Neutral Citation: [2024] UKFTT 00273 (TC)

Case Number: TC09119

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/01442

Constructive trust

Heard on: 27 April 2023
Judgment date: 3 April 2024

Before

TRIBUNAL JUDGE ALLATT
SIMON BIRD

Between

RASIAH RAVEENDRAN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr T Puspandan

For the Respondents: Joshua Gyasi, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The format of the hearing was via video link, with an interpreter appearing by video to interpret the Appellant's evidence.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. At the Tribunal's request, further submissions were made on trust law on 25 May 2023 by HMRC.

BACKGROUND

4. The appeal is in relation to a discovery assessment for the 2014/15 tax year of £191,973.50.

5. On 31 March 2005 the Appellant purchased the property 114 Tooting Hill Street, London, SW17 0RR, for £300,000.00. On 14 May 2014 the above-mentioned property was sold for £350,000.00 to the Appellants sister-in-law. A third party valuation obtained by HMRC put the value of the property at 14 May 2014 as £1,080,000.

ISSUES

6. The issues for the Tribunal to consider are a) was the discovery assessment properly raised and b) was the Appellant the beneficial owner of the property?

MATTERS THAT ARE NOT UNDER DISPUTE

7. The Appellant owned the leasehold of the property since 1989 and his brother, Mr Indraraj has since that date used the property to trade from.

8. In 2005 his brother was approached by the freeholder who wished to sell the property.

9. Due to being made bankrupt in 2004, Mr Indraraj could not obtain a loan to buy the property.

10. The property was bought in the name of the Appellant.

11. The property was sold to the Appellant's brother-in-law, Mr Indraraj's wife, on 14 May 2014.

DISCOVERY ASSESSMENT

12. HMRC discovered the sale of the property during the course of an enquiry into the Appellant's tax return for 2014/15.

13. No mention had been made of the transaction in the tax return.

14. The assessment was made within the 4 year time limit from the end of the relevant tax year.

15. There is no contention from the Appellant that the discovery assessment is not valid.

16. The Tribunal find that the discovery assessment was validly made.

BENEFICIAL OWNERSHIP

EVIDENCE FROM THE APPELLANT

17. The bundle contained documentation supplied by the Appellant to HMRC to support his contention that Mr Indaraj was the legal owner of the property.

18. We were supplied with statements sworn under oath from Mr Indraraj and from Mr Raveendran.

19. In addition Mr Raveendran supplied a witness statement and gave evidence to the Tribunal.

20. The third party documentation included completion statements for the purchase and sale. The completion statement for the purchase shows that two transfers of £22,000 were made to the solicitors and those, together with the loan in Mr Raveendran's name, formed the bulk of the monies for the purchase.

21. Mr Indraraj, in his sworn statement, made among others the following statement 'My brother did not make any financial benefit as the result of this purchase. My brother only helped me. All he did was allowed me to use his name and nothing else.'

22. Both Mr Raveendran and his brother say that the transfers of £22,000 came from Mr Indraraj. Evidence was provided that Mr Indraraj had approached NatWest for evidence of this, but as the transaction was over 7 years ago no records were held by them.

23. Third party documentation was also supplied showing various amounts paid by Mr Indraraj in connection with the property over the relevant period. This evidence was not conclusive of ownership either way as the majority was documentation that might be expected to go to the operator of the premises, rather than the freeholder, however there was a sizeable bill in 2005 for renovations of £35,000 addressed to Mr Indraraj and showed as paid.

24. The completion statement from the solicitors for the 2014 sale would appear to show that of the £350,000 received, £1,467 was to pay fees and £348,533 was to redeem the mortgage and 'refund of balance to loan account' suggesting there may have been a further loan.

25. We found Mr Raveendran to be a credible witness, albeit unsophisticated in financial matters. Under cross examination and questions from the Tribunal, he explained that his brother wished to buy the property and had asked him to help by taking out the loan arranged by a broker that his brother was using.

26. He had agreed, with the proviso that the loan be taken over by his brother within 5 years. This had not happened as his brother was still unable to take out a loan.

27. Mr Raveendran appeared unaware of the full bankruptcy situation of his brother.

28. Mr Raveendran confirmed he had not disclosed to either the bank or the law firm acting for the purchase that he was not the beneficial owner of the property.

