Neutral Citation Number: [2024] EWFC 54 (B)

Case No: BV17D30521

IN THE FAMILY COURT SITTING AT BRENTFORD

Alexandra Road,
Brentford, TW8 0JJ

Date: 5 March 2024

Before :

His Honour Judge Willans

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Between :

AW	**Applicant**
- and –	
(1) RH (By his litigation friend, The Official Solicitor) **(2) PT** **(3) SB**	**Respondents**

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Arman Alam (instructed by **No12 Chambers**) for the **Applicant**
Tamara Muhammad (instructed by **Wilson Solicitors LLP**) for the **1st Respondent**
Simon Bradshaw (instructed by **Summerfield Browne**) for the **2nd and 3rd Respondents**

Hearing dates: 4-5 March 2024

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JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

His Honour Judge Willans :

Introductory Points

1. This judgment follows a preliminary hearing held over the last two days. In reaching my conclusions I have had regard to the digital bundles placed before me; the evidence of the applicant and the two intervenors and the submissions made by counsel for applicant, respondent and intervenors. I refer to the applicant wife as AW, the respondent husband as RH and the respective intervenors as PT and SB respectively (both siblings to RH). No discourtesy is intended by the use of these abbreviations.

The Issue in the case

2. The issue in this case relates to the extent to which two properties should be treated as matrimonial property within the financial claim brought by AW against RH. I refer to the two properties as No.22 and No.11.

3. In the case of No22 the central question is as to whether this should be treated entirely as matimonial property owned by RH or as being jointly and beneficially owned by him and PT and as such to be included in the matrimonial assets as to 50% (or such alternate % as determined by the Court). In relation to No11 the issue is as to whether this is property in respect of which RH has a beneficial interest or whether it is the property of SB in its entirety and falls outside of the matrimonial acquest.

Legal Principles

4. The law to be applied in relation to these disputes is not the Matrimonial Causes Act. I do not determine these disputes on the basis of any discretionary power. Rather I resolve the dispute applying strict legal principles developed over time with respect to claims relating to trusts over land. The procedural approach in this case has followed the guidance set down in TL v ML & Others (Ancillary Relief: Claim Against Assets of Extended Family) [2005] EWHC 2860 (Fam) which makes clear (see headnote):

   The task of the judge in determining a dispute as to ownership between a spouse and a third party was completely different in nature from the discretionary exercise undertaken in determining a financial relief dispute between spouses. A dispute with a third party must be approached on exactly the same legal basis as if it were being determined in the Chancery Division. It was essential, where a dispute arose in financial relief proceedings about the ownership of property which involved a third party, that the third party should be joined to the proceedings at the earliest opportunity; that directions should be given for the issue to be fully pleaded by points of claim and points of defence; that separate witness statements should be directed in relation to the dispute and the dispute should be heard separately as a preliminary issue before the financial dispute resolution hearing

5. I have been referred to the following authorities:

   1) Stack v Dowden [2007] UKHL 17
   2) Marr v Collie [2017] UKPC 17
   3) Laskar v Laskar [2008] EWCA Civ 347

4) Curley v Parkes [2004] EWCA Civ 1515

There is no principled dispute in this case as to the applicable law. The key question for me is as to the intentions of the relevant actors at points of legal change of ownership and as to what this tells me as to the current beneficial interests held by RH in either property. It is important to bear in mind that it is for AW to prove the case she makes and not for the third parties to disprove her allegations. She bears the burden of proof and will discharge this if she establishes an event on balance of probability (being more likely than not). All the evidence is valuable in assessing whether this test has been met.

The witnesses

6. This is a case involving family interaction and memories of actions and decisions taken more than a decade ago. The understanding of what took place is now shaped in the context of a matrimonial dispute in which AW is asserting claims against other family members. The combination of these family relationships; the dynamic arising out of the same; the conflicted interests and the passage of time mean the Court will naturally approach any fact finding with care and with an eye on available independent evidence.

7. Having heard the witness evidence of each party I make the following observations.

- RH did not give evidence. He acts via the office of the Official Solicitor and it is accepted he lacks litigation capacity. The parties obtained expert evidence as to his cognitive ability and this evidence suggested he would not be able to engage with the process of giving evidence. This was not challenged and so I simply have a position document taken from him on behalf of the Official Solicitor which supports the position taken by the third parties. He was supported by an intermediary. This naturally has impact on the weight I can attach to his case which is contained on instructions set out within a position document. I formed the view limited weight should be placed on this and I have been wary to adopt the position save where it is otherwise supported by my findings.

