



[2002] EWHC 2821 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

HC 00 00951

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, December 20, 2002

Before
MR JUSTICE LAWRENCE COLLINS

Between

BUCKINGHAMSHIRE COUNTY COUNCIL

Claimants

and

(1) SARBJIT SINGH BRIAR
(2) LORRAINE JANESSE BRIAR
(3) LJB ELECTRONICS LIMITED
(4) DELI BAR LIMITED

Defendants

JUDGMENT
Approved by the Court for handing down

Mr Benedict Sefi (instructed by Sharpe Pritchard) for the Claimants
Mr Graham Platford (instructed by Kidd Rapinet) for the First, Second and Third Defendants

I direct that pursuant to CPR PD 39 para 6.1 no official shorthand note shall be taken
of this judgment and that copies of this version as handed down may be treated as authentic.

.....
(Mr Justice Lawrence Collins)

Mr Justice Lawrence Collins:

I Introduction

1. In these proceedings Buckingham County Council (“the Council”) seeks to make the first and second defendants, Mr and Mrs Briar, responsible under the Town and Country Planning Act 1990 (“the 1990 Act”) for the clean-up costs of a site at Court Lane, Iver. The land was bought by them in 1988, and from 1989 there was unauthorised tipping on the land, which was followed by an enforcement notice from the Council and ultimately fruitless negotiations between Mr Briar and the Council. After the Council served a further enforcement notice in 1996, the land was transferred by Mr and Mrs Briar to a company formed by them, and then it was transferred to, and registered in the name of, a company called Deli Bar Ltd.
2. By section 178(1) of the 1990 Act:

“Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may - (a) enter the land and take the steps; and (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.”
3. By section 336(1):

“ ‘owner’, in relation to any land, means ... a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;”
4. Valuers instructed by the Council have valued the site at around £50,000 if the enforcement notice had been complied with. The evidence from the Council is that the cost of removing an estimated 47,000 cubic metres of waste from the site would be approximately £1,270,000, and that accordingly the unrestored site has a negative value of approximately £1.22 million. There may be a dispute about the figure, which is not material for present purposes, but in any event the evidence is that the cost of work to comply with the enforcement notice is beyond the means of the Council, should it wish to use the default action powers provided by the 1990 Act.
5. Despite enquiries, no trace of the officers of Deli Bar Ltd has been found. The Council says that the transfers of the land to Mr and Mrs Briar’s company and then on

to Deli Bar Ltd were sham transactions to avoid the consequences of non-compliance with the enforcement notice, concocted with advice from Mr Briar's solicitor, Mr Bettison, and that Mr and Mrs Briar remain liable as owners under the 1990 Act.

II Background

6. Mr Briar, the first defendant, has a small electronics business. He has a workshop at home. But most of his work is done on visits to customers, where he carries out repair and maintenance jobs. His wife, Mrs Briar, ran a nursing and nanny agency, and also helped in Mr Briar's business. They separated in 2001.
7. The Council is the local planning authority with responsibility for control of the use of land in Buckinghamshire. In 1988 Mr Briar bought at auction for about £80,000 a patch of open land at Court Lane, Iver, abutting an industrial estate on the east side of the M25 a little north of the M4 ("the land"). An adjoining site was owned by Thames Water Utilities. The land was registered in the names of Mr and Mrs Briar. It was subject to a charge in favour of Barclays Bank for 90% of the purchase price. Mr Briar says that he intended that a workshop for his business would be built on the land. Mrs Briar described it as just a scrap heap.
8. At that time the site was within the Metropolitan Green Belt, and did not have planning permission for any use other than for agriculture. In October 1989, following a report of unauthorised tipping, an official of the Council inspected the site, on which soil and rubble had been tipped. Shortly afterwards, Mr Briar engaged Gradewell Ltd to raise the level of the land. He told the Council that he wished to regularise the tipping that had already taken place and to undertake further tipping. He was advised by the Council that he had to submit a planning application.
9. In February 1990 the Council received a planning application from Gradewell Ltd. for tipping on site. The application proposed the deposit of 30,000 cubic metres of waste at an average depth of three metres. The South Bucks District Council raised concerns that the tipping was a forerunner to pressure to develop the land for commercial or industrial use. By this period the land had already been raised by three and a half to four metres. The evidence was that the majority of this tipping had been undertaken either by Gradewell Ltd or other tipping organisations with the agreement of Mr Briar.

10. In June 1990, the Council's Planning Sub-Committee refused the planning application primarily because the land was within the flood plain and was in the Colne Valley Park. The Sub-Committee authorised enforcement action to require the removal of the waste from the flood plain.
11. On July 6, 1990 an enforcement notice was served on Mr and Mrs Briar and Gradewell Ltd. The enforcement notice was not complied with and in 1991 Mr and Mrs Briar were prosecuted for failing to comply with the notice. In November 1991 Mr Briar agreed to remove some of the waste and re-grade the land in the flood plain.
12. In the following years Mr Briar and his surveyor had discussions with the Council on a restoration scheme, but no complete scheme was agreed for the waste removal and site restoration. The approach which the Council was taking at that time was to try to work with Mr Briar to agree upon a final landform for the site.
13. Further tipping occurred on site in summer 1995. The National Rivers Authority served an enforcement notice on Mr Briar in October 1995 requiring the material to be removed within 28 days.
14. On January 8, 1996 the Council served an enforcement notice on Mr Briar and Thames Water Utilities as the owners of the site. Mr Briar and Thames Water Utilities appealed against the enforcement notice. Mr Briar appealed on, amongst other grounds, ground (a), that the tipping ought to be given planning permission. In his appeal form, he stated that the site ought to be given planning consent for uses other than agriculture because otherwise he could not use the land viably. The evidence from the Council was that the restraint on development imposed by planning policies applicable to the site was still in place in this period, and it was therefore unlikely that Mr Briar would have been granted planning consent for the development of the site.
15. Mr Briar failed to attend the public inquiry on August 5, 1997, and he told the Council that he was not attending because he no longer owned the land. The enforcement notice was upheld by the Inspector by letter dated November 3, 1997.
16. Tipping nevertheless continued on the site in 1997 and 1998. In August 1997 the Council obtained an injunction to prevent companies then present on the units to the north of the site from commencing tipping operations on the site. But there was

further unauthorised tipping thereafter in 1997, and also in 1998. The Council instructed a ground work contractor to enlarge the bund on the west side of the site to prevent further tipping and secure compliance with step 1 of the enforcement notice.

III The transfer of the land to LJB Electronics Ltd and to Deli Bar Ltd

17. In early June 1997 the Council was pressing Mr Briar's solicitors, Messrs Bettison & Johnson, as to whether he was proposing to pursue the appeal.
18. By a transfer dated June 2, 1997, Mr and Mrs Briar transferred the land for a consideration of £86,000 to a company which had carried on Mr Briar's business since March 1996, LJB Electronics Ltd ("LJB").
19. By a transfer dated July 17, 1997 LJB transferred the land for a consideration of £1 to a company called Deli Bar Ltd ("Deli Bar"), which had been incorporated in March 1997.
20. Each of the transfers was prepared in the offices of the firm of solicitors, Bettison & Johnson, which had acted for Mr Briar on the appeal from the enforcement notice, but the firm did not conduct any correspondence with the Land Registry. The land was registered at the Land Registry in the name of Deli Bar with effect from July 29, 1997.
21. LJB was incorporated in March 1996. The directors were Mr and Mrs Briar, and Mrs Briar was also the secretary. Its first set of accounts was made up to March 31, 1997. The only tangible fixed assets shown in the accounts were plant and machinery and vehicles to a value of about £16,000. In the accounts to the year ended March 31, 1998, the profit and loss account shows a loss on disposal of tangible fixed assets of £86,041, and a note to the accounts shows a disposal of freehold land of £86,042. The balance sheet shows the sum of £42,648 on directors current account.
22. The company which became known as Deli Bar from May 27, 1997 was incorporated at the end of April 1997 by formation agents. Its registered office was 11 Bessemer Park, 250 Milkwood Road, London SE24 0EZ. Mr Surjit Singh was appointed as director on July 1, 1997 and Mr Charnjit Singh was appointed secretary on the same date. In each case their address was shown as 3 Lake Avenue, Slough, Berks SL5 3BY. Charnjit Singh resigned as secretary on March 8, 1998. Notices were given by

the Registrar of Companies under section 652 of the Companies Act 1985 that Deli Bar would be struck off the register and the company would be dissolved, but action on the notices was suspended on objection being received by the Registrar from the Council. I was also informed (but there is no evidence on this) that Deli Bar was in the event struck off the register but restored on the application of the Council.

