



Neutral Citation Number: [2024] EWHC 988 (Ch)

Appeal No: CH-2023-000061

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY APPEALS (ChD)**

**On appeal from the order of Recorder Maguire dated 10 March 2023**  
**Sitting in the County Court at Central London**

7 Rolls Building  
Fetter Lane  
London EC4A 1NL

Date: 29 April 2024

Before :

**THE HONOURABLE MR. JUSTICE MARCUS SMITH**

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**ARDLEY ALLEN**

Appellant  
(Claimant below)

- and -

**JOAN ELIZABETH WEBSTER**

Respondent  
(Defendant below)

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**Ms Antonia Halker** (instructed by **Faradays Solicitors**) for the **Appellant**  
**Mr Tahir Ashraf** (instructed by **Callistes Solicitors**) for the **Respondent**

Hearing date: **29 April 2024**

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**Approved Judgment**

This judgment was handed down on 29 April 2024 in person during a hearing and by circulation to the parties or their representatives and by release to the National Archives.

**Mr Justice Marcus Smith:**

**A. INTRODUCTION**

1. By an order dated 13 March 2023 (the “Order”), Recorder Maguire (the “Judge”), sitting at the County Court at Central London, declared that the property known as at situate at Tyndale Villas, Sartar Road, Nunhead, London SE15 3BB (the “Property”) was held by the Appellant and Respondent upon trust for them as tenants in common in the following terms:

(1) 8% for the Appellant; and

(2) 92% for the Respondent.

2. The Order was consequential on a detailed and careful judgment (the “Judgment”) handed down on 9 March 2023. The Judge throughout referred to the parties as the Claimant and the Defendant. I shall refer to the Appellant and the Respondent, and I should make clear that the Claimant is the Appellant and the Defendant is the Respondent.

3. By an Appellant’s Notice dated 23 March 2023, the Appellant sought permission to appeal the Order on five grounds. The Judge refused permission to appeal. By my order of 28 September 2023, I gave permission to appeal on all grounds. The reasons relevantly state:

The [Judge] has rendered a very careful judgment, dealing with an making findings in relation to a number of facts. An appellate court should be slow to question such findings and (to be clear) I do not do so. However, the grounds of appeal turn, in large part, on inference from found facts. In such cases, substantial weight must be given to the conclusions of the [Judge], but it is permissible to test those inferences in light of the factual findings, and the applicable law. Equally, the [Judge’s] discretion (in terms of ordering sale) is a matter an appellate court [will] be slow to question.

**B. THE CENTRAL ISSUE ON APPEAL**

4. The central issue on this appeal is whether the Judge correctly declared the beneficial interest in the Property as vesting 92% in the Respondent and 8% in the Appellant, in circumstances where:

(1) The Appellant and the Respondent purchased the Property in their joint names as joint tenants.

(2) At the time of the purchase of the Property, the common intention of the Appellant and the Defendant was to hold the beneficial interest in the Property jointly and equally.

(3) When the Appellant moved out of the Property (in 1990), that common intention did not change.

(4) The common intention did change in or around 1992, when the Appellant ceased contributing to the mortgage and to the repair of the Property.

(5) The common intention changed, such that the beneficial ownership should be held, instead of equally, in the proportions that I have already described (92%/8%):

5. The Appellant contends that there was no basis for the Judge to find that the intention of the Appellant and the Respondent changed in 1992: see paragraph 3 of the Grounds of Appeal. This is Ground 1 of the appeal.
6. In the alternative (this is Ground 2 of the appeal) the Appellant contends that the common intention that the Judge should have found was that the interests of the parties should crystallize in or around 1992, and that the Appellant's interest should be calculated by reference to his having, in 1992, an absolute (money) amount equivalent to a 50% share in the value of the Property as at 1992: see paragraphs 7 and 8 of the Grounds of Appeal.
7. There is thus a close link between Grounds 1 and 2, and I propose to consider them (even though they are alternatives) together. Grounds 3 and 4 are very much secondary to these Grounds, and I propose to consider them at the end of this Judgment. Ground 5 relates to costs here and below, and I will determine that question after have handed down this Judgment, for (by this Judgment) I am materially varying the terms of the Order, and so it is appropriate to consider costs (here and below) in light of this Judgment.

### **C. THE LAW REGARDING COMMON INTENTION**

8. There was no legal controversy before me, and I can set out the relevant law briefly. The essence of Grounds 1 and 2 is not that the Judge misunderstood or misstated the law, but that the Judge reached factual findings on insufficient evidence and/or were findings that were outside the range of reasonable determinations which the Judge could make.

