

[2019] UKFTT 0164 (PC)

PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2017/0982  
BETWEEN

NEVILLE DEREK PLIMLEY

Applicant

and

SEYED ARMAN DIJAB FOROUSHANI  
(Administrator of Ms Simin Golestani-Araghi deceased)

Respondent

Property: 1 Vine Square, Star Road, London W14 9XU

Title number: BGL54746

ORDER

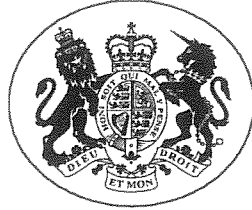
The Chief Land Registrar is ordered to cancel the application dated 6 March 2017.

BY ORDER OF THE TRIBUNAL

*Ann McAllister*

Dated this 4<sup>th</sup> day of February 2019





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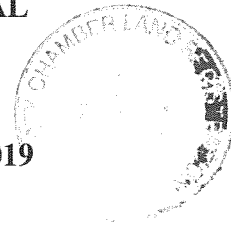
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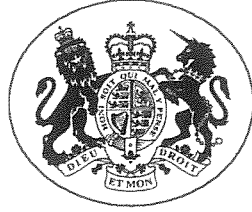
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**Applicant**

**and**

**SEYED ARMAN DIBAJ FOROUSHANI  
(Administrator of Ms Simin Golestani-Araghi, deceased)**

**Respondent**

**Property: 1 Vine Square, Star Road, London W14 9XU**

**Title number: BGL547746**

**Before: Judge McAllister  
Alfred Place, London  
19 and 20 December 2018**

**Representation: Mr Rakesh Nath of Counsel appeared on behalf of the Applicant; Mr Stuart Armstrong of Counsel instructed by Wedlake Bell appeared on behalf of the Respondent.**

**DECISION**

**Introduction**

1. On 1 August 2005 Simin Golestani-Araghi ('Simin') exercised her right to buy a leasehold interest of 125 years from 25 December 2004 in a ground floor flat known as 1 Vine Square, Star Road, London W14 ('the Property') under the Housing Act 1985. The Property was purchased in Simin's sole name and was registered in her

name on 2 September 2005. The purchase price was £102,000 (allowing for a discount of £38,000) of which £82,000 was provided by a mortgage with First National.

2. Simin died intestate on 28 January 2017. The Respondent ('Arman') is her son. He was appointed administrator on 24 March 2017. The Applicant ('Derek') was in a relationship with Simin over a period of time from about 2000/2001 until 2008. He continued to remain on good terms with Simin, and to help her as she became increasingly unwell.
3. By an application dated 6 March 2017 Derek applied to enter a restriction against the title of the Property on the grounds that he had acquired a beneficial interest in the Property on the basis of a common intention constructive trust, alternatively on the basis of a resulting trust. Arman objected and the matter was referred to the Tribunal on 19 October 2017.
4. It was common ground at the hearing that the scope of my decision is limited to establishing whether any beneficial interest arises, and not determining quantum which would in any event be a matter for another court.
5. For the reasons set out below I will order the Chief Land Registrar to cancel the application. In my judgment Derek has not acquired any beneficial interest in the Property.

### **Relevant legal principles**

6. There is no dispute as to the principles to be applied. I will therefore set out the law in outline only. The starting point is the presumption that the Property is owned beneficially as Simin was the sole legal owner. The burden is on Derek to establish the parties' actual intention to create a trust, expressly or inferred, objectively ascertained. The law is set out in *Stack v Dowden* [2007] 2 AC 432, *Jones v Kernott* [2012] 1 AC 776, and other decisions such as *Thompson v Hurst* [2012] EWCA Civ 1753 and *O'Kelly v Davies* [2014] EWCA Civ 1606.

7. In co-habitee cases the usual trust will be the common intention trust. For this to be established, it must be shown that there was such an intention, and that Derek acted to his detriment so that it would be inequitable or unconscionable for Simin to deny that interest. It is appropriate to look at the whole course of dealing. A resulting trust will arise where it is clearly established that contributions have been made to the purchase price, although it is doubtful whether as a matter of law this presumption should be applied to domestic relationships.
8. In any event, of course, each case is fact sensitive.