23. All efforts to trace Mr Surjit Singh and Mr Charnjit Singh have failed. In September 1998 letters sent recorded delivery by the Council to Deli Bar, and to Charnjit Singh and Surjit Singh, at 11 Bessemer Park were returned with “unknown company” or “No longer at this address” or “Not at this address” on the envelope.
24. In February 1999 enquiry agents reported to the Council that they had been unable to contact anyone who could identify Mr Surjit Singh and Mr Charnjit Singh in Slough. In March 1999 they reported that they had made inquiries and called at 5 Lake Avenue (not 3), where they spoke to an adult Asian male in his 30s who stated that Charnjit Singh and Surjit Singh were his parents, but they were unable to verify what they had been told.
25. Two officials of the Council, Mr McCormack and Mr Sweetland, went in July 1999 to Unit 11, Bessemer Park, 250 Milkwood Road, London SE24 OEZ. It was occupied by a company called A1 Windows. They spoke to a person at the office called Mr Anagnos. He said that he had never heard of Deli Bar or Surjit Singh or Mr Charnjit Singh. Mr Anagnos said he had received mail for several companies he had never heard of at the Unit 11 address. Mr Lenham, who said he partly owned and ran the Bessemer Park trading estate, suggested to them Mr Anagnos could be using Unit 11 as a postal address.
26. The Council also wrote to the company formation agents (Formation Nominees Ltd) who had provided Deli Bar asking them whether they had any record of the person with whom they dealt at the time the shelf company changed hands. The Council received a handwritten reply: “We dealt with Mr Singh see Form 288.”

IV The Council’s claim

27. In these proceedings the Council claims a declaration that Mr and Mrs Briar are owners of the land within the meaning of section 336 of the 1990 Act; an order that the land be vested in Mr and Mrs Briar and that the Land Register be rectified to show

them as the registered proprietors; an injunction restraining any transfer of land without further order until the enforcement notice has been complied with; and an injunction ordering Mr and Mrs Briar to reduce the levels of the land and to remove the waste material.

28. According to the Council, the registration of Deli Bar as proprietor of the land was procured by Mr Briar upon the false representation that the transfer from LJB to Deli Bar was a genuine transaction, when it was a fiction; and the Land Registrar was further deceived by the submission by Mr Briar of a document purporting to be a certificate by Charnjit Singh, whereas no such certificate was made or signed by such a person. Neither of the Singhs exists, or the names are pseudonyms for Mr Briar.
29. The Council also argues that if the transfer to Deli Bar was a fiction arranged by Mr Briar, then Mr and Mrs Briar remain owners of the land in equity by reason of the fact that Deli Bar holds the land on constructive trust for them.
30. Finally, the Council argues that the transfers should be set aside under sections 423 to 425 of the Insolvency Act 1986, and the land should be vested in Mr and Mrs Briar, on the basis that each of the transfers was a transaction which was entered into at an under value, Mr and Mrs Briar procured the transactions for the purpose of putting their assets beyond the reach of the Council, and the interests of the Council have been prejudiced.

V Mr Briar's original case

31. The way the case was originally put is of crucial importance in testing the credibility of Mr Briar and Mr Bettison in the light of documents which emerged later and on which they were cross-examined.

A. Defence, witness statements of Mr Briar, and further information

32. In the defence as originally served in October 2000 it was said that in 1996 and 1997 Mr Briar transferred his business to LJB, including the land, for the price of £86,000 which LJB still owed; and that he arranged the transfer from LJB to Deli Bar in discussions with Mr S Singh and Mr C Singh at 11 Bessemer Park in about July 1997. It was accepted that the land was a substantial liability when acquired by LJB and subsequently by Deli Bar.

33. The defence was verified in a witness statement of October 25, 2000, in opposition to an application for summary judgment by the Council. In his witness statement Mr Briar said that the land was bought solely for LJB Electronics (the firm) and the deposit was paid out of its account, and the balance of £74,700 was raised by the business by charging the land by way of first legal charge and charging their home by second charge to the bank. Mr Johnson of Bettison & Johnson acted on the completion of the purchase. They were optimistic at the time of getting planning permission.
34. When the business became a limited company, on the advice of their accountant, he transferred the land as with other business assets to LJB as it was from the outset a business asset.
35. By the time of the transfer to Deli Bar, he realised that the land was a liability which LJB could not afford, and the transfer was intended to preserve its business.
36. He did not know why Deli Bar in fact bought the land, but a Mr Paget Clarke told him that the Singhs wanted it to grow spices and the Singhs told him that they expected to be able to make use of the land after discussions with the Council. Mr Paget Clarke was confident that the Singhs had contacts in the Council, and he had no reason to believe that the purchase by Deli Bar was other than for good commercial reasons.
37. The formation agents who incorporated Deli Bar apparently dealt with someone describing himself as Mr Singh when selling Deli Bar, and that person was not Mr Briar or anyone he knew and he had no reason to believe he was not one of the two men he dealt with and who described themselves as Mr Surjit Singh and Mr Charnjit Singh. He accepts that he suspected that Deli Bar made a bad bargain, but that was not his concern, which was that LJB had made a good bargain.
38. A request for further information about (inter alia) those parts of the defence dealing with the two Singhs was answered on October 12, 2001. The request sought information on whether Mr Briar had had a part in setting up Deli Bar, how he came to meet the Singhs, why meetings took place at 11 Bessemer Park, and who acted for LJB and Deli Bar on the transfers.
39. In answer, it was said that Mr Briar, whilst working on various sites in or about London, told people of his predicament with the land. As a result of this he was

contacted on the telephone by a surveyor connected with one site called Paget Clarke. Mr Paget Clarke told him that these people wanted the land for agricultural purposes. Mr Paget Clarke indicated that he was to act for the Singhs and approach the Council on their behalf. Mr Briar was invited to meet Mr Paget Clarke in an office at 11 Bessemer Park. He met Mr Paget Clarke there on his first visit, and on the second and subsequent visit met both Mr Surjit Singh and Mr Charnjit Singh.

40. In the same answers it was stated on his behalf (the document being put in by Bettison & Johnson) that Mr Briar acted both for himself and for LJB on the transfers “save that Messrs Bettison & Johnson drafted the transfer.”
41. In a witness statement of December 31, 2001 he said that after 1994 his new accountants advised him that the whole business including the land should be transferred to a limited company for tax reasons. But the bank would not agree until monies which were owing to them had been paid. They went ahead and transferred the business to LJB in 1996 but the transfer of the land was frustrated until such time as he could raise extra money to pay off the bank.
42. With this statement he exhibited a copy of the minutes of a directors’ meeting of LJB on March 28, 1996. The first item is headed “Land at Court Lane Iver”. It is said “It was decided the land be transferred to LJB Electronics Ltd., at the original purchase price of 84,000 pounds and the cost of sale and purchase to be borne by LJB Electronics Ltd., and the Barclays Bank Plc. be contacted with regards to outstanding commercial mortgage and charges on the land.”
43. Subsequent to the transfer of the land into the name of LJB, he was approached by a Mr Paget Clarke. He did not know how Mr Paget Clarke had got hold of his name, but he told him that he had a couple of clients who were interested in the land. Mr Paget Clarke at that stage did not even know where the land was, and he told him that it was near the M25 motorway and explained to him what the problem was. The response from Mr Paget Clarke was that he had contacts and Mr Briar need not worry. He took him at face value and was only too glad to be able to consider transferring the land to a third party.
44. As a result Mr Paget Clarke arranged for him to visit the office of Deli Bar so he went to 11 Bessemer Park which was not far from Brixton in south London. The premises

were an office. Mr Paget Clarke took him inside. Mr Paget Clarke introduced himself and then introduced each of his clients by name, first Mr Surjit Singh and then Mr Charnjit Singh. They had a discussion during which the two Mr Singhs agreed they would take the land off his hands on the basis that he would then be left to continue paying off his outstanding loan to Barclays Bank. He had no reason to doubt that this office was the office of Deli Bar, and it looked as if it was in the course of being done up.

45. At the meeting the only thing they discussed was the fact that they would take the land off his hands. In order to achieve this he contacted his solicitor (Mr Bettison) and obtained from him a standard transfer document which he then filled in and subsequently made an arrangement to go back to the same address on a second occasion. On this occasion he saw only Mr Paget Clarke, and there was no sign of either of the two Mr Singhs. He recalls that as far as the transfer document was concerned the details were typed in and he then signed as director and secretary and gave the transfer form to Mr Paget Clarke together with any documents and correspondence which he had with the Council up to that time. That was his last involvement with Mr Paget Clarke.
46. He had no connection with No.3 Lake Avenue. He had only met Mr Surjit Singh and Mr Charnjit Singh on the one occasion and he had absolutely no idea where they came from.

B. Witness statement of Mr Bettison

47. At the material time Mr Bettison was a partner in Bettison & Johnson, together with Mr Johnson. His secretary was Mrs Edna Smith. In August 2001 the practice of Bettison & Johnson was taken over by Kidd Rapinet, where Mr Bettison and Mr Johnson are partners and Mrs Smith remains as Mr Bettison's secretary.
48. In a witness statement made on July 19, 2002 Mr Bettison said that his first involvement in relation to this matter was in about February 1996 when he was asked to advise Mr Briar about the enforcement notice issued on January 8, 1996, and to act on the appeal. He recalled that in 1996 Mr and Mrs Briar had wished to execute a transfer of the land to their business as the monies to buy the land initially were from

the business, and that he advised in that year that this could not be achieved until Barclays Bank as mortgagees consented.