9. In *Jones v. Kernott*, [2011] UKSC 53 at [47], Lord Walker stated:

In a case such as this, where the parties already share the beneficial interest, and the question is what their interests are and whether their interests have changed, the court will try to deduce what their actual intentions were at the relevant time. It cannot impose a solution upon them which is contrary to what the evidence shows that they actually intended. But if it cannot deduce exactly what shares were intended, it may have no alternative to ask what their intentions as reasonable and just people, would have been had they thought about it at the time. This is a fallback position which some courts may not welcome, but the court has a duty to come to a conclusion on the dispute put before it.

10. At [51], Lord Walker articulated the following principles which should apply where (as here) a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests. The principles articulated by Lord Walker were:

- (1) That the starting point is that equity follows the law and that the couple are joint tenants both in law and equity.
- (2) That that presumption could be displaced by showing (i) that the parties had a different common intention at the time when they acquired the home or (ii) that they later formed the common intention that their respective shares would change.
- (3) That the common intention had to be deduced objectively from conduct, and must be manifested by that party's words and conduct notwithstanding that they did not consciously formulate that intention in their own mind or even acted with some different intention, which was not communicated or manifested.

## **D. THE FOUND FACTS**

11. The Judge heard from both the Appellant and the Respondent (at [18] of the Judgment: hereafter, all paragraph references are to the Judgment, unless I state to the contrary). Of the two witnesses, the Appellant was the better witness (at [19] to [20]), for the Respondent's evidence was coloured by an "overarching concern to keep the Property" (at [24], but also at [21] to [26]). As a result, the Judge treated the Defendant's evidence with caution (at [27]).
12. Although there was documentation before the Judge (at [18]), this evidence was patchy and by no means complete: at (for example) [36], [38] and [39].
13. The Property was purchased for a consideration of £69,995 in 1988 (at [29], [30]). The Appellant and the Respondent moved into the Property in that year (at [31]), but in 1990 (following a dispute) the Appellant moved out (at [32]). In 1991, the Appellant issued proceedings in the High Court seeking an order for the sale of the Property (at [40]). Although these proceedings were never resolved, the Appellant did make statements in 1991 that he owned and contributed to the Property equally with the Respondent (at [40] and [41]). In 1991, so far as contributions were concerned, that was true.
14. The Judge found as a fact that the Appellant contributed equally until 1992, when a joint account held by the Appellant and the Respondent was closed (at [42]). The account was closed by the Respondent. Thereafter, in essence, the Appellant did not contribute further.
15. There were communications between the Appellant and the Respondent in the 2000s (at [47]ff), but the Judge (understandably) could draw little from this, save that the Respondent had done little to maintain the Property (at [61], [62]).
16. The Judge carefully set out the law, and properly found that the burden of showing a changed intention lay on the party asserting this, namely the Respondent (at [72]).
17. The Judge found that the parties bought the Property as joint tenants, with the intention that the Property be held equally (at [90]). He found that that common intention did not change when the Appellant left the Property in 1990 (at [91]).
18. The Judge then focused on the significance of the Appellant's cessation of contribution to the Property in 1992. He placed significant weight on the fact that the Respondent contributed to the mortgage from that time (at [95]) and (at least to a limited extent) maintained the Property (at [99]). There was a formal severance of the joint tenancy in January 2019 (at [104]), but the Judge found that there was in fact a change in common intention in 1992 (at [100]), which must have had the effect of varying the manner in which the equitable interest was held. The Judge did not make any finding as to the value of the Property in 1992. The formal severance in 2019 is immaterial to the matters before me today.

## **E. ANALYSIS**

19. The Judge summed up the position extremely clearly at [107]:

This is an unusual situation. The Property was bought jointly by the parties over 34 years ago. The [Appellant] moved out of it over 32 years ago and stopped making financial and non-financial contributions to it over 30 years ago. Neither the [Appellant] nor the [Respondent] has carried out nor funded any particularly significant maintenance or refurbishment work to the Property over the entire period. The only significant refurbishment works that have taken place were said to be funded by Southwark Council.

20. The Judge, then carried out an assessment of the parties' interests done by reference to their respective financial contributions over time. He found (assuming that the Respondent made all mortgage payments after 1992) that there had been, over the time the Property was held, some 600 mortgage payments, of which the Appellant had made 48. That ratio gave the Judge the 8% interest he found the Appellant to have (i.e. 48 out of 600 is 8%).
21. This is a resulting trust analysis *par excellence*, and it disregards the focus on common intention that the law requires. I do not consider that the Judge's conclusion can be supported by the facts that were found. The analysis, based as it is on after the event mortgage contributions, whilst compelling in the abstract, is not one open to the Recorder. It does not, as it should, focus on the common intention between Appellant and the Respondent as at 1992, which is when the Judge found the common intention changed.
22. In 1992, the Respondent closed the joint account she held with the Appellant: at [43], [97]. At that point:
  - (1) The Appellant stopped contributing (as the Respondent must have known); and
  - (2) The Respondent began solely contributing to the mortgage (as the Appellant must, at least, have inferred from the fact that he could pay into the joint account (it having been closed)) and from the Respondent's continued occupation of the Property.
23. I consider that it is permissible to conclude, from these facts alone, that the common intention had changed. It would be extraordinary if the common intention to hold equally could survive these changes. In effect, the Respondent would be paying for the Appellant's interest and that – given an acrimonious split – is just not likely.
24. It seems to me that Ground 1 (that there was no change of common intention) must fail in light of the Judge's findings, which were well within the bounds of what could properly be decided, given the facts found.
25. I turn to Ground 2. As I have already noted, I do not consider that a forward looking analysis of what the Respondent paid after 1992, by way of mortgage contributions, can justify the Judge's reasoning. It seems to me that the common intention must be inferred from facts that inform that common intention as it existed in 1992.
26. In my judgement, it is to be inferred from all the manifested facts (specifically, the cessation of contribution in 1992) that the Appellant's interest crystallised in 1992, when his contributions ceased. The difficult question is what that amount, as crystallised, in fact was.
27. The purchase price of the Property was just under £70,000 in 1988 (at [29]). However, the valuation also noted that if essential repairs were carried out, the Property would be valued at £74,000 (at [29]). Although the Judgment is not completely clear, it would appear that these works were carried out (at [31]). Of course, property prices fluctuate and – at this time – may have gone up or down. I cannot say. It seems to me that the best course is to presume a similar value in 1992 to that in 1988, namely £74,000 with the repairs carried out.
28. With a value of £74,000, the Appellant's 50% share crystallised at half that amount, namely £37,000. What percentage share of the Property that comprises depends on the sale price that the Property achieves, which is of course market dependent. The Property was valued at £600,000 in 2023. If that is the case, then the Appellant's

£37,000 results in a 6.25% share of the Property. But I want to be clear that I not finding a percentage share, but an interest in the amount of £37,000.

29. To that extent, Ground 2 of the appeal succeeds; Ground 1, as I have already said, fails.

## **F. THE REMAINING GROUNDS OF APPEAL**

### **(1) Ground 3**

30. The Judge declined to make any order of sale. The Appellant contends that there was no good reason not to do so pursuant to section 14 of the Trusts of Land and Appointment of Trustees Act 1996, and appeals against this decision. The relevant factors to be taken into account are set out in section 15 of the 1996 Act, but none are of great assistance here.
31. Two factors impel me to the conclusion that the Judge erred in this discretionary question, and that an order for sale must be made: first, unless such an order is made, the Appellant will be kept out of his money for no good reason until the Respondent chooses to sell, which is unlikely to be soon. Furthermore, the value of the Appellant's entitlement will likely diminish over time. No interest is due; and the Appellant cannot benefit from any increase in property prices (although he is insulated from falls in the property market).
32. An order for sale must be made unless, in the meantime, the Respondent elects to pay the Appellant off. Given that I understand the value of the Property to be £600,000, and that it is unencumbered, it will be straightforward for the Respondent to raise money on the Property so as to pay the Appellant, without selling the Property. I consider that she should be given no more than three months to do this, after which the Property must be sold with all expedition.
33. This was the substance of Ground 3, and I find that it succeeds.

### **(2) Ground 4**

34. Paragraph 7 of the Order provides that upon sale of the Property, the Respondent shall pay to the Appellant the sum of £438.53 on the sale of the Property. It is unnecessary to state why the Judge made this particular order (and the Appellant frankly concedes that the reasoning is not "adequately explained").
35. Nevertheless, the order has been made, and it is not appealed. Since I am directing a sale of the Property, the sum can be added to the £37,000. As I have said, any sale of the Property can be avoided if the entirety of the sum (£37,000 plus £438.53) is paid.

### **(3) Ground 5**

36. As I have already stated, it is appropriate in any event to revisit the costs below in light of this Judgment. The costs of this appeal must also be resolved. These are matters on which I have yet to hear argument. I propose to hand down this Judgment, and then hear the parties on the question of costs, here and below.