

**TRANSCRIPT OF PROCEEDINGS**

---

Ref. 15-M-2020

**IN THE CENTRAL LONDON COUNTY COURT (BANKRUPTCY)**

Thomas More Building  
Royal Courts of Justice  
Strand  
London

**Before DISTRICT JUDGE REVERE**

**IN THE MATTER OF**

**JULIA SWAN (Acting as a Trustee) (Applicant)**

**- v -**

**(1) PAUL JOYCE (A Bankrupt)**  
**(2) MRS JOYCE (Respondents)**

**JAMES COUSER, instructed by JJP Law LLP, appeared on behalf of the Applicant**  
**THE FIRST RESPONDENT appeared as a litigant in person.**  
**MAXWELL MYERS, instructed by Foreman & Co, appeared on behalf of the**  
**Second Respondent**

**JUDGMENTS**  
**3<sup>rd</sup> FEBRUARY 2021**  
**(AS APPROVED)**

---

*DISCLAIMER: The quality of audio for this hearing is the responsibility of the Court. Poor audio can adversely affect the accuracy, and we have used our best endeavours herein to produce a high quality transcript.*

*WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

JUDGE REVERE:

1. This is an application brought by Trustees in Bankruptcy of Paul Joyce. The application was in two parts: it was for the possession and sale of his property at 62 Longwater Lane, Norwich, and for consequential directions on sale.
2. The first respondent (Mr Joyce) went bankrupt on 20 July 2016 on his own petition, at which point his share in the property vested in the Official Receiver. Trustees were appointed on 17 August 2016.
3. On 16 March 2016 the property 62 Longwater Lane had been transferred from his sole name into the joint names of himself and his wife (the first respondent). It was stated on the transfer that it was a “transfer for no consideration on express trusts for the property to be held in equal shares between the parties.” The Trustees raised a question over the timing of the transfer and were not satisfied with the response they got. This application is the result of the dispute between the parties as to whether or not Mrs Joyce owns a beneficial interest in the property that reflects her legal interest.
4. There are separate legal issues to be considered in this application. Looking at the reality of the application, the application to rescind the transfer and vest 100 per cent of the property in the Trustees is an application under section 339 of the Insolvency Act and the Trustees have to show that there was a transfer at an undervalue in order to succeed.
5. The burden of proof is on them. However, in order to defeat that application the respondents raise a factual scenario stating that they had a constructive trust that Mrs Joyce would own 50 per cent of the property and that that arose in 2013. In respect of proving that issue, the burden of proof falls on them. If the Trustees are not able to discharge their burden of proof in respect of their application, I will then go on to consider the cross-application for a declaration by Mrs Joyce.
6. The application notice - which is at pages 1-3 of the bundle - is for a declaration that the transfer on 16 March 2016 was a transfer at an undervalue, as I have said, within the meaning of section 339, and for an order revesting the property in the Trustees. Alternatively, if a beneficial interest exists, the Trustees ask for a declaration as to the extent of that interest. The application included an application for an order for possession and sale and directions.
7. In response to the application, the second respondent says that she acquired a beneficial interest in the property following her move to the property in 2013. By order of 21 August 2019, Deputy District Stephens, in Norwich, made an order for possession and sale, suspended until determination of the issue as to whether or not Mrs Joyce had a beneficial interest. This has been the trial of that issue.
8. The legal issues are factually intertwined. As I have said, if I am satisfied on Mrs Joyce’s case, I do not need to go on to consider whether or not there was a transfer at an undervalue because, self-evidently, there will not have been. If I am not satisfied on Mrs Joyce’s evidence, then the Trustees have to prove, on the balance of probabilities, that their application should succeed. I will, therefore, consider the evidence first, make findings of fact and then apply the law to those facts as I find them in the context of the application that

there has been a sale at an undervalue and the cross-argument that the transfer was merely evidence of an earlier acquired beneficial interest in 2013.

9. I heard evidence from both Trustee applicants and both respondents. I read their witness statements and the documents supporting them. I read witness statements from Ms Tierney and Mr Reeves and the single joint expert valuation report of Mr Willerton.

10. The following evidence, which is before me and which is uncontested or challenged, is as follows. The property was a two-bedroomed bungalow prior to the loft conversion. In late 2011 Mr Joyce started loft conversion works for his daughter and it was then stopped when she moved out to be with her partner and have a baby.

