Michaelmas Term
[2024] UKSC 42
On appeal from: [2023] EWCA Civ 214

JUDGMENT

Frenkel (Appellant) *v* LA Micro Group (UK) Ltd and others (Respondents); LA Micro Group Inc (Appellant) *v* LA Micro Group (UK) Ltd and others (Respondents)

before

Lord Hodge, Deputy President
Lord Briggs
Lord Sales
Lord Burrows
Lord Richards

JUDGMENT GIVEN ON
11 December 2024

Heard on 15 and 16 October 2024

First Appellant – LA Micro Group Inc
Clare Stanley KC
William Buck
Jen Coyne
(Instructed by Fladgate LLP)

Second Appellant - Frenkel
Alex Barden
(Instructed by Schofield Sweeney LLP (Leeds))

Respondents - LA Micro Group (UK) Ltd and others
Andrew Twigger KC
Paul Strelitz
Oliver Hyams
(Instructed by IBB Law)

LORD BRIGGS (with whom Lord Hodge, Lord Sales, Lord Burrows and Lord Richards agree):

Introduction

1. This appeal raises an important but undecided question about the vendor—purchaser constructive trust ("VPCT") which typically arises whenever there is an agreement for the sale of property of which equity would grant specific performance. It is one of the ways in which effect is given to the maxim that equity treats as done that which ought to be done.

2. The question arises in the context of a claim by the appellants that an oral agreement in 2010 ("the 2010 Agreement") by the first appellant, La Micro Group Inc ("Inc"), to transfer its 51% beneficial interest in each of the two issued shares in the first respondent, La Micro Group (UK) Ltd ("UK"), to their respective legal holders, the respondents, David Bell and Arkadiy Lyampert (respectively "Mr Bell" and "Mr Lyampert"), was ineffective for that purpose because of the lack of signed writing under section 53(1)(c) of the Law of Property Act 1925. The Court of Appeal ([2023] EWCA Civ 214; [2024] Ch 1, para 110) rejected that claim because it held that the 2010 Agreement gave rise to a VPCT which displaced section 53(1)(c) by virtue of section 53(2). So far as is relevant section 53 provides:

> "(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—…
>
> > (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".

3. Subject to one further point to which I shall shortly return, sensible concessions by counsel on all sides, Clare Stanley KC for the first appellant, Alexander Barden for the second appellant and Andrew Twigger KC for the respondents, mean that there remains, after very lengthy and complex litigation, only one concise issue of law to be decided. It is this. Granted that a VPCT would arise on an oral agreement for the sale of an equitable interest in a share in a private company to anyone else in the world, does the fact that the purchaser was the sole trustee of the share as legal owner, and already (or about to

become) the holder of the rest of the beneficial interest in the share other than that agreed to be sold, mean that there can be no VPCT? The argument for the appellants that there would be no VPCT is based upon the proposition (which the respondents accept) that in such a case the concentration of the whole beneficial interest in the sole legal owner as the result of the sale means that he (or she) is the beneficial owner by virtue of his legal title, and that any previous equitable interests merge and disappear into that legal title. There the common ground ends. The appellants go on to submit that, however worded, the agreement for such a sale is in substance just an agreement for the destruction of the vendor's equitable interest, so that there is no property to be transferred upon which a VPCT could bite.

4. The further point is that the respondents say that section 53(1)(c) does not in any event apply to equitable interests in anything other than land so that, even in the absence of a VPCT, the appellants' claim fails in limine. This is a new point which the respondents seek permission to advance for the first time in this court, the contrary having been assumed to be true at all previous stages in this litigation. It is however a pure point of law, on which both sides had prepared careful written submissions. The court therefore heard oral argument from the respondents on the point de bene esse, reserving until judgment on the appeal the question whether to give permission for it to be argued at all. As will appear at the end of this judgment I consider that permission to pursue this point should be refused. As has been assumed by judges, textbook writers and practitioners for over half a century, section 53(1)(c) applies to dispositions of equitable interests in all kinds of property, real or personal, and not just to equitable interests in land.

The facts and litigation chronology

5. The issue of principle for decision in this appeal is not particularly fact-sensitive, but the following short summary of the facts will serve to set it in context. It is no longer contentious between the parties, although many aspects of it were the subject of extended dispute during the litigation in the lower courts. Some parts of the summary which follows were always common ground, but others were resolved only on a second appeal to the Court of Appeal.

