PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2015/0243

BETWEEN

Ian Rand

Applicant

and

Que Ha Tran

Respondent

Property Address: 219 Bexley Road, Eltham, Kent SE9 2PN
Title Number: SGL67157

Judge Colin Green

ORDER

It is ordered that the Chief Land Registrar give effect to the Applicant's application as if the Respondent's objection of 25 November 2014 had not been made.

Dated this 27th day of November 2017

Colin Green

BY ORDER OF THE TRIBUNAL

PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2015/0243

BETWEEN

Ian Rand

Applicant

and

Que Ha Tran

Respondent

Property 219 Bexley Road, Eltham, Kent SE9 2PN
Title Number: SGL67157

Judge Colin Green

At: Alfred Place
On: 7 July 2017

Applicant Representation:	Mukhtiar Singhof counsel
Respondent Representation:	David Brounger of counsel

DECISION

Introduction

1. 219 Bexley Road, Eltham, Kent ("the Property") was purchased on 23 November 2012 in the sole name of the Applicant, who was subsequently registered as the proprietor with freehold title absolute. The Applicant applied for registration of a

Restriction in Form A on 10 October 2014, on the basis that he had a beneficial interest in the Property under a constructive trust by reason of his financial contributions to the purchase and works carried out. The Respondent objected to the application and the dispute was referred to the Tribunal. There are two issues I have to decide: does the Applicant have a beneficial interest, and if so, what is the extent of that interest? Although it is only necessary to make a finding on the first issue to determine if the application for a Restriction is properly founded, where there is sufficient evidence available, it is the practice of this Tribunal to move on to the second stage and assess the size of that interest to avoid future litigation in some other forum over the issue, and assist the parties in any future negotiations. Both parties accepted that it would be an appropriate exercise in this case, should it be found that the Applicant has such an interest.

History

2. Large parts of the history were common ground, or at least uncontested. The Applicant and the Respondent (also known as "Tracy Tran") formed a relationship as a result of them both working at the Bank of China in London – the Applicant as building facilities manager and the Respondent in the retail banking section – and the fact that they both commuted by train from Eltham Station. The relationship began in late 2006 or early 2007 – the precise date is not material. The Applicant had a son from a previous relationship. The Respondent was going through a divorce, and found the Applicant's guidance helpful and reassuring. She had two children, an adult daughter and a 16-year-old son, both of whom lived with her.

3. The parties owned their own properties: the Applicant was the owner of 35 Harcourt Avenue, Blackfen ("the Applicant's Property") and the Respondent, 30 Greenway, Eltham ("the Respondent's Property"). The Applicant contends that the parries lived at the Respondent's Property, although he would have to return from time to time to his own property as his son would visit, and he also had a dog. This is disputed; the Respondent contends that although the Applicant spent most evenings at the Property and ate his lunch and dinner there at weekends, he rarely stayed over and usually returned to the Applicant's Property. In my view, whether the parties can be classified as living together at the Respondent's Property has no great significance, since this is

not determinative of their intentions in respect of the purchase of the Property, and indisputably, they were in a serious relationship for an appreciable time.

4. The Applicant's contention is that in about April 2012, at the Respondent's Property, the parties agreed to jointly purchase a house on a fifty-fifty basis, in which they would live together with the Respondent's children and the Applicant's mother, as his father had recently passed away. His son would be also able to visit and stay. It would also be necessary to renovate the property. Although the parties had the assistance of a mortgage advisor, the Respondent advised the Applicant that it would be cost-effective or tax efficient if the property was purchased in her name alone and that at a later date they would purchase an investment property in his name, to which he agreed.

5. The Respondent's account is rather different. She contends that she wished to purchase a larger property for herself and her children, and that since her daughter had recently started working as a trainee solicitor her additional income made such a move feasible. When she discussed the matter with the Applicant, he made it clear that he did not want the burden of another mortgage. Accordingly, it was never intended that the purchase should be joint, and she was to be the sole owner.

6. The Property was purchased for £260,000.00 with the assistance of a mortgage of £195,000.00, and a deposit of £65,000.00. On the footing that he was to make an equal contribution, the Applicant contends he paid £20,000.00 to the Respondent towards his share of the deposit, on the understanding that he would make up the balance of his share by payment for work to the Property. Initially, the fact of this payment was not accepted by the Respondent, but she eventually acknowledged the payment of that sum into her account.

7. A few months prior to completion, a joint account was opened with Santander to manage the finances of the Property, into which both parties paid £1,000.00 per month. From this, the mortgage and other expenditure was paid. Renovation work began after completion of the purchase, which went on for approximately a year. For the hearing, a schedule was prepared by the Applicant detailing the various payments made, coming to just over £63,000.00. These are largely agreed, save for the following

items, disputed by the Respondent: two payments of £300.00 for plumbing work; £2,000.00 for payment to the builders; £200.00 for electrical works, and refurbishment and miscellaneous payments totalling £4,669.94. In addition, it is accepted that the monthly payments into the joint bank account made by the Applicant amounted to £14,000.00. There are unquantified payments in respect of miscellaneous items, such as furniture and white goods, and insurance but these are disputed, save for the insurance.

8. In respect of such matters, the Respondent's version of events is that the payment of £20,000.00 was not required for the payment of the deposit, which she was able to make from sufficient funds in her own account. Rather, the £20,000.00 was by way of a loan to her for the purpose of starting the renovation work. The initial estimate for the renovation work proved to be inaccurate (which is accepted by both parties) and therefore the Applicant made a second loan of £19,500.00. A further loan of £20,000.00 to complete the renovation works was made by the Applicant in November 2013. Indeed, in respect of all the undisputed payments in the said schedule, the Respondent contends that they were by way of loan. The joint account was nothing more than a convenient method of managing the costs of renovation and paying the mortgage until the Respondent and her family could move into the Property and let out the Respondent's Property, and did not indicate any kind of joint ownership.

9. The relationship between the parties came to an end in December 2013, shortly after which the Respondent and her family moved into the Property.

The law

10. The relevant legal principles concerning constructive trusts in this context were undisputed, and may be summarised as follows. Since beneficial ownership is presumed to follow legal title, the burden is on the Applicant to establish joint ownership. What is required is a common intention that ownership was to be shared, acted on by the parties. Such an intention may be found by way of an express agreement; alternatively, a common intention may be inferred from the conduct of the parties, looking at their behaviour and dealings as a whole.

Findings

11. For the following reasons I prefer the Applicant's account and find that there was an express agreement that he and the Respondent were to be the joint owners of the Property.

11.1. On any footing, the Applicant made substantial financial contributions towards the Property, primarily the refurbishment costs. I am mindful of Sir John Chadwick's observation in *James v. Thomas* [2007] EWCA 1212:

> *"It is a mistake to think that the motive which leads parties in [a materially communal relationship] to act as they do are necessarily attributable to pecuniary self-interest."*

Nevertheless, I do not consider that the Applicant would have committed such large sums to the project, and been so heavily involved in the works and associated matters, other than if he had a financial involvement that went beyond a mere loan of money.

11.2. The Applicant's evidence was that he maintained a record of all his payments on a spreadsheet stored on a PC at the Respondent's Property, which is no longer available. It was submitted by Mr. Brounger that the need for such a spreadsheet supports the view that the financial arrangements were by way of loan I do not accept this – when dealing with what was clearly and expensive and reasonably complex undertaking, I am not surprised that a proper record of such matters was kept by the Applicant, who was a works manager.

11.3. In addition to the parties, I also heard evidence from Ann Rand, the Applicant's mother. Although she is related to one of the parties, it was clear that she had had a good relationship with the Respondent, and they were fond of each other. Her evidence was that there were a number of occasions when she was at the Respondent's Property when there were discussions between the parties concerning the purchase of the Property and that they would like her to come and live with them. They also approached her on one occasion concerning a possible loan to assist with the Property, some £20,000.00, but the matter was never raised again. Mrs. Rand stuck me as an honest witness,

doing her best to recollect events as fairly as possible, and I accept that the parties gave every impression that the purchase was a joint enterprise.

