Press Summary

11 December 2024

Frenkel (Appellant) v LA Micro Group (UK) Ltd and others (Respondents); LA Micro Group Inc (Appellant) v LA Micro Group (UK) Ltd and others (Respondents)

[2024] UKSC 42

On appeal from [2023] EWCA Civ 214

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Sales, Lord Burrows, Lord Richards

Background to the Appeal

This appeal concerns the true ownership of LA Micro Group (UK) Ltd ("UK"), a UK company supplying computer hardware. UK was set up in 2004 for the purposes of a joint venture between Mr Bell and a Californian company, LA Micro Group, Inc ("Inc"), which was itself owned equally by Mr Lyampert and Mr Frenkel.

UK has two shares, one held by Mr Bell and one by Mr Lyampert, who are also the company's directors. Prior to 2010, each share in UK was held on trust: for Mr Bell, as to 49% (in other words, Mr Bell was the 49% 'equitable' owner of each share); and for Inc, as to the remaining 51%. The profits of UK were, however, to be split equally between Mr Bell and Inc.

In 2010, Mr Lyampert and Mr Frenkel fell out. Mr Frenkel told Mr Bell that UK was Mr Bell's business and that he wanted nothing more to do with it. Mr Lyampert and Mr Bell reached agreement as to a new arrangement (the "2010 Agreement"), binding on Inc as well as Mr Bell and Mr Lyampert. As part of this, the profits of UK would be split equally between Mr Bell and Mr Lyampert (rather than Inc). Mr Lyampert also agreed to take on Inc's debt to UK.

Mr Frenkel subsequently claimed he was owed (via Inc) a share of the profits of UK. Mr Bell and UK went to court seeking a declaration that, following the 2010 Agreement, Mr Bell and Mr Lyampert were the sole legal and beneficial owners of the shares they respectively held. Inc argued that it remained the 51% beneficial owner of each share.

The High Court originally upheld UK and Mr Bell's claim on the basis that Mr Frenkel had disclaimed Inc's interest in UK in 2010. However, this was overturned by the Court of Appeal, which sent the claim back to the High Court to consider a number of alternative arguments.

The High Court then found that it was an implied term of the 2010 Agreement that each of Mr Bell and Mr Lyampert would henceforth own his share beneficially as well as legally, such that the beneficial ownership of UK would be split 50/50 between the two of them.

However, the High Court held that this agreement was ineffective because it was not in writing and signed by Inc as was required for dispositions of equitable interests (ie interests under a trust, like Inc's 51% equitable beneficial ownership of the shares in UK) by section 53(1)(c) of the Law of Property Act 1925 (the "LPA").

The Court of Appeal disagreed, holding that Inc had contractually given up its beneficial interest and that this was effective despite the lack of signed writing because of the way that a particular legal mechanism – a 'constructive trust' – came into play, meaning that the transaction fell within the exception provided by section 53(2) LPA.

Inc and Mr Frenkel appealed to the Supreme Court, arguing that the transaction was ineffective because it was not signed and in writing as required by section 53(1)(c) LPA.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Briggs, with whom the other justices agree, gives the judgment. The failure to comply with the requirement for signed writing under section 53(1)(c) LPA did not prevent 2010 Agreement from taking effect. That is because section 53(2) LPA states that the requirement for signed writing does not affect the operation of a constructive trust. The circumstances created by the 2010 Agreement gave rise to the operation of a purchaser-vendor constructive trust, and so the case fell within the section 52(3) exception.

Reasons for the Judgment

The vendor-purchaser constructive trust (or "VPCT") is a trust which typically arises whenever there is an agreement for the sale of property with regard to which the courts would grant specific performance (ie order the parties to complete the contract) **[1]**. It was not disputed that the subject matter of the 2010 Agreement – equitable interests in shares in a private company – satisfied that requirement **[25]**.