6. Mr Lyampert set up Inc in California in 2001 as a trader in computer hardware. Shortly thereafter Mr Roman Frenkel joined him in the business. They were the sole shareholders in Inc, each holding 50% of its shares.

7. Mr Bell owned a British company Bstock Ltd, which also traded in computer hardware. Bstock and Inc began trading with each other and Messrs Bell, Frenkel and Lyampert discussed a joint venture between the three of them. For that purpose UK was acquired off the shelf in July 2004. In August 2004 Mr Bell became the sole owner of UK's only issued share ("Share 1"). Both he and Mr Lyampert became directors of UK.

8. The joint venture discussions led to an agreement in August 2004 between Mr Bell and Inc (acting by Mr Lyampert) under which:

(i) UK would be owned as to 51% by Inc and as to 49% by Mr Bell.

(ii) Each of UK and Inc would supply computer hardware to the other at no mark-up. Profits made in the USA from the sale by Inc of UK's equipment would be remitted to UK. Profits made by UK on the sale of Inc's equipment in Britain would be retained by UK.

(iii) The profits of UK would be split equally between Mr Bell and Inc.

9. By 2009 a second share had been issued by UK and allotted to Mr Lyampert ("Share 2"). Mr Bell held Share 1 on express trust for Inc as to 51% and for himself as to 49%. Likewise Mr Lyampert held Share 2 on express trust as to 51% for Inc and as to 49% for Mr Bell.

10. In 2010 Mr Lyampert and Mr Frenkel fell out. Mr Frenkel sought to dissolve Inc. On two occasions in 2010 he told Mr Bell that he wanted nothing further to do with UK or its business. The falling out between Mr Lyampert and Mr Frenkel led to a restructuring of the business arrangements between the individual and corporate parties. As a first stage Inc and UK resumed trading together at usual commercial margins, and with freedom to compete against each other in all markets.

11. Also in 2010 Mr Bell and Mr Lyampert made an oral agreement between each other, and on behalf of UK and Inc ("the 2010 Agreement"), of which the following were expressly agreed terms:

(i) that they (ie Mr Bell and Mr Lyampert) would work together to carry on UK's business,

(ii) that the profits of UK would thenceforth be split between the two of them on a 50/50 basis, and

(iii) that Mr Lyampert would assume liability for Inc's then substantial indebtedness to UK, from which Inc was released.

12. The courts below have held that the 2010 Agreement also contained the following implied term, binding upon Mr Bell, Mr Lyampert and importantly upon Inc, that

henceforth the two issued shares in UK would no longer be held on the 51%/49% terms declared by the express trusts for Inc and Mr Bell, but as to Share 1 solely for Mr Bell, legally and beneficially, and as to Share 2 solely for Mr Lyampert, legally and beneficially, with the result that they became the 50/50 beneficial owners of UK. The courts below have also held that Inc received valuable consideration for its agreement to give up its 51% beneficial ownership of UK in the form of the immediate release of its debt to UK.

13. This implied term was, of course, never reduced to words, let alone to writing. It has variously been described in judicial pronouncements upon the 2010 Agreement as an agreement "that each of the issued shares (in UK) would be held beneficially for the person in whose name it was issued" (per Judge Jarman [2022] EWHC 1304 (Ch), [48]), as an agreement "that Inc's place in UK was being assumed by Mr Lyampert personally and that he and Mr Bell would thereafter own, run and profit from UK equally" (per Nugee LJ in the Court of Appeal, [2024] Ch 1, at para 86) and, in Nugee LJ's earlier summary, at para 8, the issue was said to be whether "Inc had contractually surrendered its interest". The concept of Inc surrendering its interest seems to have originated in a submission by Mr Twigger KC at an earlier stage in the proceedings: see per Sir Christopher Floyd at para 81 of his judgment on the earlier appeal ([2021] EWCA Civ 1429; [2022] 1 WLR 336), handed down on 5 October 2021.

