



9 November 2011

PRESS SUMMARY

Jones (Appellant) v Kernott (Respondent) [2011] UKSC 53
On appeal from the Court of Appeal [2010] EWCA Civ 578

JUSTICES: Lord Walker, Lady Hale, Lord Collins, Lord Kerr, Lord Wilson

BACKGROUND TO THE APPEALS

This case concerns the correct approach to calculating beneficial interests in property where the legal title to the property is held in joint names by an unmarried couple but there is no express statement of how it is to be shared.

Ms Jones and Mr Kernott met in 1981. They had two children together. In 1985 they purchased a house in Thundersley, Essex in their joint names. The price paid was £30,000 with a £6,000 deposit paid exclusively by the proceeds of sale from Ms Jones's previous home. No declaration was made as to how the beneficial interest in the property was to be held. The mortgage and upkeep on the house was shared between them. In 1986 they jointly took out a loan of £2000 to build an extension. Mr Kernott did some of the work himself.

The relationship deteriorated and in 1993 Mr Kernott moved out. From that point onwards Ms Jones lived in the Thundersley property with both children. In 1996 Mr Kernott bought his own house in Benfleet, Essex. Over the years, the value of the Thundersley property increased and in 2006 Mr Kernott indicated that he wished to claim a beneficial share in it. In response, Ms Jones, in 2007, applied to the county court for a declaration under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 that she owned the entire beneficial interest in the property. By 2008 the property was valued at £245,000.

The county court judge noted that the house was first purchased to set up a family home. It was bought in joint names and a presumption arose that they intended to jointly share the beneficial ownership of it as well. Up until 1993 there was no evidence to rebut that presumption. Ms Jones claimed however that in the 14 and a half years following there was evidence that their common intention had changed. Mr Kernott had ceased to make contributions towards the running of the house and had made only very limited contributions towards the support of their children. Furthermore it was mostly during that latter period that the value of the property had increased.

The judge held that their common intention had indeed changed. In reliance upon the decision of the House of Lords in *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432, he held that once the initial presumption of joint beneficial ownership is displaced and there is no further clear evidence as to the division of shares in the property it falls upon the court to infer or impute an intention to the parties as to the division of the property that they, as reasonable and fair people, would have intended. He decided that Mr Kernott was entitled to only a 10% share.

Mr Kernott appealed to the High Court arguing that it was wrong for the court to infer or impute a change of common intention and further wrong for the judge, in effect, to substitute a division that he considered to be fair as between the parties. Mr Nicholas Straus, QC sitting as a High Court judge dismissed his appeal. Mr Kernott appealed to the Court of Appeal which, by a majority (Jacob, LJ dissenting), allowed his appeal.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores the order of the county court. Lord Walker and Lady Hale give the lead judgment. Lord Collins agrees with Lord Walker and Lady Hale and adds some reflections of his own. Lord Kerr and Lord Wilson agree in the result but reach it by a different route.

REASONS FOR THE JUDGMENT

References in square brackets are to paragraphs in the judgment

Lord Walker and Lady Hale: The principle recognised in *Stack v Dowden* is that where people purchase a family home in their joint names the presumption is that they intend to own the property jointly in equity also [15]. The starting point is different in cases where the property is bought in the name of one party only. The presumption of joint beneficial ownership arises because (i) purchasing property in joint names indicates an “emotional and economic commitment to a joint enterprise” and (ii) the practical difficulty of analysing respective contributions to the property over long periods of cohabitation [19-22].

The presumption may be rebutted by evidence that it was not, or ceased to be, the common intention of the parties to hold the property jointly. This may more readily be shown where the parties did not share their financial resources [25]. In the absence of clear evidence of intention, a question arises as to when the court can infer such intention and when the court can, instead, impute an intention. An inference is drawn where an actual intention is objectively deduced from the dealings of the parties; an imputation is one attributed to the parties by the court [26-27]. The search is primarily to ascertain the parties’ actual intentions, expressed or inferred but if it is clear that the beneficial interests are shared but impossible to infer a common intention as to the proportions in which they are shared, the court will have to impute an intention to them which they may never have had [31].

The following principles apply: (i) the starting point where a family home is bought in joint names is that they own the property as joint tenants in law and equity; (ii) that presumption can be displaced by evidence that their common intention was, in fact, different, either when the property was purchased or later; (iii) common intention is to be objectively deduced (inferred) from the conduct and dealings between the parties; (iv) where it is clear that they had a different intention at the outset or had changed their original intention, but it is not possible to infer an actual intention as to their respective shares, then the court is entitled to impute an intention that each is entitled to the share which the court considers fair having regard to the whole course of dealing between them in relation to the property; and (v) each case will turn on its own facts; financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended or fair [51].

On the facts of this case the county court judge held that the parties’ intentions as regards the Thundersley property had changed after their separation. It was a “...logical inference that they intended [Mr Kernott’s] interest in Badger Hall Avenue should crystallise” in 1995, when they took the house off the market, cashed in an insurance policy, so that Mr Kernott was able to buy a house in his own name [48]. The calculation of their shares on this basis produced a result so close to that produced by the judge that it would be wrong for an appellate court to interfere.

Lord Collins agrees with Lord Walker and Lady Hale, holding that the differences in reasoning set out below are “largely terminological and conceptual and are likely to make no difference in practice.” [58].

Lord Kerr holds that the divergence in reasoning might, in practice, make a difference [67]. The question concerns how far the court should go in seeking to infer intention and when it is justified in imputing it. It is preferable to give effect to the parties’ intentions where possible but the courts should not be reluctant to recognise when it is not and to impute an intention accordingly. In agreement with Lord Wilson it is not possible to infer the intention in this case but the division that the judge made is a fair one as between the parties and should stand.

Lord Wilson considers that on the facts of this case, it is impossible to infer the intentions of the parties and the court can only impute to the parties an intention that the house be held in fair proportions along the lines of those set out by the county court judge [89].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html