

[2017] UKFTT 0345 (PC)

REF/2015/0842

**PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

TIYEB HUSSAIN

APPLICANT

and

RIANA BIBI

RESPONDENT

Property Address: 6 Erin Close, Oldham OL9 8NU

Title Number: MAN55039

Before: Judge Michell

Sitting at: Alexandra House Manchester

On: 1st February 2017

Applicants Representation: Mr Khan, counsel, instructed by The Legal Company
Respondent Representation: In person

DECISION

APPLICATION FOR ENTRY OF A RESTRICTION TO PROTECT A BENEFICIAL INTEREST ARISING UNDER A RESULTING TRUST- WHETHER APPLICANT HAS A BENEFICIAL INTEREST IN THE PROPERTY-

Cases referred to

Stack v Dowden [2007] UKHL 17

O'Kelly v. Davies [2014] EWCA Civ 1606

1. Mr Toyeb Hussain claims to have a beneficial interest in 6 Erin Close, Oldham. He claims that the interest arises under a resulting trust because some of the money used to buy the property was his money. He says that the money to buy 6 Erin Close belonged in part to him because it was the proceeds of sale of another house, 24 Hathersage Street, Oldham ("Hathersage Street") and that he had a beneficial interest in Hathersage Street under a constructive trust. He says that the constructive trust in Hathersage Street arose because it was the common intention of himself and the legal owner, Mrs Riana Bibi that he should have an interest and he provided part of the purchase price and carried out and paid for works to that property.
2. Mr Hussain and Mrs Bibi were in a relationship. They went through an Islamic wedding ceremony in October 2001 but were not legally married because the necessary formalities to make a legally recognised marriage were not complied with. After their wedding, Mr Hussain and Mrs Bibi lived together with family and after about 2 months, they moved together into a flat rented from Great Places Housing Association. The flat was in Mrs Bibi's name and Mr Hussain says that Mrs Bibi received housing benefit to pay for the rent. Mr Hussain says that he and Mrs Bibi's brother looked for a house to be bought for Mr Hussain and Mrs Bibi to live in and found Hathersage Street. Mr Hussain went to see the house with Mrs Bibi initially and they went back on a second occasion, accompanied this time by Mrs Bibi's mother and her brother. There was some discussion of the purchase price on this occasion but Mr Hussain was not present for all of that discussion. The purchase price was agreed directly with the vendor on a later occasion when Mrs Bibi went to see the house without Mr Hussain. Mr Hussain said that Mrs Bibi told him that the purchase price agreed was £10,000 but that later she told him it was £11,500.
3. Mr Hussain said that the house needed a lot of work. He said that it was old with plaster falling off the walls. It needed a kitchen and new bathroom fittings.

4. Mr Hussain said that the purchase of the house was funded as to £10,000 with money provided as a gift by his uncle, Mr Ashfaq Ahmed. Mr Hussain said that his uncle handed him the money in cash at Mr Hussain's mother's house on an occasion when Mrs Bibi was not present and that Mr Hussain then took the money to the flat where he was living with Mrs Bibi. He said that Mrs Bibi took the cash with his consent and used it to pay for the house. Mr Hussain did not know the source of the £1,500 needed for the balance of the purchase monies.

5. Mr Ashfaq Ahmed gave evidence. He confirmed that he gave Mr Hussain £10,000 to buy the house. He had seen the house and said that it required complete renovation. It needed a kitchen, new flooring and plastering.

6. Mrs Bibi's case as to how the purchase was funded is quite different. She said that the purchase monies were made up of the following:

- (i) £5,000 "dowry" provided by her mother;
- (ii) £5,000 gift from her grandfather;
- (iii) £1,000 borrowed from her brother; and
- (iv) £500 of her own money.

Mrs Bibi said that the monies from her mother and grandfather were paid by cheque to the solicitors acting on the purchase. Mrs Bibi's mother and grandfather have since died. The solicitors acting on the purchase are no longer in practice. Mrs Bibi did not keep any records of the purchase of the Hathersage Street house after she bought 6 Erin Close. Mrs Bibi did not provide any supporting evidence as to the source of the purchase monies.