49. Due to the costs of prosecuting the appeal, including the costs of expert witnesses, Mr and Mrs Briar and their company ceased to instruct him in relation to the appeal and they formally discontinued work on it in about March 1997.
50. In May/June 1997 Mr Briar contacted him and informed him that he had obtained a release of the charge from Barclays Bank and instructed him to transfer the land to LJB as he had wished to do a year or two before to regularise matters between himself and his business in relation to monies withdrawn. As the title to the land was known it was deemed acceptable by Mr Briar to simply transfer the land to LJB without the necessity for any complicated conveyancing procedure and a transfer document was prepared by Mr Bettison and given to Mr Briar for execution for the transfer of the land to LJB.
51. On about July 3, 1997 he was instructed by Mr Briar on behalf of LJB to sell the land to Deli Bar and he agreed to prepare a transfer document with the basic details on it as Mr Briar said he was going to hand these over to the directors of Deli Bar who were to make their own arrangements to register and complete the transaction. This he did in July 1997 and that was his “final involvement” in the matter on behalf of Mr and Mrs Briar and LJB. He had no dealings whatsoever with anyone representing Deli Bar.

C. Summary

52. The factual case for the defendants as it stood by mid 2002 can be summarised as follows:
 - (1) It was intended from 1996 (as evidenced by the minute of March 28, 1996) that the land would be transferred to LJB, and the transfer to LJB was effected in June 1997 pursuant to that intention, with the purchase price left outstanding;
 - (2) Subsequent to the transfer of the land into the name of LJB, Mr Briar was telephoned by a surveyor called Paget Clarke. He did not know how Mr Paget Clarke had got hold of his name, The land was a substantial liability, and when Mr Paget Clarke learned of this (after Mr Briar had told various people of his predicament) he told Mr Briar that the Singhs wished to acquire the land for

agricultural purposes (to grow spices), and that they had contacts in the Council, and that he (Mr Paget Clarke) would act for them in their approaches to the Council;

- (3) The transfer was agreed and effected at two meetings at 11 Bessemer Park. According to his witness statement in December 2001, at the first meeting Mr Paget Clarke introduced himself and then introduced each of his clients by name, first Mr Surjit Singh and then Mr Charnjit Singh.
- (4) Following that meeting Mr Briar contacted his solicitor (Mr Bettison) and obtained from him a standard transfer document which he then filled in and subsequently made an arrangement to go back to the same address on a second occasion, when only Mr Paget Clarke was present. He signed the form of transfer and gave the transfer form to Mr Paget Clarke together with any documents and correspondence which he had with the Council up to that time. That was his last involvement with Mr Paget Clarke.
- (5) He had only met Mr Surjit Singh and Mr Charnjit Singh on the one occasion and he had absolutely no idea where they came from.
- (6) According to the further information, Mr Paget Clarke was present at the first meeting, and at the second meeting he met both Mr Surjit Singh and Mr Charnjit Singh.
- (7) Mr Briar was not the person who acquired Deli Bar from the formation agents and he had no connection with No.3 Lake Avenue.
- (8) From March 1997 Mr Bettison's only involvement with the matter was as follows. First, in May/June, at the request of Mr Briar, he produced a form of transfer of the land from Mr and Mrs Briar to LJB as Mr Briar had wished to do a year or two before to regularise matters between himself and his business in relation to monies withdrawn. Second, on or about July 3, 1997 he was instructed by Mr Briar on behalf of LJB to sell the land to Deli Bar and he agreed to prepare a transfer document with the basic details on it as Mr Briar said he was going to hand these over to the directors of Deli Bar who were to make their own arrangements to register and complete the transaction. He

prepared the transfer document, and that was his final involvement in the matter of behalf of Mr and Mrs Briar and LJB.

VI New documents

53. By the time of the trial documents had become available which were capable of shedding light on the veracity of the account given by Mr Briar and Mr Bettison. The first list of documents disclosed by the defendants was dated October 10, 2001. It contained none of the documents to which I shall refer in this section. In March 2002 Kidd Rapinet, Mr Briar's solicitors, said that no conveyancing documents were in their possession. A revised list was served on July 19, 2002, and it contained an additional schedule of documents, which included a letter of July 3, 1997 to which I shall refer. In addition, privilege was waived by Mr and Mrs Briar with regard to certain documents held by Kidd Rapinet as successors to Bettison & Johnson.

54. The documents to which I refer are (a) documents received from the Land Registry and which were lodged in connection with the registration of the land in the name of Deli Bar; and (b) the Kidd Rapinet documents in respect of which privilege was waived. The Land Registry documents have been the subject of evidence from an Assistant Land Registrar, Ms Lesley Owen, who has explained the procedure and the origin of the markings on the documents.

A. Land Registry documents

55. The first is a transfer of the land by Mr and Mrs Briar to LJB. It bears the date June 2, 1997. The consideration is £86,000, and the document shows that stamp duty of £860 was paid on July 1, 1997.

56. The second is a form of transfer from LJB to Deli Bar (Form 19), which was created in the offices of Bettison & Johnson. The transfer to Deli Bar is dated July 17, and the date was typed in by Mrs Smith.

57. The form contains three matters of interest: (a) there is endorsed on it a certificate that the instrument falls within category "L" in the schedule to the Stamp Duty (Exempt Instruments) Regulations 1997; (b) the company registration number of the transferee was not originally typed in, and the form contains the number 3361783 written in hand; (c) there are crosses in pencil marked where it is to be signed by LJB, the

transferor, and against the pencil crosses are the signature of Mr Briar and what purports to be the signature of Mrs Briar.

58. Next, there are two forms A4 which were typed up in the offices of Bettison & Johnson by Mrs Smith. These are applications to register dealings with the whole of the titles, and are lodged with HM Land Registry. Each of them contains pencilled crosses in four places. The first two are against the places for insertion of the reference and telephone number of the person to whom requisitions are to be sent and to whom documents are to be returned. The second two are against the places where there is a request for the land certificate to be issued and a certificate that the information required has been supplied. On each of the forms the request and the certificate are signed by Mr Briar and dated July 19, 1997.
59. Box 4 (which provides for the persons to whom requisitions are to be sent and documents returned) has been filled in as follows. In the case of the transfer to LJB, the person typing the document (Mrs Smith) has typed in the names of Mr and Mrs Briar and someone has written in a reference "Iver" and the telephone number 01628-603144. Similarly, in the case of the transfer to Deli Bar the requisitions are to be sent to and documents returned to LJB, and the reference is "Court Lane" and the same telephone number is given.
60. On July 19, 1997 Mr Briar signed the PD4 (or L(A)451) form (Particulars of Instruments Transferring or Leasing Land) in relation to the transfer to Deli Bar. The details of the transferee, the nature of the estate (fee simple) and the consideration (£1) and other details have been added in typescript.
61. The transfers and forms were sent to the Gloucester District Land Registry and fees of £160 and £40 were paid on July 28, and then the papers were sent to the Leicester District Land Registry. Officials then checked that the appropriate fee had been paid, and the initials of the officer (Mr Stoney) appear in box 2 on each of the Forms A4. The PD4 (or L(A)451) also accompanied the application forms.
62. Because the transfer of July 19, 1997 did not originally bear a certificate under the Stamp Duty (Exempt Instrument) Regulations, Mr Stoney wrote a requisition to LJB dated August 12. He sent the transfer so that it could be endorsed with the appropriate certificate, and also the form L(A)451. He returned the L(A) 451 because

- if the certificate for exemption was appropriate the form would not be required. On returning the transfer, the applicant also returned the L(A)451.
63. The evidence from the Land Registry was that the forms A4 would not have been sent back, and the Land Registry did not insert either the pencil crosses in box 4 or the blue biro details (reference and telephone number).
 64. When the transfer was subsequently certified and returned to the Land Registry with the form L(A)451 Mr Stoney then inserted in manuscript at box 3 of the application to register dealings the receipt of the form in accordance with Land Registry procedures.
 65. Mr Stoney made two requisitions on August 12, 1997. In relation to the transfer to LJB, he wrote to Mr and Mrs Briar (as the persons shown on the A4 to whom requisitions should be sent), and he asked them to state whether LJB was incorporated in England and Wales, and, if so, its registered number must be stated. The response was a letter from Mr Briar stating that it was incorporated in England and Wales under the number 3177947.
 66. Mr Stoney wrote a similar letter on the same date to LJB (as the person to whom requisitions should be addressed in accordance with the Form A4) in connection with the transfer to Deli Bar. The response was a letter purportedly from Mr C Singh under the letterhead of Deli Bar stating that it was incorporated in England and Wales and that its registration number was 3361783. This was then inserted in the transfer.
 67. After the requisitions were dealt with, the land was registered as from July 29, 1997 in the name of Deli Bar.
 68. Ms Owen's evidence confirmed that the reason why Mr Stoney returned the L(A)451 was that if the certificate for exemption was appropriate the form L(A)451 would not be required. On returning the transfer, the applicant also returned the L(A)451. She also confirmed that the Land Registry did not insert the pencil crosses or the blue biro details (reference and telephone no) in the boxes on the forms A4. The Land Registry would not have known the applicant's reference or telephone number to insert, and would have had no need or reason to insert pencil crosses. Any markings in those boxes must therefore have been inserted before the applications were received in the Land Registry. The company registration numbers were inserted on the forms of transfer by a Land Registry official, following the requisitions of August 12, 1997.