11. In 2012 Mr and Mrs Joyce started their relationship. They had known each other for many years and it was a second marriage for both of them. They were, therefore, familiar with each other before the relationship started and had a good knowledge of each other's families.

12. On 1 June 2013 Mrs Joyce moved into the property with Mr Joyce and her two sons. The Trustees accept the son's disabilities and that the property needed to be adapted for a family of four.

13. On 17 December 2014 Mrs Joyce sold her property known as 55 Henfield, in Eastbourne.

14. On 5 January 2015 there was a finance agreement relating to Mr Joyce's business with a personal guarantee which Mr Joyce signed.

15. On 22 May 2015 Mr and Mrs Joyce got married and they had a honeymoon in Italy. Mrs Joyce said she had no knowledge of Mr Joyce's business affairs, which was not challenged. She said she believed the business was prospering. In any event, as I will come on to, in order for the Trustees to prove a transfer at an undervalue it is not necessary to prove a mental element to that fact; there simply has been to be a transfer at an undervalue.

16. In September 2015 Mr and Mrs Joyce applied for a remortgage but it was delayed. On 27 November 2015 there was an Experian check on Mr Joyce and on the 14 January 2016, after some delay, the remortgage was approved.

17. On February 2016 Mr Joyce stated that he knew that he could not pay his debts and that was the date put on his bankruptcy application. On 10 February 2016 the remortgage was finally approved.

18. On 17 February 2016 the partnership entered administration. On 14 March 2016 letters before action were sent to Mr Joyce and he appointed solicitors. On 16 March 2016 the property was registered into joint names. On 18 July 2016 there was a judgment in default against Mr Joyce under the personal guarantee. On 30 August 2016 Mrs Joyce started paying the mortgage.

19. On 20 July 2016 Mr Joyce petitioned for his own bankruptcy and was adjudged bankrupt on that date. On 17 August 2016 the Trustees were appointed and on 29 November 2016 they notified of the intention to sell the property.

20. I heard evidence from the Trustees. The evidence and cross-examination of the Trustees went largely to the reasonableness of their decision not to accept the respondents' case that the second respondent had a 50 per cent share in the property. I do not rehearse the details of evidence.

21. The Trustees drew my attention to the deficits in the evidence provided by the respondents to prove any sort of beneficial interest, and I will examine that evidence with care. They also stated in evidence that they do not allege that the conveyance in March 2016 was not done with fraudulent intent. This had been suggested in their witness statements but was not pursued in evidence and was conceded in argument.

22. The Trustees conceded in evidence that work had been done to the loft as reflected in the valuation report but disputed Mrs Joyce's financial contribution to that project.

23. The Trustees also led evidence on the failure of the respondents to attend a meeting for questioning in relation to the alleged beneficial interest. They ask me to find that this was obstruction and should be held against the respondents in an assessment of their credibility on their evidence.

24. I will examine the correspondence and the evidence surrounding the invitation to the meeting in more detail because it may be that this evidence is put forward by the parties on costs arguments so findings of fact would be useful. I will do this after findings of evidence on the substantive issues.

25. To the extent that the Trustees conceded in correspondence that the second respondent may have a beneficial interest in the property, I do not take account of that evidence. The Trustees have no direct knowledge of the circumstances surrounding the creation of the constructive trust and it is a matter for the court to decide, on the evidence, whether such a trust arose.

26. The second respondent's evidence: Mrs Joyce's evidence was that after the relationship started she agreed with Mr Joyce that she would sell her home and move in with Mr Joyce as her work was transferable but he needed to be near the business. She decided to sell her house in Eastbourne and move to Norwich to live with him. They would be a family unit and the home would be owned jointly. Following on from that agreement she used the proceeds of the sale of her property to fund the works to the property, share the bills and mortgage payments equally and take on new debt equally in the form of a remortgage. She did not give evidence of the words actually said, but said conversations took place and there was an express agreement that she would acquire a beneficial interest in Mr Joyce's property.

27. In the absence of express words or conversations pleaded I look at the evidence to see if there is evidence from which an inference of agreement may be drawn. Mrs Joyce said that all that existed of the loft conversion works when she moved in was an outline frame. The loft was made temporarily usable by putting up stud walls, that Mr Joyce erected, and prior to the sale of her property she invested £10,000 to make it liveable.

28. The majority of the investment, in the form of installation of wet room and internal decorations, took place after she received the funds from the sale of her property. She describes how it was necessary to adapt the loft to make a self-contained flat as Joe - who is deaf and autistic, with anxiety disorder - will be dependent on her for life.
29. She accepted in evidence that the business affairs she describes in her witness statements were matters that had come to her knowledge after the event. She said in evidence that had she paid bills at about £1,300 a month and that the first respondent paid the mortgage until he stopped work when he became bankrupt.
30. Prior to the bankruptcy, several payments had bounced and she took over the payments of the mortgage in August of 2016. She describes a “pooling of the family’s resources,” although the first respondent paid the bills, paid the mortgage and she paid the rest of the outgoings associated with the upkeep of the property.
31. Mrs Joyce said that she and Mr Joyce started to talk about a remortgage to consolidate their debts and reduce the monthly expenditure in around September 2015. She exhibits documents showing the application for the remortgage around this time. She says the only reason for the delay in the remortgage was due to there being an Experian negative report for Mr Joyce. She produced documents showing this exchange. Once this was sorted out, the mortgage was approved. She and Mr Joyce signed the mortgage documents (including the transfer forms) in around January 2016.
32. There was a further delay in the transfer being registered because of an error by a company called Breezeplus+ (the conveyancers). She produced evidence of the fine incurred and said that the letter showed that Breeze had paid the fine. The Trustees dispute this. She says that the mortgage was agreed and finalised before the onset of Mr Joyce’s financial difficulties.
33. At paragraph 21 of her witness statement she says that the transfer of the property into joint names was put into effect in the agreement they reached when she moved into the property in 2013.
34. At paragraph 22 of her witness statement she said the proceeds of the remortgage were largely spent on joint expenditure, including their wedding, and the first respondent’s daughter’s weddings and furnishing the property. The remortgage paid all the credit card debts of both respondents. She said she would not have done this if there had been any idea that the first respondent would go bankrupt at this stage.
35. She produced a completion statement for the sale of her property showing net proceeds of sale at £45,413.13. A schedule of works done on the property estimated the works to have cost £35,250, which she said was paid for in cash. The remortgage released a sum of £55,982.27, which was applied to pay off the couple’s debts and for living expenses after the first respondent lost his job. In a schedule of debts cleared with the funds at page 106 there is a list showing the sums paid off by the second respondent. In evidence she said all these debts were debts of the couple and upkeep of the family home.

36. She was cross-examined as to why she had not produced any bank statements or evidence showing the money she spent on the loft works. She said the first respondent had done the work himself and with friends in the building trade and she had paid all the sums in cash, in small chunks. She had not disclosed statements, as she said they would not show any correlation with the sums on the schedule as the payments were made for supplies and contractors as the works progressed in a piecemeal fashion. At paragraph 25 of her witness statement she said she did pay for some items related to the work on personal credit cards but has not produced those statements.

37. She said that after the first respondent became bankrupt she worked three jobs to pay the mortgage and bills. She paid the arrears for three months prior to August 2016 by credit card and set up direct payments from August 2016, which she has maintained, although there are some arrears on the accounts as of today's date.

38. In relation to the correspondence surrounding the invitation to a meeting, the second respondent said that she had not obstructed, but had genuine concerns due to the delays in questions not being addressed, had lost faith in the Trustees and their instructed solicitor. She said that when the Trustees' solicitor said she would come to their house, she said she did not want the solicitor to come to the house because she had lost faith in her at that point. She believed the correspondence with the solicitor had been harassing and lacking in sensitivity and did not take Mr Joyce's illness seriously. She said that Mr Joyce was very limited in where, and for how long, he could attend a meeting. She accepted that she did not raise the issue of not being able to walk from a car park, but she said he had told the solicitor that Mr Joyce was immobile.

### **Mr Joyce's evidence**

39. Mr Joyce gave evidence that by the time of the trial he and Mrs Joyce had separated and have been apart from some 15 months. The first respondent's evidence was at times not easy to follow due to the internet connection.

40. He agreed that the works had been done in the schedule as set out at page 288 and the proportions of pre- and post-sale of the respondents' property correlated with the second respondent's recollection. He said that he had told the second respondent not to disclose her bank statements as he did not want his friend who had been paid to be identified. He said some payments had been made by credit card.

41. When asked why the property had been transferred to the second respondent, he said that she was his wife and, as far as he was concerned, that she had acquired with an interest when they got married. He said he had spoken to the second respondent on many occasions about her owning the property and that she had everything he had. He said that the Trustees had all his bank statements and denied that it was he who had paid for the loft works.

42. When asked why he had not transferred their property into joint names when they got married, his immediate response was that they had done that. That response was consistent with the evidence that they had applied a few months after and there had been a delay in registration of the transfer.



## **The evidence on the invitation to interview**

43. In considering this evidence I refer solely to the email and letter correspondence contained in the bundle and add into that my perception of Mrs Joyce and the way that she gave her evidence.

44. The Trustees say that the second respondent was obstructive in failing to attend for questioning to establish if she did own a beneficial interest from 2013. They say that they had to issue this application to determine the issue. They accept that they did not make an application for an oral examination prior to the issue of this application.

45. Mrs Joyce said that the emails from the Trustees and their solicitor (Ms Tierney) were aggressive and she did not get answers to her questions. She said that Mr Joyce was immobile, on morphine and unable to walk to a venue from a car park. She said that by the time the offer was made for the solicitor to attend her home she had lost trust and did not want the solicitor in her home. At that point she instructed solicitors.

46. I note that the Trustees were previously the administrators of Pyramid (Mr Joyce's company) and that the solicitor was the solicitor who obtained the judgment against the first respondent under the personal guarantee he had given to the company.

47. Mr Joyce said that the Trustees have all of his bank statements. The correspondence shows the following. On 30 April 2018 the first respondent wrote to Ms Tierney that she could not attend the interview for questioning on the 3<sup>rd</sup> as they did not realise that it had been set some distance away, and in that letter she set out Mr Joyce's issues and the issues relating to her sons.

48. On 2 May Ms Tierney responded, requesting medical evidence before she could agree to a closer venue.

49. On 9 May Mrs Joyce responded, attaching evidence and a further explanation of the issues. Ms Tierney responded the same day, stating that the evidence was not sufficient and in two paragraphs she challenged all the details of the evidence that was of a sensitive nature and had been provided but then at the bottom of the letter she went on to say, nevertheless, she would agree to a venue closer to the Joyces. She said that she needed Mrs Joyce to provide dates so that a suitable venue could be arranged.

50. On 15 May she chased Mrs Joyce for a reply and Mrs Joyce responded on the same date stating that the previous email had been abrasive and unsympathetic. She said she was seeking legal advice. She did not provide dates.

51. On 15 May the solicitor wrote to Mrs Joyce denying that the email was harassing and giving a further seven days before an application for an oral examination was issued. There was an offer to liaise with any instructed solicitor to arrange an interview.

52. On 22 May 2018 Mrs Joyce wrote to Ms Tierney requesting information about the format of the interview so that she could advise what was possible about dates and times.

53. On 6 August 2018 there is correspondence that took place after Mr Joyce had had surgery. Mrs Joyce said that she needed a further three months for Mr Joyce to be able to attend an interview and she made a complaint about the six-week delay in Ms Tierney responding.
54. On 10 2018 August Ms Tierney offered to come to the house and asked for dates from 3 September onwards, and clearly that was much sooner than the three months proposed by Mrs Joyce.
55. On 26 October 2018 Mrs Joyce's solicitors set out the basis of the constructive trust.
56. On 1 November 2018 Ms Tierney wrote to the solicitors accepting that there may be an interest but requiring evidence to prove it.
57. On 23 November 2018 Mrs Joyce's solicitors attached evidence and asserted a 50 per cent share. That evidence consisted of bank statements and evidence of mortgage payments only at that stage.
58. On 19 December 2018 Mrs Joyce's solicitor provided valuation evidence.
59. On 8 May 2019 Ms Tierney responded to the letter of 19 December 2018 saying that she did not accept the valuations and stating that there was no evidence of the contribution to the home improvements and claiming repayment of £31,243.48 of mortgage funds paid to the second respondent. It was said in that letter that immediate repayment was required as the second respondent had not proved an interest.
60. On 17 May 2019 the respondent's solicitor responded about the law to Ms Tierney and discussed the purchase of the Trustees' interest.
61. On 28 May 2019 Ms Tierney wrote to the respondent's solicitor taking issue with their constructive trust analysis and stating that the loft improvements were botched works and that there was no evidence of improvement that Mrs Joyce had funded.
62. On 11 July 2019 Mrs Joyce's solicitor wrote to Ms Tierney noting that proceedings had been issued and saying that valuation evidence was needed, this following on from that correspondence about the valuation evidence.

Findings of fact:

63. Taking first my assessment of the witnesses, in relation to the Trustees I make no assessment of the credibility of the Trustees' evidence. They are professionals giving evidence in the course of their obligations. They have no direct knowledge of the relevant facts. I found when they gave evidence that they answered with care and made appropriate concessions.

**Mrs Joyce**

64. I found Mrs Joyce to be an honest witness. She gave her evidence in a straightforward manner and admitted when her recollection of events was unclear. I found her to be a



witness that would not have had the capacity to engage in the level of calculating actions of which she was accused. For example, trying to run down the clock by delaying a meeting or having the property transferred into her name deliberately to move it out of Mr Joyce's estate to avoid creditors. She was giving evidence in a case which had caused her a great deal of stress and distress and yet she remained calm and answered questions carefully.

65. Mr Joyce gave evidence and I found him to be honest in his responses. He conceded that he had tried to protect his friends in the building industry by asking Mrs Joyce to withhold the statements, even though that was detrimental to her case, and although only a few payments had been made by credit card. His evidence could be expected to corroborate Mrs Joyce's and I add no weight in respect of the corroborative effect of his evidence.

66. He accepted that he could not recollect exact conversations about the agreement with Mrs Joyce that she would own a share in the property but was clear that they had both expressly agreed that this would be the case and from about three months into their relationship, which started in 2012.

67. The respondents' credibility on the issue of the reason for the remortgage and the delay was supported by documentary evidence from Experian and Breezeplus+, which was contemporaneous documentary evidence supporting their evidence on this issue.

68. The findings of facts I make on the disputed issues in the case are as follows.

69. The relationship started in about the middle of 2012. The couple moved in together.

70. On 1 June 2013 Mrs Joyce sold her house where she lived with her two sons about 18 months later. The amount of the proceeds of sale is as stated. She put her house on the market, I find, as soon she had moved in with the second respondent. However, it took approximately 18 months to sell. I accept her evidence on that point.

71. I find that the loft conversion was started by Mr Joyce but not in a finished or usable condition when Mrs Joyce moved in. I find that she did temporary works to make it usable until she had sold her house. I find that she paid for more substantial works to the loft conversion once her property had been sold. I find on the evidence that Mr Joyce could not have paid for the loft conversion works out of his salary and there was no other evidence that he had the funds to have been able to pay for that loft conversion.

72. I find that the couple intended to occupy the property as their family home. I find that the marriage was a happy one until the financial problems and that the first respondent took on the boys as his own when the couple moved in together.

73. I find that the couple pooled all their financial resources in an undivided way and each paid what they could afford to pay towards the upkeep of the house and the family. I find that the first respondent paid the mortgage and the second respondent paid the bills and household expenses.

74. I find that the second respondent paid for the joint expenditure on her credit cards and that all the joint expenditure on the credit cards on the statement was that of the couple and not just herself.

75. I find that the respondent took on liability for a joint mortgage. I find that the parties took a decision to attempt to remortgage the property in around September 2015 to consolidate their debts but the application could not be made until November 2015 due to a problem with the first respondent's Experian record.

76. I find that the respondents signed the transfer forms at the time that they signed the mortgage documents in around January 2016, which was before the date of knowledge of bankruptcy financial issues and it was at that point that the legal transfer documents were signed. That only became legal when it was registered later on.

77. I find that the delay in registering the transfer was due to Breezeplus+'s failure to send the forms on time. I accept that Breezeplus+ paid the fine (as is evident from the letter). I do not accept the applicant's interpretation of that letter. The first respondent did not share financial details of his business affairs with the second respondent and I accept the second respondent's evidence that she believed the first respondent's business was doing well up until the bankruptcy.

78. Was there an agreement? It was said that there was an express agreement but there were no actual conversations pleaded or given in evidence. Can an inference be drawn that there was an agreement?

79. I find that the second respondent would not have sold her house and moved in with the first respondent other than on the understanding that she would own a share in his property. The second respondent had worked hard to acquire her own home and would not have given up this security if she had not believed that she had an interest.

80. I took the following evidence into account in reaching the decision that the parties did agree that the second respondent would have a beneficial interest. The couple got married, moved in together and treated the property as a family home. There was an intention in those actions to share equally family debts, liabilities and assets. The second respondent invested proceeds of sale of the house to the improvements made to the property. The couple did not treat their finances as separate, but pooled their finances and resources and paid what they could. The first respondent paid the mortgage and the second respondent paid the bills and expenses. The second respondent took on the liability for the debt on remortgage. The consolidation was of the debts of both of them in an undivided share, i.e. they both took on equal liability for their debts whether equal or not. The debts on the schedule at page 106, which were calculated by the second respondent, were for joint expenses, including the wedding of the first respondent's daughter. This evidence is consistent with the parties having reached an agreement that the second respondent would have a beneficial interest in the property.

81. Did the second respondent pay for the loft conversion works as stated? I accept her evidence that she borrowed £10,000 from her mother initially to make the property work for the four family members. I have considered carefully the issue of the fact that she did not disclose her bank statements which could have shown withdrawals of sums of cash to pay for the loft. Even if the sums were paid in dribs and drabs, the bank statements would have helped her case. Her explanation was that she had no receipts and the payments were in cash so would not show up in correlation to the schedule. It transpired in evidence from the first

respondent that some payments, although not many, were made by credit card and she had said that in her witness statement as well.

82. Having heard her evidence, I am satisfied that that she did not understand the significance that a court of law would place upon the supporting documentary evidence that would be required to prove the payments. Considering this evidence, it would have helped her case had she disclosed the statements.

83. Is the failure to disclose the statements sufficient enough to damage her credibility on the issues of the amounts spent? I am satisfied that, in the context of the adversarial nature of the relationship with the Trustees and their solicitor, that she was defensive, and so less likely to disclose the evidence. There is evidence that the loft has been converted and I have found that the first respondent could not have paid for it. The loft was to house her boys, and I find it likely that she would have paid for the works. I accept that the works were carried out by the first respondent through his connections in the building industry and that it is unlikely that receipts were obtained or retained. The work was also done some nine years ago. The fact that the works have been finished is evidence of the second respondent's lack of resources to finish them. I am satisfied that she applied the balance of the fund she received from the sale of her property to the loft conversion.

84. It is accepted by the single joint expert that works were done to the extent that could be observed from the exterior. There is no evidence to counter what is said in that schedule.

85. Although the schedule was created for the purposes of this case - there being no contemporaneous records of the amounts spent - the work was done and the figures do not seem unreasonable. I therefore accept her evidence on the sums spent despite the failure to disclose the statements.

86. I find that the second respondent did spend approximately £35,000 on conversion works. I find that, although a frame of the loft had been installed prior to the work she did, that it was insufficient to add any value to the property and that the entirety of the value added is attributable to the property.

87. I find that the second respondent acted to her detriment in relying on the agreement made in 2013 that she would acquire a share in the property. The investment in the loft was significant and she took on the remortgaged debt. She gave up the security of owning her own home.

88. On the basis of the contribution that she made, what was the share in the equity? The presumption is that where there is an agreement to jointly own and share, the share will be 50/50. I find that the contribution was 50/50 both on the basis of what the parties say they agreed and the fact that they pooled their resources and contributed what they could.

89. On the basis that I have inferred that there was an agreement between the parties and that they would share the property equally in beneficially and on the basis that I found that the second respondent acted to her detriment in reliance on that agreement, I find that a constructive trust arose on the date she moved into the property in 2013.

90. I find that the transfer of the property into joint names at the time of the remortgage was a process that was started before the bankruptcy and was contemplated and completed, with the signing of the transfer forms, in January 2016 when the mortgage forms were completed. Although it was a condition of the mortgage that the property be transferred into joint names, the reality was that the transfer gave legal effect to the pre-existing beneficial ownership under the constructive trust that had arisen in 2013.
91. I do not need to set out the provisions of section 339 and 341 of the Insolvency Act because on the findings that I have made there was no value in the transfer that took place in 2016.
92. Therefore, the application to revest is dismissed and the declaration is made that the second respondent has a 50 per cent equitable interest in the property, therefore the equitable interest follows the legal interest.
93. Moving on to the account, the parties agree that if it is found that the second respondent has a beneficial interest in the property, then she should be given an opportunity to purchase the Trustee's share.
94. I have been provided with valuation evidence and mortgage statements. The taking of the account is straightforward and I propose to deal with it in this judgment, subject to a few points on which I will need the assistance of counsel below. However, there are matters on which I need to make findings of fact.
95. Before I move on to that, I need to make findings of fact on the correspondence issues as well.
96. Looking at the correspondence, as I have recited the correspondence about the invitation to the interview, the invitation to the interview was properly put forward by the Trustee. I find that Mrs Joyce cannot be criticised for her attempts to arrange an appropriate time and venue and I am satisfied that Ms Tierney's response - particularly the response rejecting the medical evidence - although it did offer the opportunity to have a meeting closer to home, did create an atmosphere of animosity between Ms Tierney and Mrs Joyce. I take into account that the solicitor for the Trustee was in a very powerful position and that Mrs Joyce was not in fact the bankrupt and that extra courtesy needed to be accorded to her in those circumstances.
97. I do not criticise the Trustee for pursuing the application. However, the Trustee, on various occasions, made threats to issue an oral application for examination and failed to do so. They also made a threat to recoup a £30,000-odd payment in circumstances where it was clear that there was an issue in dispute between the parties that needed to be resolved.
98. I do not find that that correspondence assisted Mrs Joyce in cooperating with the Trustee. I also take account of the fact that Mr Joyce did have very real medical issues and it would have been difficult for him to attend unless specific circumstances were agreed. Unfortunately there was a breakdown in communication. Mrs Joyce could have provided dates which would have allowed the Trustee to then find a venue and then Mrs Joyce could have commented on whether that venue was OK, but in circumstances where Mrs Joyce was

feeling defensive, she did not go with that option and did not respond but instructed solicitors.

99. I am satisfied that Mrs Joyce was not deliberately obstructive, but was cautious and fearful in her approach to Ms Tierney in respect of the various medical issues that Mr Joyce and her sons faced. I accept that by the time that Ms Tierney offered to attend the family home that it would not have been appropriate for her to do so in light of the relationship between the parties. I, therefore, do not criticise Mrs Joyce for failing to attend, and the Trustees, although they could have behaved differently, equally were not particularly at fault. It was a breakdown in relationships.

100. The main criticism that could be levelled would be at Ms Tierney for failing to accept the medical evidence when it was put forward. I can see no prejudice to the Trustees, on a reasonable request and without demanding medical evidence, to have agreed to meet locally to the bankrupt and his wife in the first place.

101. So, moving on to the taking of the account. The taking of the accounts involves a valuation, and so I have read the expert report of Mr Willerton. He values the property at £230,000, stating that that includes a £10,000 increase in value due to the loft conversion. I consider only his evidence - not the evidence of the respondents - valuers which are not single joint expert evidence.

102. In reaching his valuation Mr Willerton states that the comparables that he sets out at paragraph 4.3 of his reports and then reaches a figure. The figure he reaches is similar to the comparables. He says that he has made allowance for the limited market for the property which is that, because of the unfinished loft conversion works, that the property would only be attractive to a small developer because of the work done. But he does not explain why that does not lead to a discount from the comparables.

103. The comparables are recent in time and for three-bedroomed properties for the most part - some for two - one recent comparable that has been recently refurbished was £222,500 which was sold in August 2019. A property that sold for £240,000 did have three bedrooms but also had a garage, which this property does not.

104. I am satisfied that the value is accurate on the basis of the evidence of the comparables, but I find that the market value is £220,000, not £230,000. Mr Willerton did not give any reason for his assessment of the figure of £230,000 and based on the comparables, I cannot see how he could have arrived at the figure of £230,000 if he had indeed taken into account the limited market that was available to the property as he says he did. All the three-bedroomed properties advertised that were in that range had a garage.

105. The Trustees state that I should take notice of the effect of the price increases in the market. I do not do so. This is the joint valuation evidence. In the middle of a pandemic there is uncertainty. Any uncertainty that there is I set off against any possible increases. In any event, it would have been open to the parties to provide updating evidence, which they did not do. For that reason I put the valuation at £220,000.

106. Although I have the evidence of the single joint expert, it is open to me, where I find that report has not properly reasoned the findings that it has made, to depart from it and I take

the decision to depart from it to the limited extent that I look at the comparables and reach a figure within the range of the comparables which he has provided which is slightly different from the figure that he has reached.

107. The mortgage redemption statement in the bundle shows that this is a joint mortgage which is to be redeemed in the sum of £142,750.12. That leaves a net equity in the property of £77,249.88.

108. There is a dispute between the parties as to whether the costs of sale should be deducted in the sum of £400 from the net equity or in the sum of the real costs of sale. I am satisfied that the savings in the costs of sale must be taken on the usual basis, although it is possible to get lower valuations from companies like Purple Bricks.

109. In this case this is a property which only has a specific market and I accept the respondents' calculation that the costs of sale should be approximately three per cent (which is a total of £6,600) which has to be deducted from the net equity if the property were to be sold on the open market. Therefore, the net equity costs after sale would be £70,649.88 and 50 per cent of that would be £35,234.94.

110. The next issue is the issue of the allowance (if any) that should be made for the home improvements.

111. I am satisfied, having been referred to a section in Lewin on Trusts by Mr Myers, for the second respondent, that the appropriate allowance where it has been established that home improvement works were carried out by a co-owner that on sale - and this is what we are dealing with in this situation is what the value on sale would be and there is an order for sale in place and we are looking at what the cost would be of purchasing the Trustee's share and therefore the point of sale is appropriate to consider - on point of sale, the person who made the investment in the property is entitled to the lesser of the sum of either the cost of the works or the increase in value.

112. Mr Willerton says that the increase in value was £10,000. I am satisfied that all of the benefit of that £10,000 should be attributable to the second respondent - there only having been a shell of the works before she carried out the completion of it - and therefore she would be entitled to 50 per cent of the value of the improvement, which is £5,000. Deducting that from the 50 per cent share of the equity would be £30,324.94.

113. I have looked at the calculations done by the Trustees. They appear to seek to add on the £5,000, but the law is clear that she should be given credit for the sum of £5,000, which reduces the share that she has to pay to purchase the Trustee's share.

114. The issue which I have yet to calculate is the way that the payments of the mortgage should be applied.

(There followed further submissions)

**JUDGE REVERE:**



115. I need to make findings in relation to the appropriate method of assessment having heard submissions from both of you. I need to consider how to deal with the taking of an account.

116. It is not disputed that Mrs Joyce has been in occupation of the property and that she has paid the full mortgage (subject to a small amount of arrears) since August 2016. The first respondent moved out of the property on 18 November 2019.

117. I find the law (as set out in Lewin on Trusts) is that the Trustees are no longer entitled to receive an occupational rent for Mr Joyce's share of the property once he left. The law is that it does not matter whether he is deliberately excluded or leaves intentionally. Once he had of has left, there is no longer any entitlement.

118. I find that from 18 November 2019 the second respondent is entitled, therefore, to 50 per cent of the capital and interest that she has paid in discharging the mortgage.

119. In relation to the period between 30 August 2016 and 17 November 2018 I am satisfied, looking at the principles as set out in Lewin on Trusts at 10.080 and taking my broad equitable jurisdiction to consider the apportionment, that it is reasonable in this case to look at the notional rent that the Trustees would be entitled to for their share of the property rather than to find exact market comparables. The Trustees are entitled to occupational rent for this period and the second respondent is entitled to 50 per cent of the capital repayments on the mortgage, therefore I set off the interest that she has paid under the mortgage as the notional occupational rent that she would have paid to the Trustees for that period. So, therefore, a calculation needs to be done.

120. The reality of the situation is, therefore, that the interest payments added to the half of the mortgage payments which the Trustees have not had to pay for that period would amount to what would be something similar to the market rent that Mr Couser has advocated I follow. So the calculation that needs to be done is to work out what the actual figure would be that would be deducted from the Trustee's share, therefore, to enable the purchase and so that a figure can be put in the final order because Mrs Joyce is entitled to credit for those sums.

(There followed further submissions)

-----