[2018] UKFTT 326 (PC)

REF/2016/0031

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Rachid Ben Youssef

APPLICANT

and

Ann Nguyet Hoang

RESPONDENT

Property Address: 62 Brookhouse Road Farnborough and Store GU14 0BT and 78 Cripley Road, Farnborough GU14 9QA
Title Number: HP390513 & HP258498

ORDER

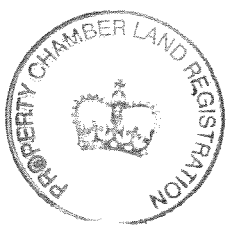
IT IS ORDERED as follows:

The Chief Land Registrar is to give effect to the Applicant's application dated 28 August 2015 for the entry of restrictions insofar as it relates to 78 Cripley Road Farnborough as if the Respondent's objection had not been made, and to cancel the application insofar as it relates to 62 Brookhouse Road Farnborough.

Dated this 29 May 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL



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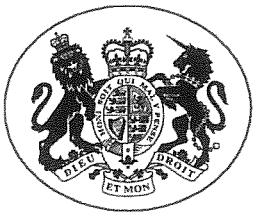

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Title Number: HP390513 & HP258498

Applicant Representation:	Mr Paul Brennan instructed by Wheelers LLP
Respondent Representation:	Mr Michael Paget instructed by HE Thomas & Co

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DECISION

KEYWORDS: common intention constructive trust – beneficial interest – contributions to purchase price

Cases referred to:
Capehorn v Harris [2015] EWCA Civ 995

Jones v Kernott [2011] UKSC 53

Lightfoot v Lightfoot-Brown [2005] EWCA Civ 201

Lloyd's Bank v Rosset [1991] AC 107

Oxley v Hiscock [2004] EWCA Civ 546

Stack v Dowden [2007] UKHL 17

1. The Respondent, Miss Anh Nguyet Hoang, is the registered proprietor of 78 Cripley Road and 62 Brookhouse Road, both in Farnborough. The Applicant, Mr Rachid Ben Youssef, has made an application to HM Land Registry for the entry of a restriction against the title to each property on the basis that he has a beneficial interest in both. The Respondent objected to his application and the dispute has been referred to the Land Registration Division of the First-tier Tribunal pursuant to section 73(7) of the Land Registration Act 2002.
2. A hearing took place before me on 16 and 17 May 2018 at Alfred Place in London; the Applicant was represented by Mr Paul Brennan of counsel and the Respondent by Mr Michael Paget of counsel, and I am grateful to both for their helpful arguments.
3. I have directed the registrar to give effect to the application insofar as it relates to 78 Cripley Road as if the Respondent's objection had not been made, and to cancel the application insofar as it relates to 62 Brookhouse Road. In the paragraphs that follow I give my reasons for that direction.

The law

4. The Applicant claims an interest in the two properties under a common intention constructive trust, or a resulting trust, or by virtue of an equity arising from proprietary estoppel. There is no dispute between the parties as to the applicable law.
5. For the Applicant to be found to have an interest under a common intention constructive trust there must have been an agreement between the parties, on which the Applicant relied to his detriment, that he would have an interest in the property; if there was no express agreement I can infer one from the circumstances; but it must be a real agreement (*Lloyd's Bank v Rosset* [1991] AC 107; *Stack v Dowden* [2007] UKHL 17;

Capehorn v Harris [2015] EWCA Civ 995 at [17]). There has been controversy over the circumstances that will support such an inference but it is uncontroversial that a direct financial contribution can do so (although it does not automatically do so, and will not do so if there is some other reason for their being made: *Lightfoot v Lightfoot-Brown* [2005] EWCA Civ 201 is an example). If there was an agreement, express or inferred, that he should have a beneficial interest but no agreement as to the size of his interest then I can impute to the parties an intention that he should have whatever would be fair (*Oxley v Hiscock* [2004] EWCA Civ 5476; *Stack v Dowden* [2007] UKSC 17; *Jones v Kernott* [2011] UKSC 53).

6. That is a summary distillation of the authorities but, as I say, they are not in dispute. As will be seen, I have found that there was a common intention or agreement between the parties as to the ownership of 78 Cripley Road that the Applicant would have an interest in the property. It was probably an express agreement, but if I am wrong about that I infer one from the circumstances of their setting up home together and the Applicant contributing a substantial sum towards the deposit for the purchase of the property. That contribution is also the Applicant's detrimental reliance upon the agreement. I have found that there was no agreement between them as to the extent of that share, and indeed that they probably each had very different ideas about it, but I impute to them an intention that the Applicant would have a fair share in proportion to his contribution; the circumstances are such that it would not be fair to go further than that.
7. A resulting trust is presumed to arise when one party contributes to the purchase of another's property; it is now well-established that a resulting trust is very unlikely to arise in a domestic situation. I have not given separate consideration to the Applicant's claim to an interest in 78 Cripley Road on the basis of a resulting trust in the light of my finding of a common intention constructive trust.
8. Finally, an equity by estoppel will arise if the Respondent has assured the Applicant that he will have an interest in the property and he has relied upon that assurance to his detriment. Again, I have given no separate consideration to the Applicant's claim in proprietary estoppel so far as 78 Cripley Road is concerned because there is nothing that could give him any additional claim in proprietary estoppel beyond the interest to which he is entitled under the common intention constructive trust.
9. I have found that the Applicant cannot make out a claim to an interest in 62 Brookhouse Road on any basis, as I explain below.

The evidence about 78 Cripley Road

10. The Applicant's evidence is contained in his Statement of Case and in a witness statement made on 24 November 2016. He asked permission to rely upon a further witness statement that he made on 8 May 2015, in which he commented on the disclosed conveyancing file for the purchase of 78 Cripley Road. I refused permission because it was made very late, and because it appeared at that stage that there was no need for him to rely on it as evidence since it consisted largely of commentary on the conveyancing file which was more appropriately made in submissions or in cross-examination.
11. However, it was referred to later in the hearing and it became clear that it contains a significant statement about the source of funds for the purchase of 62 Brookhouse Road; it became the subject of argument at the close of the hearing. As I explain below, my findings about the purchase of 62 Brookhouse Road are based partly upon the inconsistency between the Applicant's witness statement of 24 November 2016 and what he said later in his statement of 8 May 2018 having seen the conveyancing file.
12. The Respondent produced no witness statements from anyone else. This inevitably attracted adverse comment. On the second day of the hearing, after both parties had closed their cases at the end of the afternoon of 16 May, Mr Paget asked to call evidence from Mr Pham, the Respondent's brother, on the basis that he would be able to give valuable evidence as to the source of the deposit paid for 78 Cripley Road. Mr Paget confirmed that he had not had any discussion with Mr Pham and did not know what he was going to say. Mr Brennan for the Respondent naturally expressed concern about the unfairness of an ambush at this late stage. I took the view that whatever evidence Mr Pham were to give, after the close of both parties' cases and at a point when the Respondent knew exactly what she needed him to say, would have no probative value, and so I refused the application to call him.
13. I should say at the outset that I did not find either of the parties to be a reliable witness. Each has given an account of the relevant events that is at best incomplete. I take the view that the Respondent has lied about the duration of the parties' relationship and cohabitation, and the Applicant's change of story about the funding of the deposit for 62 Brookhouse Road demonstrates his tendency to make up explanations in response to what is said to him. Accordingly my findings of fact are based where possible on independent corroborating evidence, although it is not available on all points.
14. It is convenient to discuss the evidence about 78 Cripley Road under three headings: the parties' relationship, the Applicant's claimed financial contributions, and their common intention as to the property's ownership.

The evidence about the parties' relationship

15. The Applicant says that he met the Respondent in late 2010 and started to live with her in summer 2011 when she was pregnant with their daughter, Sophie. At that stage the Respondent was living in shared rented accommodation at 64 Rectory Road, Farnborough, with her two older children. The Applicant says that he was working as a lorry driver. He says that he and the Respondent bought 78 Cripley Road in December 2012 intending it to be their family home. He says that they lived together until April 2015 when he left 78 Cripley Road.
16. In support of this the Applicant points to an invoice from PC World in December 2012 supplying white goods for 78 Cripley Road, addressed to the Applicant at that address, and to invoices and delivery notes from a number of suppliers in 2013 and 2014 for goods, including one addressed to Mr and Mrs Benyoussef at 78 Cripley Road.
17. The Respondent s evidence was that the relationship began in 2011 and ended in 2012. At the hearing her evidence in cross-examination as to when she met the Applicant was confused; she initially said she met him in summer 2011 but eventually conceded that she must have met him before she became pregnant and therefore said it must have been spring 2011. She said that at that stage she was still in a relationship with her previous partner and that the relationship with the Applicant – despite the pregnancy – did not begin until the summer. She says that they did not start living together until after she bought 78 Cripley Road.
18. I reject the Respondent's evidence about the commencement of the relationship and of their cohabitation. I do so because of the confusion and evasiveness with which she replied to questions about the start of the relationship, and because the conveyancing file relating to 78 Cripley Road includes a photocopy of the Applicant's driving licence, which gives his address as 64 Rectory Road. Her explanation that she did not know about the address on the driving licence and that the Applicant was just visiting is not plausible. I accept the Respondent's evidence that they met in late 2010 and started living together in the spring of 2011.
19. As to the duration of the relationship, the Respondent says that it ended in 2012 shortly after Sophia was born. Her explanation for the invoices and delivery notes which show that the Applicant accompanied her to buy furniture and paid for some of it was, if I understood correctly, that they were still doing some things together because they had a child together, and that whenever he paid for anything she paid him back. She also

says that six monthly payments to her of £400 from November 2014 to April 2015, seen on his bank statements, were payments of rent.

20. I make no positive finding as to when the relationship ended, because in view of the fact that the parties continued to live at the same address it is unlikely to have had a clear end point. I find that the relationship did not end in 2012 because the Applicant continued to live at 78 Cripley Road so it is unlikely that there was a complete breakdown so long before he left. The B&Q invoice from 2013 indicates that they described themselves as "Mr and Mrs Benyoussef" well after the Respondent says they had split up. Equally I think it improbable that they remained a happy couple until his departure in April 2015, when he says that the Respondent called the police. It is likely that there was a deterioration in the relationship before then. At best the relationship lasted from late 2010 until some time in 2014.

The evidence about financial contributions to 78 Cripley Road

21. The Applicant says that he made direct contributions to the purchase price of 78 Cripley Road, substantial contributions to its extension and refurbishment, and also towards bills and running costs, and to furniture and fittings for the Respondent's business premises. His evidence for these financial contributions is woefully incomplete; so is the Respondent's evidence about the same events. One of the reasons for that is that both dealt habitually in cash. The trouble with dealing in cash so that payments cannot be evidenced is that when the parties to those dealings need proof of what they have done it cannot be found; both parties are to some extent hoist by their own petard.
22. The Applicant's claimed financial contributions fall into three groups; I go through the groups of payments in turn and make findings about them on the balance of probabilities on the basis of the evidence or its absence.
23. First, the Applicant says that he put about £40,000 towards the deposit on the property. He was working as a lorry driver at the time. He obtained funds by way of loans from people in Tunisia, his country of origin. The loans were arranged by his brother. He explained that because of the political instability in Tunisia many people hold sterling in cash and are glad to get it out of the country. He says that he borrowed £27,000 from Mr Abdelhafid Ben Chaabane in July 2011, on the basis that he would repay it with £3,00 interest, and £3,000 from Mr Lotfi Balloumi in September 2011.
24. The Applicant has produced an undated brief witness statement from Mr Chaabane confirming that he lent £27,000, with no mention of interest, and an email from Mr Balloumi dated 9 February 2016 confirming the loan of £3,000 (and the £5,000

mentioned in paragraph 41 below). Neither mentions a repayment date. None says that the Applicant has repaid him anything although the Applicant says that he made a repayment to Mr Balloumi in 2015. Neither attended the hearing; the Applicant says this is because they are both in Tunisia.

25. The Applicant goes on to explain that the money he borrowed was given to him in cash – some he brought back from Tunisia, on some occasions it was handed to him in England. For example, he said (at the hearing and not in his written evidence) on one occasion £4,000 was handed over to him in a coffee shop in Farnborough by someone with whom his brother put him in touch.
26. In order to get all this cash into a bank account the Applicant says that he and the Respondent drove around her contacts in the Vietnamese community in London and Slough who gave her cheques for cash. The Applicant says – and it has not been disputed – that he does not speak Vietnamese; he says he does not know the people who wrote the cheques and cannot contact them to call evidence from them, although he remembers a Mr Anwar and Miss Malik who ran a shop in Slough. The cheques were paid into her account with Lloyds Bank numbered 15339868, which the Applicant says was a joint account opened for this purpose. He says that the Respondent also had some cash savings which were exchanged for cheques which could be paid into the bank.
27. He says he also made separate payments to the Respondent's account in July, August , September, October and November 2011, the latter three by standing order, amounting to £5,600 altogether.
28. In paragraph 16 of his witness statement of 24 November 2016 the Applicant says that he and the Respondent paid £10,000 of the mortgage debt in 2013. He does not say how much of that he paid.
29. I turn to the Respondent's evidence about the funding of 78 Cripley Road.
30. She says in her Statement of Case (she made no separate statement) that the Applicant was unemployed while 78 Cripley Road was being purchased, but conceded at the hearing that he was working as a driver. She says, and can demonstrate from the bank statements, that the account numbered 15339868 was in her sole name until it was transferred into joint names in May 2012. She says the transfer was made to enable the Applicant to pay child support for Sophia but that he did not do so and so the account was closed.
31. In her written evidence the Respondent says nothing about how the deposit was financed; the conveyancing file reveals that she told her solicitor that she was borrowing

money from family and friends. At the hearing she said that the cheques paid into her accounts prior to the purchase of 78 Cripley Road were gifts and loans to her from friends and family. She has produced cheques, paying-in slips and bank receipts for a number of cheques, and below is a schedule of them. The paying-in slips show payments in to both the account numbered 15339868 and the Respondent's account numbered 15339460; I have not been able to match cheques to paying-in slips and the parties have not attempted to do so.

Cheques disclosed:		£
1.8.11	Mr M H Pham	3,000
4.8	Miss J Zhong	2,500
4.8	Miss J Zhong	2,500
5.8	Mr T Dong	3,000
9.8	Mr T Dong	2,000
10.8	Mr S Anwar	2,500
15.8	Mr V A Nguyen	1,000
16.8	Mr V A Nguyen	2,000
17.8	Mr S Anwar	2,500
17.8	Miss N Malik	2,500
20.8	Miss T M Nguyen	3,000
20.8	Mr D Chu	2,000
20.8	Miss V Chu	3,000
8.9	Mr T Nguyen	4,000
20.9	Mr T Chu	3,000
22.9	Mrs Tra TT Hoang	2,500
28.9	Miss N T	3,000
7.10	Mr T Dang	3,000
19.10	Miss N Huyhn	2,000

		49,000

32. In December 2012 the sum of £79,260 was transferred from the account numbered 15339868 to the account numbered 15339460 and then to the Respondent's solicitor to pay the deposit for 78 Cripley Road.
33. The Respondent points out the weakness in the Applicant's evidence. None of the lenders attended the hearing. No evidence is given as to their whereabouts save for the assertion that they are in Tunisia. The idea that people whom the Applicant does not know would make him unsecured loans without even a written agreement strains

credulity. The Applicant's brother has not attended and nothing is said as to his whereabouts.

34. The Respondent says that the £5,600 represents the repayment of loans made by her to the Applicant to buy a car and to pay rent in Newbury.

35. Whilst the Applicant's evidence about the funding of the deposit is weak, the Respondent's is even weaker. She says that she raised the deposit from friends and family who gave her gifts and loans, and that that is what the cheques represent. None of those friends and family made a witness statement so her account has even less corroboration than the Applicant's. She asked to call her brother, as I have explained, but his evidence given at that late stage would have had no value.

36. The Respondent had no explanation for the payment of the cheques into the account numbered 15339868, which eventually became a joint account, rather than into her account numbered 15339460 which was always in her name alone, followed by the transfer of the £79,260 into 15339460 from which the deposit was eventually paid. She says it did not matter which account she paid the cheques into. It was suggested for the Applicant that in fact she paid them into 15339868 because she told the Applicant that it was a joint account. There is insufficient evidence to make a positive finding about that but certainly the shuffling of money between accounts is another unexplained part of her story.

37. The most important point is that if these cheques were gifts from friends and family it is inexplicable that in a number of cases the same person writes more than one cheque. Mr Anwar for example makes two payments seven days apart; Miss Zhong makes two payments on the same day. This is inconsistent with the Respondent's account; it is actually consistent with the Applicant's evidence that he and the Respondent went round her Vietnamese contacts exchanging cash for cheques, and the pattern of cheques is very much what might be expected if that is what happened and care was being taken to keep everything under £5,000.

38. I therefore find on the balance of probabilities that the Applicant did contribute towards the deposit on 78 Cripley Road, and that his contribution was borrowed in cash and exchanged for cheques in the way he describes. He says he paid around £40,000; the sums he has mentioned amount to £35,600 and that is what I find he paid.

39. The Applicant has produced no evidence to show that £10,000 of the mortgage debt has been paid off, nor what proportion of that sum he paid, and therefore my finding as to his contribution to the purchase price is limited to the £35,600 just mentioned.

40. Second, the Applicant says that after 78 Cripley Road was purchased, building work was undertaken. An extension was built for £45,000; and £9,000 and £2,000 were spent on a kitchen and cooker. "This work was paid for in cash, the Applicant and the Respondent both making contributions". Then £10,000 was spent on the bathroom, in case, and another £3,000 and £25,000 for the shower and the building of a utility rom. The Applicant does not say how much he paid.
41. He says that to finance his contribution he borrowed £5,000 from Mr Balloumi (again mentioned in Mr Balloumi's witness statement), £2,000 from Mr Boutriga (confirmed by him in a very brief email to the Applicant 10 February (no year)) and two sums of 15,000and 17,000 Euros from Mr Jamel Ketati in September 2014, confirmed by him in a letter of 15 February 2016 from an address in Paris. None of these witnesses attended and I can place no reliance on what they say. The Applicant says that he visited Tunisia in 2013 and 2014 and brought money back with him, Mr Ketati having paid the money to the Applicant's brother who passed it to him and to others who were coming to the UK.
42. The Applicant says he provided other monies from his wages as he was employed as a driver throughout this period.
43. The Respondent, on the other hand, says that the Applicant paid £12,000 to redecorate the kitchen and to convert a living room into a bedroom for lodgers. She denies that he paid anything else.
44. Neither the Applicant nor the Respondent has any evidence of having spent anything on the refurbishment. Even if the loans from Tunisia were made, the only evidence the Applicant has produced which he says is evidence of his actually making payments for the refurbishment is a handwritten note of sums of money all less than £4,000, mentioning various dates in 2012. The paper does not refer to refurbishment or indeed to anything at all.
45. The Applicant has the burden of proof and there is no evidence on the basis of which I can find that he made any contribution towards extension and refurbishment except for the £12,000 that the Respondent agrees he paid.
46. Third, the Applicant claims to have bought goods for 78 Cripley Road and for the Respondent's business premises at 81 Queensmead. He has produced receipts for specific items (£5,000 to Furniture Village (undated), £1,786 to B& Q invoiced to "Mr and Mrs Benyoussef dated 9 April 2013, £859 to Jewsons in July 2014(if I have correctly deciphered a very faint copy), and a bank statement showing a payment to

Homebase for replacement doors at 78 Cripley Road for £728.95. He says he helped her pay a fine for employing illegal immigrants at her nail and beauty salon. He also says that he contributed to the household outgoings and to the cost of childcare for the Respondent's elder daughter; and I have noted at paragraph 19 above that for a six month period from November 2011 he paid £400 per month into the Respondent's account.

47. The Respondent says that the household items and office equipment were paid for by her although the Applicant went with her to buy them. She says that on one occasion he signed the delivery note because he was at home when he was not working.

48. She denies having been fined for employing illegal immigrants. The Applicant has provided no evidence to substantiate these serious accusations and I do not believe that he made this payment.

49. It is likely that the Applicant paid for or contributed to at least some of the household items. It would have been perfectly appropriate for him to do so while he was living at the property and apparently making no other contribution to the household, whatever the state of the relationship between the two of them. Even if he made all the payments he says he made, that is no more than one would expect in the circumstances and certainly not a contribution towards the acquisition of the property itself. The same goes for the payments of £400 per month to which I referred above (paragraphs 19 and 46); these are likely to have contributions towards the running costs of the household, even if the Respondent regarded them as rent.

50. In summary I have found that the Applicant has shown that he contributed £35,600 towards the deposit on 78 Cripley Road but has not demonstrated on the balance of probabilities that he contributed anything else towards the acquisition of the property.

The evidence about the parties' intentions as to the ownership of 78 Cripley Road

51. The Applicant's evidence is that he and the Respondent "decided to purchase a property which would become their family home" (statement of Case paragraph 2) and that although it was bought in her sole name "she confirmed to the Applicant at all material times that the property was their jointly owned property". He has provided no details of these conversations nor any clue as to what "at all material times" might mean. In his witness statement he says that the Respondent "confirmed that I was to have an interest in this property" while 78 Cripley Road was being purchased, and that had she not done so he would not have made the contributions that he did.

52. He explains that the purchase was made in the Respondent's sole name because she insisted upon it. He also says that his credit rating was not sufficient for him to be acceptable to the mortgagee.
53. In his witness statement at paragraph 20 he says that the Respondent referred to all the properties (the two houses and the business premises) as belonging to them both.
54. The Applicant has sought disclosure of the conveyancing file for 78 Cripley Road and it has been produced. It shows that the Respondent alone instructed solicitors and that she gave no hint that there was a joint purchaser. The Applicant's only involvement in the process was to sign a waiver so as to postpone any interest he might have to that of the mortgagee. (It does not of course say whether he had an interest in the property or not and no significance can be attached to the terms of the waiver itself – the suggestion that he would have stated that he had an interest in that document if he had had one is unrealistic.)
55. The Respondent denies that there was any agreement or understanding between them as to the joint ownership of 78 Cripley Road. Her case is that this was a short relationship with no commitment on the Applicant's part; he did not want her pregnancy to continue; there was no joint bank account for the saving of deposit monies; he made no payments towards the mortgage or for child support; in short there was nothing from which a common intention or agreement could be inferred.
56. However, in the light of my finding that the Respondent did make a substantial contribution towards the deposit I find that there was a common intention or agreement between the parties that 78 Cripley Road would belong to them both. Such a contribution goes beyond the call of friendship or of an intimate relationship and is inexplicable except on the basis that the Applicant was to have an interest, and therefore I find that that was in fact (I am inferring not imputing) the parties' agreement.
57. I appreciate that whilst the parties did have that agreement it may not have been the Respondent's intention. It is suggested that she would have told her solicitor if she had really intended to share ownership with the Applicant. That may be so. The Applicant does say that she insisted on having the purchase in her own name and it may be that she did not intend to stand by what she had agreed with him. But it is well-established that an insincere promise or agreement may nevertheless found a constructive trust.

Conclusions as to the common intention constructive trust of 78 Cripley Road

58. I conclude on the basis of the parties' conduct at the time of purchase that it was intended that the Applicant would have an interest in what was to be their family home, bought

at a time of happiness when they were expecting their first child, and that in reliance on that agreement the Respondent contributed £35,600 to the purchase price.

59. I have found that the Applicant has not proved that he made any further contributions to the parties' joint acquisition of the house or to its improvement.

60. I asked counsel for both parties at the hearing if they wanted me to express a view about the quantum of a beneficial interest if I were to find that the Applicant had an interest. They both said that their clients wanted me to do so.

61. The Applicant says nothing in his Statement of Case or his witness statement about what he thought his interest was. In cross-examination he said it was agreed he would have a half share. The Respondent of course denies that there was any interest at all but Mr Paget suggested that if I found that the Applicant had an interest it should represent no more than a 5% share in the property, but he could not provide any explanation for that figure.

62. The Applicant's contribution to the deposit represented about 15% of the cost of the property. He made a £12,000 contribution to refurbishment later. I have found that he made no further contributions. In cross-examination he confirmed that he had never made any contribution towards the mortgage payments on 78 Cripley Road, nor any contribution towards child maintenance. I have accepted that he bought some household items, and I have accepted that his payments of £400 per month from November 2014 to April 2015 represented a contribution towards the household expenses, but taken together that represents a meagre contribution towards the family's living and housing costs over the years, bearing in mind that the Applicant as Sophia's father was responsible for her support.

63. I am aware that the criteria on the basis of which I can infer or impute an agreement as to the quantum of the Applicant's interest are wide-ranging, as set out by Lady Hale in paragraph 69 of *Stack v Dowden* [2007] UKHL 17. One of the factors is the nature of the parties' relationship. I note that this couple kept their finances separate and that the Applicant made very little contribution to the cost of the family's living and housing. In the circumstances I would regard a fair share to be no more than the proportion of the cost of the house that he contributed to the deposit, namely 15%, and that is my finding on quantum. I see no reason to suppose that that intention changed later when he contributed towards the cost of refurbishment; in particular there is no evidence that he contributed more than the parties might have regarded as appropriate in the light of his share in the beneficial ownership.

The Applicant's claim to an interest in 62 Brookhouse Road

64. The Respondent bought 62 Brookhouse Road in November 2012, on a buy-to-let basis.

65. The Applicant's claim to an interest in it is based on his claim that the deposit was funded with the income from 78 Cripley Road of which he says (and I have found) that he was the joint owner. In his Statement of Case at paragraph 7 he says "Five paying lodgers moved into the property with the Applicant and the Respondent and the rental income was used substantially to provide a deposit for the purchase of 62, Brookhouse Road."

66. In his witness statement of 24 November 2016 he says at paragraph 16:

> "We then took in five paying lodgers at 78 Cripley Road who were paying £1,000 to £1,200 per month. With the payments from the lodgers, we were able to save up a deposit to buy 62 Brookhouse Road, Farnborough on 6 November 2012 for £135,000, an interest only mortgage being obtained in the sum of £102,515."

67. The Applicant does not say that he made any additional contribution to 62 Brookhouse Road, save that at paragraphs 16 of his statement he says he and the Respondent paid £10,000 of the mortgage debt later and that it was converted to an interest-only mortgage. He has produced no evidence about that payment nor any information as to how much of it he paid and therefore I cannot base any finding of fact on that evidence.

68. Nor does he say that any agreement or understanding was reached about it, save that in his witness statement he says that the property was intended to be an investment to enhance the family income (witness statement paragraph 16; Statement of Case paragraph 7). His claim is essentially that the use of rental income, jointly owned by the parties by virtue of their joint ownership of 78 Cripley Road, means that he was also the joint owner, in the same proportions, of 62 Brookhouse Road.

69. In her Statement of Case the Respondent says that the deposit was financed "with the help of a personal loan from the respondent's friend". This is, again, unsupported by any detail let alone by any witness evidence other than her own. She denies that the property was agreed to be a family investment.

70. On the other hand, the Applicant's explanation of the source of the deposit in his witness statement is at odds with what he says in his statement of 8 May 2018, which is as follows:

> "The respondent states that 62 Brookhouse Road was purchased with the assistance of a personal loan from her friend. She provides no information as to

who this friend was. At this time we were providing accommodation and food for various individuals who worked either in the nail bar that the respondent was then managing or a nail bar that her brother, who lived in Exeter, owned. I believe that her brother may have advanced money which was used as a deposit for the purchase of 62 Brookhouse Road. However, this was in effect payment for our accommodating some of the workers in the nail bars and providing food for them."

71. That is wholly different from his previous story that rent was paid by lodgers, and from his statement that "we were able to save up". The statements cannot both be true. Since the Applicant's and the Respondent's accounts are at least similar – the Respondent refers to a friend rather than her brother - I find as a fact that the deposit for 62 Cripley Road was not paid out of savings made by the Applicant and Respondent from payments made to them by their lodgers by way of rent.
72. Any payment made by a third party in respect of the lodgers is very different from rent paid directly, and such a payment is by no means obviously the fruit of the jointly-owned property. The details of the arrangement remain a mystery. I conclude that the Applicant was not telling the truth in his earlier witness statement, because his account is contradicted in his own later statement, and I find that he has no interest in 62 Brookhouse Road.
73. Accordingly there is no basis for the Applicant's claim to an interest in 62 Brookhouse Road.

Conclusion

74. The Applicant has a 15% interest in 78 Cripley Road, and no interest in 62 Brookhouse Road. He is entitled to the entry of a restriction on the title to 78 Cripley Road but not on the title to 62 Brookhouse Road and I have directed the registrar accordingly.
75. As the Applicant has been successful as to one property and not as to the other my preliminary view is that I should make no order for costs, but if either party wishes to make an application they may of course do so in accordance with the directions given by the Tribunal by letter enclosing this decision.

Dated this 25 May 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL