

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**  
**IN THE MATTER OF MOHAMMED RAZEEM (A BANKRUPT)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 27/03/2026

**Before :**

**ICC JUDGE AGNELLO KC**

-----  
**Between :**

**(1)ASHLEIGH FLETCHER**  
**(2) WAYNE MACPHERSON**  
**( in their joint capacity as trustees in bankruptcy of**  
**Mohamed Razeem)**  
**- and -**  
**MRS VIBHUTIBEN DESAI**

**Applicants**

**Respondent**

-----  
**JUDGMENT**

**Mr Andrew Brown** (instructed by Irwin Mitchell) for the Applicants  
**Mr Sam Laughton** (instructed by Ventura Law) for the Respondent

Hearing date: 13 March 2026  
-----

## **ICC JUDGE AGNELLO KC:**

### **Introduction**

1. On 9 July 2024, Deputy ICC Judge Frith ( the Judge) heard the application by the Trustees in bankruptcy of Mr Razeem seeking orders pursuant to section 339 of the Insolvency Act 1986 ( IA) and/or section 423 of IA. The Judge declared that the trust deed dated 2011 entered into by Mr Razeem was a sham and that the transfer of two properties from Mr Razeem to Mrs Razeem by transfers dated 29 September 2016 and 28 October 2016 constituted transactions at an undervalue pursuant to section 339 IA. The judge ordered that the two properties vest in the Trustees in bankruptcy (the Trustees).
2. Mrs Desai makes an application pursuant to section 375 IA seeking to vary the order made by the Judge (the Frith order). Mrs Desai asserts that the order should have also dealt with and recognised the charging orders she had by way of security over Mr Razeem’s interest in the properties. She seeks an order varying the Frith order and effectively declaring that her charges remain valid and secure her interest in the properties. This is the principal application which this judgment deals with.
3. There are various other applications listed before me, including that of the Trustees seeking an order discharging the charging orders, an application by Mrs Desai for permission to lift the stay on her section 423 IA application and other related applications. I will deal with the section 375 IA application and thereafter deal with other applications in so far as necessary.

### **Factual Background**

4. Mr Razeem was registered as the legal owner of the two properties, being 115 Week Street, Maidstone ME14 1RB (Week Street) and 21 Grant Drive, Maidstone ME15 9RZ (Grant Drive). On 3 March 2011, Mr Razeem entered into a trust deed purporting to settle the properties on trust for Mrs Razeem, his wife.
5. In early 2015, Mrs Desai commenced litigation against Mr Razeem relating to the sale of a news agent business. On 16 September 2016, after a trial, DJ Sullivan entered partial judgment in favour of Mrs Desai in the sum of £7,374 and reserved judgement as to the rest to 31 October 2016.
6. On 29 September 2016, Mr Razeem executed a TR1 transferring ownership of Week Street to Mrs Razeem for £1. On 28 October 2016, Mr Razeem executed a TR1 transferring ownership of Grant Drive to Mrs Razeem for £1. On that same day, Mrs Desai was granted interim charging orders for £7,374 against Mr Razeem's interest in Grant Drive and Week Street.
7. On 31 October 2016, DJ Sullivan gave judgment in favour of Mrs Desai against Mr Razeem in the sum of £81,469 plus costs to be assessed with a payment on account of costs of £15,000. In November 2016, Mrs Desai commenced proceedings in the FTT in relation to the ownership of the properties which arose out of Mrs Desai's attempts to register restrictions over the two properties. Mrs Desai asserted that transfers were shams. The FTT litigation was subsequently stayed.
8. On 27 April 2018, Mrs Desai issued a Part 8 claim for declarations as to the ownership of the properties. To an extent, these Part 8 Claim proceedings

duplicated the proceedings in the FTT. This claim was transferred to Brighton County Court. No trial has taken place in relation to the Part 8 Claim.