- AW gave evidence through an interpreter. Her questioning (as with all the witnesses) was short and it was not possible to form a very clear view as to her credibility from this process. I bear in mind that she has a strong interest in the findings and this may cause her to deliberately or inadvertently shape her case to fit her interests. I agree there were some contradictions in what she told me and I accept significant aspects of her case are wholly undocumented and date back over more than a decade. I have treated her evidence with care but not rejected it. Her evidence did not suggest she was a dishonest witness and I make clear she does not claim to be have been party to many of the events central to this case.

- PT’s evidence was unclear and at times confusing and contradictory. I bear in mind her evidence as to poor health and the impact the same has had on her memory. At the same time she was frank on certain issues and gave evidence which appeared to contradict her essential case. I formed the view she was an honest individual but I

was careful in considering the weight I could put on her evidence given her level of confusion and uncertainty.

- RB was the most articulate and clear of the witnesses. He gave a firm and consistent account. There were some points which caused me to pause but overall his evidence was internally consistent. However, again he has an interest in the issues under consideration and as with the other witnesses he was recalling events from some time ago. I approach his evidence with care but I do not regard him as a unreliable witness.

The essential history

8. 1983: No11 was purchased with SB and RH registered as legal owners and no statement of beneficial interests. SB claims he was the sole contributor to this property and that RH only joined him in the purchase as this permitted double taxation benefits (MIRAS). SB claims it was not intended RH should have any interest in the property and subsequently RH has made no contribution. It appears for a significant period the property was rented and the costs of the property funded from this rental. For much of the period SB lived out of the jurisdiction.

9. 1985: RH purchased No22. It adjoins a property owned by the wider family in which RH appears to have lived for much of the time with his parents. There is evidence he was assisted by his family in funding the deposit on the property (including support from SB) but no one makes a claim based on these contributions. The property was registered in the sole name of RH.

10. 2005: AW and RH married.

11. 2009: By this time there was litigation affecting the family involving principally SB's ex-wife and RH's mother. This involved property adjoining No22. To compromise these proceedings funds were required (although it is less clear as to how much) and as a result No22 was remortgaged to release funds. To enable this PT and RH raised a mortgage on the property and PT was joined on the title documents as legal owner of the property. No statement of beneficial interests exists.

Question 1 in this case is as to the motivations behind this transaction and whether as a result the beneficial interests follow the legal interests with PT having a severable joint tenancy with (on severance) a 50% interest in the property.

12. 2013: Late in the year AW and RH's children were born.

13. 2014: Early in the year after some improvement works on the property AW (and possibly to some extent RH) moved into No22. It seems clear for much if not all of this time No22 had lodgers and their rental payments funded the costs of the property. There is a dispute as to exactly when AW moved into No22 and this is complicated by the fact of the two adjoining properties and the existence of an internal door between the two with fluidity between the

properties. AW says this was 2014 whereas others suggest 2017. At about the same time as this was taking place SB returned from overseas and RH was removed from the title deeds in respect of No11.

Q2 in this case is as to the motivations behind this change and the preceding legal ownership and whether this property is part of the marital pot for distribution.

14. AW and RH subsequently separated. It is not so clear when this was but the AW puts it as being in around 2014. She claims the separation derived from RH's unwillingness to provided appropriate support for her and the children. Confusion arises because in evidence AW linked this to PT going on the property title yet this was in 2009 and it is clear the marriage continued after that date. Elsewhere she linked it to a later point in time which appears to have been after 2014 and related to the rent monies no longer being forwarded to a joint account.

15. I should pause to note that No22 remained tenanted in part even after AW moved into the property. AW's, which I accept, is of collecting the rent and paying the same into a joint account (held in the name of the RH and PT from which the mortgage was paid). Later she was worried as to whether this was being used to pay the mortgage and started to withold the rent collected. I accept this evidence. This may have been the point at which the relationship broke down. It is not dated in her statement but the sense is of it being sometime after 2014. As with other dates in this case it was difficult to obtain satisfactory clarity. I note counsel for the third parties submits this was no later than 2017. I agree that it probably the latest time for the separation – given the divorce issued in that year - with the earliest likely date being sometime around mid-2014.

16. 2017: Divorce proceedings commenced.

17. 2019: Financial proceedings commenced. I have had regard to the multiple case management orders found in section B of the hearing bundle. None are directly relevant to my resolution of this dispute and so I will not cite them at length or in any detail.

