



REF/2018/0960

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

KEITH NIGEL SANDFORD

APPLICANT

and

THERESE MARY OLIVER

RESPONDENT

Property Address: 59 Lesney Park, Erith, DA8 3DS
Title Number: SGL568190

Before Judge Dovar
Sitting at: Alfred Place, London
On: 24th June 2019

Applicant Representation: Tracy Bird instructed by Bower Cotton Solicitors LLP
Respondent Representation: Estelle Lear instructed on Direct Access

DECISION

KEYWORDS – co-habitation – property registered in sole name – beneficial interests – common intention constructive trust

Cases referred to:

Stack v Dowden [2007] UKHL 17

Jayasinghe v Liyanage [2010] EWHC 265 (Ch)

Chief Land Registrar v Silkstone [2011] EWCA Civ 801

Inhenagwa v Onyeneho [2017] EWHC 1971 (Ch)

Introduction

1. Mr Sandford claims a beneficial interest in the Property, which was the family home occupied by the parties and their children until 2017, when he moved out. His claim is based on a common intention constructive trust.
2. In August 2018 he applied to HM Land Registry for a restriction against title to the Property to reflect and protect his purported interest. Ms Oliver objected and the matter was referred to this tribunal.
3. Both parties gave oral evidence before me and were represented by counsel at the hearing.
4. At the outset, the parties submitted that I did not have to determine the substantive underlying dispute relating to the interest claimed, but that my enquiry was more akin to one for summary judgment. I do not agree, it was made clear in *Jayasinghe v Liyanage* [2010] EWHC 265 (Ch) (and confirmed in *Chief Land Registrar v Silkstone* [2011] EWCA Civ 801), that the function of the Tribunal on a referral under s.73(7) of the Land Registration Act 2002 is to determine the underlying substantive dispute; which is how I have approached this matter.
5. However, the parties were clear, and I accept that they were entitled to proceed on that basis, that if I did find that Mr Sandford had a beneficial interest, I would not make any finding as to the quantum of that interest and following *Inhenagwa v Onyeneho* [2017] EWHC 1971 (Ch) I would simply allow the original application. That would permit the restriction to be entered and if they could not reach agreement on the quantification of that interest, then one party could commence court proceedings to determine the same.

Factual Background

6. The following facts are not contentious.
7. In 1988 the parties started a relationship; Ms Oliver had previously been married. In 1989, 216 Burrage Road, London, SE18 was purchased in Ms Oliver's sole name and they lived there together. In 1990 their first child, Lucy, was born. In 1992 Ms Oliver purchased a holiday home in Kent. In 1993, their second child, Arabelle, was born.

8. On 29th September 1993, the Property was purchased in Ms Oliver's sole name (with a mortgage in her name, which was paid by her) and the parties moved in the following year after some works were undertaken.
9. Mr Sandford, who is a builder by trade, carried out some of the works to the Property, which included renovating the garage with an extension above (in about 2000). Various other works, including the installation of a new kitchen (in about 2010) and a swimming pool and pergola (in about 2012) were undertaken by Mr Sandford over the years. He estimated that over the 23 years he lived at the Property, he had spent about 2 years renovating it. At one point he explained that as the family grew bigger, so they needed more space. He was not paid for those works and there was an issue as to who paid for materials. Both agreed that they had directly come from Ms Oliver, however, Mr Sandford contended that at least, in part and indirectly, they were paid out of the income from various rental properties which they held together.
10. In 2000, the parties had their third child, Elodie.
11. Two properties were purchased in Lanzarote in joint names and the income from those rentals went into a joint account. Whilst it may have been intended that that joint account would deal solely with the upkeep and maintenance of those rental properties, it appears that the parties, over the years, did not strictly adhere to that and funds were paid out to defray costs elsewhere including on the Property.
12. At all times, since they had been in a relationship, Mr Sandford had owned another property, which was held in his sole name.

Basis for claiming an interest

Legal Basis

13. Both parties referred me to the *Stack v Dowden* [2007] UKHL 17 for the relevant principles to apply when property is purchased in one partner's sole name in the domestic context. It is clear from that authority, that where, as here, the property is purchased in one party's name, the other party has a difficult evidential hurdle to establish an interest.
14. Baroness Hale stated at paragraph 56

“Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”

15. In terms of how a party could establish a beneficial ownership that was not reflected in the legal ownership, Lord Neuberger stated at paragraph 141

“... I am unconvinced that the original ownership of the beneficial interest could normally be altered merely by way in which the parties conduct their personal and day to day financial affairs. I do not see how the facts that they have lived together for a long time, have been in a loving relationship, have children, operated a joint bank account, and shared the outgoings of the household, including in respect of use and occupation of the home, can, of themselves, indicate an intention to equalise their originally unequal shares any more than they would indicate an intention to equalise their shares on acquisition, as discussed earlier. So, too, the facts that they both earn and share the home-making, or that one party has a well-paid job and the other is the home-maker, seem to me to be irrelevant at least on their own. ...

“143. It is worth repeating that one is concerned with the ownership of what will normally be the most important and valuable asset of the parties, and the way they conduct their day-to-day living and finances is, in my view, at least of itself, not a reliable guide to their intentions in relation to that ownership. Even payments on decoration, repairs, utilities and council tax, although related to the home, are concerned with its use and enjoyment, as opposed to its ownership as a capital asset. It is also worth repeating that these factors are not irrelevant to the issue of whether there has been a change in the shares in which the beneficial interest in the home is held. They provide part of the vital background against which any alleged discussion, statement or action said to give rise to a change in the beneficial ownership is to be assessed, in relation to both whether it occurred and what its effect was.”

