

# Save it for a rainy day—bankruptcy and sham trusts (Murphy and Hyde v Munir)

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**Restructuring & Insolvency analysis: Mr Munir purported to transfer the entire beneficial interest in his substantial London property portfolio to various members of his extended family in the years before he was made bankrupt. He entered into no less than three deeds of trust for this purpose. The court found these deeds of trust were a sham not intended to have legal effect. Alternatively, it was found that the deeds were transactions at an undervalue and transactions defrauding creditors. Mr Munir’s wife was said to be a trustee in respect of two of the trust deeds, but her evidence was that she could not read English and had no idea what she was signing at the time. The third trust deed was a self-declaration trust. Accordingly, the court held that the intention of Mr Munir alone as settlor that was decisive. However, despite being named as a respondent, Mr Munir did not take part in the proceedings nor did he give evidence. The court was prepared to infer the relevant intention on the part of Mr Munir without having heard from him and by reference to third parties’ understanding and actions. Written by Daniel Lewis and Rachael Earle, barristers, at Wilberforce Chambers.**

*Re Mohammed Munir (a bankrupt); Murphy and another (as trustees in bankruptcy of Mohammed Munir) v Munir and others; Chughtai and another v Munir* [\[2021\] EWHC 278 \(Ch\)](#), [\[2021\] All ER \(D\) 80 \(Feb\)](#)

## What are the practical implications of this case?

The case involved the application of the following established principles to the unusual circumstances of this particular bankruptcy:

- in order to prove a sham, the claimant must show (i) an intention that there should be no trust or that the document is not intended to have legal effect, and (ii) an intention to give a false impression to third parties or to the court
- a common intention between the settlor and any trustee is required but it is sufficient that the trustee went along with the settlor’s wishes or was recklessly indifferent (*Midland Bank v Wyatt* [\[1997\] 1 BCLC 242](#)) and/or that they were recklessly indifferent (*Minwalla v Minwalla* [\[2005\] 1 FLR 771](#) at para [54]–[55]) where a beneficiary under a trust deed claims to have a beneficial interest in the property in any event based on a constructive trust, the same principles apply as in cohabitation cases (eg *Stack v Dowden* [\[2007\] UKHL 17](#)). If the beneficiary cannot point to evidence of actual common intention in the form of an agreement between the parties, they must persuade the court to infer such an agreement from the parties’ conduct and, in that regard, direct financial contributions to the purchase price or initial deposit and regular contributions towards the mortgage instalments are all relevant considerations
- he who asserts must prove. The court will expect to see documentary evidence to support alleged financial contributions by an alleged beneficiary

## What was the background?

The joint trustees in bankruptcy claimed that between 2007 and 2010, when Mr Munir was facing serious financial difficulties, he created a series of ‘rainy day’ trust documents that purported to transfer away the beneficial interest in his London property portfolio to members of his family; but that in reality the Bankrupt retained his interest. Alternatively, to the extent the transactions were genuine, they constituted transactions at an undervalue within the meaning of [section 238](#) of the Insolvency Act 1986 ([IA 1986](#)) and / or transactions defrauding creditors within the meaning of [IA 1986, s 423](#).

By the time of trial, only two of the purported beneficiaries actively opposed the claim—a Mr Chughtai and his wife. They also issued a separate claim against the joint trustees in bankruptcy seeking a declaration that Mr Munir held one of the properties on trust for them by virtue of the trust deeds or a

common intention constructive trust (the latter on the basis that he said that he had contributed to the purchase and made mortgage payments).

The case had a number of striking features:

- Mr Munir, as the bankrupt, chose not to put in any evidence, whether as to his alleged intention in creating the trust deeds or as to anything else
- Mr Munir's wife—the alleged trustee of two of the trust deeds, denied any knowledge of the trust and claimed that she had no idea what she was signing
- despite Mr Chughtai claiming to have paid the purchase price and the mortgage on 10 Stradbroke Drive, he chose not to disclose his bank statements (which would have been determinative of the issue)
- as the judge later found, the oral evidence of Mr Chughtai was both extraordinary and incredible

### What did the court decide?

The court held that three trust deeds were sham documents not intended to have legal effect.

Alternatively, they constituted transactions at an undervalue or transactions defrauding creditors. The court accepted that the deeds were entered into at a time when Mr Munir was facing serious financial difficulties and that he had clearly intended to retain the beneficial interest in the properties (he had, for example, declared rental income on the properties in his tax returns after entering into the trust deeds).

Importantly, the court was prepared to infer the relevant intention on the part of Mr Munir in his absence.

On Mr Chughtai's constructive trust argument, the court found his evidence to be 'extraordinary and wholly incredible'. The judge relied on the observations of Lady Justice Arden in *Re Mumtaz Properties* [2011] EWCA Civ 610 that 'contemporaneous written documentation is of the very greatest importance in assessing credibility' and it can be significant not only where it is present but also where it is absent. Mr Chughtai had not provided a bank statement to support his financial contributions nor evidence from anyone else concerned in the purchase of the property to support his position.

The joint trustees in bankruptcy succeeded on each of their claims and Mr Chughtai's claim was dismissed. Mr Munir's property portfolio vested in his joint trustees in bankruptcy pursuant to [IA 1986, s 306](#).

### Case details

- Court: Business and Property Courts of England and Wales, Insolvency and Companies List (ChD)
- Judge: Insolvency and Companies Court Judge Mullen
- Date of judgment: 15 February 2021

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