

January 2013 to date. The letter concluded: "*If your client does not provide this documentation we will be asking the court to draw the inference that P Ltd is your client's nominee*". No reply has been received. In view of this silence, a reasonable adverse inference can be drawn against this "*uncommunicative husband*" (per Lord Sumption in *Prest*, *supra*, at [45]).

84. For the above reasons, I find that P Ltd is H's nominee and that P Ltd holds all its assets absolutely for H on a 'bare' trust.

Bare trust

85. The *Law Commission Report on Trusts of Land (No. 181) (1989)* defined a bare trust as follows (in paragraph 3.27):

"A bare trust exists where the entire beneficial interest is vested in one person and the legal estate in another. The trustee in such a case has no duties other than to obey the beneficial owner, who is, to all intent, the real owner."

(see also *Lewin on Trusts*, Chapter 1-028)

86. The terms 'bare trustee' and 'nominee' are often used interchangeably. In essence, a bare trustee and a nominee are 'nominal' title holders, holding an asset for another person who is the true beneficial owner for all purposes. A bare trustee is a trustee who is a mere repository of the trust property with no active duties to perform, and with no responsibilities in relation to trust property other than to preserve the property for the beneficiary (and the transferor of the assets). The bare trustee's duties are purely passive, and 'bare' or naked of active duties decreed by the settlor. In *IRC v Silvert's Ltd* [1951] Ch D 521 at p 530 the Court of Appeal described a bare trustee of shares in a company as being "*a mere name or 'dummy' for the true owner*".

Prest v Petrodel Resources [2013]

87. In my view, the present case is on all fours with *Prest v Petrodel Resources* [2013] UKSC 34 and [2012] EWCA Civ 1395. In the Court of Appeal in *Prest*, Rimer LJ (with whom Patten LJ agreed) stated:

"[136] ... If property held by a husband has been put into the name of someone who, on the evidence, is obviously a bare trustee for him, there will be no problem in holding that the beneficial ownership has not changed. As explained in the first sentence of the last quoted paragraph, the court will also not be bamboozled by the use by husbands to a like end of "shams, artificial devices and similar contrivances".

88. The Supreme Court in *Prest* confirmed the tenacity of the rule in *Salomon's* case in family cases, *i.e.* that a company is a legal entity distinct from its shareholders, and its assets are its own, and not those of its shareholders, even where company is owned and controlled by one person. The Supreme Court re-iterated that the circumstances in which the corporate veil could be lifted were very limited, and no special exception should be made for financial remedy proceedings, even in circumstances where the husband had misapplied the assets of his company for his own benefit. However, the Supreme Court held that the restriction on 'piercing the corporate veil' does not apply to circumstances in which the company is a 'bare trustee' holding assets in its name for the husband. The Supreme Court took the classic 'resulting trust' route and ordered the companies to transfer properties registered in their names directly to the wife.

Summary

89. As stated above, P Ltd has not appeared in this case, nor filed any evidence from a director or officer, nor disputed W's assertion in her Case that P Ltd is H's nominee. Nor has H himself challenged that assertion.

90. Against this background, in my judgment, in the light of H and P Ltd's non-disclosure and non-cooperation in these proceedings, the Court is entitled to draw similar inferences as the Supreme Court did in *Prest*. As Lord Sumption articulated:

"[47] The judge's finding about the ownership and control of the companies mean that the companies' refusal to co-operate with these proceedings is a course ultimately adopted on the direction of the husband. It is a fair inference from all these facts, taken cumulatively, that the main, if not the only, reason for the companies' failure to co-operate is to protect the London properties. That in turn suggests that proper disclosure of the facts would reveal them to have been held beneficially by the husband, as the wife has alleged".

91. The form of order sought by W in this case, whereby P Ltd (*qua* nominee/bare trustee for H), shall pay the lump sum to W and transfer the Modern Art Collection in line with order made in *Prest* where the companies were found to hold the properties on trust for the uncommunicative husband, and they (*qua* nominee/ bare trustee) were ordered to transfer the properties to the wife. I shall so order.

Trust issue (3) - W's application to set aside the March 2015 disposition

92. W seeks an order setting aside the Deed of Trust dated 17th March 2015.

93. The timing is telling. The Deed of Trust dated 17th March 2015 was executed four days before H signed his first witness statement in the present proceedings. By the Deed of Trust, H purported to assign to the Trust the entire 100% issued share capital in the three offshore holding companies (*i.e.* A Ltd, M Ltd and L Ltd) relating to the yacht, plane and helicopter. In addition, H also assigned to C Ltd his 60% shareholding in a Cypriot company, S Ltd, which held a Moscow property. (I shall refer collectively to these as "the March 2015 Companies").

94. On the same day, 17th March 2015, H executed a document described as "*Declaration of Trust*" by which he purportedly assigned to C Ltd as Trustee of the Trust his right, title and interest of whatsoever nature in all the March 2015 Companies. H also declared himself to be Trustee of the March 2015 Companies in favour of the Trust C Ltd and undertook to deal with the March 2015 Companies only as directed by C Ltd (a company of which, of course, he was sole director). In my view, it is clear that H was attempting to hide the March 2015 Companies in an offshore trust because he was faced with W's imminent claims in these proceedings. (I shall refer to this as "the March 2015 Disposition").

95. On 21st March 2015, only four days after effecting the March 2015 Disposition, H signed a witness statement in support of his application for a stay of these (English) proceedings in favour of Russia on the grounds of *forum non conveniens*. In his witness statement, H asserted that he was merely "... one of a number of discretionary beneficiaries of an offshore trust which is beneficially interested in the ... assets [of the March 2015 Companies]...". It is clear that this was a transparent attempt to put the assets of the March 2015 Companies out of his (legal) reach and to inhibit W's ability to claim or include those assets as part of the marital asset reckoning or, at least, to make enforcement of W's claims more difficult.

Section 37 MCA 1973

96. The March 2015 Disposition falls to be considered under s.37 MCA 1973. Section 37 gives rise to a legal presumption in relation to such dispositions made within the past three years. In *AC v DC (No 1)* [2013] 2 FLR 1483, Mostyn J usefully summarised the operation of s.37:

"[9] For W's application to succeed the following has to be demonstrated:

(i) That the execution of the [disposition] was done by H with the intention of defeating her claim for financial relief. This is presumed against H, and he