14. The litigation about whether Inc had indeed ceased to be the beneficial owner of 51% of UK began in 2015, as the apparent result of Mr Frenkel repenting of his statement to Mr Bell in 2010 that he wanted to have nothing more to do with UK. He was the claimant in an unsuccessful action seeking a declaration that he personally was the beneficial owner of 25.5% of UK. There followed a claim by UK and Mr Bell in 2020 for a declaration that he and Mr Lyampert were the sole legal and beneficial owners of the shares in UK respectively issued to each of them. This succeeded before Judge Jarman in January 2021 ([2021] EWHC 140 (Ch)) on the basis that Inc had disclaimed its 51% beneficial interest in UK. Inc (by then in a form of protective receivership in the USA) and Mr Frenkel successfully appealed that decision on legal grounds, but the Court of Appeal ([2022] 1 WLR 336) remitted the case back to the judge to make further findings of fact. At a second trial before Judge Jarman in March 2022 ([2022] EWHC 1304 (Ch)) Mr Bell and UK failed on their case that Inc's interest had been contractually surrendered. The contractual surrender case was based on the implied term to that effect in the 2010 Agreement. The judge found that there had indeed been such an implied term, but that the contractual surrender was defeated for lack of writing under section 53(1)(c). Nonetheless he found in favour of Mr Bell on the basis of proprietary estoppel.

15. On Inc's and Mr Frenkel's second appeal, heard in January 2023 ([2024] Ch 1), they succeeded on evidential grounds in having the judge reversed on proprietary estoppel, but Mr Bell and UK's Respondents' Notice, to the effect that section 53(1)(c) was disabled by a constructive trust under section 53(2), prevailed on the basis that the 2010 Agreement, being specifically enforceable, gave rise, albeit only momentarily, to a

VPCT in favour of each of Mr Bell and Mr Lyampert. It did so only momentarily because, as Males LJ explained, the bare constructive trust of Inc's equitable interest for Mr Bell (and for Mr Lyampert) which came into existence as the result of the 2010 Agreement immediately united the whole equitable interest in each share with the legal interest in the same share, with the result that the purely equitable interests and Inc's trusteeship ceased to have any separate existence.

The parties' sensible concessions

16. Subject only to their point about section 53(1)(c) being limited to interests in land, the respondents conceded (as they had in the Court of Appeal) that, regardless whether it might be classified as a surrender, release, destruction or transfer, Inc's agreement to confer its 51% interest in the two issued shares in UK upon Mr Bell and Mr Lyampert amounted to a disposition of that equitable interest within the meaning of section 53(1)(c). I have no doubt that this concession was rightly made, mainly because of the unanimous decision of the House of Lords in *Grey v Inland Revenue Comrs* [1960] AC 1 that "disposition" in section 53(1)(c) carried its ordinary, wide meaning.

17. Having failed in all their other equitable defences to Inc's claim, including proprietary estoppel and laches, and having not at any stage sought specific performance of the 2010 Agreement, the respondents therefore conceded before this court that their case that Mr Bell and Mr Lyampert were 100% beneficial owners of their respective shares in UK depended entirely upon succeeding in their argument that the 2010 Agreement created a VPCT in relation to Inc's 51% equitable interest in each share, from the moment when the agreement was made. It has never been in dispute between Mr Bell and Mr Lyampert that the 2010 Agreement operated as an immediate transfer to Mr Lyampert by Mr Bell of his former 49% beneficial interest in Share 2, held by Mr Lyampert.

18. For their part the appellants conceded that the implied term of the 2010 Agreement by which Inc gave up its beneficial interest in each share would have satisfied the equitable conditions for the creation of an immediate VPCT, sufficient to override section 53(1)(c), if each of the purchasers had been anyone in the world other than, respectively, Mr Bell and Mr Lyampert. They accepted that an equitable interest in a share in a private company was capable of being trust property, and that an agreement for its sale would be specifically enforceable. Further they accepted that immediate consideration was provided to Inc for its giving up of its 51% beneficial interest in both shares, in the form of Mr Lyampert's undertaking to assume liability for Inc's debt to UK, so as immediately (of course with UK's consent) to release Inc from that liability by way, in effect, of novation. This meant that, as they accepted, the VPCT would have been a bare trust in favour of the third-party purchaser from the outset. The only obstacle to that outcome was, they submitted, that Inc's equitable interest did not continue to subsist in the hands of either Mr Bell, or Mr Lyampert, following the making of the 2010 Agreement. Rather

it was in each case destroyed by becoming part of a 100% beneficial interest in the hands of each of them as the sole legal owner of each share.

19. It is worth exploring this concession in a little more detail, as the court did with Miss Stanley and Mr Barden. It was framed in relation to a hypothetical third-party purchaser called X. But it would apply equally in either of the following examples:

(i) an agreement for the transfer of Inc's 51% interest in Share 1 to Mr Lyampert, and its 51% interest in Share 2 to Mr Bell;

(ii) an agreement to transfer only a 50% beneficial interest to each of Mr Bell and Mr Lyampert, with Inc retaining a nominal 1% beneficial interest in each case.