7. Mr Hussain said in his oral evidence that the house was purchased in Mrs Bibi's sole name at the suggestion of Mrs Bibi's mother and brother. Mr Hussain said that the idea was that if the house was in Mrs Bibi's sole name and she was on social security benefits then they would not need to pay Council Tax. Mr Hussain said that he was not happy with the proposal because he thought all their property should be held jointly because they were married. However, after lengthy discussions taking place over a few days, he gave in and agreed to the house being bought in Mrs Bibi's name.

8. Mrs Bibi said that the house was not in joint names because Mr Hussain was not paying for the house. Mrs Bibi said that she knew the house was in an area due for redevelopment as part of an urban renewal scheme.

9. Mr Hussain said that the renovation works to the house took six months. Work was done by a builder called "Dave". Mr Hussain paid Dave cash in hand at the rate of £30 a day and paid for food and cigarettes for him (amounting to a further £20 a day). Mr Hussain estimated that Dave worked for an average of 5 days a week for 20 weeks. Mr Hussain said that he bought materials, though he and Mrs Bibi paid jointly. Mrs Bibi paid £1,000 for lights for the house. Mrs Bibi helped pay for the kitchen units and they were installed by a relative of Mrs Bibi. Mr Hussain paid £100 for a cheap bathroom suite. Mrs Bibi paid for the carpet. Mr Hussain paid for a new boiler. Some things were paid for using Mrs Bibi's credit card and Mr Hussain gave Mrs Bibi money towards paying the credit card bills.

10. Mrs Bibi said that the works took no more than one month. Her plan was just to make the house habitable for 3 or 4 years because after 3 or 4 years it would be acquired for the purposes of the redevelopment scheme. Mrs Bibi said that it would have made no sense for works to have been undertaken that took six months. She was paying rent and Council Tax for the flat where she and Mr Hussain lived. The work to the house was kept to a minimum and it was a small house. A new kitchen was fitted. Dave did some plastering when plaster came off after wallpaper was stripped. Dave laid flooring. The flooring was carpet purchased as an end of roll and strip laminate flooring costing £5 a square metre. Mrs Bibi accepted that Mr Hussain helped out with some of the work.

11. Mrs Bibi's case is that Mr Hussain did not and could not pay for the works because he was not working. Mrs Bibi says that she was working full time for Park Cakes and doing a lot of overtime. Mr Hussain worked for Park Cakes for only one month and he did not work again until he opened a shop in 2006. Mrs Bibi said that she borrowed money to pay for the works.

12. Mr Hussain said that Mrs Bibi worked for Park Cakes only for one year and that otherwise, she had been drawing Social Security benefits. Mr Hussain said that at the time he and Mrs Bibi went to live at the housing association flat, he was working at McDonalds. He said that he worked for 3 months for Park Cakes before the purchase of Hathersage Street.

Later he worked for his uncle in his property development and insurance underwriting businesses. There was a period of 2 years when he was not working because he had an accident but after that period, he bought an off-licence business. Later in about 2008/2009 he was in partnership running a takeaway food business.

13. Mr Ahmed's evidence was that he went to the house once while the works were being done and he visited the house when the works were completed. The works were so extensive that they could not have been completed in 3 weeks. He thought that the works took six months or so to complete.

14. The parties moved into Hathersage Street and lived there as a family. Their first child was born in 2004.

15. Hathersage Street was acquired under a Compulsory Purchase Order for £40,000 plus £4,000 relocation compensation in 2006. On about 14th August 2006 Mrs Bibi purchased Erin Close for £73,500. The purchase monies were paid using the money paid under the Compulsory Purchase Order for Hathersage Road and £22,500 borrowed from Oldham Council. Mrs Bibi said the balance was funded by money provided by her brother, her grandmother, her uncle and herself. Mr Hussain and Mrs Bibi were living apart at the time Erin Close was purchased. Mr Hussain said that he did not make any contributions expressly for the purchase of Erin Close but he said that Mrs Bibi had access to money left in Hathersage Street that he and Mrs Bibi were saving up; money he described as money in a "committee". He thought there was about £5,000 in the house when he left.

16. Mr Hussain and Mrs Bibi's relationship resumed and they had a second child who was born in 2007 and a third child who was born in 2009. They finally separated in 2014.

Law

17. Mr Hussain will establish a beneficial interest in Erin Close under a resulting trust if he can show that he provided part of the purchase monies. It is not Mrs Bibi's case that if Mr Hussain provided part of the purchase monies for Erin Close, he did so as a gift to her. In order to show a contribution to the purchase price of Erin Close, Mr Hussain seeks to show that he had a beneficial interest in Hathersage Street so that part of the monies paid under the compulsory purchase order belonged beneficially to him. Mr Hussain will establish a

beneficial interest in Hathersage Street if he can show the existence of a common intention constructive trust. Mr Hussain must prove that it was the common intention, agreement or understanding of Ms Bibi and himself that he should have an interest in the property and that he acted in reliance on that agreement as by making the payments and/or carrying out works to the property in the reasonable belief that he was acquiring an interest in the property. Mr Hussain can prove the common intention either by proving that there was an express assurance, promise or agreement or by proving facts from which a common intention is to be inferred. In *Stack v Dowden* [2007] UKHL 17 the House of Lords held that it is possible to infer a common intention from the whole course of dealing between the parties. That case was concerned on the facts with a claim by one of two legal and beneficial owners to an enlarged share and not with the question whether a person had any interest at all. However, the approach of considering the whole course of dealings between the parties in order to determine whether one had an interest in the house of which the other was the sole legal owner was followed by the Court of Appeal in *O'Kelly v. Davies* [2014] EWCA Civ 1606

18. In *Stack v Dowden* Lord Walker said

"In those cases (it is to be hoped, a diminishing number) in which such an examination is required the Court should in my opinion take a broad view of what contributions are to be taken into account. In *Gissing v Gissing* [1971] AC 886, 909G, Lord Diplock referred to an adjustment of expenditure "referable to the acquisition of the house." "Referable" is a word of wide and uncertain meaning. It would not assist the development of the law to go back to the sort of difficulties that arose in connection with the doctrine of part performance, where the act of part performance relied on had to be "uniquely referable" to a contract of the sort alleged (see *Steadman v Steadman* [1976] AC 536). Now that almost all houses and flats are bought with mortgage finance, and the average period of ownership of a residence is a great deal shorter than the contractual term of the mortgage secured on it, the process of buying a house does very often continue, in a real sense, throughout the period of its ownership. The law should recognise that by taking a wide view of what is capable of counting as a contribution towards the acquisition of a residence, while remaining sceptical of the value of alleged improvements that are really insignificant, or elaborate arguments (suggestive of creative accounting) as to how the family finances were arranged.

His Lordship continued,

“That summary was directed at cases where there is a single legal owner. In relation to such cases the summary, with its wide reference to "the whole course of dealing between them in relation to the property", is in my opinion a correct statement of the law, subject to the qualifications in paras 61 ff of Lady Hale's opinion. I would only add that Chadwick LJ did not refer to contributions in kind in the form of manual labour on improvements, possibly because that was not an issue in that case. For reasons already mentioned, I would include contributions in kind by way of manual labour, provided that they are significant”.

19. Lady Hale said at paragraph 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.”

20. In *Jones v. Kernott* Lord Walker and Lady Hale at paragraph 52 said of a case where the house is purchased in the name of one party only

“The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above.”

21. In respect of Mr Hussain’s claim to a beneficial interest in Hathersage Street, it is necessary for me to consider

(i) whether there was an express assurance, promise or agreement that Mr Hussain should have a beneficial interest in that property;

(ii) whether facts have been proved from which a common intention of the parties that Mr Hussain should have a beneficial interest can be inferred; and

(iii) whether Mr Hussain acted in reliance on the common intention by making payments or doing work on the property in the reasonable belief that he had or was acquiring an interest.

If Mr Hussain proves that he has some beneficial interest in Hathersage Street then it will follow that part of the monies paid under the compulsory purchase order belonged to him. As that money was used in buying Erin Close, Mr Hussain will have acquired a beneficial interest in Erin Close under a resulting trust. It is not necessary for Mr Hussain to establish the extent of that interest to succeed in his application for the entry of a restriction.

Findings

22. I find that the purchase of the Hathersage Street house was funded as to £10,000 with money provided by Mr Hussain’s uncle. Both Mr Hussain gave evidence about the circumstances in which Mr Hussain provided the money. Mr Ahmed was not in the hearing room when Mr Hussain gave his evidence and yet there were remarkable similarities in their evidence. I consider that this was because they were both telling the truth. This money was provided as a gift to Mr Hussain. I find that Mr Hussain did some works to the Hathersage

Street house. The evidence is not clear enough to enable me to find who paid for what elements of the building works. Neither party produced documentary evidence to show when and where they were working and what they earned. Given the length of time that has passed since Hathersage Street was passed, I do not consider such evidence as Mr Hussain and Mrs Bibi gave as to when and where they were working to be reliable. Neither party produced any documentary evidence showing particular payments being made for particular elements of the building work. Doing the best I can on the limited evidence available, I find that Mr Hussain and Mrs Bibi both contributed towards the cost of the works. I consider that both would have had some money, whether derived as wages earned from employment or as social security benefits. There is no evidence as to the extent to which the works enhanced the value of the property though I accept that it needed a new kitchen, a replacement bathroom suite, floor coverings, a new boiler and central heating and for walls to be plastered. All those works would in the normal course be expected to enhance the value of a property.

23. It is not clear to me that there was any express assurance, promise or agreement that Mr Hussain should have a beneficial interest in Hathersage Street. Mr Hussain did not give clear evidence of a particular conversation at a particular time from which it should find that there was an express assurance, promise or agreement. However, I am satisfied that it was the common intention of the parties that Mr Hussain should have some interest. Such a common intention is to be inferred from the circumstances. Both parties considered themselves at the time to be married, having gone through a religious marriage ceremony. They were living together at the time of the purchase of the house and had been married only for a matter of months. The house was intended by them both to be the matrimonial home. Mr Hussain obtained a gift from his uncle of money to fund the purchase and used that money towards the purchase. He provided almost 90 per cent of the purchase monies. Mr Hussain then helped with the building works to get the house ready for himself and Mrs Bibi to move in. Those circumstances taken together lead to the inference that Mr Hussain was to have a beneficial interest in Hathersage Street.

24. Mr Hussain acted on the common intention that he was to have an interest in Hathersage Street by providing money towards the purchase price and by working on the house. Accordingly, I find that Mr Hussain had a beneficial interest in Hathersage Street.

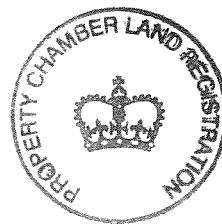
25. Part of the money paid for Hathersage Street under the Compulsory Purchase Order belonged to Mr Hussain because it represented part of the proceeds of sale of a property in which he had a beneficial interest. Those monies were then used in the purchase of 6 Erin Close. As monies belonging to Mr Hussain were used towards the purchase of 6 Erin Close, Mr Hussain acquired a beneficial interest in 6 Erin Close under a resulting trust.

26. I shall direct the Chief Land Registrar to give effect to the application of Mr Hussain to register a restriction in Form A on the title to 6 Erin Close as if Mrs Bibi had not objected to the application.

27. My preliminary view is that Mrs Bibi must pay Mr Hussain's costs of the proceedings to be assessed. Mr Hussain has won and the usual order is that costs follow the event. Any party who wishes to submit that some different order ought to be made as to costs should serve written submissions on the Tribunal and on the other party by 5th April 2017.

BY ORDER OF THE TRIBUNAL

Michael Michell



DATED THIS 21ST MARCH 2017