69. Ms Owen also confirmed that if the Land Registry has any reason to believe that documents submitted for registration have not been properly executed or are in some other way false or fraudulent, the papers would immediately be passed to an Assistant Land Registrar who would make appropriate enquiries to satisfy the Registry that the documentation submitted for registration was in order. The file would not be left with a junior officer and the application would not be processed unless the Assistant Land Registrar was satisfied that the application was in order, which would clearly not be the case in the event that it was demonstrated as a result of the enquiries that the documentation was fraudulent. In the witness box she said that the Land Registry would not register a transfer if there was a suspicion of fraud until they were satisfied.

B. Bettison & Johnson documents

70. The first in time, although the last to be disclosed (after the trial had begun), was an attendance note of June 12, 1997 of a meeting between Mr Briar and Mr Bettison, at Mr Bettison's office. Mr Bettison's diary confirms that it took place.

71. The attendance note was as follows:

“12th June 1997

OB attending Mr Briar in the office Engaged 1 hour

Indicating to Mr Briar all the work I had done and in liaising with the Water Authority who would spend sufficient monies on experts to demonstrate to the Waste Authority “Bucks” that not all of the requirements of the enforcement notice need to be complied with.

Mr Briar was told it was unlikely to get any form of planning consent without Mr Huntley being involved and he would cost about £3,000.00 plus VAT

Mr Briar is reluctant to give me authority, which I need to instruct experts on waste, Green Belt and Agriculture so that I can put up a case to run parallel with the Thames Water case.

I have pointed out to Mr Briar that if he doesn't do something the enforcement notice will be made final at the appeal hearing and he will be required to do all of the works and that could cost hundreds of thousands of pounds.

Mr Briar explored the possibility with OB of transferring the land and I advised him the Bucks C C went to extraordinary lengths to trace people and I told him about the story of them going to Ireland to look for one land owner of a piece of land near Amersham. I told him about Mr Wicks and his energetic methods. He was advised that applications may be made to get the land transferred back to him. He said he'd think about it and really

wanted the problem to go away. I said it wouldn't. He (*sic*) best bet was to join with Thames Water and get the matter sorted as best he could.

Mr Briar said his bank was owed money on the loan he got to buy the land off Thames Water initially and his company would buy the land and pay off the bank. He'd get funds raised to do that. He understood the risks of the Council trying to set aside the transfers.

He'd contact us again when he'd further considered the matter and if he wanted his company to buy the land."

72. The next group of documents are matter reports (which show time recorded, money received and disbursed, and bills rendered) of, and bills rendered by, Bettison & Johnson. These show that (a) Mr Bettison spent an hour and a half on June 12, 1997 on Mr Briar's work, but do not show any other work done after that date; (b) £860 was taken out of client account on June 30, 1997 to pay for stamp duty; (c) a bill was rendered for £750 on July 16, 1997 (at a time when unbilled work in progress on the matter was recorded as £621), and a further bill for £1500 was rendered on August 11, 1997 (when no further time had been recorded). The bills were rendered under Mr Bettison's reference. The bill for £750 states that it is in relation to all planning matters regarding the land and to all matters relating to transfer of land, and the bill for £1500 states that it is in relation to "planning matter" at Court Lane Iver. A cheque requisition form shows that the cheque for the stamp duty was requested on June 26, 1997 by Mrs Smith.
73. By a letter dated July 3, 1997 (which was disclosed only in July 2002) on the letterhead of LJB Electronics (the firm, not the company) Mr Briar wrote to Mr Bettison to say:
- "With reference to our recent telephone conversation regarding the land at Court lane Iver, can you please make immediate arrangement for the land to be sold to the following:
- Deli Bar Ltd.,
11 Bessemer Park,
250, Milkwood Road,
London SE24 OEZ.
- Sale Price 1.00 pound. (All cost to be born [*sic*] by LJB Electronics Ltd.)
- Can you please carry out the above instruction soon as possible"

C. Coulter case documents

74. The relevance of this affair is that it may shed light on the advice which Mr Bettison gave to Mr Briar on June 12, 1997. Mr Bettison acted for a Mr Arthur Coulter from about 1992 in connection with allegations of unlawful tipping in Chalfont St Peter. None of the facts set out hereafter was independently proved in this trial.
75. In December 1989 the Council began investigating unlawful tipping on land in Chalfont St Peter which was registered in the name of Mr Arthur Coulter of 52 Summers Island Road, Loughall, County Armagh, Northern Ireland. Between 1989 and 1991 the Council corresponded with and spoke to someone claiming to be Arthur Coulter. There were also two other men involved, the brothers Aaron and Quinton Coulter. There were proceedings in the Magistrates Court for breach of an enforcement notice. Aaron Coulter pleaded guilty. The attendance of Arthur and Quinton Coulter had been excused on the grounds of Arthur's ill-health. All three of the Coulters were represented at the hearings by Mr Bettison, who entered a plea of not guilty on behalf of Quinton Coulter and a plea of guilty on behalf of Arthur Coulter to charges of being the owner of the land and failing to cease the tipping. During the hearing Aaron Coulter informed the court that Arthur Coulter was his brother, that he was 58 years old and confirmed his address, where he lived with his other brother Quinton running the family car and tractor business. Arthur Coulter was fined £8,000 and ordered to pay prosecution costs.
76. There was a further enforcement notice, from which Arthur Coulter appealed. Aaron Coulter gave evidence stating that Arthur Coulter was unable to attend because of his heart condition. Mr Bettison represented Mr Arthur Coulter and introduced Mr Aaron Coulter as his brother.
77. The Council made enquiries of the social security agency and the Royal Ulster Constabulary, but were informed that they had no knowledge of Arthur Coulter, and all enquiries failed to confirm that there was such a person. In September 1993, the land was registered in the name of Alan Taylor of 8 Ash Close, Garston, Watford, but there was no trace of such a person ever having lived at that address. In 1996 the land was registered in the name of Cormac Leonard of Drumcairn, Loughall Road, Armagh, who told the Council that he had bought the land from Victor Johnson, and did not know of Alan Taylor, the previous registered proprietor. He had acquired the

land in a swap-deal with Mr Johnson who wanted a lorry. Victor Johnson told the Council that he had bought the land from Aaron Coulter as part of an exchange deal involving cars. He did not know of Alan Taylor.

VII Questions

78. The consequence of this evidence is that the following questions call for explanation if (a) Mr Briar's sole involvement with the Singhs was one meeting with them at 11 Bessemer Park; and (b) Mr Bettison did nothing more than produce the two forms of transfer for execution by Mr and Mrs Briar, and LJB respectively:

- (1) who put the date of June 2, 1997 on the first transfer, and why;
- (2) who arranged for it to be stamped £860;
- (3) who added a pencil cross to the transfer to LJB at the place where Mr and Mrs Briar were to sign as transferors;
- (4) who created the Forms A4, and added the pencil crosses for the places where references, telephone numbers and signatures were to be added;
- (5) who decided that the names and addresses of the transferors, rather than the transferees' solicitors, should be given as the persons to whom requisitions and documents should be sent, and what possible reason could there be for the Land Certificate to be sent to the transferor;
- (6) who added into the Forms A4 the handwritten telephone number (Mr Briar's number) as the contact number;
- (7) who added to the transfer to Deli Bar the certificate that the instrument fell within category "L" in the schedule to the Stamp Duty (Exempt Instruments) Regulations 1997;
- (8) who added the company registration number of the transferee to the form of transfer to Deli Bar;
- (9) who typed the PD4 (L(A) 451) form (Particulars of Instruments Transferring or Leasing Land), in relation to the transfer to Deli Bar;

(10) when the Land Registry returned the Deli Bar transfer to LJB (together with the Form L(A)451) because it did not bear a certificate under the Stamp Duty (Exempt Instrument) Regulations, in what circumstances was the certificate added, and in what circumstances was it returned to the Land Registry (together with the Form L(A)451).