9. Thereafter from July 2017 until April 2021, Mrs Desai obtained charging orders over the two properties based on various judgments she obtained as against Mr Razeem. For current purposes, all charging orders obtained are as follows:-

- (i) 28 October 2016, two interim charging orders, one against each of the two properties charging the sum of £7,374.09 against Mr Razeem's interest in each property. Final charging orders were granted on 1 August 2018;
- (ii) 7 June 2018, an interim charging order securing the sum of £126,168.38 against Mr Razeem's interest in Grant Drive. Final charging order was granted on 1 August 2018;
- (iii) 13 June 2019, an interim charging order was granted securing the sum of £57,500 against Mr Razeem's interest in Grant Drive. Final charging order on 21 October 2019;
- (iv) 7 July 2020, an interim charging order securing the sum of £103,773 against Mr Razeem's interest in Week Street. Final charging order was granted on 27 April 2021.

10. On 12 February 2019, Mrs Desai presented a bankruptcy petition against Mr Razeem based on the judgment debts totalling £223,444. The petition made no reference to the existing security held by Mrs Desai under the various charges. On 27 February 2020, a bankruptcy order was made against Mr Razeem based on Mrs Desai's petition.

11. On 13 October 2020, Mrs Desai issued a section 423 IA claim against Mr Razeem in Maidstone County court seeking, ‘an order for the sale of the properties and payment of the net proceeds of the sale to the claimant [Mrs Desai] after payment of prior incumbrances’.
12. On 20 January 2023, the Trustees issued the application pursuant to section 339 IA and Part 7 Claim pursuant to 423 IA seeking a declaration that the trust deed was a sham and orders setting aside the transfers relating to the two properties on the grounds that they were transactions at an undervalue. Those proceedings were consolidated by order dated 1 March 2023.
13. The various different applications of Mrs Desai were transferred to this court by an order of mine dated 30 May 2023. Thereafter by order dated 4 July 2023, ICC Judge Jones stayed Mrs Desai’s section 423 application until after the outcome of the Trustees’ application (as consolidated). A debarring order was made against Mr and Mrs Razeem in relation to the Trustees’ proceedings. Thereafter the Trustees’ application was listed for trial and heard by the Judge on 8 July 2024.
14. Mrs Desai had been represented by Counsel at the hearing before ICC Judge Jones on 4 July 2023. Mrs Desai was not represented before the Judge on 9 July 2024. She explains that she did not see that she had to because she believed the issue of her charging orders would be dealt with after the trial. Her husband did attend the trial. She was not a party to the Trustees’ application.

15. Thereafter Mrs Desai was served with the Frith order. The application seeking to vary the Frith order was made by Mrs Desai on 8 January 2025. By order dated 13 January 2025, ICC Judge Prentis directed that the section 375 application be heard with directions and/or determination of the other applications in so far as time permitted.

### **The Frith order and judgment**

16. Under the terms of the Frith order, the Judge declared that the deed of trust dated 3 March 2011 purporting to settle the two properties on trust for Mrs Razeem constituted a sham transaction and was of no legal effect. Thereafter the Judge declared that transfer of the properties via the TR1s on 29 September 2016 and 28 October 2016 for £1 each constituted transactions at an undervalue pursuant to section 339 IA.

17. The Judge then ordered (1) that the deed of trust is set aside, (2) pursuant to section 341(1)(a) IA, the legal title and beneficial interest in Week Street is vested in the Trustees as the trustees in bankruptcy and (3) pursuant to section 341(1)(a) IA, the legal title and beneficial interest in Grant Drive is vested in the Trustees as the trustees in bankruptcy.

18. Mr Laughton relied upon the following passages from the judgment :-

‘[38] In summary, the 2011 Deed did not affect the beneficial interest in the [Properties]. ...

[39]... it is my view that the case that this was a sham transaction are adequately made out and that the appropriate relief applied for by the Claimants will be granted.

[40]I now turn to the alternative case that is put in the event that ... I am challenged on that conclusion. This is that the 2011 deed constitutes a transaction between creditors within the meaning of s.423 of the Act. ...

[42]... It appears that the 2011 deed disposed of the entirety of the beneficial interest in the [Properties] for nil consideration.

[43]There is a clear admission made by the Second [Defendant] as to the true intention of the 2011 deed, which was to ensure that the assets were protected against risk of attack from the First Defendant's creditors, as I have previously mentioned. The existence of potential judgments and enforcement by creditors are matters of historical fact, which Mr Brown prays in aid for his position that these transactions are indeed proven to fall within the intentions of s.423 of the Act. There is clear evidence that the Defendants intended to put them beyond the reach of creditors for a prohibited purpose. In my view, that case is also made out.

[44]I will now hear Mr Brown on the terms of the order to put these findings into effect.'

### **Relevant provisions of the Insolvency Act 1986 and case law**

19. Section 339 IA and section 341 set out the basis of a transaction at an undervalue :-

‘Section 339 (1) Subject as follows in this section and sections 341 and 342, where an individual is made bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if–

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,
- (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership, or
- (c) he enters into a transaction with that person 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 the individual.'

**‘Section 342 -(1)** Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently made bankrupt may (subject as follows)–

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the individual;
- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other

liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

**(2)** An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

**(a)** shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith and for value, or prejudice any interest deriving from such an interest, and

**(b)** shall not require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual...

**(3)** Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.'

20. Section 423 IA 86 sets out the avoidance transactional remedy applicable in both a solvency and insolvency context is equally applicable to both corporate and individual respondents. The relevant provisions are as follows:-

**'Section 423 (1)** This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if

**(a)** he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

**(b)** he enters into a transaction with the other in consideration of marriage or the formation of a civil partnership; or

**(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.

**(2)** Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

- (a) restoring the position to what it would have been if the transaction had not been entered into, and
  - (b) protecting the interests of persons who are victims of the transaction.
- (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
  - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.
- (4) In this section “*the court*” means the High Court or—
- (a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;
  - (b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.
- (5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

**Section 424 (1)** An application for an order under section 423 shall not be made in relation to a transaction except—

- (a) in a case where the debtor has been made bankrupt or is a body corporate which is being wound up or is in administration, by the official receiver, by the trustee of the bankrupt’s estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction;
- (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
- (c) in any other case, by a victim of the transaction.

(2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.’

Section 425 sets out the types of orders which can be made. In relation to vesting orders, section 425(1)(a) states

‘(1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)–  
(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;’

21. As stated in the Court of Appeal decision in *Stonham v Ramratten* [2011] 1 WLR 1617, a vesting order made pursuant to section 342(1) IA takes effect from the date of the order. At paragraph 37, Lord Justice Lloyd stated :-

‘Nor can I accept that property which is ordered to be transferred pursuant to an order under section 342(1)(a) is thereby treated as forming part of the bankrupt's estate at the commencement of the bankruptcy. Mr Mather argued that such retrospective effect would be the natural consequence of the court seeking to restore the position to what it would have been if the transaction had not been entered into, as required by section 339(2) . However, it seems to me that it would read a great deal too much into the words of that section. The effect of an order of whatever kind under section 342 will depend on the terms of the order, to some extent. If, as it might very well have been in the present case, the effect of the order is to require the property transferred to be vested in the trustee as part of the bankrupt's estate, it seems to me that that vesting takes effect as from the date of the order and no earlier. Ancillary provision might be made by other provisions of the order, in respect for example of benefits obtained in the meantime, but the actual vesting does not seem to me to have a retrospective effect by virtue of section 342 . Equally it would be artificial to suggest that it has a retrospective effect by virtue of section 283(1).’

22. Mrs Desai's application is made pursuant to section 375 IA :-

‘(1) Every court having jurisdiction for the purposes of the Parts in this Group may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of jurisdiction for the purposes of those Parts by the county court or by an insolvency and companies court judge lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies to the Court of Appeal.