The evidence heard

18. As noted the evidence was short and concluded in less than a day. No witness lasted more than an hour.

- AW maintained her case. She detailed her account of the separation of the parties and her case as to having made substantial contributions to No22 in both 2013 and 2019 by funding improvements. She accepted she could not provide any documents in support of the same and when questioned agreed a significant part of the expenditure in question had in fact come from the rental received rather than separately from herself. However, her direct contribution from savings could be measured at around £20,000. It was suggested this did not fit with her income levels at the time but she did not agree. She agreed she had made no contributions to the purchase of No22 and it was purchased before she married RH. She agreed the rent

paid the mortgage and that she had stopped passing this over when issues arose between her and RH. There had been no discussions with her at the time of the 2009 remortgage although she knew there had been issues between her mother-in-law and an ex-wife. She agreed she had not been involved with the purchase of No11 but RH had told her he was a joint owner of the property. She had expressed opposition to the remortgage in 2013 and this has upset SB. She explained a lack of supporting documents on the basis that her bank did not hold records going back to 2013 but could not explain why documents had not been obtained with respect to the 2019 improvements. It should be noted there is no fundamental dispute the improvements were carried out, or that the same were at least in part funded by rental monies. The dispute is as to whether there was a direct contribution from AW.

- PT accepted No22 had been owned by RH for about 24 years before she went on the title and during this period she had not contributed to the property. She was somewhat confused as to the purpose of the remortgage but eventually agreed it has been linked to the litigation. She accepted by the time of the remortgage the property had increased to £240,000 in value and that the remortgage was for £102,000 in total. She explained she wanted to be on the title as she wanted protection given she was on the mortgage. She agreed the mortgage had been paid from the rent although she had had no direct involvement in this process although it was paid at times through a joint account set up in the name of her and RH. Her only contribution was putting herself on the mortgage. She accepted when questioned by counsel that she had not been put on the title to have an interest in the property but rather to provide her with protection. Although in written evidence she claimed to have made direct mortgage payments from her own funds when AW withheld rent she confirmed she had not done this in live evidence. She was aware of the works undertaken on the property as she would visit the family but no-one had sought her permission for this to be done and she had not been involved with the same. She had no knowledge with respect to no11.

- SB explained a charge held by PT over No11 and also explained the tax benefits which led to RH being on the title. He had been out of the jurisdiction until 2013 and had limited knowledge of the litigation which involved his ex-wife and his mother. When away no11 was managed by his wife. When he came back to this country he sensed AW felt the ‘tables had turned’ and that she was looking to have an interest in the property adjoining no22 but he was now back. He explained the change in ownership of no11 as being due to the tax rules changing and there being no purpose to RH being on the title.

Discussion

19. This is not a case with significant factual disputes. There is broad agreement as to the following:

1) This was a family with a significant amount of mutual support. SB gave support to RH to buy his property; RH gave support to SB with respect to tax benefits; PT assisted RH in obtaining the remortgage; PT assisted SB and obtained a charge on his property; the children assisted their mother when litigation was ongoing with the adjoining property. This is to the credit of all and it far from uncommon in a close family of this type. It can though complicate the assessment of historic intentions when seen through the prism of later litigation.

2) Until 2009 there is no doubt RH solely owned No22. The assistance he received with its purchase was gratuitous in form.

3) On the evidence and other than the tax benefits (which was likely to be relatively modest in quantum) RH provided nothing by way of contribution to No11. It does seem likely he was on the mortgage to obtain the tax benefits cited above.

4) In 2009 No11 was remortgaged to compromise litigation concerning the adjoining property. This is not said to be property owned by either AW or RH although they were living in the property at the time with wider family.

5) Works were undertaken in both 2013 and 2019. These were at least largely funded from the rental income.

6) It is clear AW made no financial contribution save to the extent I might find her to have made the alleged contribution to the works.

20. On balance I am not persuaded she made a material contribution to the works. It appears likely these funds came from the rent monies. I cannot rule out some relatively modest contribution from her own funds when passing money but this is not such as to change the answer to the questions posed by this case. I am unclear as to when the parties emotionally separated. It was not when AW first moved into No22 in 2014 but was certainly before 2017. I consider it likely it was a developing situation over the period 2015-16. Thankfully the answer to this case does not depend on resolving this point.

My conclusions on No22

21. I start from the position that beneficial interests follow legal interests and that as such PT would appear to have a equal (50%) interest in the property. This is clearly the correct starting point in the light of the legal authorities. I bear in mind the points made in particular at §68-69 of Stack v Dowden:

68. The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's estate may well wish to assert that he had a beneficial tenancy in common. It cannot be the case that

all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase.

69. In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

I bear in mind the need to focus in this case on the parties intentions and I have regard to §53-59 of Marr v Collie.

22. I consider the evidence is tolerably clear and leads me to conclude PT did not intend to have any beneficial interest in No22 when she was added to the legal title. I find RH is solely beneficially entitled to the property. The change in 2009 was solely to provide PT with a safety measure in the event of future problems in that it would provide a financial guard against a later claim made against her on the mortgage. In reaching this conclusion I have regard to the following matters:

1) Importantly, this was my understanding of PT's own evidence when questioned as to her intentions. She agreed it was 'correct' that she had not intended to have an interest. I understood her to confirm the same when I sought clarity from her. I am not satisfied it would be right to set aside this concession against interest in favour of a bold statement of interest contained within a witness statement. I do not consider her live evidence was surrounded by confusion. It seemed to me it was a simple statement which in fact fitted with the evidence.

