sibaie [2024] Conv. 140). In any event, no question of vendor-purchaser constructive trusts need ever have arisen.

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