(3) The county court is not, in the exercise of its jurisdiction for the purposes of those Parts, to be subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this section.’

23. The exercise of the section 375 jurisdiction follows well established principles summarised by Mr Justice Laddie in *Papanicola v Humphreys* [2005] 2 All E.R.

418( paragraph 25):-

(1) The section gives the Court a wide discretion to review vary or rescind any order made in the exercise of the bankruptcy jurisdiction.

(2) The onus is on the applicant to demonstrate the existence of circumstances which justify exercise of the discretion in his favour.

(3) Those circumstances must be exceptional.

(4) The circumstances relied on must involve a material difference to what was before the court which made the original order. In other words there must be something new to justify the overturning of the original order.

(5) There is no limit to the factors which may be taken into account. They can include, for example, changes which have occurred since the making of the original order and significant facts which, although in existence at the time of the original order, were not brought to the court’s attention at that time.

(6) Where the new circumstances relied on consist of or include new evidence which could have been made available at the original hearing, that, and any explanation by the applicant given for the failure to produce it then or any lack of such explanation, are factors which can be taken into account in the exercise of the discretion.

24. Mr Laughton also referred to Lord Justice Chadwick in the earlier case of *Mond v Hammond Suddards (No.2) [2000] Ch 40*, where the Court of Appeal considered r.7.47(1) of the Insolvency Rules 1986, the equivalent provision in respect of corporate insolvency. Chadwick LJ said at 49B:

‘... I can see no basis why the words used in rule 7.47(1) should not be given the very wide effect which, as a matter of language, the meaning which they naturally bear would indicate that the rule-making body intended. The rule is in terms which are indistinguishable from the parallel provision applicable in bankruptcy: see section 375(1) of the Insolvency Act 1986; and, in that context, there is no reason to doubt that Parliament intended to preserve the unlimited jurisdiction to conduct a rehearing which, as Sir James Bacon C.J. observed in *Ex parte Keighley; In re Wike* (1874) L.R. 9 Ch.App. 668n., was "of very considerable antiquity" and which had been enshrined in successive Bankruptcy Acts: see section 71 of the Act of 1869 (32 & 33 Vict. c. 71), section 104(1) of the Act of 1883 (46 & 47 Vict. c. 52) and section 108(1) of the Act of 1914. As Hoffmann J. pointed out in *In re Calmex Ltd.* [1989] 1 All E.R. 485, 486, the power is expressed in completely general terms. But, although I would hold that, as a matter of jurisdiction, the power to review conferred by rule 7.47(1) is

unfettered, it is, of course, a power which is to be exercised judicially. It would, in my view, be inappropriate - save in the most exceptional circumstances - for a judge to exercise that power in order to substitute his own decision for that of another judge of co-ordinate jurisdiction reached on the same material after a full consideration of the arguments. The power to review is not to be used in order to hear an appeal against a judge of co-ordinate jurisdiction. The exercise of the power should be confined, as a matter of discretion, to cases in which there has been some change in circumstances (which may, perhaps, include the consideration of material which was not previously before the court) since the original order was made: see the observations of Millett J. in In re A Debtor (No. 32-SD-1991) [1993] 1 W.L.R. 314, 318-319'

#### **The grounds of the section 375 application – submissions**

25. Mrs Desai's case is that she had the benefit of at least 4 charging orders to secure her various judgment debts over Mr Razeem's interests in the two properties. It is accepted that at the time that she obtained the charging orders, the properties had been transferred to Mrs Razeem by the TR1s dated 29 September 2016 and 28 October 2016. Her first interim charging orders were obtained on 28 October 2016.
26. It is accepted by Mr Laughton on behalf of Mrs Desai, that the charging order dated 7 July 2020 is invalid in that it was obtained after the bankruptcy order was made. The charging orders which are therefore referred to in the rest of this judgment relate to the other charging orders. There is a debate as to the validity of the charging order obtained between the date of issue of the petition and the bankruptcy order. For current purposes, I do not need to deal with that issue.