IX Responses by Mr Briar and Mr Bettison

A. Further information

79. After the Land Registry documents became available further information was sought from the defendants and in further information dated August 30, 2002 it was stated on Mr Briar's behalf that the applications to register dealings dated July 19, 1997 were signed by him as it was believed that both applications were returned by the Land Registry to him with pencil crosses to be signed and blanks to be completed which he did so sign and complete without considering whether he was the correct signatory. In answer to the question whether he, or Mrs Briar, had seen or prepared the declaration which purported to have been made by Mr Charnjit Singh, it was stated that Mr Briar did not prepare the declaration but may have seen it, but could not recall after such a long period of time the circumstances in which this might have occurred.
80. He also said in the same document that there was co-operation between himself and a director of Deli Bar as was required to ensure the registration of both the transfers dated June 2, 1997 and July 17, 1997. His recollection was that the undated declaration regarding LJB might have been prepared by Deli Bar or a director of Deli Bar.
81. It was also stated that neither he or Mrs Briar had been able to identify the whereabouts of Mr Paget Clarke or any director of Deli Bar since October, 2001

B. Statement of Mr Briar of October 23, 2002

82. This statement was made in relation to the transfer from LJB to Deli Bar and the applications to register the transfers.
83. In relation to the transfer from LJB to Deli Bar, he said that he did not know who put the cross on the transfer form. In regard to the Land Registry forms A4, he asked Mr Bettison to provide him with the relevant forms for both transfers. The only parts of

the forms which he completed were the signatures and the addition of a telephone number and a reference on each form. The remainder of the forms were, so far as he recalled, completed by Mr Bettison's secretary. He noted that the Land Registry suggests that the crosses were not put on the forms A4 by them. He thought that they had been, but in the light of their comments he did not know who put the crosses on.

84. He accepts that both the Land Registry letters dated August 12, 1997 were sent to the same address. He would automatically have sent on any documentation received to the address given for Deli Bar at 11 Bessemer Park.
85. After the transfer documents in relation to the transfers to LJB and Deli Bar, he did not arrange or actually prepare any other documents. He could only conclude that Mr Charnjit Singh of Deli Bar would have sent a letter for him to sign on behalf of LJB by way of a response to the Land Registry letter. This he would have signed and sent on to the Land Registry. He did not sign the letter from Deli Bar to the Land Registry.

C. Statement of Mr Bettison dated October 15, 2002

86. After the Land Registry documents were produced, his evidence was expanded in this way:

- “1. ... now that I have seen the documents from the Land Registry, I am able to amplify the matter some more.
2. At the time of the preparation of the respective transfers, at the request of Mr Briar I had my secretary, Edna Smith, prepare Land Registry forms A4 which she partially completed to assist him. The form A4 in respect of the transfer from LJB Electronic Limited was prepared by her without being dictated to her as she routinely prepared these documents and it would have been a simple request to her to complete them and leave blank those sections as needed completion later blank.
3. On the first A4 she put S.S. Briar and L.J. Briar in Box 4. I have asked her about this. What she would habitually type in here was the name of our firm. As we only prepared the forms for others she made a mistake, and using her own initiative, she inserted the name of the Transferor. That wasn't noticed, by anyone before the forms were handed to Mr Briar.
4. On the second A4 she has made exactly the same mistake in putting the Transferor in Box 4 whereas she should have left both Box 4's in these forms blank for completion by others. Nobody noticed this and this is why Mr Briar (or LJB Electronics Limited) received any

requisitions from the Land Registry for Mr Briar or whoever sent the A4 forms to the Registry appears to have failed to complete the blanks in the forms and I believe the crosses were put on the forms by the Land Registry where blanks had to be completed. We have no recollection of putting the pencil marks on the forms A4 ourselves.”

D. Mr Briar: Oral evidence

87. In the witness box Mr Briar said that it was pure coincidence that LJB was incorporated shortly after the enforcement notice. LJB had already bought the land by the time of the meeting with Mr Bettison on June 12, 1997, but the paper work had not been completed. The March 1996 minutes had not been produced for this case. If the attendance note suggested that he was then undecided on a transfer, the attendance note was based on a misunderstanding. He could not remember what happened after the meeting on June 12, and in particular he could not remember the sequence of events which led to the transfer being signed.
88. Mr Paget Clarke knew about Mr Briar and the land because he had told architects and surveyors and asked advice about planning permission. He was approached by telephone. He spoke to Mr Paget Clarke a few times over a few weeks, probably before June 12, and Mrs Briar might have spoken to him also. He had not made any efforts to find Mr Paget Clarke because he was not a private investigator. He had no contact telephone number for him because Mr Paget Clarke always contacted Mr Briar direct. Although he had said in the further information document that Mr Paget Clarke was connected with a site, all he had meant was that Mr Paget Clarke was connected with one of the surveyors on a large site. After the transfer he gave him all the documents he had. Presumably Mr Paget Clarke knew that the land carried a liability of hundreds of thousands of pounds. Mr Paget Clarke arranged for the visit to 11 Bessemer Park even though he and the Singhs lived in Slough, and Brixton was not a convenient place for a brief meeting. He was just told to go there.
89. Mr Bettison did not effect registration of the transfers because it would be cheaper for Mr Briar to do it. There was no further advice from Mr Bettison after the transfer documents that he could remember. At first he said that he could not remember who sent him the form A4, but he ultimately conceded that it came from Mr Bettison. He did not send it to the Land Registry. He would have sent it back to Bessemer Park.

90. He perhaps received the PD4 from Mr Paget Clarke and the Singhs. The A4 with the crosses came from Bessemer Park. The Land Registry requisitions were not disclosed in the litigation, because he did not have them. They had been sent to Bessemer Park. The LJB letter to the Land Registry was typed at 11 Bessemer Park and sent back to him for signature, and he did not generate the Deli Bar letter.
91. He did not accept that he went to Mr Bettison with the Land Registry queries and asked him what to do. He said “Not necessarily”.
92. He did not know who typed the exemption certificate on the transfer to Deli Bar, but it was typed either by Bessemer Park or the solicitors.
93. Bettison & Johnson were not acting in the deal, they were just filling in the forms. He did not remember that Bettison & Johnson drafted documents other than the transfer. He did not recall that (a) they typed up the A4s; (b) they typed up the L(A)451 and (c) they amended the transfer instrument to Deli Bar by adding the exemption certificate after it had been returned by the Land Registry. The bill for £750 was an on account retainer, and the £1500 bill was not in connection with this transaction.

E. Mrs Briar

94. Mrs Briar separated from her husband in 2001, and was very critical of him. She said in the witness box that he was habitually untruthful. There was only one matter in relation to which her evidence was important, and that was whether she had executed the transfer from LJB to Deli Bar as secretary of LJB. The handwriting was quite different from her normal handwriting, and Mr Briar had said in his witness statement in October 2001 that he had signed the transfer on his second visit to Bessemer Park as director and secretary. When the Council took the point that his signature was insufficient Mr Briar changed his account and said that he remembered Mrs Briar signing the transfer during a heated argument at their house. Mrs Briar supported his account and added that her signature was different because her husband had physically forced her to sign.
95. The only other evidence which she gave which was of any direct relevance was that she had spoken on the telephone in about 1995 to a well spoken man who identified himself as Paget Clarke. She also commented on the evidence that a person at Lake Avenue had referred to the two Singhs as his “parents” and said that in the Sikh community a person might refer to two men from the same family as parents.

F. Mr Bettison: Oral evidence

96. His written evidence had been that his sole involvement in the matter, after Mr Briar had abandoned his challenge to the enforcement notice, was to prepare the two forms of transfer. But Mr Bettison faced a number of difficulties by the time he came to give evidence.
97. First, the attendance note of June 12, 1997 showed that he had advised Mr Briar that if he did nothing, the enforcement notice would be made final, and Mr Briar would be required to do all of the works, which could cost hundreds of thousands of pounds. They then explored the possibility of transferring the land, and Mr Bettison advised him that the Council went to extraordinary lengths to trace people and it is apparent from the note that Mr Bettison told him something about the Coulter case. Mr Bettison advised Mr Briar that the Council might seek to have the land transferred back to him. Mr Briar is recorded as having said that he understood the risks of the Council trying to set aside the transfers, and would contact Mr Bettison again when he had further considered the matter and if he wanted his company to “buy” the land. That strongly suggested that by this stage there was no arrangement or agreement for Mr and Mrs Briar to sell the land to LJB.
98. Second, it was plain from the documents that Mr Bettison had done much more than draft the two forms of transfer. In particular, the Forms A4 had been drafted to show the transferors (i.e. Mr and Mrs Briar and their company LJB) as the persons to whom correspondence should be directed by the Land Registry, rather than (as would be usual) the transferee’s solicitors. Doing that would be consistent with the hypothesis that Deli Bar was not genuine and that it was important for the transaction to be orchestrated by Mr Briar.
99. The delivery of the two bills for £750 and £1500 suggested that Mr Bettison had done much more than dictate the short form of transfer to LJB and arrange for the form of transfer to Deli Bar to be filled in.
100. On the attendance note, he was referred to the sentence “He’d contact us again when he’d further considered the matter and if he wanted his company to buy the land.” In evidence he said that he meant “transfer the land” rather than “buy the land”. He had not used the word “buy” as a term of art in the attendance note.

101. In the witness box he had to accept that the words “final involvement” (in his witness statement of July 2002) in relation to the preparation of the forms of transfer were not accurate, after it had become clear from the Land Registry documents that his firm had been involved in preparing the Forms A4 and L(A)451 and in typing in the stamp duty exemption certificate, following the Land Registry requisitions. He did not know why he did not put it in his witness statement that Mr Briar came back to seek advice after June 12, 1997.
102. Also he had to accept, after it became apparent that Mrs Smith would have to give evidence, that Mrs Smith had not said that she had made a mistake when entering the name of the transferors on the Forms A4. His account was that he told her that he thought there had been an error, and asked whether it seemed fair to her, and she seemed to be content with his explanation.
103. On the transfer documents:
- (a) He did not recollect on whose instructions Mrs Smith completed the names in Box 4. He would have stood over the typewriter or she would have gone through the form with him. Both forms were her territory rather than his. He accepted that he had never prepared documentation for registration, without his firm doing the actual submission. He thought that Mr Briar gave all the documents to Deli Bar. He had forgotten that his firm prepared the A4s.
 - (b) He simply followed instructions in transferring the land. It was put to him that if the consideration had been nominal Mr Briar would have saved £860 of duty. He said that Mr Briar wanted that price. Mrs Smith had inserted the date of June 2, 1997 on the transfer to LJB. That was in accordance with Mr Briar’s instructions. He said that Mr Briar brought it in for stamping, and he would have asked for the date. He accepted that it was the earliest possible date to avoid a stamping penalty.
 - (c) He was asked for his recollection who brought in the letter about Deli Bar. He said it was difficult to recollect, but it was probably brought in by hand. He was asked whether the letter was in fact an inadequate instruction
 - (d) He accepted he must have given Mr Briar advice in the preparation of the documents. He would have gone through them. He said that he might have put

the crosses on the forms, but ultimately he had to concede that he was the only person who could have put them on, and that the Land Registry would never send back an A4.

(e) He was asked why and how the decision was taken for Mr Briar to be the applicant rather than (a) Bettison & Johnson or (b) the transferee. The answer was because Mr Briar was taking the documents lock, stock and barrel to Deli Bar. It was incorrectly filled in and it was simply a mistake not to have put in the name of the transferee, and he had not noticed that the name of the transferor was put in the box.

104. At first he said that the July bill was generated by the office manager, and the August bill was rendered in ignorance of the first bill.

105. Mrs Smith was cross-examined. Mrs Smith accepted that the box for correspondence in the Forms A4 was unusual in that it did not contain the name of the transferee or its solicitors, but contained the name of the transferors. She could not remember the reason. Mr Bettison would simply have told her that they were not lodging it and would have stood over her and dictated Box 4. Mrs Smith's account of the origin of Mr Bettison's statement that it was her error was that Mr Bettison asked her whether she had made a mistake, and she replied that she did not know. When what she said was put to him after he was recalled, he did not disagree, and said that he had not been actually reporting what she said.

106. She could not recall having seen the requisitions from the Land Registry, but she accepted that the exemption certificate was typed by her, and she would have done so on the direct instructions of Mr Bettison and handed it back to him.

X Conclusions on the facts

107. Mr Briar was perhaps the most blatant liar I have ever heard in the witness box. I am wholly satisfied that his story of Mr Paget Clarke and the Singhs is a lie from beginning to end.

108. I am also firmly of the view that the 1996 minute is back-dated, and was produced to buttress the story that the land had been sold to LJB before the events of June/July 1997.

109. The story of how he came to be in touch with Mr Paget Clarke is in every respect unbelievable. Mr Paget Clarke is first said to be a surveyor on a site, then someone connected with a surveyor on the site; he knows people who want to grow spices on the land; he arranges a meeting in Brixton between people who live in Slough; he does not give Mr Briar a telephone number, and only makes calls, and never receives them; he arranges a sale of land which carries with it a liability of hundreds of thousands of pounds.
110. He lied when he said that Mr Bettison did not arrange the registration because it would be cheaper for Mr Briar to do it; and when he said that there was no further advice from Mr Bettison after the transfer documents that he could remember. His failure to accept in the witness box that he went to Mr Bettison with the Land Registry queries and asked him what to do was dishonest. All his evidence that he received the Land Registry documents from Bessemer Park, and returned them to Bessemer Park were pure fabrication, as was his answer that the LJB letter to the Land Registry was typed at 11 Bessemer Park and sent back to him for signature, and that he did not generate the Deli Bar letter.
111. Nor do I believe that when he verified the further information referred to in para 40 above, he did not remember that Bettison & Johnson drafted documents other than the transfer, namely (a) they typed up the A4s; (b) they typed up the L(A)451 and (c) they amended the transfer instrument to Deli Bar by adding the exemption certificate after it had been returned by the Land Registry.
112. My impression of Mrs Briar was that she is an intelligent person who was well aware of the aspects of the case which might make her liable. She therefore showed considerable personal hostility to her husband in her oral evidence and also in an outburst in the court room, but she was supportive on the matters which affected her personal interest. Despite the Council's acceptance of her evidence, I was by no means convinced of her truthfulness.
113. I am also satisfied that Mr Bettison deliberately lied in his witness statements and evidence in the witness box in material respects. Mr Bettison's written evidence was that he had nothing at all to do with Mr Briar after he stopped working on the appeal other than to draft two simple forms of transfer. In my judgment it is incredible that

Mr Bettison could have forgotten the course of this unique transaction in circumstances in which he had advised Mr Briar of its dangers.

114. I am satisfied that he meant “buy the land” rather than “transfer the land” in his attendance note and that he was lying in order to be consistent with Mr Briar’s story that the transfer to LJB was just a formality.
115. The attendance note was not disclosed until October 29, after the trial had begun. The defendants agreed to waive privilege. Mr Johnson, the partner handling the litigation, said that he had not known of the document until Mr Bettison handed him a copy of the attendance note after Mr Johnson had told Mr Bettison that privilege had been waived, and during that discussion Mr Bettison said that he had a note, and got it from his office. Mr Bettison said that Mr Johnson had had the document in his files, and he was very surprised at Mr Johnson’s statement that he did not know about it. If it were necessary to come to a conclusion on this conflict of evidence I would have preferred the evidence of Mr Johnson, who had no reason to lie and would have been angry, not at the failure to disclose a privileged document, but at Mr Bettison for having allowed a false case to be put forward, namely that the role of Bettison & Johnson had been limited to the production of the transfers.
116. The June 2, 1997 date for the transfer to LJB was obviously chosen by Mr Bettison as the earliest possible date to avoid a stamping penalty, so as to distance it from the transfer to Deli Bar, and Mr Bettison was lying when he said that Mr Briar brought it in for stamping, and that it was Mr Briar who chose the date. Mr Bettison instructed Mrs Smith to insert the date.
117. Mr Bettison also lied when he said that he did not recollect on whose instructions his secretary filled in the Form A4. He said that it was incorrectly filled in and it was simply a mistake not to have put in the name of the transferee. I am satisfied that he knew exactly what he was doing when he instructed his secretary to put the names of the transferors in box 4 on the Forms A4, and his attempt to lay the blame on his secretary is despicable. There was absolutely no reason to do this if the transfer to Deli Bar was genuine, and if it had a genuine office and genuine officers. Mr Bettison (like Mr Briar) knowingly and falsely asserted that the pencil marks were made at the Land Registry.

118. Nor do I believe his evidence that the August bill was rendered in error, in ignorance of the July bill. It is inconceivable that the July bill was generated by the office manager. Mr Bettison had to concede she had no authority to determine the mark-up and that bills required the authority of a partner. Mr Bettison lied in order to avoid the obvious conclusion that he was charging for advice and work in connection with the scheme.
119. The Singhs are fictional persons. There were no meetings at 11 Bessemer Park, and no documents were given to or received from Deli Bar or the Singhs. If these transactions were genuine there would be some trace of Deli Bar at its registered office and its officers would be traceable by professional enquiry agents. There is no conceivable reason why the Singhs and Deli Bar should take the land for growing spices and place themselves in the same predicament as Mr Briar on the advice of a professional surveyor without enquiry beyond one meeting with Mr Briar.
120. Mr Bettison was well acquainted as a result of the Coulter case with the techniques of implementing a scheme for the transfer of land tipped with waste to a proprietor impossible or difficult to trace by reason of being fictional. He discussed the Coulter case with Mr Briar. Mr Bettison advised on the scheme, and did his best to distance himself from it by allowing Mr Briar to effect the registration.
121. Mr Briar could not have played the part attributed to him without step by step guidance from a solicitor, and his only adviser was Mr Bettison, who charged £2250 for his services in a period where he says that he was asked to nothing other than produce two simple forms of transfer. Mr Bettison organised the documentation for and devised and explained the procedures for registration. The fees were for devising and implementing the scheme.
122. In consequence my findings on the course of events are as follows.
123. I do not believe that the land was bought for the electronics business, or that there was an agreement in 1996 for Mr and Mrs Briar to transfer the land to LJB. The minute of March 1996 was produced, and back-dated, for the purposes of this litigation. It was produced late in the day, and is the only surviving minute of the company. It is inconsistent with the accounts to 1997. It is inconsistent with the attendance note of June 12, 1997 which shows that Mr Briar by that date had not yet decided to sell the

- land to LJB. I do not accept Mr Bettison's evidence that he did not mean "buy" and meant "transfer."
124. On June 9 and 10, 1997 the Council was pressing Bettison & Johnson about Mr Briar's appeal. On June 12, 1997 Mr Briar and Mr Bettison discussed transferring the land as a possible solution. Mr Bettison told Mr Briar about transfers to non-existent persons, and pointed out the risks. Mr Briar told Mr Bettison that he would come back to Mr Bettison if "he wanted his company to buy the land."
125. At some time before June 26, 1997 Mr Briar informed Mr Bettison that he wished to go ahead, and on about June 26, 1997 Mr Bettison drafted the form of transfer. A cheque for the stamp duty was requisitioned by Mrs Smith. The transfer was executed by Mr and Mrs Briar, and back-dated to June 2, 1997 by Mrs Smith on the instructions of Mr Bettison.
126. At around this time, Mr Briar (or an associate of his) pretended to the formation agents that he was one of the Singhs and acquired Deli Bar. On July 1, 1997 its registered office was changed to 11 Bessemer Park and the Singhs were appointed as officers. On the same day the transfer to LJB was stamped.
127. At some time before July 27, the transfer to Deli Bar was typed by Mrs Smith, and executed by Mr Briar, and dated July 17 in typescript. It also bears a signature purporting to be that of Mrs Briar. Both Mr Briar and Mrs Briar say that the document was executed by her during a domestic quarrel, which is said to explain why the handwriting bears no resemblance to her usual handwriting. There was no expert handwriting evidence, and ultimately the Council accepted that Mrs Briar was a truthful witness (as to which I have already expressed doubt). As a result the issue of the execution of the transfer to Deli Bar disappeared from this case.
128. Mr Briar disclosed in these proceedings a letter of instruction to Mr Bettison dated July 3, which asked him to "make immediate arrangement for the land to be sold" to Deli Bar. If it was a contemporaneous document (on which there must be some doubt) it was not a sufficient instruction if the writer simply wanted a form of transfer, and there must have been a conversation about its implications, or it must have been produced pursuant to a previous plan.
129. On July 17 Mr Bettison rendered a bill for £750.

130. Mr Bettison produced the Forms A4 and PD4 and added crosses to show Mr Briar where he was to sign and add contact details. Mr Briar completed the forms on about July 19.
131. The transfers and forms were sent on about July 27 to the Gloucester District Land Registry, and on August 12 the Land Registry (Leicester) raised requisitions in letters to the transferors, and in particular required a certificate of exemption to be endorsed. The second transfer was returned. The L(A)451 was also returned, because it would not be appropriate if the certificate for exemption was appropriate.
132. Mr Briar took the papers to Mr Bettison, who arranged for the exemption certificate to be added by Mrs Smith, and the transfer was returned, together with the L(A)451, and with letters from LJB and Deli Bar giving the company number.
133. Either Mr Briar or Mr Bettison returned the documents to the Land Registry, which registered Deli Bar as proprietor with effect from July 29, 1997 (the date of receipt of the applications) and sent the Land Certificate to Mr Briar.
134. Meanwhile on August 11, Mr Bettison had rendered a further bill for £1500.
135. Mr Briar received the requisitions of August 12, 1997 from the Land Registry, and he arranged for letters to be sent as from LJB Electronics and from Deli Bar giving the information about the companies. The letter from Deli Bar was, to his knowledge, a forgery in that there was no such person as C Singh to write the letter on its behalf, and the signature was written by Mr Briar or someone on his behalf.

XI Consequences

136. The Council argues that for a variety of reasons Mr and Mrs Briar are liable, or can be made liable, as owners of the land under section 178(1) of the 1990 Act, notwithstanding that the registered owner is (unless and until the Land Register is rectified) Deli Bar; and that, irrespective of whether they are owners, an injunction can be granted against them under section 187B to restrain breach of planning control.
137. By section 178(1) of the 1990 Act:

“Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may - (a) enter the land and take the steps; and (b) recover from

the person who is then the owner of the land any expenses reasonably incurred by them in doing so.”

138. By section 336(1):

“ ‘owner’, in relation to any land, means ... a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;”

139. The Council argues that Mr and Mrs Briar can be made liable in one or more of three ways. The first is by rectification of the proprietorship register to re-instate them as proprietors. The second is by holding that Mr and Mrs Briar remain owners in equity by virtue of the fact that Deli Bar holds the land on constructive trust, because (among other reasons) Deli Bar is a mere façade and to be identified with Mr and Mrs Briar. The third method is by setting aside the transfers under sections 423 to 425 of the Insolvency Act 1986 and vesting the land in Mr and Mrs Briar on the basis that the transactions were at an undervalue.

140. The statutory definition of “owner” by reference to the person who is entitled to receive the rack rent is of some antiquity. In *Pollway Nominees Ltd v. Croydon LBC* [1986] 2 All ER 849 (HL) Lord Bridge of Harwich reviewed the statutory contexts in which a similar formula had been used. That was a case in which the freeholder of a block of flats was held not to be the “owner” for the purposes of responsibility under the Housing Act 1957 for repairs. The freeholder had only a reversionary interest in most of the flats, and had no right of occupation which it could dispose of for a rack rent. Lord Bridge said (at 853):

“In all these cases the rationale of the use of the formula to designate the person on whom the relevant obligation is cast is surely plain. The owner of that interest in premises which carries with it the right, actual or potential, to receive the rack rent, as the measure of the value of the premises to an occupier, is the person who ought in justice to be responsible for the discharge of the liabilities to which the premises by reason of their situation or condition give rise.”

141. In *East Lindsey DC v Thompson* [2001] EWHC Admin 81 (Div Ct, Brooke LJ and Potts J) the issue was whether Mr Thompson was the owner of land for the purposes of section 179(1) of the 1990 Act, which imposes criminal liability on an owner for breach of an enforcement notice. Between the inspector’s decision and the expiry of

the 3 month period for compliance, Mr Thompson had conveyed it to Mr Bennett, but the transfer to Mr Bennett was not registered until after the prosecution against Mr Thompson was brought in respect of events after the expiry of the time limit. It was held that Mr Thompson could be tried and convicted because “the person with the legal freehold title comes within the definition of ‘owner’ under section 336(1) of the [1990] Act, even if he no longer has the beneficial interest in the land or in any notional rack rent. That position will obtain until such time as the legal title has been transferred by registration.” That was because the registered proprietor could dispose of a leasehold interest and obtain a rack rent, and it was the registered proprietor who was the person who at law was entitled to continue to receive the rents, even though the person ultimately entitled to obtain the benefit of those rents would be the unregistered transferee as the beneficial owner who had the equitable interest. The transferor was therefore not excluded from the definition of “owner”.

142. Brooke LJ said (at paras 25 to 26):

“ ...since section 336(1) of the Act includes within that concept of owner, a person who is entitled to receive such rents as ‘trustee for any other person’. Therefore, such a person who has no beneficial interest in the rents is still capable of being the owner. That seems to indicate that a person in Mr Thompson’s position is still the owner of the land until registration has taken place. I can see no reason for confining the meaning of the word ‘trustee’ in section 336(1) to only contain types of trust, such as discretionary trusts ... Nothing in the language of the section or of the Act generally point to such a limitation.

...

There are sensible practical reasons why the registered proprietor should be treated as the owner for enforcement notice purposes. In particular, the system of registration of title provides a straightforward method of ascertaining who is the owner of a particular parcel of land and such registration of the disposition of freehold estates has been compulsory throughout England and Wales since 1990. Moreover, the land register is open to public inspection. That means that a local planning authority has available to it the evidence of the register as to who is the owner of the land. In contrast, the authority may be, as it was in the present case, wholly unaware of an unregistered transfer, which is by its nature a private transaction between vendor and purchaser. If the authority was not able to rely on the register as an accurate source of information about the ownership of land, it would have repeated difficulties when seeking to enforce against breaches of planning control.”

143. It is therefore clear that normally the registered proprietor will be the owner for the purposes of section 178(1). *East Lindsey DC v Thompson* does not altogether exclude

the possibility that the beneficial owner may be the owner, since Brooke LJ posed the question in that case as being whether the transferor was *excluded* from the definition of owner.

144. By section 82(1) of the Land Registration Act 1925:

“82.—(1) The register may be rectified pursuant to an order of the court or by the registrar, subject to an appeal to the court, in any of the following cases, but subject to the provisions of this section:—

(a) Subject to any express provisions of this Act to the contrary where a court of competent jurisdiction has decided that any person is entitled to any estate right or interest in or to any registered land or charge, and as a consequence of such decision such court is of opinion that a rectification of the register is required, and makes an order to that effect;

...

(d) Where the court or the registrar is satisfied that any entry in the register has been obtained by fraud; ...”

145. Rectification under section 82 is always discretionary. The Council argues that the register ought to be rectified under s. 82(1)(a) and (d). Even if Deli Bar holds the land for Mr and Mrs Briar, I do not see any basis for the application of section 82(1)(a). It is plainly intended to ensure that the true owner has a method of ensuring that its interest is properly registered.

146. As regards section 82(1)(d) the Council says that the proprietorship register ought to be rectified to restore Mr and Mrs Briar as the registered proprietors on the basis that they are beneficially entitled to the land, and the registration of Deli Bar as proprietor was procured by the fraudulent deception of the officials at the Land Registry.

147. It is clear from *Norwich Building Society v. Steed* [1993] Ch 116, 133-134 (CA) that it is not sufficient to obtain rectification under section 82(1)(d) that the transaction is itself fraudulent (in that case on the ground that the transfer was induced by fraud): “The paragraph is directed ... to fraud practised upon the Land Registry in order to obtain the entry in question.” (at 134, per Scott LJ). Consequently the registration of a forged transfer, at least if the application for registration is made by the forger, could be annulled under paragraph (d): *ibid.*

148. I have already expressed my doubts about the evidence of Mrs Briar, but the Council no longer pursues the contention that the signature of Mrs Briar on the transfer by

LJB to Deli Bar was a forgery. It cannot therefore say that a forged transfer was presented for registration. But the Council contends that there were misrepresentations to the Land Registry: that there was an agreement for transfer from LJB to Deli Bar, when there could have been no such agreement since (among other reasons) Deli Bar was a sham; that Charnjit Singh existed when he was in fact a fiction; and that the document allegedly signed by Charnjit Singh giving details of Deli Bar to the Land Registry was genuine when in fact it was a forgery. The purpose of the deception of the land registry was the transfer of an onerous obligation from Mr and Mrs Briar to a company with no assets to enable compliance with that obligation.

149. The defendants say that even if Charnjit Singh, Surjit Singh and Paget Clarke were fictitious, persons describing themselves as Charnjit Singh and Surjit Singh acquired Deli Bar, notified the Registrar of Companies of their appointment and resignation as directors, and signed and returned to the Land Registrar the letter giving information about Deli Bar. Those persons plainly existed, and it would be entirely irrelevant to the actions of Deli Bar by its officers if those persons were Mr Briar under an alias.
150. In my judgment, the register ought to be rectified to show Mr and Mrs Briar as the registered proprietors. It is plain from the evidence of Ms Owen from the Land Registry that if the Land Registry suspects that there is some irregularity, an entry will not be made until the matter has been investigated and clarified. In answer to a requisition from the Land Registry, Mr Briar presented a forged letter to the Land Registry in order to facilitate the registration of the transfer, and to conceal from the Land Registry that the transferee had no genuine officers and was a sham. The official of the Land Registry acted upon that forgery by entering the details and authorising registration of Deli Bar in place of Mr and Mrs Briar. The entry was therefore obtained by fraud. For this purpose the falsely back-dated transfer to LJB can be disregarded as a fraudulent sham and a fraud on the Registrar. There never was any intention on the part of Mr and Mrs Briar to sell the land to LJB for £86,000, and no intention on the part of LJB to buy it. The sole purpose of the transfer document was to further the fraudulent design, and to distance Mr and Mrs Briar from Deli Bar.

151. The Council's position on the second point is that although Deli Bar is still a legal entity and being registered proprietor has the legal title, in the events which have happened Mr and Mrs Briar remain the beneficial owners, and so the owners within the meaning of section 336. The argument is put on the basis that because the transaction was a facade or sham, either Deli Bar is constructive trustee for Mr and Mrs Briar, or the corporate veil can be lifted so as to make Mr and Mrs Briar liable.
152. I was referred to the recent authorities on constructive trust (*Paragon Finance v DB Thakerar & Co* [1999] 1 All ER 400) and on piercing the corporate veil (*Trustor AB v. Smallbone (No.2)* [2001] 1 WLR 1177). For the reasons given above I am satisfied that Deli Bar was a mere façade. The transfer was certainly a sham in the normal sense, although perhaps not in the sense of the classic formulation by Diplock LJ in *Snook v. London and West Riding Investments Ltd* [1967] 2 QB 786, 802 ("intended to give the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create"). This case fulfils the criteria for piercing the corporate veil accepted in *Trustor AB v. Smallbone (No.2)* [2001] 1 WLR 1177 by Sir Andrew Morritt, V-C, namely: (a) the company is a facade or sham with no unconnected third party involved; and (b) the company is used as a device or facade to conceal the true facts thereby avoiding or concealing any liability of the persons in control of the company.
153. In fact, Deli Bar could be regarded as being no more than the nominee of Mr and Mrs Briar. In many cases that fact, and the fulfilment of the conditions for piercing the corporate veil in the circumstances of this case, would present no difficulty in imposing liability on Mr and Mrs Briar. But in this case there is a statutory definition of the person to be made liable, the owner.
154. But, in view of the fact that I have decided in favour of the Council on the rectification of the register point, it is not necessary to decide the difficult question of whether there might be exceptions to the principle that in general it is the legal owner who is the owner for the purposes of sections 178 and 336 of the 1990 Act. My provisional view is that, despite the merits of the Council's case, the Act would not permit Mr and Mrs Briar to be liable.
155. Finally, the Council relies on sections 423-425 of the Insolvency Act 1986. Section 423 relates "to transactions at an under-value; and a person enters such a transaction

with another person if (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself" (section 423(1)).

156. In such a case the court may make such order, on the application of a victim of the transaction, as it thinks fit to restore the position and to protect victims of the transaction, provided that the court is satisfied that the transaction was intended to put assets beyond the reach of a person who might make a claim against him, or otherwise prejudice such a person: sections 423(2), (3), (5); 424(1). Section 425(1)(a) provides that an order may be made requiring any property transferred as part of the transaction to be vested in any person.
157. The Council's primary position is that the whole affair should be seen as a single transaction whereby Mr and Mrs Briar secured Deli Bar to have the land, and the reality is that the transaction was a transfer from Mr and Mrs Briar to Deli Bar for no consideration. The Council's argument is this: (a) ownership of the land carries with it several onerous obligations: the basic obligation to comply with the enforcement notice; the obligation to comply with any injunction requiring compliance and the potential liability of costs of injunction proceedings; and the obligation to pay the costs of compliance with the enforcement notice in the event that the Council exercises powers under section 178(1) of the 1990 Act; (b) the purported transactions by which the land passed to Deli Bar from Mr and Mrs Briar (or from LJB and then to Deli Bar) was a transaction at an under-value in the sense that each of LJB and Deli Bar accepted the land with the onerous liability as owner, but Deli Bar received no consideration and LJB received consideration (if any) worth significantly less than the value in money or money's worth of the consideration provided by LJB in relieving Mr and Mrs Briar of their liability to comply with the enforcement notice. Accordingly, Deli Bar has entered into a transaction at an under-value for the benefit of LJB and likewise has LJB for the benefit of Mr and Mrs Briar.
158. Each transaction was entered into for the purpose of prejudicing the interests of the Council which is entrusted with the task of enforcing the enforcement notice against the owner if necessary by injunction proceedings or otherwise under the 1990 Act. The transactions were designed to transfer "ownership" of the land to an entity which

would disappear or be unable to comply with the requirements of the enforcement notice, and leave Mr and Mrs Briar free of responsibility. Under section 423(5) the Council is a victim as a person capable of being prejudiced by the transactions and both LJB and Deli Bar are within the definition of “debtor” each being persons who have entered into transactions at an under-value. Under section 425(1)(a) the court may order the land to be vested in Mr and Mrs Briar.

159. In my judgment, this remedy is not open to the Council. The Council’s argument looks at under-value from the viewpoint of the transferee, LJB or Deli Bar. But on the Council’s case, the transfer was a gross overvalue from the point of view of the transferor. The structure of section 423 is based on the notion that it is the transferor/debtor who is transferring at an under-value in order to put assets beyond the reach of, or otherwise, prejudicing, the creditor. It simply does not fit the scheme of the sections to treat LJB and Deli Bar as the person entering into the transaction at an under-value. That is shown by the fact that in section 423(3) the claim of the victim has to be against the person who receives no, or insufficient, consideration.
160. Whether an injunction (and, in particular, a mandatory injunction) should be granted under section 187B was left over, and I will hear argument on that question and on the consequences of this judgment and the form of order, if they cannot be the subject of agreement.