### **Background and evidence**

9. Simin was born on 26 June 1953. She came to the United Kingdom in 1991 from Iran with her then husband and her son Arman who was born on 29 June 1986. Simin and her husband divorced in 2001. Simin moved to London from Glasgow in 1999 when she obtained a secure tenancy of the Property from the London Borough of Hammersmith and Fulham. Her parents died in Iran in 2001 and 2002 and she inherited some money from selling a flat there. This money (£25,950) was brought in cash to the UK and deposited into her Abbey Instant Saver account in December 2003, following the death of her parents in Iran, and then ultimately used for the purchase of the Property.
10. Simin suffered from poor health for many years prior to her death. She had a liver transplant in 1992 and had Hepatitis C. She was in hospital for long periods of time from 2003 onwards. She was not able to work.
11. Simin and Derek met in 2001. At that time, Derek was living in a room above a public house in Black Prince Road. He moved there as a result of a breakdown in his relationship with his then partner, who continued to live in a flat owned by him in Wandsworth with his son. He is a business man who had devised a flow metering technology used to monitor the performance of, and guard against abuses of, tap dispensing drinks in licensed on trade premises. The company through which he traded was called Ininline International Limited.

12. Derek had been living in Black Prince Road for some four years before he met Simin. The relationship progressed and he stayed frequently at the Property. His evidence is that he moved into the Property permanently in 2002 when the owner of the public house sold the premises. This date is not borne out by the documentary evidence, namely the mortgage application form referred to below; a letter from his then solicitors dated 30 August 2017 (which states that, up to September 2005, he stayed with Simin a few nights a week, and began to cohabit officially in September 2005) and his company's annual returns which gives his address as Black Prince Road until it is formally changed on 13 May 2005.
13. In 2003 the possibility of exercising the right to buy a leasehold interest in the Property was explored. The Council provided a valuation under the Housing Act 1985 was obtained on 6 February 2003 in the sum of £140,000.
14. In August 2003 the Council sent all the relevant documents in relation to the right to buy, including the offer notice which was in Simin's sole name. The premium was £102,000, representing the market value less Simin's discount of 46%, namely £38,000. When Derek was asked why he was not added as tenant, he stated that he had been told that if his name was added the discount would be lost, and, moreover, that it was not even possible to have a side agreement or declaration of trust protecting his interest, as this would be contrary to the intention of the legislation. He stated that there was an understanding between himself and Simin that the Property would be put in joint names after three years (at the end of the period when the discount has to be repaid on a further disposition). There is no evidence that he raised this point with Simin (or the solicitors) after 1 August 2008, and indeed it is his case that he did not want to raise this formally during her lifetime because of her ill health.
15. There is no evidence of any advice from Rooks Rider, who were instructed in connection with the purchase, relating to the legal or beneficial title to be held jointly. To the contrary, the first file note on their file says 'No trust deed required'.
16. Counsel checked the legal position relating to joint tenancies under the right to buy legislation before the end of the hearing: section 123 of the Housing Act 1985 allows a secure tenant in his notice under section 122 that no more than three members of his family who occupy the dwelling house as their only or principal home should share

the right to buy. Members of family is defined as to include someone who has been residing with him throughout the period of 12 months ending with the giving of the notice. It is therefore correct to say, it seems, that once the notice has been served (sometime before February 2003) it was too late to add Derek to the legal title. This would not, of course, have prevented a declaration of trust being drawn up to deal with the beneficial title.

17. On 10 September 2003 Derek began paying the sum of £408.33 into Simin's Santander's account. A total of 23 payments were made, totalling £9,391.59. There is an issue as to whether a further payment was made. On his case the last payment was made in December 2005, bringing the total to £9,799.92. These payments, he said, were payments referable to the purchase. The payments were made from his business account, of which he and a co-director were signatories, and the reference on the statements from October 2003 onwards is 'Mrs Golestani-Arag Innlne Inter Ltd'. name.

18. His explanation for these payments, made so far in advance of the purchase of the Property (almost two years later) was that he paid what he believed would be half the deposit, (which he believed would be £15,000) and that he paid what he would have paid had he borrowed it from American Express. He was paying a sum, in other words, which notionally included the interest he would have paid had he borrowed the money. Of course, had the sale been concluded in six months and not two years, the so called deposit fund would have been very much smaller. In any event, no deposit as such was needed for the purchase. In reply to the question whether it was in fact company money which was being used to fund the purchase (on his case) he stated that this was by way of wages owed to him. He denied the suggestion that the sums were in fact repayment of a loan made by Simin to his company.

19. On 19 December 2003 the sum of £25,950 was paid into Simin's Abbey Instant Saver. It is accepted that this money came from Iran, and was paid in cash into her account. It is also to be noted that as of April 2004, Simin had the sum of £34,000 in her savings account.

20. In January 2004 the Council send all the relevant documentation, including the counterpart lease and plan, to the solicitors then instructed by Simin (and recommended by Derek), Lambs Brooks.
21. On 23 March 2004 Simin's Abbey bank account was closed and the money transferred to another account Abbey account. The balance was £34,647.05.
22. In January 2005 Rooks Rider were instructed in relation to the purchase of the Property. The first attendance note is dated 21 January 2005. I have referred to this above. The contact was made by Derek. A hand written note says that the buyer will be Simin. On 8 February 2005 Rooks Rider wrote to Lamb Brooks stating that they had been instructed by Simin and asking for the papers to be sent to them. Lamb Brooks confirmed that they had been instructed by Simin and passed on all the documentation on 9 February 2005.
23. Rooks Rider asked for a copy of Simin's passport in February. There appears to have been some delay but both passports were sent to the solicitors on 6 March 2005. It is also clear that attempts were being made (it appears in joint names) to obtain a mortgage, initially from the Chelsea Building Society.
24. On 17 March 2005 the Council sent Rooks Rider a Preliminary Notice to Complete. This was sent because over a year had elapsed since the offer notice had been made under section 125 of the Housing Act. The notice to complete was addressed to Simin.
25. On the 16 April 2005 £29,997 was withdrawn from Simin's Abbey Instant Saver account and paid into her Chelsea account.
26. An attendance noted 3 May 2005 on Rooks Rider's file states: 'Mge in joint names as Simin cannot get one in her sole name, even with Derek as guarantor. Will try again.'
27. On 17 May 2005 the Council served a Final Notice to Complete which was to expire on 18 July 2005.
28. On 27 May 2005 Derek and Simin applied for a mortgage from First National, part of GE Money Home Lending Ltd. Both give their address at the Property. The



declaration of income gives his monthly salary as £45,683: this is clearly a mistake and is meant to be his annual income (as other parts of the form confirm). Derek filled in the form stating that he had lived there for 1 year and 4 months, and gave his previous address at 71 Black Prince Road. When asked about this, and other documentation showing that he still used the Black Prince Road address he stated, as I understand it, that he had given a false address in order to benefit from the congestion charge exemption, and because changing his address was not top of his priority.

29. The financial adviser who acted as the intermediary was called Sebastian Murphy. On 18 December 2017 he wrote to Derek stating the mortgage application had been a joint one and that the only reason the deed/ownership was in Simin's name was because of the right to buy discount. He then added: *'I know at the time we talked about organising a deed of trust to confirm the beneficial ownership, however I am sorry to learn that the solicitors didn't organise this during the transaction'*.
30. The mortgage offer was made to both Simin and Derek on 15 July 2005. On 28 July 2005 Rooks Rider wrote to both Derek and Simin. The letter required Simin only to execute the mortgage form. The letter continued by saying that the writer was not convinced that completion could take place on the following Monday because he had not yet heard from First National that the mortgage could be in Simin's name only. The letter continued: *'The initial indications are that they require the mortgage to be in your joint names whereas your mortgage broker assures me that this is not the case. The mortgage cannot be in joint names as the lease is in Simin's sole name.'* There is no further evidence relating to Mr Murphy's involvement, but it is relevant to note that he seemed to believe that the mortgage should be in Simin's name only.
31. Asked about this, Derek stated that he would never have allowed the mortgage to be in Simin's sole name because he needed to demonstrate that he was involved in the purchase. This, of course, does not fit with the advice he said he had received from Mr Colman to the effect that he could not have any interest in the Property. In the event, as set out below, he did not complete the mortgage deed.
32. On 25 July 2005 Rooks Rider had written to First National explaining to them that as the Property was being bought by Simin in her sole name the mortgage could only be in her name. The letter then asked that the mortgage offer be re-issued. In commenting

on this letter, Derek said in evidence that Rooks Rider were clearly acting against his interests.

33. The position became more confused immediately after this correspondence. On 1 August 2005 Derek Coleman's secretary sent an email to both Simin and Derek enclosing a letter from First National required for the funds to be released. Both were asked to sign the letter. On the same day both Derek and Simin signed a letter referring to the mortgage in joint names in accordance with the mortgage offer dated 15 July 2005.
34. The mortgage deed is dated 1 August 2005. The borrower is stated to be both Derek and Simin. In evidence Derek stated, for the first time, that he had filled in the form by writing Simin's name. He did not write in his name or sign the deed because, he said, he had been told by the witness (the branch manager of the Chelsea Building Society in Fulham) that he should not sign because he was not the tenant. Had the witness told him to sign he would have done so. I find this evidence very difficult to accept: witnesses do not give legal advice, and if he was in any doubt it would have been very easy to check with Rooks Rider. The decision not to enter his name or sign the Deed is clearly of the utmost importance in this case, and the consequence of not assuming any liability under the mortgage must have been obvious to Derek at the time.
35. On 1 August 2005 £21,257.85 was paid out of Simin's Chelsea Building Society to complete the purchase and £82,000 was advanced by First National Bank. At the time of Simin's death the balance stood at £74,000 odd.
36. The upshot of this confusing sequence of events was that Derek was not a party to the mortgage and did not incur any liability under the mortgage, although in emails sent shortly after Simin's death, Derek stated that he was liable. David Coleman was contacted by Arman after Simin's death and his understanding of the position was that although the original mortgage offer was in both names it was amended and a fresh offer made in Simin's name only. He added that so far as he was aware there was no agreement with Derek as to the ownership of the Property.

37. Derek's evidence is also that he had many discussions with Simin about the ownership of the Property and in particular in December 2016 when Simin assured him that she had taken steps to formally document his interest. She said ' the paper work has been done' . Derek stated that he had rung David Colman and that he had said he would try to help. Again, this does not sit with the response given in writing by David Coleman to Arman and his solicitors. Derek believes that there was some documentation to this effect in a cash box which Arman took from the Property after Simin's death. This is disputed by Arman.
38. The mortgage payments were either paid from Simin's account or by the Department of Work and Pensions. It is not Derek's case that he made any direct payments to First Direct but rather that he made payments to her account from which she paid the mortgage. Derek produced a schedule from his bank statement which he said showed payments of £4360.00 to Simin. These payments were made both before and after the date of the acquisition of the lease on 1 August 2005. In cross examination he accepted that these payments covered all possible expenses relating to the Property and they were his contributions generally to household expenses. Derek also stated that he did not pay after he left the Property in April 2007 (though he may made some mortgage payments after Simin's death). Having looked at her statements Derek accepted that there is nothing in her bank statements to show that he was paying anything towards the mortgage. It is also clear from her statements that she was receiving benefits, at least from 2007.
39. Derek also relies on the works done by him to the Property in support of his argument that he acquired a beneficial interest by virtue of a common intention that he should do so. He fitted a brand new kitchen which, he says, took 3 weeks; installed a triple wardrobe in the bedroom and put in a lean to in the garden. He also fitted a power shower. He accepted that he enjoyed living in an improved flat but, he said, this was not the full picture.
40. Finally, Derek was asked why he did not make any claim while Simin was alive. His response was that there was no need to: the Property was not sold, and, moreover, he did not want to upset Simin. He also did not have the funds to fight the case. The issue of his interest in the Property was raised for the first time with the family after Simin's death in emails with Arman.