27. Mrs Desai's argument is that she is entitled to maintain her charging orders over the properties, because section 339 IA states (2), 'The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.' Mr Laughton submits that the mandatory language of section 339(2) requires the court to restore the position would have been had Mr Razeem not executed the two transfers ( the TR1s). Effectively the court is being asked to recognise the charging orders which had been obtained by Mrs Desai over the properties charging Mr Razeem's interest in the properties despite Mr Razeem having no interest in those properties at the time that the charging orders were granted. At that time, the entire interest in the properties vested legally and beneficially in Mrs Razeem. That was the position until the Frith order which set aside the deed of trust and also set aside the transfers via TR1s. The Frith order did not set aside the trust deed as a transaction at an undervalue pursuant to section 339 IA. It set aside the transfers via the TR1s.

28. In accordance with the Court of Appeal decision of *Stonham v Ramrattan*, Mr Laughton accepts section 342 IA does not allow for a vesting order to be retrospective. The order takes effect from the date of the order. However he submits that the wording used in section 339 IA mandates the court to validate Mrs Desai's charging orders on the basis that this would restore the position had the transfers not been executed by Mr Razeem. He submits that it is clear from the passages set out above from the judgement that the Judge did not consider the position of Mrs Desai's charging orders.

29. He also relies on the orders which were sought by the Trustees in their section 339 application, which included (1) a declaration that each of the transfers constituted a sham, and/or transaction defrauding creditors within section 423 IA, and/or a transaction at an undervalue within the meaning of section 339 IA and (2) an order that Mr and Mrs Razeem restore the Trustees to the position which they would have been in had the transfers not taken place. He submits that this must include restoring Mrs Desai to the position she would have been in had the transfers not taken place. He submits the purpose of section 339 IA is to restore the status quo and that would mean restoring the position of Mrs Desai in relation to her charging orders over the properties. He submits that if the transfers are set aside, as they were in this case, then Mrs Desai's position is one of a secured creditor and therefore the order she seeks by way of variation does not fall foul of the pari passu rule.

30. Mr Laughton also relies on section 423 IA in that he submits that the only way Mrs Desai can be protected as a victim of the transaction (being the transfers) is by recognising her charging orders. He relies on her section 423 IA application which was issued after the bankruptcy order was made and that she is clearly a victim of the transaction which was sought to be impugned both in those proceedings and also in the section 339/423 proceedings issued by the Trustees.

31. Mr Laughton relies on the case of *Kubiangha v Ekpenyong* [2002] EWHC 1567 (*Ch*) which he submits demonstrates that in seeking section 423 relief, the court can reinstate charges so as to provide security to a victim of a transaction. The case related to a non insolvency section 423 IA where the Judge held that the transfer by Mr Ekpenyong to his wife of the matrimonial home two weeks after

a large judgment had been entered against him fell firmly within section 423 IA. As part of the judgment, the Judge also considered whether Mrs Ekpenyong had a beneficial interest in the property because it was originally in the name only of her husband. The Judge held that she had a 50% interest. The Judge also determined that the Halifax charge over the property was protected by section 425(2) IA. He then stated as follows in relation to the charge over the property in favour of the Halifax at paragraph 31:-

‘With the evidence in this unsatisfactory state, I do not think I can reach any firm conclusion on how the burden of the Halifax charge is to be borne as between Mr and Mrs Ekpenyong. That is a question which is, in practice, most unlikely to require resolution as between the two of them, and I think it better to leave it open. However, as between the claimants and the defendants, I propose, subject to any comments counsel may make, to make an order to the effect that if it becomes necessary to sell the property in order to enforce the claimants' judgment, and if Mr Ekpenyong's half share in the property would otherwise be insufficient for that purpose, the burden of the Halifax charge is to be borne as to 50 per cent by Mrs Ekpenyong's share in the property in exoneration of Mr Ekpenyong's share. In other words, what I envisage is that for the purpose of protecting the claimants' interests, but not further or otherwise, only one half of the burden of the Halifax charge is to be treated as a first charge on the proceeds of sale of the property, and subject thereto the whole of Mr Ekpenyong's half share is to be available, if necessary, to satisfy the judgment against him.’