The majority of cases dealing with the VPCT concern the sale of land: after a contract for land is made there will normally be further steps that need to be taken – namely the payment of the purchase price and the legal transfer of ownership of the land. The effect of the VPCT is that, as soon as the contract is made, the vendor comes under obligations in relation to the property he is selling: he cannot then sell it to someone else, or damage it. At the same time, he can continue to use it and rent it out for a profit until the purchase price is paid. Once the purchase price has been paid in full, the vendor simply holds the property on bare trust for the buyer until legal ownership is transferred **[26]**. In that way, the VPCT provides a kind of interim protection for the parties during the period between contract formation and the completion of the transaction, either voluntarily or pursuant to an order for specific performance **[28]**.

The relevant parts of section 53 LPA provide as follows **[2]**:

> *"(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—...*

(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts".

Accordingly, the absence of signed writing would not make the 2010 Agreement ineffective if the circumstances gave rise to a VPCT.

There was, in the end, only one issue before the Supreme Court: granted that a VPCT would have arisen had the 2010 Agreement purported to sell Inc's equitable interest in the shares in UK to *anyone else*, did it matter that in the event the buyer was (with respect to each of the two shares) also the sole trustee (and so the sole legal owner of the share in question), and was also, or was to become also, the owner of the remainder of the beneficial interest in that share? Did that mean that no VPCT could arise **[3]**? It if did, that would seem a strange result **[46]–[48]**.

The parties to the 2010 Agreement clearly assumed that their oral agreement was adequate to achieve their intended result without the need for any further written transfer of Inc's beneficial interest. The consideration for the sale was fully paid at the time of that agreement, by virtue of Inc's debt to UK being undertaken by Mr Lyampert. But, in the eyes of the law, the agreement would fall foul of section 53(1)(c) LPA in the absence of a VPCT because it involved the disposition of Inc's equitable interest in each share. To that extent, without a VPCT, it would have needed to be completed by writing **[29]**.

The quirk of this case was that a VPCT would not merely provide interim protection (each of Mr Bell and Mr Lyampert immediately becoming beneficiaries under a bare trust over Inc's equitable interest), but would also complete the transfer of Inc's 51% interest. That was because the property being transferred was purely equitable and because the buyers were already the legal owners of those shares and were, or were at the same time to become, the owners of the remainder of the beneficial interest in each share. The VPCT would therefore be (as was common ground between the parties) sufficient without more to concentrate the whole beneficial interest in each share in its legal owner, and thereby bring about the merger of the legal and equitable interests in each share (so that the legal owner would consequently also be the full beneficial owner) **[29]–[30]**.

In the light of this, the appellants argued that no VPCT could arise in the circumstances because the implied term of the 2010 Agreement was really concerned with the destruction – rather than the transfer – of equitable interests (leaving the full beneficial ownership of each share to the legal title holder), such there was no property to which the VPCT could or should attach **[37]**.

However, this did not reflect the substance of the 2010 Agreement, which was concerned with Mr Bell and Mr Lyampert becoming the owners of Inc's 51% interest and not with the destruction of anything **[38]–[42]**.

Even on a strictly technical analysis, it was only after the equitable interest had been transferred to the legal title holders (by the VPCT) that the equitable interest merged with the legal title (and so was destroyed). The VPCT would therefore be momentary, but that did not mean that the courts should refuse to recognise it **[43]–[45]**.

This was perfectly consistent with the protective nature of VPCTs in general. Without one, Mr Bell and Mr Lyampert would have each remained (for as long as it might take to get an order for specific performance) minority owners of their respective shares, vulnerable to Inc selling its interest to a third party or becoming insolvent **[34]**. It was also consistent with the underlying objective of equity in this context, which was to treat as done that which ought to be done **[35].** The fact that in this case the VPCT meant nothing further was needed to give effect to the 2010 Agreement was not a reason for denying the availability of a VPCT altogether **[34]**.

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Separately, the respondents sought the Supreme Court's permission to raise a new argument (not argued in the courts below) as to the scope of section 53(1)(c) LPA **[4]**. They suggested it applied only to dispositions of equitable interests in land – and not, therefore, the equitable interests in the shares in UK – such that signed writing was never required **[50]**. The Supreme Court declined permission on the basis that this new ground did not raise a properly arguable point of law: the orthodox reading of section 53(1)(c) (not restricted to land only) was too well-established now to be disturbed **[51]–[54]**.

References in square brackets are to paragraphs in the judgment.