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doi:10.1017/S0008197326101445

A century after the enactment of the Law of Property Act 1925 ("LPA 1925"), *National Iranian Oil Co. v Crescent Gas Corporation Ltd.* [2025] EWCA Civ 1211, [2026] B.C.C. 41 ("*National Iranian Oil*") is the most significant decision on the interpretation of section 53(1)(b), concerning formalities for trusts of land. Whilst the case provides helpful clarification of certain practical matters, it rejects the orthodox understanding of what happens when formality requirements are not met.

Declarations of trusts of land must be proved by writing signed by the person who is able to declare the trust. The Court in *National Iranian Oil* acknowledged that the signature could be that of the settlor or the trustee, without explaining why the latter suffices, although this is presumably because, once title has been transferred to the putative trustee, they could self-declare that they hold the land on trust. It was also confirmed that the signed writing can arise after the trust has been declared since its purpose is simply to manifest an intention to declare. The need for signed writing was justified as mitigating the risk of fraud arising from recognising false oral evidence of trusts which could deprive landowners of their beneficial interest.

One of the issues in the case was whether LPA 1925, section 53(1)(b) permits the settlor's agent to evidence the declaration of trust. It was unanimously held that an agent cannot sign on behalf of the settlor because, unlike section 53(1)(a), concerning the creation or disposal of interests in land, and 53(1)(c), concerning the disposition of equitable interests, no reference is made in subsection (b) to an authorised agent being able to sign the relevant document and there is risk of fraud from agents declaring trusts without written authority to do so. Where the settlor is a company, inevitably the signature must be that of a natural person such as a director, not as agent but because they need to facilitate the signing by the company and so are able to declare the trust.

So far, so good. But from this point the Court of Appeal divided. For sections 53(1)(a) and (c) signed writing is mandatory and its absence renders the transaction void, but section 53(1)(b) only requires proof of intention to declare the trust. This difference was recognised in *National Iranian Oil*, although there was disagreement about its implications. The orthodox interpretation of the provision, one endorsed by Zacaroli L.J., is that a trust of land can be created without signed writing, but in its absence the trust is unenforceable. Sir Julian Flaux C. and Falk L.J. both rejected this interpretation and held that failure to evidence the trust with signed writing renders the trust non-existent.

https://doi.org/10.1017/S0008197326101445 Published online by Cambridge University Press

Whether the trust is non-existent or unenforceable for lack of signed writing will usually make no difference, since, if non-existent, the beneficiary will have no rights and, if unenforceable, they will not be able to enforce their rights. But the distinction may sometimes matter, as it did in *National Iranian Oil* since it was necessary to determine whether a trust of land had transferred beneficial rights to the beneficiary or whether the settlor remained absolute owner. The settlor company, which owed a large sum to the respondent, had declared a trust of land which was not evidenced by appropriately signed writing and subsequently transferred legal title to the land to the "beneficiary". The key issue was whether the settlor had initially retained a valuable interest in the land such that the subsequent transfer was of significant value. If there was already a trust, albeit unenforceable, the transfer of title would not have been of significant value. However, if the trust was non-existent the subsequent transfer was of significant value and, since no value was received in return, would be a transaction at an undervalue under section 423 of the Insolvency Act 1986 and so liable to be unwound. Because of the absence of signed writing the majority held that the trust could not be proved to exist, so the transfer of title was at an undervalue. Since Zacaroli L.J. considered that an unenforceable trust had been created, he held that it had been effective to transfer beneficial title and the subsequent transfer of legal title was not at an undervalue.

The majority held that, although signed writing is an evidential rather than a formality requirement, a trust of land cannot be validly declared until there is signed writing, although if the signed writing is produced subsequently the trust will be treated as retrospectively valid from the date of declaration. This means that the beneficial interest in the property will be deemed retrospectively to have been transferred to the beneficiary at declaration. It might also mean, in a case of self-declaration, that in the period between declaration and production of signed writing the settlor may have acted inconsistently with the trust without it constituting a breach of trust at the time but, following the retrospective validation, this becomes a breach. This is an absurd consequence which calls into question the approach of the majority.