32. Mr Laughton submits that this is authority for the Court being able to restore charges to a property whereby the transfer of the same has been set aside.
33. He submits that Mrs Desai should be given an opportunity to make her case for the relief she seeks. She was not a party to the section 339/423IA application and additionally it is submitted that the Deputy Judge did not consider her

position when he made the order. He submits that the exceptional circumstances in relation to the exercise of section 375 are made out.

34. Mr Brown on behalf of the Trustees asserts that the section 375 IA conditions are not made out and additionally that relief sought by Mrs Desai in her proposed variation of the Frith order so as to recognise her charging orders is fundamentally flawed in that such a variation would effectively breach the pari passu rule by allowing Mrs Desai to be placed in a better position over other creditors in the bankruptcy estate.

### **Discussion**

35. I will deal with whether the relief sought by Mrs Desai in her proposed variation is actually one open to her in law. In so far as such relief is incapable of being granted as a matter of law pursuant to section 339/423, then there is no need for me to consider whether she has made out her grounds pursuant to section 375 IA.
36. Section 339 IA is part of the avoidance provisions created by Parliament so as to enable office holders, being either trustees in bankruptcy or liquidators/administrators, to seek to set aside transactions which have been entered into for no value or a value significantly less than the consideration provided to the debtor. Such proceedings can only be brought once the relevant insolvency event has occurred. In this case this is the bankruptcy order.
37. In my judgment, the proceedings under the avoidance provisions relating to both transactions at an undervalue and preference claims are causes of action vested in the relevant insolvency office holder. The proceeds of any recoveries from

such actions will be for the benefit of the relevant insolvency estate. The relevant office holder will realise and distribute the assets which form part of the estate, including any proceeds from avoidance actions. The statutory order of distribution in bankruptcy of bankruptcy debts and expenses treats all ordinary unsecured debts in the same way (section 328(3) IA). They fall to be paid by way of distribution on a pari passu basis after the payment of bankruptcy costs and expenses, preferential debts and secondary preferential debts. In other words, the ordinary non preferential debts rank equally between themselves and will receive any dividend in equal proportions between themselves.

38. Support for these principles also appear in section 342 (3) IA which states that any sums required to be paid to the trustee in accordance with an order under section 339 shall be comprised in the bankrupt's estate. Equally, section 342(1) (a) IA states that an order made pursuant to section 339, may require 'any property to be transferred as part of the transaction or in connection with the giving of a preference, to be vested in the trustee of the bankrupt's estate as part of that estate'. In my judgment, the variation sought by Mrs Desai would be a breach of the pari passu rule as it would create an inequality as between the creditors of the estate. In my judgment, the words set out in section 339 (2) IA are not to be construed as allowing a restoration of the previous position which breaches the rules relating to the distribution of the insolvent estate. It is clear that section 339 IA must be read alongside the aim and purpose of the management and realisation of the insolvent estate. Once a bankruptcy order is made, creditors are to be treated in the same way. A creditor has no entitlement to a better recovery than the other creditors.