41. Arman's evidence was as follows. He moved to London from Glasgow in July 2007 and lived close to his mother, sometimes living with her. He stated that whilst his mother and Derek began a relationship in 2000/2001 he did not move to the Property until several years later and left finally in 2009, although he continued to see Simin and to some extent look after her. Derek registered her death on 3 February 2017. He refuted any suggestion that Derek had a beneficial interest in the Property. The Property was his mother's only asset and Simin had told him, and her sisters, that it would pass to him.
42. Arman was not in a position to say for certain that his mother lent money to Derek or his company although she had said that Derek had no money and, he believes, would have been willing to lend him money in thanks for his undoubted care. He was caring and helpful, and Arman was reassured by her views of him. His impression of Derek is that he was a confident man, who sometimes had money and sometimes did not. His evidence bears out the fact that Simin and Derek remained on reasonably good terms after he moved out.
43. Following her death, Derek seemed to take charge. Arman was not in a state to do anything. His family in Sweden urged him to snap out of the state he was in so that he could take some control. He went to the Property with his girl friend and Derek gave him a summary of what he had done. As for the cash box, this was opened in Derek's presence and it contained some coins only. There were no documents in the box.
44. I have seen documents signed by Simin's sister and brother in Sweden to the effect that Simin was always clear that the Property belonged to Arman and that no claim by Derek had ever been made before her death. I have also seen a number of statements from friends of Derek's who state that it was always understood that the purchase of the Property was a joint venture. I attach no weight to these statements since none of the evidence was tested in cross examination.

## **Conclusion**

45. The legal principles are set out above and are not in dispute. The beneficial title will follow the legal title unless Derek can establish, on a balance of probabilities, that he

is entitled to a beneficial interest either on the basis of a constructive or a resulting trust. In order to establish a constructive trust Derek must show a common intention, reliance and detriment. The intention must be an actual intention, which can either be express or inferred from the whole course of conduct. The alternative argument is that a resulting trust arises from the contributions he made which, it is accepted, must be referable to the purchase of the Property.

46. I start by bearing in mind that the evidence given by Derek is necessarily self serving and that Arman, though no doubt close to his mother, can only throw a limited light on the nature of the relationship between Derek and Simin. Nonetheless, I found Arman to be an honest and entirely straightforward witness. Derek's evidence was at times difficult to follow and, it must be said, improbable. It is surprising that he did not make any claim to the Property until after Simin's death, and in particular that he did not do so when he moved out of the Property in 2008/2009, bearing in mind his case that he believed that he could be put on the title 3 years after His evidence as to the date when he moved in was also contradictory, and does not tally with the documentary evidence.

47. More pertinently, the documentation does not support his case. There is no record of any discussion between Derek and Rooks Rider about his obtaining a beneficial interest. To the contrary, the first attendance note states unequivocally 'no trust deed.' This is borne out by David Coleman's recollection.

48. In reality, it seems to me that the fact that he was not included at the outset, and that the solicitor clearly recorded that he did not need a trust deed, point clearly to the fact that Simin was to be the sole legal and beneficial owner of the Property. His evidence on this important point, as to what he was told, and by whom, and what he believed the position to be, is also confused.

49. The fact that Derek did not execute the mortgage deed is also highly relevant. The circumstances of the execution of the Deed remain unclear, but for whatever reason he did not put his name or signature to that document, and is not therefore a party to the mortgage.

50. I am also not persuaded that the various payments of £408.33 are referable to the purchase of the Property, and found Derek's explanation unconvincing. There was sufficient money available to Simin to pay the balance of the purchase price without the need for this money. It seems to me to make little or no sense to begin making these payments so far in advance of the actual purchase, and if it was anticipated that the purchase would take place sooner, then again the sums do not add up.
51. The evidence as to the other payments made can all be explained as contributions to the overall joint expenditure and, of course, Derek was not paying any rent whilst living at the Property. I do not doubt that he did some work to the Property, but again this is not of itself evidence a common intention that he should have a beneficial interest in the Property.
52. The most powerful argument in Derek's favour is that he appeared willing to be a joint mortgagor. But this argument breaks down precisely at the last moment when, for whatever reasons, he did not execute the mortgage deed. I have dealt with his explanation above. It is also the case that he the mortgage instalments for a period after Simin's death. But this could simply have been to strengthen his case (not made during her lifetime) that he had an interest in the Property.
53. For all these reasons, therefore, I find that Derek has not established either a constructive or resulting trust. This leaves the question of costs. Arman, as the successful party, is, in principle, entitled to his costs from the date of reference (19 October 2017) on a standard basis. A schedule in Form N260 or the like is to be filed and served by 18 February 2019. The response is to be filed and served within 14 days of receipt of the schedule. Subject to any reply, I will consider the matter on paper.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 4<sup>th</sup> day of February 2019.**

