

[2017] UKFTT 0735 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2016/0250

BETWEEN

Richard Charles Stuart Bradbury

Applicant

and

Jacqueline Ann Summerfield

Respondent

**Property Address: 6 Guernsey Close, Congleton
Title Number: CH335300**

Judge Colin Green

ORDER

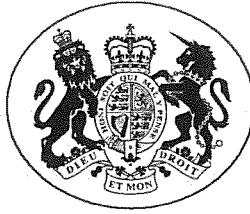
It is ordered that the Chief Land Registrar give effect to the Applicant's application as if the Respondent's objection had not been made.

Dated this Monday 14 August 2017

Colin Green

BY ORDER OF THE TRIBUNAL





[2017] UKFTT 735 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2016/0250

BETWEEN

Richard Charles Stuart Bradbury

Applicant

and

Jacqueline Ann Summerfield

Respondent

**Property Address: 6 Guernsey Close, Congleton
Title Number: CH335300**

Judge Colin Green

**At: Manchester Employment Tribunal
On: 22 May 2017**

Applicant Representation: In Person

Respondent Representation: In Person

DECISION

Introduction

1. The Respondent is the registered proprietor of 6 Guernsey Close, Congleton (“the Property”) with freehold title absolute, under title number CH335300. She and the Applicant were in a relationship and cohabited at the Property from 2003 to 2015. On

26 November 2015, the Applicant applied using form RX1 for registration of a restriction in Standard Form II against the title on the basis that he had a beneficial interest in the Property under a constructive trust by reason of works carried out and his financial contributions during the period of cohabitation. The Respondent objected and the application was then referred to the Land Registration Division of the Property Chamber. The issue I must decide is whether the Applicant has a beneficial interest under a constructive trust. At the hearing, I heard evidence from both parties, who were given the opportunity to cross-examine and challenge any areas in dispute.

History

2. Large parts of the history were common ground, or at least uncontested. The Respondent has lived at the Property since 1986 when it was in the joint names of herself and her ex-husband, Mark Summerfield. They had two children, who have lived at the Property throughout. The Respondent and Mr. Summerfield were divorced in 2003 and in 2004 she bought out his interest in the Property with the assistance of a secured loan from Yorkshire Bank Home Loans Limited, who took a charge on the Property. The Respondent was registered as the sole proprietor on 8 November 2004. Yorkshire's charge was registered on the same date.
3. The relationship between the parties began in November 2002. The Applicant moved from Scarborough to live with the Respondent and her children in January 2003. Their relationship ended in May 2015 when he moved out of the Property although there had been difficulties for some time before that.
4. The parties' respective employment histories are as follows. Initially, the Applicant was unemployed when he moved to Congleton. In the summer of 2013 he became self-employed as a fishmonger but his drawings were negligible. Eventually, he carried out casual electrical work for a neighbour's business, earning about £1,300.00 per month (gross). In 2004 or 2005 he managed a pub on a self-employed basis for a period of about eighteen months, making about £1,800.00 per month. Thereafter, he began work for the neighbour's business on a full-time basis, while attending a two-year college course to qualify as an electrician. He earned about £1,200.00 to £1,500.00 per month, but after a year the business became insolvent and the Applicant began working for JMS Retail Concepts Limited in the business of shop fitting. From

March 2008 to the present he has worked as a contractor earning about £1,400.00 per month, rising to about £2,000.00 per month at the time the relationship ended.

5. In 2003 the Respondent was working for Hays PLC, a staffing and recruitment agency, as head of the corporate accounts division. Her remuneration was a combination of a basic wage and commission, and she earned between £5,000.00 and £5,500.00 per month. This had dropped however, when she was made redundant in 2011, and she received a redundancy payment of £22,000.00. In October 2011, she began work for a new business as a contractor, earning about £5,000.00 per month. In July 2012, she obtained a position with a new recruitment company, earning £5,700.00 per month, but was made redundant in 2014. She obtained new employment in the summer of 2015, after the relationship had ended. The Respondent has received no financial assistance from her ex-husband.

6. It is not disputed that substantial works were carried out at the Property, in two stages, largely funded by two unsecured loans from the Halifax. The first was a joint loan for £25,000.00 in February 2008, which was paid into the Applicant's bank account with the Halifax. The second loan was obtained in the Applicant's sole name in February 2012 for £19,950.00, part of which was used towards repayment of the balance of the first loan. There is no dispute that the works were carried out. In respect of phase one, during the period March to September 2008, the works are summarised in an "invoice" from Ideal Home Improvements dated 26 June 2008: a block paved drive, conservatory, ten windows and a front door, under floor heating, various tiling and the supply of a kitchen and appliances, totalling £31,700.00. In addition, there are labour costs of £2,050.00, including payment to the Applicant's two sons, bringing the total to £33,750.00. Phase Two (February to April 2012), this consisted of the installation of a new bathroom by the Applicant and his son, new flooring in two bedrooms, the staircase and the hall, a new handrail for the stairs and new oak doors throughout the house. The sum total is £8,477.00, which the Applicant says is more than the net amount of the second loan. It is also contended that certain works were carried out by the Applicant prior to phase 1: hard wood flooring on the lounge, a new fireplace and fitting, and a new boiler., at a cost of £2,750.00. The Applicant also contends that he made the following additional contributions: project managing the works for two

weeks in 2005, some electrical work as payment for plastering at the Property, and nine days' worth of labour in 2012.

7. Although, apart from some small items which are not material in the present context, the Respondent does not challenge the work done, she does not accept that the amount spent is as contended for by the Applicant, and has concerns over the lack of supporting documentation, and believes that some of the loan monies were used by the Applicant for his own business purposes. The invoice from Ideal Home Improvements in particular is regarded as an unreliable guide to what was actually paid, as the individual items are not broken down.
8. The Applicant's explanation in cross-examination was that the work carried out was by family, friends and people he knew in the trade, that he was frequently being charged "mates rates" and making payments in cash. Therefore, although he can identify cash withdrawals from his bank account, it is impossible to match these to specific works. He says there are some receipts for items he purchased, but he left these at the Property when he moved out and they have not been returned. He denies having used any of the loan monies other than for the purposes of works to the property as he estimates that total amount he spent exceeds the net amount of the loans. On balance, I accept this explanation, and that the Applicant used the loan monies roughly as he claims. I also accept that some additional work was carried out at the Property, though it is not necessary for me to put a precise monetary value on this.
9. The position in respect of household finances was as follows. It is accepted that the Applicant made all the repayments on the first and second loans, which were £406.50 per month for the first loan and £408.38 per month for the second. There was a joint account with the Yorkshire Bank, which was funded entirely by the Respondent, from which the Yorkshire mortgage was paid, at £385.84 per month. The amount currently outstanding on the mortgage is in the region of £147,000.00. All other outgoings were paid from the joint account, although the Respondent accepted in cross-examination that the Applicant paid the utility bills, council tax and for certain furnishings.

10. There is also an issue over a motor vehicle, but as I pointed out to the parties, ownership of the vehicle is something that falls outside the scope of the Applicant's application to the Land Registry.

The law

11. The relevant legal principles concerning constructive trusts are set out in paragraphs 16 and 17 of the judgment of Sales L. J. in *Capehorn v. Harris* [2015] EWCA Civ 955 (the parties were provided with a copy at the outset of the hearing):

*"16. The legal framework was common ground between the parties at trial and again before us on appeal. In relation to assets acquired by unmarried co-habitees or partners, where an asset is owned in law by one person but another claims to share a beneficial interest in it a two stage analysis is called for to determine whether a common intention constructive trust arises. First, the person claiming the beneficial interest must show that there was an agreement that he should have a beneficial interest in the property owned by his partner even if there was no agreement as to the precise extent of that interest. Secondly, if such an agreement can be shown to have been made, then absent agreement on the extent of the interest, the court may impute an intention that the person was to have a fair beneficial share in the asset and may assess the quantum of the fair share in the light of all the circumstances: see *Oxley v Hiscock* [2004] EWCA 546, [2005] Fam 211; *Stack v Dowden* [2007] AC 432; *Jones v Kernott* [2011] UKSC 53.*

17. There is an important difference between the approach applicable at each stage. At the first stage, an actual agreement has to be found to have been made, which may be inferred from conduct in an appropriate case. At the second stage, the court is entitled to impute an intention that each person is entitled to the share which the court considers fair having regard to the whole course of dealing between them in relation to the property. A court is not entitled to impute an intention to the parties at the first stage in the analysis."

12. Dealing with the first stage, in the present case when the parties began their cohabitation the Respondent was already an owner of the Property along with her husband, whom she bought out in 2004. Although this is not a case of a property having been purchased in the name of one party at the time of an existing relationship, there is no reason why a common intention constructive trust cannot arise in respect of a subsequent relationship. As regards an express agreement, the Applicant's evidence was that shortly after he and the Respondent began living together, and on a couple of occasions afterwards, she said that she would speak to the bank about putting the

Property into joint names, but eventually told him it was impossible, due to his self-employed status. The Respondent denies any such conversations, but I am minded to accept the Applicant's account. I do not consider that he would have made substantial financial contributions to the Property other than on the basis that he had an interest in it, and that it is most unlikely that he would have done so by way of a gift to the Respondent, as she contends.

13. The Respondent points out that if it had been her intention that she and the Applicant should be joint owners, she could have arranged this at the time she bought out her ex-husband and the Property was put in her name. In my view, the Respondent did not do this, either because of the Applicant's self-employed status, or because she was wary of having a property in joint names and going through the same thing she had recently undergone with her ex-husband. Had she made it clear that she did not want the Applicant to have an interest in the Property, matters would be different, but I must reach conclusions as to the parties' common intention based on what they said and did, not the private content of their minds. Having accepted the Applicant's account of what was said, I conclude that there was a common intention to share ownership on which the Applicant relied in the way set out above.
14. Alternatively, if there was no express understanding, I consider that I can imply a common intention from their conduct in respect of the works, how they were funded, and the general financial arrangements between the parties.

Quantification

15. Although it is only necessary to find whether there is a beneficial interest 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.
16. On the basis of the above findings, there was no express agreement as to the size of the parties' shares. The Applicant submitted that ownership in joint names means fifty-fifty ownership, but I do not consider that such an inference can be made. Without an express agreement on shares, I must consider what would be a fair share

having regard to the parties' course of dealings in relation to the Property during their twelve-year relationship and the difference in their earnings, as set out above, and the fact that the Respondent already owned a half-share when the relationship commenced. This is not a precise arithmetical exercise, but in my view quantifying the Applicant's interest at fifteen per cent of the equity in the Property is a just result.

17. I should add a proviso to the above. I see from the Respondent's mortgage statement, provided on the day of the hearing, that there was a further mortgage advance of £30,000.00 on 22 September 2016, after the relationship had ended. I do not know the purpose of this advance and the issue was not canvassed before the parties at the hearing. It is possible, however – and I put it no higher – that there will have to be some further adjustment between the parties in respect of that further advance by way of what is known as equitable accounting. This is not something I can do, but it is an issue on which both parties might have to take legal advice when they instruct solicitors in the future, as they must almost inevitably do, if only to arrange a buy-out. I should make it clear however, that my finding as to the extent of the parties' shares has no effect on any further adjustments which might have to be made, post-separation.

Conclusion

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

Costs

19. 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. Although the Applicant acted by solicitors in respect of his Statement of Case, at some point he ceased to instruct solicitors. In principle, he would be entitled to recover sums in respect of any work done, and any expenses and losses incurred in respect of these proceedings since he has acted in person, see: s. 1(1) of the *Litigants in Person (Costs and Expenses) Act 1975*. Accordingly, if the Applicant wishes to seek an order for costs, I direct that by 4.00 pm on 29 August, he send to the Tribunal and the Respondent written (preferably typed) details of his solicitor costs since 13 April 2016 (the date of the reference from the Land Registry) together with copies of supporting invoices, and if he wishes to claim costs as a litigant in person, details of the time he has spent on the proceedings

since he has been acting in person and any expenses he has incurred, and any losses in working on the proceedings.

20. If a costs application is made, the Respondent will then have the opportunity to provide written submissions in response, presenting any reasons she wishes to rely on as to why she should not pay the Applicant's costs, and any issues she has with the details provided by the Applicant. She should send such submissions to the Tribunal and the Applicant by 4.00 pm on 12 September. 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 Monday 14 August 2017

Colin Green

BY ORDER OF THE TRIBUNAL

