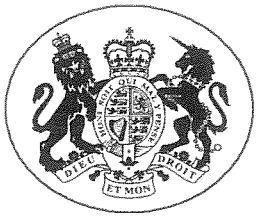


[2019] UKFTT 444 (PC)

PROPERTY CHAMBER

FIRST – TIER TRIBUNAL

LAND REGISTRATION DIVISION

2017/0826

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

BETWEEN

Ronald Shanks

APPLICANT

and

Kim Diane Walters

RESPONDENT

Property Address: 103 Woodville Road, Barnet EN5 5NJ

Title Number: NGL680893

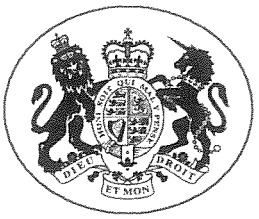
Before: Mr Simon Brilliant sitting as Judge of the Property Chamber of the First-tier Tribunal

The Chief Land Registrar is directed to give effect to the Applicant's original application dated 21 March 2017 as if the objection had not been made.

Dated 14th June 2019

Simon Brilliant

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



[2019] UKFTT 0444 (PC)

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Property Address: 103 Woodville Road, Barnet EN5 5NJ

Title Number: NGL680893

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

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 1 and 2 April 2019

Applicant's Representation: **Mr L Barnes of counsel.**

Respondent's Representation: **Mr M Feldman of counsel.**

DECISION

Resulting or constructive trusts – respondent the sole registered proprietor of a property – parties in a relationship prior to the respondent purchasing the property – parties live together in the property for 10 years and have a son – claim by applicant to have a beneficial interest in the property - issues as to whether the parties had a common intention as to ownership.

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 103 Woodville Road, Barnet EN5 5NJ ("the house") which was purchased in the sole name of Ms Walters, the respondent, for £460,000 on 24 October 2006. The respondent was duly registered at Land Registry on 6 December 2006 as the sole proprietor of the house under title number NGL680893.

2. Mr Shanks, the applicant, claims to have a beneficial interest in the house on the basis of a common intention constructive trust. The respondent denies this.

3. The applicant was born on 17 December 1960 and is now 58 years old . The respondent was born on 14 September 1962 and is now 56 years old.

4. The parties began their relationship in the 1990s when both were serving police officers. The parties lived together at the house between October 2006 and January 2017, when the applicant left in the circumstances set out below. The relationship had broken down permanently in the previous September.

5. It is common ground that the applicant gave the respondent £30,000 towards the costs of the acquisition of the house. The applicant says this was given on the basis that he was to acquire a beneficial interest in the house. The respondent says that this money was a loan and she accepts she has to repay it.

6. The applicant and the respondent have a son, Joe, who was born on 13 December 2007 and is now aged 11. The respondent has never married and has no other children. The applicant was still married to Ruth Shanks ("RS") when his relationship with the respondent began. He has two children from the marriage. RS did not commence divorce proceedings until 2012.

7. It is common ground that in 2013 the applicant gave the respondent a ring. Photographs of the ring itself and of the ring on the respondent's left hand ring finger were produced. The applicant says that the ring was given on the occasion of the parties becoming engaged. The respondent denies this and says that the ring was merely a friendship ring.[1]

8. On 21 March 2017, 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 and the household expenditure.

9. On 20 May 2017, the respondent objected to the original application. She says that there was never any agreement or understanding that the applicant would acquire an interest in the house, that the payment of the £30,000 referred to above was a gift, and that any payments the applicant made towards household expenditure were in the nature of rent.

10. On 4 September 2017, the dispute was referred to the tribunal under section 73(7) of the Land Registration Act 2002.[2]

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[1] If I find there was an engagement, Mr Barnes expressly told me in closing that he did not seek to rely on s.37 of the Matrimonial Proceedings and Property Act 1970 as discussed in Dibble v Pfluger [2010] Fam Law 1279. Nothing turns on which finger the ring was worn, as a friendship ring is also worn on the left ring finger.

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

11. My task is to determine whether the applicant has any interest in the house. If he does, he 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 his share is. The applicant contends for a 30% share. The respondent, if she loses on this issue, contends for a 20% share.

12. 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, or whether either of them was ever unfaithful to the other. There is no agreed valuation of the property.[3] It is no part of my task to determine what the valuation is.

The witnesses

13. The applicant and the respondent each gave oral evidence.

14. The trial bundle contained a substantial number of bank statements. Helpfully, each party collated a schedule of that party's payments.

The law: common intention

15. 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 analyses contained in paragraphs 11-024 and following of Megarry & Wade's The Law of Real Property, 9th edition 2019, and paragraphs 9-062 and following of Lewin on Trusts 19th edition 2015.

16. 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 his detriment on the basis of that common intention so that it would be inequitable for A to deny B

[3] The only evidence of value is contained in a letter dated 11 February 2017 from an estate agent to the respondent which suggests an asking price of £825,000 in order to achieve a figure as close to that is possible. Figures given in such circumstances are notoriously unreliable, and the market has considerably softened since that date.

an interest.

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

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

19. 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.

20. For an express common intention there must be an agreement, arrangement or understanding reached between the parties that the property is to be shared beneficially. This must be based on evidence of express discussions between the parties, however imperfectly remembered and however imprecise the terms may have been.

21. 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.

22. The first case where an intention will be inferred is where B contributes directly to the purchase price, whether by cash contribution or its equivalent, or by paying mortgage instalments[4]. 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. However, positive evidence that the parties did not have such an intention will defeat the inference.

23. 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.

[4] Lloyds Bank plc v Rosset [1991] 1 AC 107, 132 and Grant v Edwards [1986] Ch 638, 647.

Outline of the facts

24. The applicant, before he retired, was a Detective Chief Inspector and was deployed at one time in sensitive work abroad. The respondent is still a Police Constable. Both parties worked extremely hard in order to maximise their over time.

25. As stated above, the applicant was still married to RS when the parties began their relationship. As the parties' relationship developed, so the applicant's marriage deteriorated. RS moved to Somerset with the children and the applicant continued to live in a flat he owned in London.

26. In the Spring of 2006, the parties had a meal at the Arati Indian Restaurant in East Barnet. It is common ground that they discussed purchasing a house. They also discussed starting a family. As a result they viewed a number of properties. Eventually, they viewed the house which was on offer for £460,000. They offered this price which was accepted.

27. It is common ground that the house was transferred into the sole name of the respondent, and that the parties contributed to the purchase price as follows:

(1) the respondent contributed £210,000;[5]

(2) the applicant contributed £30,000;

(3) the balance of £220,000 was borrowed in the name of the respondent from Woolwich Building Society ("the mortgage").[6]

28. The mortgage payments were £1,291 per month. It is common ground that the bank statements for the respondent's Woolwich and Barclays accounts show that between January 2007 and October 2008 the applicant paid in £750 per month[7] and the respondent paid in £800 per month. Between November 2008 and March 2017 the applicant and the respondent each paid in £850

[5] This was made up of £180,000 from the sale of her previous home and £30,000 from her savings.
[6] Woolwich Building Society subsequently merged with Barclays Bank plc.
[7] The applicant actually paid £800 in January 2007.

per month.

29. The applicant's schedule shows that between January 2007 and August 2017 he also paid a total of £30,665 for household expenses, £9,131 for shopping and £31,188 for the purchase of white goods, furniture and the holidays. The respondent's schedule shows that between the same dates she paid a total of £8,461 for household expenses and £43,665 for repairs and holidays

30. As mentioned above, the parties' son was born on 13 December 2007.

31. In 2011, the applicant received a lump sum from his pension in excess of £200,000.

32. In 2012, RS commenced divorce and ancillary relief proceedings against the applicant.

33. During the divorce proceedings the applicant was represented by Ms Foley of Boys Sutton & Perry. RS was represented by Everys.

34. The parties met with Ms Foley on 12 September 2012. At that meeting the applicant told Ms Foley that his monthly contributions to the respondent were rent and that he had no interest in the house. This became the applicant's pleaded case in the ancillary relief proceedings.

35. Following that meeting, Ms Foley wrote to the applicant on 14 September 2012:

About seven years ago you moved out of the flat in Whetstone and you permanently moved in with your partner Kim. Your home is registered in the sole name of Kim. She purchased the property about seven years ago in her sole name having sold a former property and invested the sale proceeds in the purchase. The mortgage is registered solely in Kim's name and the mortgage payments are made from an account solely in Kim's name. Both you and Kim have completely separate financial arrangements. You pay approximately £850 into Kim's "household" bank account and this is used to pay your rent and to contribute to the household out–goings.

36. On 14 September 2012, Ms Foley wrote to Everys:

You also refer to Woodville Road. A search of the Land Registry will confirm that legal title to this property is registered in the sole name of Mr Shank's current partner Kim. We are instructed that this is a property that Kim purchased on her own approximately seven years ago. She sold a property that she formerly owned and invested the sale proceeds in the purchase of Woodville Road. The mortgage was taken out in her sole name and remains in her sole name The mortgage payments are paid from a bank account in Kim's sole name. In the circumstances we do not consider that this property should be treated as a matrimonial asset and should therefore [not] be subject to the usual disclosure requirements. If your client remains of the view that this is a joint matrimonial asset, she is invited to set out her arguments in full.