16. Mr Sandford asserted that his interest arose through a common intention constructive trust. It was contended that that was established through a common intention to share

ownership (whether expressly agreed or inferred) coupled with some detriment suffered by the person relying on that common intention. In this case, Mr Sandford candidly accepted that there had been no express discussion about sharing ownership of the Property. His case therefore rested on inferring such an intention from the factual circumstances. To that end, I bear in mind Lord Neuberger's direction about the relevance (or not) of contributions to day to day matters and whether contributions were towards the current use and enjoyment of a property rather than increasing its value as a capital asset.

Factual basis

17. As already mentioned, Mr Sandford admitted that at no point had it been said that he would have an interest in the Property. There had been no express agreement or discussion to that end. Mr Sandford put forward a number of factors in support of his claim for an interest in the Property.
18. The first was that

“...there was a common intention to provide an equal income from the rental of the property portfolio so as to provide for the parties in their later years, irrespective of the legal ownership declared in respect of the properties.”
19. He said there was a global agreement in relation to the properties in their property portfolio, in that they would share them. However:
 - a. In evidence, he was a little coy as to whether this included properties which were in his own name; and
 - b. The global agreement referred to the receipt of rental income. He accepted that unlike the other properties, the Property had never been rented and there was no intention to rent it. It had been their family home. It therefore seems that even if there had been a global agreement, that did not encompass the Property;
 - c. The evidence of rental income focussed on the Lanzarote properties which Ms Oliver had put in joint names and from which they did share the rental income.

20. This therefore provided no support for Mr Sandford's contention that there was to be inferred a common intention to hold the Property jointly. It also did not of itself provide evidence of any detriment.
21. The second basis of his claim was
- “ ... in respect of [the Property] he is entitled to a restriction for the following reasons:*
- (a) He undertook substantial repairs and renovations to the property, to his detriment in terms of both personal income and in respect of expenditure made in relation to the property;*
- (b) By express agreement between the parties, the Applicant paid for the upkeep in relation to the property, household bills (including Sky television, utilities, upkeep of the property);*
- (c) By express agreement between the parties, in order care for the parties' children, the Applicant ceased work, this enabled the Respondent to work longer hours, thereby increasing her income, and enabling her to make financial contributions to the property purchase, and subsequent running costs ...”*
22. Although the scope of his works was in dispute, it is clear that he did undertake significant works to the Property over the years. However, it is difficult to see how that was done to his detriment. He lived at the Property and therefore obtained the benefit of his improvements; as did his family, which at the time was of benefit to him as well. I also had the impression that his other building work was intermittent and that therefore he was not really giving up much in the sense of paid work to deal with his own home. In that respect, although the work undertaken may fall slightly outside that considered by Lord Neuberger in terms of ‘payments on decorations’ the rationale is the same in that my impression of the evidence was that this was not done with any eye to increasing the home as a capital asset, which he would ultimately share in, but because it would enhance his and his family's living standards. It is therefore difficult to infer from this conduct any common intention for him to share in the beneficial interest or any detriment.
23. The upkeep referred to seemed to amount to little more than the payment of the Sky TV subscription and possibly the water bills for a period. It is hard to see how that could

form the basis of a claim for a constructive trust. Ms Oliver's evidence, which was not challenged, was that he had wanted the subscription and had been the one to watch it. This provides no support or basis of a claim for a constructive trust. No intention can be inferred nor any detriment made out.

24. Finally, his claim to have given up work to look after the children crumbled in oral evidence. He accepted that this coincided with a down-turn in his work. He also accepted that a nanny had been employed between 8 am and 6 pm to look after the children. In fact, Ms Oliver would have engaged a live-in nanny, but he did not want that. On any level, it is hard to see how looking after one's own children can amount to a detriment, but in this case, it appears that he did very little of that and what he did was his own choice. In light of that it is difficult to see how any inference could be drawn from that, let alone any detriment.
25. Ultimately he was forced to assert that he had considered this was his home and that he had a share in it and that is why he carried out works; but he also added that he carried out work to make sure that the family were comfortable. There was no evidence that any belief as to a share was instigated or even encouraged by Ms Oliver. Indeed, she gave convincing evidence when she said that after having been divorced once she was conscious not to give over property to a new partner and that is partly why the parties never married.
26. Stepping back a little and looking at the evidence in the round the evidence still does not assist Mr Sandford. It was telling that on some occasions properties were put in joint names; in particular the Lanzarote properties. This was strong evidence that when the parties intended property to be shared, they know how to structure that intention. Therefore even if, contrary to *Stack v Dowden*, wider considerations of family life could give rise to a constructive trust, in this case, the way in which the parties structured their property ownership would drive me to the conclusion that it was not intended, nor could it be inferred, that he was to have an interest in the Property.

Conclusion

27. I do not consider that Mr Sandford has established a beneficial interest in the Property and therefore I will direct the Registrar to cancel his application.

28. In terms of costs, if the Respondent wishes to make any application for costs, they should do so in writing within 14 days of receipt of this decision providing a breakdown of their costs, but the costs are to be only those from the date of referral to this Tribunal. 14 days after that, the Applicant may make any submissions in response, with the Respondent providing a short reply 7 days later.

Judge Dovar

Dated this 3rd July 2019

By order of the Tribunal