Zacaroli L.J. considered that the purpose of signed writing was only to evidence the trust rather than to perfect it. If the signed writing emerges after declaration this enables the trust to be enforced, but does not retrospectively transfer the beneficial interest because this will already have happened at declaration. Similarly, a trustee of a trust of land which has not been evidenced by signed writing will commit a breach of trust by, for example, misappropriating trust assets for themself, but the beneficiary will not be able to sue until there is signed writing.

The analysis of Zacaroli L.J. is to be preferred as being consistent with the authorities and respecting the language of LPA 1925, section 53. But this is

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not now the law. Section 53(1)(b) is held to be a rule of validity, not evidence. But if a settlor purports to declare a trust of land without signed writing, Equity may still enable a trust to be enforced and has done so where the putative trustee seeks to rely on the statute as an instrument of fraud, as recognised in *Rochefoucauld v Boustead* [1897] 1 Ch. 196 (C.A.) ("*Rochefoucauld*"). Zacaroli L.J. confirmed the continued significance of the *Rochefoucauld* principle, which is consistent with his analysis of LPA 1925, section 53(1)(b): the statutory evidential requirement can be waived where the trustee has acted unconscionably and the express trust is then enforceable. Surprisingly, the majority also endorsed this principle, but it is much more difficult to justify it where failure to comply with section 53(1)(b) is considered to negate the existence of the trust. It is one thing to use the principle to render an unenforceable trust enforceable. It is a very different thing to use it to validate a non-existent trust.

The analysis of all three judges of the consequences of not having signed writing was confused because of a perceived distinction between "two-party" and "three-party" cases, with the *Rochefoucauld* principle only applying to the latter. This is odd since *Rochefoucauld v Boustead* only involved two parties, where the settlor intended the trustee to hold land on trust for the settlor. In fact, what the judges meant by "a two-party" case was one where the settlor self-declared that they held land on trust for another. If such a trust is not evidenced by signed writing there is no scope for the operation of the *Rochefoucauld* principle because the settlor/trustee is free to determine whether they wish to create an enforceable trust by producing signed writing. In other cases, the *Rochefoucauld* principle should be applicable regardless of whether two or three parties are involved, where a settlor transfers land to the trustee to hold on trust either for the settlor or for a third party and the trustee denies the trust.

Where the settlor has transferred land to the trustee to hold on trust for the settlor, the denial of the trust by the trustee for lack of signed writing could be unconscionable, even though this is a two-party case. There is consequently scope for the *Rochefoucauld* principle to apply. Similarly, in a three-party case where the settlor transfers land to the trustee to hold on trust for somebody else. But the principle which operated in *Rochefoucauld* itself enabled the express trust to be enforced. The decision of the majority that there is no trust of land without signed writing means logically that the *Rochefoucauld* principle is inapplicable.

But there are two other methods for recognising trusts of land despite the absence of signed writing. One is to recognise that the land is held on an automatic resulting trust for the settlor. This arises where an express trust is invalid and follows logically from the analysis of the majority, but they did not consider it. Signed writing is not needed for such trusts:

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LPA 1925, section 53(2). Second, the trustee holds the land on constructive trust which is triggered by the trustee reneging on an agreement to hold the land on trust. This was recognised as arising from the absence of signed writing by the Court of Appeal in *Khan v Khan* [2025] EWCA Civ 1436. A constructive trust is also valid without signed writing: LPA 1925, section 53(2). Crucially, this does not depend on the incantation of "using a statute as an instrument of fraud". The real fraud is the denial of the agreement that land will be held on trust for another which triggers the recognition of a constructive trust.

Permission to appeal to the Supreme Court has been granted. How should that court decide these issues of interpretation? On the question of signing by agents the decision of the Court of Appeal should be affirmed. But on the more fundamental issue of the role of signed writing in trusts for land the Supreme Court should acknowledge that failure to comply with LPA 1925, section 53(1)(b) renders the trust unenforceable, but the trustee's conduct in reneging on an undertaking that the land will be held on trust means that the land is held on constructive trust. A century after its enactment, this would finally make sense of LPA 1925, section 53(1)(b).

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