This is because in neither of those examples is the equitable interest which is the subject matter of the sale destroyed as the result of the transaction by being merged with legal title to the shares in question. That element of destruction in the case before the court makes all the difference, so say the appellants.

20. It is worth clarifying at this stage that neither 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. And that is so whether or not the legal title holder has some beneficial interest of his or her own, such as a proportion of the whole as a co-owner as tenant in common, or an interest limited in time, such as a life interest or a reversion.

21. Similarly, although the beneficiaries under a trust of the legal title may, and often do, have equitable interests that correspond with their share of the beneficial ownership, this is not always so. The beneficiaries under such a trust may hold that equitable interest on sub-trust for others. They may have no beneficial interest of their own at all, or it may be a different interest (in amount or time) than the equitable interest which they hold under the trust of the legal title. There may be any number of sub-trusts, as is very common in the means whereby shares and derivatives are held, under English law at least, in the modern securities market.

22. As already noted the respondents also concede that the effect of the 2010 Agreement was (subject to the potentially disabling effect of section 53(1)(c)) to leave Mr Bell and Mr Lyampert as the sole title holder of each share, free from any trusts or equitable interests at all, so that Inc's former 51% equitable interest in each share was destroyed, by merger with the 49% equitable interests already held, or at the same time being acquired, by the two holders of the legal title. Mr Bell had already been the 49% beneficial owner of Share 1, while Mr Lyampert received Mr Bell's 49% beneficial interest in Share 2 under the 2010 Agreement.

23. The final relevant concession, made by both sides, is that there is no reported authority which directly addresses the issue before the court, either in England and Wales, or elsewhere in the common law world. It is therefore a question which lends itself to resolution by reference to first principles. The answer is not greatly affected by reference to section 53 itself, since the VPCT doctrine was well established by 1925, and 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, if it would otherwise affect its creation or operation in any way.

The vendor purchaser constructive trust

24. Some excellent scholarship by the parties, particularly the appellants, in their written cases demonstrate that the concept of the vendor purchaser constructive trust, arising on a contract for the sale of land, may be dated back at least to the 15th century: eg in *Shipton v Dogge (Doige's Case)* (1442) 20 Hen VI f 34 pl 4. The equitable remedy of specific performance may have had an even older origin, in the reign of Richard II: see W Barbour, *The History of Contract in Early English Equity* (Clarendon Press) (1914), at p 122. For as long as the subject matter was land, the criterion that the contract be specifically enforceable was always satisfied, so that it is not in the early cases described as a qualifying condition for the arising of a VPCT. In some cases the conditionality is described as being the other way round: ie that the availability of specific performance depended upon there being a trust in favour of the purchaser: see eg *Beckford v Wade* (1805) 17 Ves 87 at p 96, per Sir William Grant MR.

25. However that may be, the question whether a contract for the sale of property other than land gave rise to a VPCT always depended upon whether the uniqueness of the subject matter justified an order for specific performance: see *Snell's Equity*, 34th ed (2019), at para 24-004. It is common ground that an interest in shares in a private company satisfies that requirement of uniqueness, whereas shares in a quoted company, being available on the market, generally would not. The classic example of the creation of a VPCT over shares is *Neville v Wilson* [1997] Ch 144.

26. The overwhelming majority of cases on the VPCT are about contracts for sale which contemplate, or at least need, further steps to be taken, usually by both parties, to carry the transaction through to completion. Typically the purchaser will need to provide the promised price or other form of consideration, while the vendor will be required to transfer the subject matter, whether by conveyance, signed writing or (in the case of chattels) delivery. The terms of the VPCT constantly adjust themselves to cater for those later steps. Thus for example, upon the making of a contract for the sale of land, the vendor comes under immediate custodial obligations, so that he may not sell it to anyone else, or damage it. But the vendor continues to be entitled to beneficial use of the property, or receipt of rents and profits from it, at least until the purchase price is paid. Then the vendor becomes in substance a bare trustee for the purchaser.