11.4. There remains the question of why the Property was not put into joint names and the explanation given by the Applicant. Mr. Brounger submitted that the Applicant had given slightly different versiopns of what he was told by the Respondent, suggesting that he has simply invented matters. It is correct that different versions have been provided by the Applicant, but this does not trouble me. The Respondent worked for a bank and understandably, he considered her to have greater expertise in financial matters, either from her own knowledge or after consulting with colleagues. The Applicant cannot remember the precise details, other than that it had some something to do with it being more tax efficient in the long run for the Property to go into just her name. I do not know if this was correct advice, or whether the Respondent was motivated by other concerns, as it is only by reference to her words and actions on which I am able to reach a conclusion as to whether there was a common intention. Nor do I find it implausible that the financial advice came from the Respondent rather than the mortgage advisor, whose function was simply to find a suitable mortgage offer rather than provide advice regarding long-term financial planning.

11.5. I also regard it is implausible, and do not accept that the Applicant said he did not want the burden of a further mortgage. His financial commitment to the Property, and monthly contribution to the joint account, are inconsistent with this, and once the parties and their family members moved into the Property, the Applicant's Property could have been sold, or rented out in order to pay that mortgage.

11.6. Mr. Brounger also pointed out that the conveyancing solicitors dealt with the Respondent, to whom correspondence was addressed. I am reluctant to draw any inference concerning ownership from this as the person to whom communications are addressed might be significant or arbitrary, and there is no reliable way of telling which is the case from the correspondence itself. In this case, I take the view that the Respondent was to be responsible for dealing

with legal and financial matters and the Applicant with the refurbishment and building works, for example: planning permission was obtained in his name, as was building regulation approval and a water certificate. In other words, the parties divided the work according to their respective fields of expertise.

12. Alternatively, I consider that I can infer an appropriate common intention from the parties' conduct. The matters set out above not only support the existence of an express agreement, they also allow me to infer that common ownership was the intention of the parties.

Quantification

13. On the basis of the above findings, I also accept that there was an express agreement as to ownership in equal shares. If this is wrong however, and there was no agreement as to the size of the Applicant's share, I must consider what would be a fair share having regard to the parties' course of dealings in relation to the Property. There is no presumption that an equal division would be appropriate; nor is it a precise arithmetical exercise. Leaving aside the mortgage loan of £195,000.00, the Respondent paid the deposit of £65,000.00 and conveyancing costs and stamp duty of £9,124.00. On the basis of the Applicant's schedule, he paid in excess of £63,000.00, although the payment for unquantified miscellaneous items takes this to a slightly higher figure. I am minded to accept the disputed items from the schedule in the Applicant's favour. Both parties paid £14,000.00 into the joint account. In addition, I accept that the Applicant spent a great deal of time arranging for and supervising work to the Property and the appropriate consents. Therefore, although on such figures it would seem that the Respondent paid slightly more, in my view a fair share in respect of beneficial ownership would be fifty per cent.

14. I should make it clear that my findings in respect of beneficial ownership do not decide any issue concerning equitable accounting – any adjustments to be made concerning the period after the relationship ended – which usually arise, if at all, on a sale or buy-out. I do not wish to encourage further dispute between the parties, but on the other hand I should make the scope of this decision clear.

Conclusion

15. Accordingly, I will direct that effect be given to the Applicant's application.

Costs

16. At present, I can see no reason why I should not order that the Respondent pay the Applicant's costs, as he has been the successful party. I direct that by 4.00 pm on 11 December, the Applicant's solicitors should send to the Tribunal and the Respondent details of their legal fees and counsel's fees since the date of the reference from the Land Registry, together with copies of supporting invoices and counsel's fee notes. The Respondent's solicitors will then have the opportunity to provide written submissions in response, presenting any reasons on which they rely as to why the Respondent should not pay the Applicant's costs, and any issues with the details provided by the Applicant's solicitors. Such submissions should be sent to the Tribunal and Applicant's solicitors by 4.00 pm on 8 January 2018. Should the Applicant's solicitors with to serve a short reply, they may do so by 4.00 pm on 22 January. I will then deal with a final determination on the issue of costs and the amount to be paid should I remain of the view that the Respondent should make payment.

Dated this 27th day of November 2017

Colin Green

BY ORDER OF THE TRIBUNAL