37. It was during 2013 that the applicant gave the respondent the ring referred to above.

38. In about September 2016, the parties' relationship broke down. The circumstances were acrimonious. The respondent, contending that the applicant was no more than a lodger or tenant, served a notice to quit on the applicant. There was then an unfortunate incident at the house which led to the applicant being summonsed for common assault. He was required to leave the house on 31 January 2017, and prevented from returning to it under his conditions of bail. He was subsequently convicted and given a 12 month conditional discharge.

39. On 21 September 2017, a consent order was approved in the ancillary proceedings between the applicant and RS. On 25 October 2017, the applicant's marriage to RS was dissolved by decree absolute.

Discussion

40. In a case of this nature context is everything. At the time of the meeting in the Indian restaurant in 2006, the evidence points to a joint decision made by them to share their lives together. Their relationship had developed to a stage where they wanted to live in the same home. They talked of starting a family. The respondent was 44 years old by now. They made the decision that night to buy a house where they would both live and where they would bring up any family.

41. The evidence given by each of the parties is diametrically opposite. I do not consider that either party is trying to mislead me. The ending of their relationship was extremely acrimonious, in

particular the assault by the applicant on the respondent.[8] And, as often happens, the pain affects a party's recollection.

42. It seems to me more likely than not that during the meal at the Indian restaurant a common arrangement or understanding was reached whereby ownership of the house was to be shared. The suggestion that the applicant was simply lending the respondent £30,000 with a view to occupying the house as some sort of paying guest or licensee is, in my judgement, implausible. The relationship was by now so close and so full of optimism that both parties were, in my judgement, intending that the ownership of the house should be shared.

43. If I am wrong on that, I am of the view that I should infer that there was a common intention by the parties that the beneficial ownership of the house should be shared. As I have said, I find that the £30,000 paid towards the purchase of the house was not, as the respondent alleges, a loan but a contribution to the purchase. The schedules of payments helpfully prepared by the parties show to my satisfaction the applicant was regularly contributing to the mortgage instalments and household expenditure from January 2007 until he left in January 2017.

44. The respondent relied, as she was perfectly entitled to, on the case the applicant was putting to his solicitors and to RS's solicitors in 2012, namely that he had no beneficial interest in house. I accept Mr Burns' description of this episode as that of the applicant being less than frank. He did not wish RS to claim that a share of the house should be brought into account in the ancillary relief proceedings.

45. I prefer the evidence of the applicant to the respondent regarding the giving of the ring in 2013. But even on the respondent's case, the giving of the ring assists the applicant's case more than the respondent's. A friendship or promise ring, otherwise known as a pre-engagement ring, is a ring given as a gift to a romantic partner to signify a commitment to a monogamous

[8] Presumably, the respondent led the evidence of the assault to damage the credibility of the applicant. I had doubts as to whether this evidence should be admitted in the light of the Rehabilitation of Offenders Act 1974. In fact, I do not regard this evidence as in any way undermining the credibility of the applicant. I am satisfied that it is one blemish in an otherwise distinguished career, arising from the emotional turmoil in which the parties found themselves at this time. I should say, however, that I do not accept the applicant's evidence that he did not recall the entry for a dating site in his bank statements on 18 January 2010, especially as the entries appear regularly around this time.

relationship, often as a precursor to an engagement ring. It is unlikely that a paying guest would give his landlady such a ring.

46. Mr Feldman made the powerful points that if the house was really jointly owned, why did the applicant not use his pension payment of £200,000 to reduce the mortgage? Equally, why did he not sell his flat in order to release funds for the same purpose? I have borne these matters in mind, but they are not sufficient to alter the view that I have formed about what was discussed in the Indian Restaurant and the proper inferences to be drawn from the sharing of the mortgage repayments and the household expenses.

Share

47. Mr Burns accepts that a share of 50% is unrealistic given the inequality of capital contributions. He contends that the fairer outcome would be for the appellant to receive a 30% beneficial interest, subject to sharing liability for the outstanding mortgage in equal shares. Mr Feldman says that if I am against him on the question of beneficial ownership I should award the applicant 20% of the beneficial interest.

48. Mr Burns accepts that there will be deductions from his figure of 30%. In order to keep matters as simple as possible I propose to award the applicant 25% of the beneficial interest in the house.

Conclusion

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

50. As far as costs are concerned, the usual rule is that the unsuccessful party pays the costs of the successful party. The respondent must provide to the tribunal and the applicant within 14 days any representations about who should pay the costs.

Dated this 14th day of June 2019

Simon Brilliant

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