29. Mr Raveendran confirmed that his brother paid the mortgage, which he believed was a repayment mortgage, with amounts coming from Mr Indraraj to Mr Raveendran and then on to the bank.

30. Mr Raveendran confirmed that he had not contributed funds to the purchase, other than the loan he took out which was repaid when the property was sold to his sister in law. He said he had not made nor wanted to make a profit from the purchase.

31. When asked why £350,000 was paid to him for a property he had acquired for £300,000, Mr Raveendran replied that he thought that the extra was to compensate for stamp duty.

32. He explained that the loan in his name had been affecting his credit score and hence causing difficulties with his wife, and therefore he had requested that the ownership of the property was transferred and the loan repaid.

33. The Appellant's position is that he was not the beneficial owner of the property as he had contributed no money to its purchase, and it was understood by him and his brother that the Appellant was holding the property on trust for his brother.

HMRC'S POSITION

34. HMRC start from the position that as Mr Raveendran was the legal owner of the property, he should be assumed to be the beneficial owner of the property in the absence of evidence to the contrary.

35. HMRC say that there is not sufficient evidence to show that Mr Raveendran was not the beneficial owner.

36. HMRC would have accepted a trust deed which showed beneficial ownership held by Mr Indraraj but there has never been such a trust deed,

37. HMRC say that therefore they have to look for evidence that there was either a resulting trust (due to Mr Indraraj making a significant financial contribution to the property) or a constructive trust (due to a common intention between the legal and beneficial owners, and the beneficial owner having acted to his detriment in reliance on the common intention, for example financing significant alterations to the property).

38. HMRC's position is that the evidence referred to above is not sufficient to show that either a resulting trust or a constructive trust exists.

THE LAW

39. We were referred to various authorities on discovery assessments which we have not noted here as the discovery assessment was not a matter of dispute.

40. The law on a resulting trust is set out clearly in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708.

> Under existing law a resulting trust arises in two sets of circumstances:
>
> Where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B. there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see *Underhill and Hayton (supra)* p. 317 *et seq.; Vandervell v. I.R.C.* [1967] 2 A.C. 291 at 312 *et seq.; In re Vandervell (No. 2)* [1974] Ch. 269 at 288 *et seq.*
>
> Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest: *ibid.* and *Barclays Bank v. Quistclose Investments Ltd.* [1970] A.C. 567.
>
> Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention.

41. Case law on trusts is also summarized in *Stack v Dowden* [2007] 2 AC 432 (123 onwards)

> Beneficial ownership on acquisition: constructive trust
>
> Accordingly, in my judgment, where there are unequal contributions, the resulting trust solution is the one to be adopted. However, it is no more than a presumption, albeit an important one. Lord Nicholls of Birkenhead said in Royal Bank of Scotland plc v Etridge (No 2) [2002] 2 AC 773 at paragraph 16 that the "use of the term 'presumption' is descriptive of a shift in the evidential onus on a question of fact", and that the "use … of the forensic tool of a shift in the evidential burden of proof should not be permitted to obscure the overall position". Although said in the context of undue influence, those words apply equally to the resulting trust presumption, in my opinion.
>
> In many cases, there will, in addition to the contributions, be other relevant evidence as at the time of acquisition. Such evidence would often enable the court to deduce an agreement or understanding amounting to an intention as to the basis on which the beneficial interests would be held. Such an intention may be express (although not complying with the requisite formalities) or inferred, and must normally be supported by some detriment, to justify intervention by equity. It would be in this way that the resulting trust would become rebutted and replaced, or (conceivably) supplemented, by a constructive trust.
>
> While an intention may be inferred as well as express, it may not, at least in my opinion, be imputed. That appears to me to be consistent both with normal principles and with the majority view of this House in Pettitt, as accepted by all but Lord Reid in Gissing (see at 897H, 898B-D, 900E-G, 901B-D, and 904E-F), and reiterated by the Court of Appeal in Grant v Edwards [1986] Ch 638 at 651F-653A. The distinction between inference and imputation may appear a fine one (and in Gissing at 902G-H, Lord Pearson, who, on a fair reading I think rejected imputation, seems to have equated it with inference), but it is important.
>
> An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements. An imputed intention is one which is attributed to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended, whereas inference involves concluding what they did intend.
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> To impute an intention would not only be wrong in principle and a departure from two decisions of your Lordships' House in this very area, but it also would involve a judge in an exercise which was difficult, subjective and uncertain. (Hence the advantage of the resulting trust presumption). It would be difficult because the judge would be constructing an intention where none existed at the time, and where the parties may well not have been able to agree. It would be subjective for obvious reasons. It would be uncertain because it is unclear whether one considers a hypothetical negotiation between the actual parties, or what reasonable parties would have agreed. The former is more logical, but would redound to the advantage of an unreasonable party. The latter is more attractive, but is inconsistent with the principle, identified by Baroness Hale at paragraph 61, that the court's view of fairness is not the correct yardstick for determining the parties' shares (and see Pettitt at 801C-F, 809C-G and 826C).

> A constructive trust does not only arise from an express or implied agreement or understanding. It can also arise in a number of circumstances in which it can be said that the conscience of the legal owner is affected. For instance, it may well be that facts which justified a proprietary estoppel against one of the parties in favour of the other would give rise to a constructive trust. However, in agreement with Lord Walker, I do not consider it necessary or appropriate to discuss proprietary estoppel further in this case.
>
> It is hard to identify, particularly in the abstract, the factors which can be taken into account to infer an agreement or understanding, and the effect of such factors. Each case will be highly fact-sensitive, and what is relevant, and how, may be contentious, whether one is considering actions, discussions or statements, even where there is no dispute as to what was done or said.

FINDINGS OF FACT

42. The Tribunal find that all the purchase price of the property was funded by Mr Indraraj, either from direct contribution or from servicing the mortgage that was taken out in the name of Mr Raveendran.

43. We find this on the basis that this is the consistent evidence of Mr Raveendran and Mr Indraraj under oath, and Mr Puspandan, who was advising at the time of the transaction, not under oath but in writing to HMRC.

44. In addition, the circumstantial evidence also points to this. Mr Indraraj has gone to considerable lengths to find evidence of his contribution, and considerable lengths to obtain the evidence possible to show his continuing contribution to the improvements to the building. The fact that NatWest do not hold records of the payment of the deposit should not be seen to be anything other than an absence of evidence.

45. It is entirely plausible that Mr Indraraj could obtain no credit due to his bankruptcy.

46. Mr Raveendran was very clear that the entire mechanism of the purchase had been arranged by his brother and described the transaction as ‘my brother using my name’.

47. We find that from the outset there was a clear understanding by both parties that the property was held for Mr Indraraj.

48. We find that Mr Indraraj has contributed not insignificant amounts (c10% of the purchase price) to pay for further improvements in the property.

49. We found that the evidence did not point to any alternative way to view the transaction.

DISCUSSION

50. HMRC say that where there is sole legal ownership the starting point is sole beneficial ownership, and the onus is upon the person seeking to show that beneficial ownership is different from the legal ownership.

51. This comes from Stack v Dowden, but the full paragraph is as follows: ‘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.’

52. Here there is no dispute between the legal owner and the purported beneficial owner. Both parties are clear that the beneficial ownership is solely with Mr Indraraj.

53. Clearly the burden of proof in the appeal remains with the Appellant.

54. HMRC acknowledge all the evidence above, but contend that the attestations by Mr Raveendran and his brother are retrospective rather than contemporary, the Appellant has failed to demonstrate the common intention existed.

55. The Tribunal has considered all the evidence. HMRC point to the lack of third party evidence as indicative that the Appellant has not discharged the burden of proof.

56. However, absence of evidence is not evidence of absence. There is no evidence, in our opinion, that points to the original transaction being anything other than a resulting trust.

57. HMRC contend that should we find that there is a trust (resulting or constructive) that the assessment should be amended in proportion to the contributions of each party to the purchase price of the property. HMRC view the mortgage as a contribution by Mr Raveendran.

58. As found above, we find that the entire purchase price was funded by Mr Indraraj.

59. We find therefore that Mr Indraraj was the sole beneficial owner of the property.

DECISION

60. For the reasons given above, this appeal is ALLOWED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

61. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

SARAH ALLATT
TRIBUNAL JUDGE

Release date: 03rd APRIL 2024