2) It is supported by the absence of any evidence as to discussions in 2009 given PT was argued to have been obtaining a 50% beneficial interest then valued at about £69,000 (£240,000-£102,000/2) without having made any contribution towards the same. It strikes me as most unlikely the parties (who were family members) would not have at least considered the implications for RH of this outcome given it was his only property (on his case) and given PT had her own property. I am not determining this case on a fairness basis and parties can of course largely agree whatever terms they wish for but this is distinct from an evidential gap arising in circumstances where the obvious objective unfairness of an outcome would have called for some

level of discussion and yet none was had. The absence of the same is supportive of the notion that no unfairness was intended or expected and that no intention to share was expected or intended.

3) This is further strengthened when one considers the purpose for the loan. The purpose was to compromise a claim against a property which was not owned by RH but appears to have been owned by PT's and RH's mother. They had at least a mutual interest in this regard (as would SB who was particularly involved given it was his ex-wife making the claim). I struggle to see this as anything other than a step aimed to protect the mother and hence in a broad sense the family. I do not accept that this would have been funded effectively from RH's equity (as it was) and at the same time he would have lost half of the remaining equity to his sister to enable the same. Whilst the fact he was sharing occupation of the property might explain the former it really does not explain both.

4) This conclusion is supported by a range of other matters: (a) the lack of involvement or approval sought from PT before works were undertaken on the property; (b) the lack of involvement of PT in respect of the management of the property; (c) the lack of any apparent interest on the part of PT in the property post 2009; (d) the lack of any attempt by PT to protect her equity during possession proceedings later on. All of this speaks of a party who (as she said) simply wanted to protect herself against claims against her without having any interest in the property.

23. In my assessment AW meets the burden on her and substantially out of the evidence given by PT. It is somewhat surprising that this case has proceeded to a trial on this issue given the concessions made by PT at final hearing. It is clear to me the transfer in 2009 cannot be said to have been undertaken to defeat a future claim of AW but I fear the fact of this transaction has been allowed to be misused to later minimise the exposure of RH to AW's claims. That the case fell apart on such gentle probing supports this view.

My conclusions on No11

24. It is an irony of this case that AW seeks to argue her case in respect of No22 and no11 notwithstanding the underlying facts which point in opposite directions. So in the case of No22 I am asked to diminish the significance of PT being joined to the title and to focus on the lack of contributions made by her other than being on the mortgage. Yet in the case of No11 the opposite holds with RH also making no contribution aside from being on the mortgage such as to obtain interest relief. The only difference is as to timing between the two.

25. The starting point is that the property was in joint names with an inference in favour of beneficial sharing but this was then changed in 2013. The question is as to the intentions on purchase in 1983 and the intentions behind the change in 2013. Logically AW is suggesting the intention on change was to distance RH from ownership of the property.

26. I have reached the conclusion I should reject this suggestion and I find AW has not met the burden upon her in this regard. I find RH has no interest in No.11. My reasons for finding are as follows:

1) I fundamentally accept the evidence of SB as to the purchase of the property and AW has not been able to provide any evidence to contradict this account. It has the ring of truth and is plausible.

2) Having considered the alternative prospectus it is unclear why RH would have had an interest given his lack of contribution and the fact there was no need for him to be involved.

3) My view is supported by the contribution made by SB to No22 without claim over the property. It might seem inconsistent for RH (as I find) to obtain a 50% beneficial interest for simply providing a tax benefit and being on the mortgage whilst SB provided a significant contribution towards the deposit on No22 without any interest. My conclusion is that both represent family support without an intention to change legal rights.

4) In any event a change was made in 2013. I did pause to reflect on whether this was done to distance RH from the property at a time where on SB's own account AW appeared to be laying claim over family property. However, I consider this is neutral as to answer as SB might just as well have been seeking to protect his own property from a fear of an unjustified claim by AW as from a justified claim.

5) However, taking all the evidence together, in prefering the evidence of SB and in there being no contradictory evidence bar for the original involvement on the title which is plausibly explained I have reached the conclusion that no interest was intended by RH being on the title deeds. I am satisifed the steps taken in 2013 simply regularised the beneficial reality.

Outcome

27. I find RH is solely beneficially entitled to No22. No account of rents received is required. I find SB is solely beneficially entitled to No11. This concludes my judgment. These findings will be brought into the financial proceedings between AW and RH. Such resolution is not reserved to me as any Judge hearing those proceedings will have the benefit of this written judgment. This judgment will be published on an anonymised basis. I will ask for any further redactions to be provided to me by 4pm on Friday 8 March 2024.

His Honour Judge Willans