27. There is an in-depth analysis of this process of change in the article by PG Turner, "Understanding the Constructive Trust between Vendor and Purchaser" (2012) 128 LQR 582, and a shorter summary by Lawrence Collins LJ in *Nelson v Greening & Sykes (Builders) Ltd* [2007] EWCA Civ 1358, 10 ITELR 689, at para 53 and earlier at greater length at first instance in *Englewood Properties Ltd v Patel* [2005] 1WLR 1961. Those changes have led to the VPCT being described in *Earl of Egmont v Smith* (1877) 6 Ch D 469 at 475, per Sir George Jessel MR, as imposing "peculiar duties and liabilities" on the trustee, who was labelled a "trustee… sub modo" in *Oughtred v Inland Revenue Comrs* [1960] AC 206 at 227 by Lord Radcliffe. Some have even doubted whether the VPCT is really a trust at all: see eg *Kern Corpn Ltd v Walter Reid Trading Pty Ltd* (1987) 163 CLR 164 at p 192 per Deane J and *Knox v Gye* (1872) LR 5 HL 656 at p 675 per Lord Westbury. But the appellants accept, and I agree that, regardless of its peculiarities, the VPCT is a constructive trust within section 53(2). Furthermore it is not challenged that upon payment or other provision of the consideration for the sale, the VPCT becomes in substance a bare trust in favour of the purchaser.

28. The statistical fact that most cases about the VPCT concern contracts which require some further step (such as a conveyance or other writing) to be completed has led to the purpose of the trust being described as to protect the parties (mainly but not exclusively the purchaser) during the interval between contract and completion (see eg Meagher, Gummow and Lehane, *Equity, Doctrines and Remedies*, 5th ed (2015) at para 6-055). This is so whether the contract expressly contemplates such a further step, eg a typical contract for the sale of land, or because a transaction which is intended or assumed to be self-executing (ie to need no further step to complete it) is ineffective for that purpose (eg because it is oral rather than written) and needs to be completed, and is therefore treated by equity as if it were a contract to take that further step, of which specific performance will be granted: see eg *Parker v Taswell* (1858) 2 De G & J 559; *Gilbey v Cossey* (1912) 106 LT 607 and *Bridges v Mees* [1957] Ch 475.

29. In the present case the parties to the 2010 Agreement were (or in Inc's case were represented by) commercial men who plainly thought that they needed to do no more than make their oral bargain to lead to the outcome that, thenceforth, the entirety of the

beneficial interest in the two issued shares in UK would reside in Mr Bell and Mr Lyampert. But since in the eyes of the law that involved the disposition of Inc's equitable interest in each share, the oral 2010 Agreement was ineffective for that purpose due to section 53(1)(c) and was required to be completed by writing, unless the VPCT either provided interim protection pending a written disposition, or provided all that was necessary to give full effect to the transfer of the beneficial interest in the shares. Since the consideration was provided at the time of the making of the 2010 Agreement (Inc's debt to UK being effectively released by an oral contract) each of Mr Bell and Mr Lyampert became beneficiaries under a bare trust.

30. The conceptual quirk of the present case is that the VPCT which is interposed by equity provides not merely interim protection. It also provides all that is needed for completion of the disposal of Inc's 51% beneficial interest in the two shares, both because the interest to be transferred is purely equitable, and because the intended beneficiaries of the transaction are already the legal owners of the shares. This is because the constructive trust is (as is common ground) 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 which leaves the full beneficial interest as an incident of the legal title. It matters not whether this is described as the consequence of the creation or of the operation of the constructive trust. Either way section 53(2) protects that outcome from section 53(1)(c).

31. It was debated during the hearing whether the VPCT operated in this case by way of sub-trust, so that, using Share 1 as an example, Mr Bell held the legal title on bare trust as to 51% for Inc, and Inc held its equitable 51% on bare trust for Mr Bell. Since the respondents did not suggest that this stood in the way of a merger of all the equitable interests in the legal title, nothing turns on that aspect of the technical detail.

32. 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 VPCT does all the necessary heavy lifting once notice is given to the trustee, even where the purchaser is not the legal owner. But this was neither asserted nor (therefore) challenged in this appeal, and its correctness must await determination in a case in which it matters.

33. In their written and oral submissions, Miss Stanley and Mr Barden made much of the fact that the 2010 Agreement contemplated no interval between contract and completion, and that the recognition of a VPCT would, in effect, complete the intended transaction rather than provide only interim protection. Why, they asked, should equity operate other than for the achievement of that purely interim purpose?

34. But this is to put the cart before the horse. Without a VPCT the 2010 Agreement would have left Mr Bell and Mr Lyampert exposed to remaining minority owners of their respective shares and, therefore minority owners of UK, both by any transfer by Inc of its 51% beneficial interest to a third party, and by Inc's insolvency, for however long it might take for them to obtain an order by way of specific performance for the written transfer or release of Inc's 51% beneficial interest in each share to each of them. The VPCT upon which the respondents rely protected them from those risks. The fact that the VPCT had the added benefit (for each of them) of delivering that for which they had bargained without the need for specific performance or any other remedy is no reason for denying the availability of the VPCT, merely because it did not just provide interim protection. The appellants have not (and I think could not have) put forward some lesser form of VPCT which fully provided the traditional interim protection without also producing that added benefit.

35. More fundamentally the supposed added benefit fully accords with the underlying objective of equity in this context, which is to treat as done that which ought to be done. Interim protection between contract and completion is just an aspect of the achievement of that objective. Where the contractual objective is the conveyance or transfer of legal title, nothing that equity can do short of securing compliance with an order for specific performance (by the vendor or by a master of the High Court if the vendor refuses) will achieve that outcome. Interim protection is all that equity can provide by means of a VPCT. But where, as here, the objective is to transfer a 51% beneficial ownership, represented in Inc's hands by a mere equitable interest, to persons who in this case already have the legal title, then equity's ability to recognise a constructive trust achieves all that is necessary. The constructive trust vests the 51% beneficial ownership of each share in Mr Bell and Mr Lyampert. The doctrine of merger does the rest.

36. The creation by equity of a VPCT in favour of the purchaser is not in any event dependent upon there having been intended to be, or needing to be, an interval between contract and completion. This is made clear by the following passage in the judgment of Lord Westbury LC in *Rose v Watson* (1864) 10 HLC 672 671, at 678:

> "When the owner of an estate contracts with a purchaser for the immediate sale of it, the ownership of the estate is, in equity, transferred by that contract. Where the contract undoubtedly is an executory contract, in this sense, namely, that the ownership of the estate is transferred, subject to the payment of the purchase-money, every portion of the purchase-money paid in pursuance of that contract is a part performance and execution of the contract, and, to the extent of the purchase-money so paid, does, in equity, finally transfer to the purchaser the ownership of a corresponding portion of the estate."

The destruction analysis

37. By the conclusion of oral argument the submission that there can be no VPCT where the oral agreement is for the destruction of its subject matter rather than for its transfer had become the appellants' central case. They say that, in substance, the implied term of the 2010 Agreement was simply for the destruction of Inc's equitable interest in each of the two shares in UK, leaving Mr Bell and Mr Lyampert as the sole outright beneficial owners of each share by virtue only of their legal title. They seize upon Nugee LJ's description (in the Court of Appeal [2024] Ch 1) of the transaction embodied in the implied term as a release, and upon the respondents' own classification of it as a contractual surrender. They say, rightly, that Inc's particular 51% equitable interest would have no continued life after the completion of the 2010 Agreement, whether by a written release of it or by way of VPCT. They deal with Males LJ's description of Inc's equitable interest as having a momentary existence in the hands of Mr Bell and Mr Lyampert as revealing an attempt by the respondents to rely upon a scintilla temporis in conflict with well-settled authority.

38. In my opinion these arguments all fail to displace a VPCT on the facts of this case, whether viewing the transaction created by the implied term in the 2010 Agreement as a matter of substance or by reference to its technical mechanics. Viewed as a matter of substance, the subject matter of the implied term was Inc's 51% beneficial interest in each of the two issued shares in UK. The objective of the agreement was that, forthwith, that 51% beneficial interest was to become beneficially owned by each of Mr Bell and Mr Lyampert, as an addition to the 49% beneficial interest which they each already owned (or in the case of Share 2 Mr Lyampert was acquiring from Mr Bell at the same time), so that they should become 50/50 co-owners of UK by being the 100% beneficial owners respectively of each of its two issued shares.

39. That this is the substance of the implied term is not a matter of language. The subsequent use by the parties and the judges in the courts below of words like "surrender" and "release" are neither conclusive nor even determinative of the substance. The conferring of Inc's 51% beneficial share upon each of Mr Bell and Mr Lyampert was the substance of the implied bargain because they were businessmen who no doubt thought in terms of ownership, rather than in terms of the delicate mechanics of equitable and legal title, and the merger of one in the other.

40. Even if the words surrender or release are given weight, as descriptive of what Inc was doing, they do not, or at least not necessarily, imply destruction. Both surrender and release can include something being delivered up to someone else. They are silent about what is then to happen to the subject matter in the hands of the deliveree. In the present case the 51% beneficial interest in UK's shares being released or surrendered by Inc was not in substance to disappear. It was to become part of Mr Bell's and Mr Lyampert's

50/50 beneficial ownership of UK, represented by their separate 100% beneficial interest in each of Shares 1 and 2.

41. The only sense in which destruction is a proper description of this transaction is that it encapsulates the mechanics of what happens when a full equitable interest held under a trust becomes vested in the trustee. In those circumstances, the entire beneficial interest is reflected in the legal title. That is what is meant by merger in this context.

42. A simple example may illustrate this difference between substance and mechanics. Suppose that A and B are a cohabiting couple who share the beneficial ownership of their home as tenants in common in equal shares under A's sole trusteeship of the legal estate. The property is worth £1 million when they decide to go their separate ways. B agrees to sell her share to A for £500,000. No one would doubt that A is acquiring B's 50% beneficial interest. It is not being destroyed. But the mechanics of that acquisition involve B's 50% equitable interest joining with that of A, and the whole 100% then merging into A's legal title and disappearing. That has nothing to do with the substance of the transaction.

43. Even if the substance is ignored, and the transaction looked at merely as a matter of equitable mechanics, the appellants' case does not get them home. As both Nugee and Males LJJ explained in the Court of Appeal ([2024] Ch 1), the VPCT was the mechanism by which Inc's equitable interest in each of Shares 1 and 2 reached Mr Bell and Mr Lyampert. Only when it became vested in each of them did their status as sole trustees of each share lead to the result that the equitable interest merged in the legal title. It is fair to say that, because immediate consideration for the sale was achieved by the 2010 Agreement, the VPCT had only a momentary existence, occupying what the appellants called a scintilla temporis. But I agree with the Court of Appeal that this is no obstacle to the recognition of a VPCT in this context.

44. The appellants relied upon both *Abbey National Building Society v Cann* [1991] 1 AC 56 and *Southern Pacific Mortgages Ltd v Scott* [2015] AC 385 for the submission that the law disregards such momentary events. The question common to both those cases was whether the law should recognise a theoretical momentary gap in time between a purchaser's acquisition of legal title to land and the grant by the purchaser of a charge over it in favour of a lender providing part of the purchase price, so that someone occupying the premises could squeeze in with an overriding interest having priority over the charge. It was held in the *Abbey* case and confirmed in the *Scott* case that the purchase and the charge were one indivisible transaction between which there could be no such scintilla temporis.

45. The present case is also about an indivisible transaction (the 2010 Agreement, the VPCT and the merging of equitable interests in legal title to the two shares), but not about

any recognition of a gap in time between different parts of it, still less one the existence of which would be destructive of the purpose and intended effect of the transaction. I do not consider that those two cases suggest that there is any principled reason for refusing to recognise a VPCT merely because of its unusually momentary existence. It still plays an essential, if mechanical, part in the process whereby equitable interests in the two shares become merged in legal title to them, thereby achieving the obvious substantive purpose of the transaction, namely the conferring of full beneficial ownership in each share in favour of the persons who happened already to be the sole legal owner of each of them.

46. An added reason why the appellants' argument based upon the notion of destruction as fatal to the recognition of a VPCT should be rejected is that it produces irrational and arbitrary outcomes. It depends entirely upon the happenstance that the purchaser of the relevant equitable interest is also the legal owner of the underlying property, here the two shares in UK. It would not arise if Inc rather than either Mr Bell or Mr Lyampert had been the legal owner of the shares or, as noted above, if Mr Lyampert had been the legal owner of Share 1 and Mr Bell the legal owner of Share 2. Nor would it have arisen if a nominal 1% beneficial interest had been retained by Inc.

47. An illustration of further irrational consequences arises if it is imagined that the two limbs of the implied term affecting Share 2 had been separated by a short time, say five minutes. Share 2 was the subject of an agreement by Mr Bell to transfer his 49% interest to Mr Lyampert and an agreement by Inc to do the same in relation to its 51% beneficial interest. On the appellants' case, if Mr Bell's transfer had been agreed first, there could be no VPCT in relation to Inc's transfer. But if Inc had gone first, there would be no merger for as long as Mr Bell's 49% equitable interest in Share 2 remained to be transferred, and therefore nothing to prevent a VPCT from protecting Mr Lyampert's contractual rights as purchaser.

48. Where one theory about how equity works in a particular context produces irrational consequences and fails to achieve equity's objective in circumstances which are commercially indistinguishable from others where it does do so, that seems to me to be a telling indicator that the theory must be wrong, all the more so if the rival theory suffers from none of those defects. In the present case a conclusion that, on a sale and purchase of an equitable beneficial interest, it is irrelevant to the creation of a VPCT where the legal title lies, produces the same sensible outcome in terms of achieving equity's purpose, and is, if at all possible, the theory to be preferred.

49. Finally it was faintly argued by the appellants that if the Court of Appeal's analysis of the saving effect of the VPCT was correct, this would reduce section 53(1)(c) to a brutum fulmen, because all instances of its potential activation would be nullified by section 53(2). I disagree. The obvious arena for a requirement for writing in relation to the disposition of an equitable interest under a trust is where the intended disposition is

by way of gift, rather than contractual obligation. Specific performance and the VPCT are prime examples of the readiness of equity to come to the aid (further than does the common law) of those with contractual rights for which damages for breach or interference would be an inadequate remedy. But equity does not assist a volunteer, nor does it perfect an imperfect gift.

Is section 53(1)(c) limited to dispositions of equitable interests in land?

50. The respondents submitted, for the first time in this court and with some admitted trepidation, that section 53(1)(c) should be construed as limited to the disposition of equitable interests in land, leaving similar dispositions in relation to personalty unaffected by any requirement for writing. Their argument ran as follows:

(i) Section 53 must be read in context. The Law of Property Act 1925 is overwhelmingly about real property rather than personalty. Section 1 makes the radical transformation of most legal interests into equitable interests, but only in relation to land. The sections about the requirement for formalities are almost entirely about transactions, dispositions, declarations of trust and contracts relating to land. Leaving aside subsection (1)(c) the whole of section 53 is about land, and forms part of a run of sections dealing with land.

(ii) The phrase "equitable interest" is elsewhere defined (in section 1(8)) as limited to an interest in land.

(iii) Whereas section 53(1)(c) makes perfect sense in relation to land, where declarations of trust and contracts for sale also require writing, it is anomalous in relation to personalty, in relation to which declarations of trust and contracts for sale are subjected to no such formality.

51. I am not going to engage with the detail of this sophisticated and well-presented argument, save to say that I do not consider that section 1(8) will bear the weight attributed to it in the respondents' argument. Apart from that, if the argument had been presented in 1926, it might have enjoyed real force. The respondents' problem is that section 53(1)(c) has been assumed not to be limited to equitable interests in land for over half a century, including by the House of Lords in *Grey v Inland Revenue Comrs* [1960] AC 1, *Oughtred v Inland Revenue Comrs* [1960] AC 206 and *Vandervell v Inland Revenue Comrs* [1967] 2 AC 291. In all those cases the House of Lords had been dealing with dispositions of equitable interests in shares. In *Grey* the outcome depended upon section 53(1)(c) being applicable to equitable interests in shares (although the contrary was not argued). In *Oughtred* the precise ratio is difficult to extract from the speeches of their Lordships, but the whole of the argument proceeded upon the basis that section 53(1)(c) applied to dispositions of an equitable interest in shares. It was in the

interests of the taxpayer to argue otherwise, but Geoffrey Cross QC (for the appellant taxpayer) did not seek to do so. In *Vandervell* the applicability or otherwise of section 53(1)(c) lay at the heart of the case. The majority decided that it did not apply, because there was no divorce between the legal and the equitable estate in the shares. It would have been much simpler to hold (if true) that section 53(1)(c) did not apply to interests in shares at all, but this was not even argued.

52. Since then numerous cases have proceeded upon that assumption. In *In re Tyler* [1967] 1 WLR 1269, at 1274, Pennycuick J said that:

> "It is now well established that that requirement [ie section 53(1)(c)] applies to equitable interests in personalty as well as in land."

Substantially all the legal textbooks say the same. (See eg *Megarry and Wade's Law of Real Property*, 10th ed (2024) at para 10-50; Meagher, Gummow and Lehane *Equity, Doctrines and Remedies* (see above, para 28) at para 7-045 to 7-50 and *Scott on Trusts*, 3rd ed (1967) at p 1087, n2.) It may safely be assumed that countless written dispositions of equitable interests in personalty have since been made on the drafting and advice of practitioners on that basis.

53. 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.

54. The test for permission for the admission of an appeal, including a new ground of appeal, includes the requirement that it disclose an arguable point of law. In my view the time when this point might have been arguable has long since passed. I would therefore refuse permission to the respondents to advance it now. In any event they do not need to, for the reasons already given.

55. I would therefore dismiss this appeal.