39. Mr Laughton submits that if the transfer is set aside, Mrs Desai is effectively a secured creditor. I disagree. In my judgment, before the making of the bankruptcy order, Mrs Desai had security over any interest of Mr Razeem in the two properties. Due to the transfers via TR1s, Mr Razeem had no interest in the properties. The vesting orders made by the Frith order are not orders ab initio. They vest the properties in the trustees from the date of those orders. The provisions do not allow for retrospective vesting orders as is clear from *Stonham v Ramrattan*. At the date of the vesting orders, Mrs Desai is not a secured creditor because she did not hold any security over Mr Razeem's interests in properties. He had no interest in the properties. Mr Razeem's interests in the properties were only vested in the Trustees by the terms of the Frith order. What Mrs Desai is seeking is a variation which would enable her to benefit from the vesting orders made well after she was granted charging orders which she had been unable to enforce against any interest in the properties.

40. Before the making of a bankruptcy order, creditors are free to bring such actions or enforcements proceedings as they see fit in order to seek to secure their position against the assets of a debtor. Those actions can include bringing a section 423 IA application. After the making of the bankruptcy order, all unsecured non preferential creditors are to be treated on the pari passu basis.

41. Mrs Desai's position is not improved by her seeking to revive her section 423 IA which was issued by her after the bankruptcy order was made. Section 423 IA provides a further avoidance cause of action for insolvency office holders. However unlike section 339IA, section 423 IA avoidance claims can be issued outside of any insolvency process. The wording of the provision and subsequent

provisions distinguish between those cases which are brought by a victim of the relevant transaction and cases where the proceedings have been issued post the insolvency event. This is a post insolvency event section 423 IA.

42. In relation to any section 423 proceedings issued after the insolvency event, section 424 states that such an application is to be made by the relevant officer holder or with permission of the court, by a victim of the transaction (section 424(1)(a)). Section 424 (2) IA states that an application made pursuant to section 424(1) is to be treated as made on behalf of every victim of the transaction. In my judgment, this means that in an insolvent case, where the action falls under section 424(1)(a) IA, then the action is made on behalf of all the creditors in the insolvent estate. Arguably the wording is also wide enough to cover creditors whose debts are not provable debts in the bankruptcy, but nothing turns on this issue. It is clear that the words 'every victim of the transaction' includes all the creditors in the insolvent estate.

43. The ambit of what I call an insolvent section 423 is also clear from section 425(1) (a) which states that an order may require any property transferred as part of the transaction to be vested in any person absolutely or for the benefit of all the persons on whose behalf the application for an order is treated as made. The emphasis is effectively in ensuring that all victims of the relevant transaction benefit from the successful section 423 application.

44. In my judgment, the case of *Kubiangha v Ekpenyong* is not authority for the proposition that Mrs Desai could obtain the relief she seeks under her section 423 IA application. That case is a solvent section 423 IA. Additionally, the Judge also considered the issue of whether Mrs Ekpenyong had a beneficial

interest in the property once he had decided that the transfer to her by Mr Ekpenyong was caught by section 423 IA. The charge which the Judge was considering in paragraph 31 was not the interim charge which had been obtained by the Claimant, but the Halifax charge which may well be affected by the declaration that Mrs Ekpenyong had a 50% beneficial interest. In my judgment, the case is not authority that a court would recognise and enforce Mrs Desai's charging orders in a case of an insolvent section 423 which is treated as being brought on behalf of all the creditors. In my judgment, an insolvent section 423 IA application cannot grant relief to one victim of the transaction which would be a breach of the pari passu rule.

45. In conclusion, Mrs Desai's proposed variation to the Frith order fails on the grounds that what she is seeking has no legal basis pursuant to section 339 IA or under section 423 IA. Properly construed neither provision entitles her to seek to obtain an order in breach of the pari passu rule. In those circumstances, I do not need to consider whether she satisfies the principles allowing her to apply pursuant to section 375 IA. In any event, she has actually obtained consideration of her application to vary the Frith order in this judgment. Her claim in relation to section 423 IA also fails. Mr Laughton also accepted that in so far as Mrs Desai's application failed, then she had no defence to the discharge of the charging orders. I accept this is the position. I understand that the remaining applications do not need to be considered but I will hear the parties in the event that consequential directions are necessary.