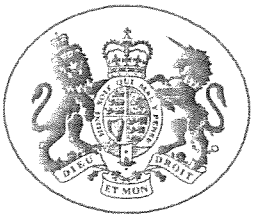


[2018] UKFTT 445 (PC)

PROPERTY CHAMBER

FIRST – TIER TRIBUNAL

LAND REGISTRATION DIVISION

2017/0190

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

BETWEEN

TRACY HARKINS

APPLICANT

and

LAURENCE JOHN HALLMAN

RESPONDENT

Property Address: 19 Durham Avenue, Bootle L30 1RE

Title Number: MS254289

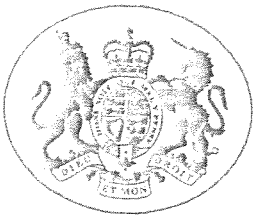
Before: Mr Simon Brilliant sitting as Judge of the Property Chamber of the First-tier Tribunal

The Chief Land Registrar is directed to give effect to the Applicant's original application dated 24 June 2016

Dated 18 July 2018

Simon Brilliant

BY ORDER OF THE JUDGE OF THE PROPERTY CHAMBER OF THE FIRST – TIER TRIBUNAL



[2018] UKFTT 0445 (PC)

PROPERTY CHAMBER

FIRST – TIER TRIBUNAL

LAND REGISTRATION DIVISION

2017/0190

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

BETWEEN

TRACY HARKINS

APPLICANT

and

LAURENCE JOHN HALLMAN

RESPONDENT

Property Address: 19 Durham Avenue, Bootle L30 1RE

Title Number: MS254289

Before: Mr Simon Brilliant sitting as Judge of the Property Chamber of the First-tier Tribunal

Sitting at: Civil & Family Court, 35 Vernon Street, Liverpool L2 2BX

On: 13 April 2018

Applicant's Representation: In person.

Respondent's Representation: In person.

DECISION

Resulting or constructive trusts – respondent the sole registered proprietor of a property – parties in a relationship prior to the respondent purchasing the property - subsequently becoming engaged to marry and opening a joint account– parties live together in the property for 12 years – claim by applicant to have a beneficial interest in the property - issues as to whether the parties had a common intention as to ownership - effect of the engagement.

Macclesfield Corporation v Great Central Railway [1911] 2 KB 528, Pettit v Pettit [1970] AC 777, Grant v Edwards [1986] Ch 638, Lloyds Bank plc v Rosset [1991] 1 AC 107, Oxley v Hiscock [2005] Fam 211, Stack v Dowden [2007] 2 AC 432, Dibble v Pfluger [2010] Fam Law 1279, Jayasinghe v Liyanage [2010] 1 WLR 2016, The Chief Land Registrar v Silkstone [2012] 1 WLR 400, Jones v Kernott [2012] 1 AC 776.

Introduction

1. These proceedings concern the ownership of a house at 19 Durham Avenue, Bootle L30 1RE ("the house") which was purchased in the sole name of Mr Hallman, the respondent, on 20 June 2003. The respondent was duly registered at Land Registry on 3 September 2003 as the sole proprietor of the house under title number MS254289.

2. Ms Harkins, the applicant, claims to have a beneficial interest in the house on the basis of a common intention constructive trust. The parties were in a relationship between 2003 and 2016, with a brief separation in 2009. The applicant is 12 years younger than the respondent. The parties lived together at the house between April 2004 and June or July 2016, when the applicant left. The relationship had broken down permanently in the previous December.

3. The applicant has twins, born on 28 May 2004, by the respondent. The respondent, who has

twice been married, has three grown up daughters.

4. On 24 June 2016, the applicant applied to Land Registry in form RX1 to enter a Form A restriction in the register of the house ("the original application"). The applicant claims to have made a financial contribution to the acquisition and improvement the house, and to have contributed to the mortgage repayments. She also says that it was agreed between the parties on a number of occasions, including prior to her moving in, that they would have a joint interest in the house.

5. On 29 July 2016, the respondent objected to the original application. He says that there was never any agreement that the applicant would acquire an interest in the house and she has not made any financial contribution to the acquisition or improvement of the house, and has not made any contributions to the mortgage repayments.

6. On 14 February 2017, the dispute was referred to the tribunal under section 73(7) of the Land Registration Act 2002.[1]

7. My task is to determine whether the applicant has any interest in the house. If she does, she is entitled to enter a restriction on the register. The parties have also invited me to determine, if the applicant does have an interest in the house, what the amount of her share is. I have no jurisdiction to order a sale of the house. I should also make clear what I am not taking into account in coming to my decision. I do not take into account how the parties have behaved to each other (save in respect of financial matters), the parenting skills of either party, the sexuality of either party or the without prejudice letters and discussions which took place after the parties separated in 2016. There is no agreed valuation of the property. It is no part of my task to determine what the valuation is.

The witnesses

8. The applicant gave oral evidence. She called Ms Marianne Liversage to give oral evidence.

[1] The purpose of the hearing is to determine the underlying merits of the case: Jayasinghe v Livanage [2010] 1 WLR 2016, approved in The Chief Land Registrar v Silkstone [2012] 1 WLR 400.

9. The respondent gave oral evidence. He put in witness statements from Ms Ann Nelson and his daughter, Ms Helen Hallman, under the Civil Evidence Act 1995 .

10. The trial bundle contained a substantial number of bank statements. References in square brackets below are to the pages in the trial bundle.

The law: common intention

11. The propositions below are derived from Oxley v Hiscock [2005] Fam 211, Stack v Dowden [2007] 2 AC 432, and Jones v Kernott [2012] 1 AC 776 and the analysis contained in paragraphs 11-023 and following of Megarry & Wade's The Law of Real Property, eighth edition 2012.

12. It frequently happens that land is purchased in A's name alone, but B claims an interest in the property by reason either of some contribution direct or indirect to its acquisition or from having made some improvement to it. To succeed, B will have to demonstrate (1) a common intention that both parties should have a beneficial interest in the property; and (2) that B acted to her detriment on the basis of that common intention so that it would be inequitable for A to deny B an interest.

13. The burden is on the applicant to show that it was intended that she was to have any beneficial interest in the house at all.

14. Common intention is relevant both as to whether a party has an interest in the property and to the amount of that share if she does.

15. The common intention that both A and B should have a beneficial interest in the property despite it being in the sole name of one only, may arise by express agreement or by inference or imputation.

16. For a common intention to be inferred there must be objective evidence from which the court can reasonably infer that the parties had a common intention, even though they did not articulate it as such.

17. Thus, positive evidence that the parties did not have such an intention will defeat the inference. The first case is where B contributes directly to the purchase price, whether by cash contribution or its equivalent, or by paying mortgage instalments[2]. Secondly, in response to changing social and economic conditions, it is now clear that the common intention may be inferred from the parties' whole course of conduct in relation to the property.

18. In cases, where a common intention as to beneficial in ownership cannot be inferred (and there is no express agreement), an intention can be imputed. An imputed intention is one "which is attributed to the parties, even though no such actual intention can be deducted from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended, whereas inference involves concluding what they did intend."[3]

19. Where the court infers a common intention that the contributor should have an interest in the property it may then have regard to the whole course of conduct between the parties to determine the actual share of the parties. The task is to determine the parties' common intention as to the shares they should have. This common intention may, and usually will be, inferred. It will arise from an objective assessment deduced from all of their conduct.

20. In those cases where it is clear that the parties intended to share the beneficial interest, but it is impossible to infer a common intention as to the size of each of their shares, then it is permissible to impute such an intention. Each party is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

21. The question whether or not an applicant has a beneficial interest in the property is not to be determined once and for all at the time that the property is purchased, or at the time, if later, that the applicant moves into the property. There may be an express, implied or imputed agreement that the applicant is to have a beneficial interest at any time after the date of the purchase but before the date when the applicant applies for the entry of a restriction

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[2] Lloyds Bank plc v Rosset [1991] 1 AC 107, 132 and Grant v Edwards [1986] Ch 638, 647.
[3] Per Lord Neuberger in Stack v Dowden [2007] 2 AC 432 at p.472.

The law: works of improvement and engaged couples

22. It is a well-established principle that a volunteer who does work on another person's property without request cannot claim in respect of the work done or for the cost incurred and acquires no interest in the property: Macclesfield Corporation v. Great Central Railway [1911] 2 K.B. 528. In Pettit v Pettit [1970] AC 777 the House of Lords in applying this principle held that, upon the facts disclosed by the evidence in the case between husband and wife before it, it was not possible to infer any common intention of the parties that the husband by doing work and expending money on materials for the house should acquire any beneficial proprietary interest in the house; and that, accordingly, in the circumstances the husband's claim to have a beneficial interest by virtue of that work failed.

23. This part of the decision was reversed by section 37 of the Matrimonial Proceedings and Property Act 1970 which is headed, *Contributions by spouse in money or money's worth to the improvement of property*. It provides:

> *It is hereby declared that where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings).*

24. This change of the law, in so far as it applied to husbands and wives, was extended to engaged couples by section 2(1) of the Law Reform (Miscellaneous Provisions) Act 1970 which is headed, *Property of engaged couples*:

> *Where an agreement to marry is terminated, any rule of law relating to the rights of husbands*

and wives in relation to property in which either or both has or have a beneficial interest, including any such rule as explained by section 37 of the Matrimonial Proceedings and Property Act 1970, shall apply, in relation to any property in which either or both of the parties to the agreement had a beneficial interest while the agreement was in force, as it applies in relation to property in which a husband or wife has a beneficial interest.

25. In Dibble v Pfluger [2010] Fam Law 1279 the parties were engaged but never married. The defendant claimed an interest in a Polish property to the improvement of which he said he had contributed £6,000. At first instance neither the judge nor counsel had considered section 2(1) of the 1970 Act. As Ward LJ said in the Court of Appeal, it had not crossed their radar until he drew it to their attention. It was held that the court ought to have considered whether the £6,000 was a contribution to the improvement of the Polish property, whether it was a contribution of a substantial nature and whether subject to any contrary agreement, a beneficial interest in the property was acquired.

The facts

26. In May 2002, the respondent moved into a one-bedroom flat. He was at that time a professional driving instructor. In October 2002, the applicant started to have driving lessons with him. In January 2003, the applicant and the respondent began a relationship.

27. The respondent says that in March 2003 he attempted to finish the relationship. However, the relationship did continue.

28. In May 2003, the respondent viewed the house. He says that he did so just with his teenage children. The applicant says that she accompanied him to the viewing. Shortly thereafter, the respondent purchased the house in his name alone.

29. The respondent says that it was in June 2003, just before he moved in, that he reluctantly showed the house to the applicant. He says that in July 2003 and in October 2003 he again attempted to finish the relationship, and that the house was bought for himself and his children and not for the applicant.

30. In October 2003, the applicant became pregnant by the respondent with twins. She says that at that time the respondent insisted that she leave her family home and move in with him. It is common ground that it was in April 2004 that the applicant moved into the house. At the same time she gave up work as a classroom assistant and healthcare worker.

31. The applicant says that, at the time the respondent insisted she moved in with him, he assured her that the house was going to be their home together. He said that it if it would make her feel less vulnerable he would add her name to the mortgage. The applicant also says that it was a condition of her moving in that the kitchen and bathroom were replaced, and some decoration carried out. She says the money borrowed to do this was later repaid as part of the household expenditure.

32. The respondent denies that he ever agreed to put the applicant's name on the mortgage. In June 2003, the relationship with the applicant was unstable and he purchased the house for himself and his daughters, not as a home for the applicant. He says that that when she moved into the house the applicant flatly refused to pay anything towards the household expenditure, stating that he would have to pay all the bills whether she lived there or not. If he was not prepared wholly to support her and the children, she would not live with him.

33. The applicant says that, from the time of moving into the house, she made regular contributions of £400 per month to the respondent towards the household expenditure which he deposited in his single account. The applicant received benefits of approximately £540 per month after the twins were born. The respondent denies that the applicant made any payments to the household at this time and says that the applicant only started to contribute to the household expenditure after she returned to work in May 2012, when she began to pay £400 per month towards credit card bills.

34. In September 2005, the respondent remortgaged with Abbey National for a sum of £54,000. The applicant denies that she signed a consent. The respondent says she did, and this was because she had no beneficial interest in the house. But normally a consent extends to a party who has a beneficial interest, but who agrees to postpone it to the interest of the mortgagee.

35. In September 2007, the twins began primary school, and the applicant began a college course.

36. In November 2007, the respondent remortgaged again, this time with Bank of Ireland, for a sum of £55,250. The respondent says that the applicant again signed a consent, but if she did, it was equivocal for the reasons given above.

37. On 24 February 2009, the parties separated following an argument. The applicant left the house with the twins and went to stay at her mother's home. Shortly thereafter, the applicant secured her own flat. In July 2009, the parties reconciled and the applicant and the twins returned to the house.

38. The applicant says that, because of her past experience, it was of the utmost importance to her that the ownership of the house was discussed. She said that it was agreed expressly and without ambiguity that her name would be put on the mortgage. The respondent acknowledged this and promised that he would make an appointment with a mortgage adviser as soon as he had time to organise this. The respondent denies this.

39. The applicant says that she continued to contribute at least £400 per month out of her £540 per month benefits. This was given to respondent in cash for him to deposit in his single account from which the mortgage repayments were made. The respondent denies this.

40. In March 2012, the applicant began work as a classroom assistant. The applicant says that she then began to contribute approximately £700 out of her salary of about £800 per month towards the household expenditure. This was handed to the respondent in cash, which he continued to pay into a single bank account, towards the household expenditure. The respondent denies this. He says that, in May 2012, the applicant began to contribute £400 a month towards credit card bills.

41. In January 2013, the parties became engaged. The respondent says this was plaster (to stick a troubled relationship together). The applicant says that the parties again discussed the applicant becoming a joint owner of the house. The respondent told her that he would do so as soon as he could, but it was difficult as he was self-employed.

42. On 9 August 2013, the respondent's account with Santander was converted into a joint account

with the applicant. The respondent says this was to stabilise the relationship. The opening balance was £572.37 [135]. The account was closed on 17 February 2016, after the parties' relationship had broken down [98].

43. The respondent transferred £6,608.56 into the joint account on 10 August 2103 [135]. This was the balance of a loan of £7,500.

44. The applicant says that she continued to make regular monthly contributions of about £800 per month towards the household expenditure, but began paying the cash directly into the joint account.

45. The applicant says that, in 2013, the parties decided further to improve the house by replacing rotten windows and doors, rather than putting the money towards their wedding.

46. There is an undated agreement between the respondent and Pioneer Home Improvements Supplies for the installation of new windows and a door at the house [63-64]. The total cost was £4,400 with a deposit of £400. On 28 August 2013, the deposit of £400 was paid out of the joint account [134]. On 30 October 2013, £2,725 was paid out of the joint account as a part payment of the balance of £4,000 [132]. On 3 October 2014, the final payment of £1,275 was paid out of the joint account [127].

47. On 18 March 2015, the parties took out a joint loan of £10,000 with Santander [56-62]. The balance, after the deduction of an existing loan in the respondent's name with £8,875.59 outstanding [62], amounted to £1,124.41 and this was paid into the joint account on 19 March 2015 [110].

48 In December 2015, the respondent asked the applicant to leave the house. The applicant left with the twins in July 2016.

49. On 8 July 2016, the parties renewed a joint household insurance policy [65-66]. Although this was after the relationship had broken down, it was a renewal in joint names which means that the parties had jointly insured the house prior to the relationship breaking down.

Discussion

50. In respect of what was agreed prior to, or at the time of, the applicant moving into the house, I prefer the evidence of the respondent to that of the applicant. I consider that the applicant is mistaken when she says that she was promised an interest in the house at this time. The respondent bought the house prior to the conception of the twins. I consider that he bought it for himself and his daughters. It was to enable them to live with him when convenient and also as an investment for his daughters. The respondent has a continual concern about his finances as his relatively modest earnings as a driving instructor made it difficult for him to find the money to pay his outgoings. I do not consider that in 2003 or 2004 he was prepared to share the ownership of the house with the applicant.

51. I am supported in this view by a long and detailed letter written in August 2016 by the applicant to the district judge dealing with a family matter. The first reference to the respondent saying he would now put the applicant's name on the mortgage was in 2013 when they became engaged. There is no reference in this document to the respondent making such a promise at any earlier time. Nor is there any express reference to this in the applicant's statutory declaration dated 14 June 2016. I therefore find positive evidence that there was no common intention when the applicant moved in that she was to have a beneficial interest in the house.

52. The applicant's bank statements in the trial bundle only start at 2009 [67]. It is not possible for me to say from any of the bank statements whether money taken out from the applicant's account was to pay to the respondent for household expenditure or was spent by her on her own needs (the respondent suggesting that she has a gambling habit). Nor is it possible for me to say whether the cash going into the respondents' numerous bank accounts came from his driving pupils or from the applicant. Either way, in the period 2004 to 2013 I accept the respondent's positive evidence that the parties did not have a joint intention that the applicant should have a beneficial interest in the house.

53. The engagement in January 2013 was of significance. It showed a greater commitment by the parties to each other. I do not accept the respondent's evidence that it was mere sticking plaster. The applicant's evidence, which I accept, is that the respondent at that time said he had spoken to a mortgage adviser about putting her name on the mortgage, but he couldn't because he was

self-employed. The respondent assured her that as soon as he could he would make sure he changed the deeds [4].

54. After January 2013 any payment towards the improvement of the house from the applicant's money would form the basis of a claim for a beneficial interest: see paragraphs 22-25 above.

55. I have referred to the payment of £4,400 for home improvements out of the parties' joint account in 2013. As this was a joint account the applicant was paying towards those improvements and is entitled to a beneficial interest in the house accordingly.

56. I consider the opening of the joint account in August 2013 as being of considerable significance. It is the first time that the parties had pooled their resources, the applicant paying her salary into it. In addition, it is clear that the parties were paying for a joint household insurance from 2015 at the latest.

57. On all the evidence I infer that from January 2013 the parties did have a common intention that the applicant should have a beneficial interest in the house.

58. The remaining question relates to the amount of applicant's interest. I have to look at all the relevant circumstances to impute what the common intention of the parties would have been. The parties' relationship while they lived in the house began in April 2004 and ended in December 2016. That is 12 ½ years. The parties' relationship after their engagement in January 2013 ended in December 2016. That is 4 years. This equates to 32% of the time the parties spent together. In addition, the applicant has contributed towards improvements. Doing the best I can, I determine the applicant' interest as 35%.

Conclusion

59. I shall direct the Chief Land Registrar to give effect to the original application.

60. As far as costs are concerned, the usual rule is that the unsuccessful party pays the costs of the successful party. Since I rejected the applicant's primary case that she had a beneficial interest from the time she moved into the house and only found that she had a 35% interest, I award her

one half of the costs. The applicant is entitled to £16 per hour for the time she spent preparing the case and attending the hearing. She is also entitled to be recompensed for any loss of wages and out-of-pocket expenditure, such as postage and printing costs.

61. Given that the parties will have a continuing relationship in respect of the well-being of the twins, the applicant may consider it wise not to make a claim for costs. If she does choose to make a claim for costs she must send a schedule of the time spent and out-of-pocket expenditure to the respondent and to the tribunal within 28 days of receiving this decision. The respondent must then send to the applicant and to the tribunal any response within 28 days of receiving the applicant's schedule.

Dated this 18th day of July 2018

Sonia Brothers

BY ORDER OF THE JUDGE OF THE PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL