[2019] UKFTT 0104 (PC)

REF NO 2017/0573

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002

B E T W E E N:

(1) GRAHAM WOLLOFF
(2) ADRIAN DANTE
AS JOINT TRUSTEES IN BANKRUPTCY OF ALEXANDER JAMES DHILLON

Applicants

And

JAGRUTI KANTILAL PATEL

Respondent

Property address: 120 SPRINGFIELD DRIVE, ILFORD IG2 6QT

Title number: EGL420321

Before: Judge David Taylor
Alfred Place, London - 10th & 11th December 2018

Representation: The Applicants were represented by Mr Richard Bowles of Counsel, and the Respondent was represented by Mr Jonathan Upton of Counsel.

ORDER

THE TRIBUNAL ORDERS as follows:-

1. The Chief Land Registrar shall cancel the Applicants application dated 15th February 2017 to enter a Form J restriction against registered title number EGL420321.
2. For the avoidance of doubt, the application which is referred to in paragraph 1 of this Order is that which was first made on Form RX1 dated 24th November 2016, by Gerald Maurice Krasner and Joanne Sara Wright as trustees in bankruptcy of Alexander James Dhillon.

BY ORDER OF THE TRIBUNAL

David Taylor

PROPERTY CHAMBER LAND REGISTRATION

DATED 17th January 2019

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DECISION

1. The Respondent is one of two registered proprietors of the freehold estate in 120 Springfield Drive, Ilford, London IG2 6QT ('the Property'). The other registered proprietor is Alexander James Dhillon.

2. Mr Dhillon was made bankrupt on the 19th October 2016, and on the 10th November 2016 Gerald Maurice Krasner and Joanne Sara Wright were appointed as his trustees in bankruptcy. By an application made on Form RX1 dated 24th November 2016 ('the Application'), those trustees applied to HM Land Registry to enter a restriction in standard Form J against the registered title to the Property. That form of restriction is one which prevents registration of a disposition of a registered estate without a certificate signed by the applicant for registration, or their conveyancer, that written notice of the disposition was given to the trustee in bankruptcy. For reasons that appear to be associated with an earlier erroneous cancellation of the Application by HM Land Registry, the Application is taken to have been made on the 15th February 2017 for the purpose of rule 15 of the Land Registration Rules 2003.

3. There were two objections to the Application. The first was made by the Respondent in her letter to HM Land Registry dated the 9th January 2017. The second was made by Mr Dhillon in his letter to HM Land Registry dated 10th January 2017. For the reasons that I have described, the effective date of both objections has been treated by HM Land Registry as having been the 15th February 2017. Both objectors asserted that the Property had at all material times been wholly beneficially owned by the Respondent.

4. The resulting disputes were referred to the First Tier Tribunal for determination under s. 73(7) of the Land Registration Act 2002. The two matters were consolidated by an order made on the 10th July 2017, but following Mr Dhillon's failure to file a Statement of Case in accordance with the Tribunal's directions, the Chief Land Registrar was directed, by an order made on the 19th February 2018, to cancel his objection to the Application. Accordingly, the only matter that is left for me to determine arises out of the Respondent's objection to the Application.

5. On the 29th January 2018, the Applicants were appointed as trustees of Mr Dhillon's bankrupt estate in place of the original trustees. The Applicants are entitled, by rule 18 of the Land Registration Rules 2003, to continue the Application. Accordingly, by an

order made on the 14th June 2018, they were substituted as parties to these proceedings, in place of Mr Dhillon's original trustees in bankruptcy.

The Issue Before the Tribunal

6. Pursuant to the tribunal's directions, the parties have exchanged detailed statements of case and witness statements, which are focussed upon the question whether or not Mr Dhillon enjoyed a beneficial interest in the Property at the time of his bankruptcy. Until receipt of the parties' skeleton arguments, it appeared that that was the central question that would need to be determined by me. Indeed, as recently as on the 29th November 2018, the Applicants' solicitors filed an agreed list of issues within which the first issue between the parties was described as being '*[h]as a beneficial interest in 120 Springfield Drive, Ilford IG2 6QT ("the Property") vested in the Applicants following their appointment as trustees in the bankruptcy of Alexander James Dhillon?*'

7. However, in the skeleton argument which he prepared for trial (as developed in oral submissions made on the first morning of the hearing) Counsel for the Applicants submitted that the Tribunal's jurisdiction was limited, and that it could not determine the issue which I have described.

8. It follows that there are two issues that I need to determine:

    a. whether I have jurisdiction to determine the substantive issue which I have described in paragraph 6 (above), and;

    b. if so, that substantive issue.

Jurisdiction

The Applicant's Submissions on Jurisdiction

9. It may help if I begin by setting out the reasons for Mr Bowles' submission that the Tribunal does not have jurisdiction to resolve the issue which I described in paragraph 6 (above). The summary which I set out in paragraphs 13 to 18 (below) is taken from his skeleton argument.

10. In that skeleton argument, Mr Bowles first drew attention to the statutory scheme which is created by the 2002 Act, and by the Insolvency Act 1986, to protect the property which forms the bankrupt's estate for the benefit of a bankrupt's creditors. He pointed out that the effect of s.306(1) of the Insolvency Act 1986 is that '*the bankrupt's estate vests immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee*', and that this vesting takes place automatically, without the need for any conveyance assignment or transfer: see s.306(2).

11. Next, Mr Bowles drew attention to s.86(4) of the 2002 Act which provides that:

'*As soon as practicable after registration of a bankruptcy order under the Land Charges Act 1972, the registrar must in relation to any registered estate or charge which appears to him to be affected by the order, enter in the register a restriction reflecting the effect of the Insolvency Act 1986.*'

12. Mr Bowles emphasised two points about this provision. The first was that entry of a restriction is mandatory in any case in which it appears to the register that a registered estate is affected by the bankruptcy order. The second is that the statutory obligation to enter the restriction exists independently of any application having been made. Accordingly it was Mr Bowles' submission that, in the present case, the Chief Land Registrar should have entered a restriction in the register reflecting the effect of the Insolvency Act 1986, and that he should have done so automatically and without need for any application to be made.

13. Next, Mr Bowles drew attention to the fact that, in a case in which registrar has entered a restriction pursuant to his duty under s.86(4) of the 2002 Act, he (the registrar) will then give notice of the entry to the proprietor of the registered estate or registered charge to which it relates. Mr Bowles submitted that rule 167 of the Land Registration Rules provides that the restriction, once it has been entered, can only be cancelled in three situations,[1] namely where:

    a. the bankruptcy order has been annulled;

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[1] There is, in fact, a fourth situation introduced by amendments made by the Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016/481 Sch.2(1) para.8(4)(a) (April 6, 2016), viz. where the adjudicator employed by the Insolvency Service has refused to make a bankruptcy order.

b. a petition is dismissed or withdrawn; or

c. the bankruptcy proceedings do not affect the land

and he accordingly submitted that '*[t]hese rules do not provide a general right to challenge the restriction being entered against this Property.*'

14. Rule 167 of the Land Registration Rules, Mr Bowles submits, '*accords with the scheme of the 1986 Act. Section 363 of the 1986 Act provides that every bankruptcy is under the control of "the Court" (being the High Court and County Court, as per s.375 of the 1986 Act) and it is the Court (as defined) that has power to:- "decide all questions of priorities and all other questions, whether of law or fact arising in any bankruptcy."*' Mr Bowles then goes on to emphasise a distinction between the question whether property falls within a bankrupt's estate, and the question whether property appears to fall within the bankrupt's estate. He suggests that the former is a question for the court, and that the Tribunal can only possibly be concerned with the latter, because that is what s. 86(4) of the Land Registration Act 2002 says. Accordingly, he submits, if the statutory scheme operates properly:

'*the [entry of the] restriction protects property which appears to belong to the bankrupt. The court will then determine whether it does belong to the bankrupt. This will be determined within the bankruptcy proceedings, typically within an application for possession and sale of a property brought by trustees in bankruptcy. If the property does fall within the bankruptcy estate, then it has been protected by virtue of the restriction for the benefit of the bankrupt's creditors ... However, if it does not, then the restriction can be removed pursuant to the LRR 2003.*'

15. Mr Bowles further submitted that, in the present case, things have not been dealt with in accordance with the statutory scheme. He said that there had been no automatic registration of a bankruptcy restriction under s.86(4), as a result of which the Applicants (or, more accurately, the former trustees) have had to issue their application to enter a restriction. In these circumstances Mr Bowles submitted that I should approach the application to enter the restriction by analogy with the position as if the statutory scheme had operated properly, and accordingly that I should direct the registrar to enter the restriction if it appears that the Property falls within Mr Dhillon's bankruptcy estate. He sub-

mitted that I should not concern myself with the substantive question whether Mr Dhillon in fact owned any interest in the Property at the time of his bankruptcy, and indeed that the Tribunal has no jurisdiction to do so.

My Decision on Jurisdiction

16. I have reached the conclusion that Mr Bowles' submissions on the issue of jurisdiction are wrong, for the following principal reasons (upon which I elaborate, below):

    a. the provisions of s.86(4) of the Land Registration Act 2002, which are the foundation of Mr Bowles' submissions, have no application in a case in which a bankrupt is a joint proprietor (as opposed to being a sole proprietor) of a registered estate in land;

    b. (even in a case in which the provisions of s.86(4) do apply, they will not limit the jurisdiction of the Tribunal in any case in which an interested party applies to alter the register by removing a restriction that has been entered pursuant to that provision, or to cancel the restriction, on the ground that the bankrupt did not enjoy a beneficial interest in the registered estate against which the restriction had been entered);

    c. the appropriate form of application, to protect for the benefit of Mr Dhillon's creditors the beneficial interest which the Applicants assert has been vested in them in the present case, is an application to enter a restriction in Form J;

    d. on any application to enter a restriction in Form J the jurisdiction of the Tribunal depends upon the extent of the matter which has been referred to it for determination under section 73(7) and 108(1) of the Land Registration Act 2002. On the facts of the present case, the matter which the Tribunal is required to determine plainly includes the question whether or not Mr Dhillon ever enjoyed a beneficial interest in the Property.

i) The Statutory Schemes for Protecting a Bankrupt's Estate

17. The statutory scheme for registration of bankruptcy restrictions which is described in s. 86(4) of the Act is one which applies in circumstances which are different to those in the present case. This is not a case in which matters have been dealt with otherwise than in accordance with the statutory scheme. On the contrary, they have been dealt with as the legislature intended.

18. Like Mr Bowles, I take as my starting point s.306(1) of the Insolvency Act 1986, which provides that '*[t]he bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.*'.

19. The next question which needs to be considered is what is comprised in the bankrupt's estate. The answer is provided by s.283 of the Insolvency Act 1986, subsection 1 of which provides that a bankrupt's estate comprises all property belonging to or vested in the bankrupt at the commencement of the bankruptcy. However, s.283(3) contains an exception which makes clear that subsection 1 does not apply to property held by the bankrupt on trust for any other person. Thus, in a case such as the present, in which the bankrupt is one of two joint proprietors of a registered freehold estate, there is no automatic vesting of the legal estate by operation of 306(1). All that vests is the bankrupt's beneficial interest in the property in question (assuming that he has one). The editors of Ruoff & Roper on Registered Conveyancing explain the reason for this at paragraph 34-021:

> *'First, as joint legal proprietor of the registered legal estate his interest exists as a unity with that of the other registered co-owner. It cannot therefore be said that the property is "belonging to or vested in him" so as to form part of the bankrupt's estate. He cannot be divested of his interest in the legal estate, as this would involve a severance of the legal joint tenancy, which is not possible in law. Second, as joint legal proprietor of the registered legal estate, he will typically hold it on trust for another person. Consequently, (and even if he had been the sole legal proprietor of the registered legal estate) his legal interest would have been exempted from the definition of the bankrupt's estate.'*

20. Section 86 of the Land Registration Act 2002, upon which Mr Bowles relies, is headed 'Bankruptcy' and it contains provisions which are designed to ensure that, in any case in which it appears that a registered estate or charge is affected by a pending bankruptcy petition, or by a bankruptcy order, appropriate entries are made in the register to protect the interests of creditors. Section 86(4), upon which Mr Bowles particularly relies, pro-

vides that after registration of a bankruptcy order under the Land Charges Act 1972, the registrar must, in relation to any registered estate or charge which appears to him to be affected by the order, enter in the register a restriction reflecting the effect of the Insolvency Act 1986.

21. In cases in which s.86(4) is engaged, the form of the restriction which the registrar is required to enter is prescribed by s.166 of the Land Registration Rules 2003. Assuming (as in the present case) the bankruptcy order to have been made by the court, the bankruptcy restriction must be in the following form:

'BANKRUPTCY RESTRICTION entered under section 86(4) of the Land Registration act 2002, as the title of [the proprietor of the registered estate] or [the proprietor of the charge dated ..... referred to above] appears to be affected by a bankruptcy order made by the [name] Court (Court Reference Number.....) against [name of debtor] (Land Charges Reference Number WO.....).

[No disposition of the registered estate] or [No disposition of the charge] is to be registered until the trustee in bankruptcy of the property of the bankrupt is registered as proprietor of the [registered estate] or [charge].".

22. As is apparent from the mandatory wording of the restriction, the effect of entry of the restriction is to prohibit registration of dispositions until the trustee in bankruptcy has been registered as proprietor.

23. The words which I have underlined, in paragraph 20 (above) are important, because they make clear that the provisons of s.86(4) can only operate in a case in which the bankrupt (or the prospective bankrupt) is the sole proprietor of the registered estate or charge, because it is only in cases of sole proprietorship that there is an automatic vesting of the legal estate so as to affect the registered estate or charge.

24. In cases of joint proprietorship, the position is different. Because of the operation of s. 283(3) of the Insolvency Act 1986, all that vests in the trustee in bankruptcy is the bankrupt's beneficial interest in property. This statutory transmission of the bankrupt's beneficial interest takes place behind the registration curtain, and does not affect the registered estate. The provisions of section 86(4) are therefore not engaged at all.

25. The result of this is that, in a joint proprietorship case, the joint legal proprietors retain their powers of disposition. This gives rise to a risk of dissipation of the proceeds of sale, part of which might form part of the bankrupt's estate, and this risk needs to be addressed. As Ruoff & Roper explain in Registered Conveyancing at paragraph 34.022:

'The consequence of the joint legal proprietors' retaining their powers to deal with the legal estate is that they that they are in a position to dispose of it and dissipate the money proceeds which belonged to the bankrupt's estate. To guard against this risk, the trustee in bankruptcy may apply for a standard restriction in Form J to be entered against their registered title. It provides:
"No disposition of the [choose whichever bulleted clause is appropriate]
- *registered estate, other than a disposition by the proprietor of any registered charge registered before the entry of this restriction,*
- *registered charge dated [date] referred to above, other than a disposition by the proprietor of any registered sub-charge of that charge registered before the entry of this restriction,*

is to be registered without a certificate signed by the applicant for registration or their conveyancer that written notice of the disposition was given to [name of trustee in bankruptcy] (the trustee in bankruptcy of [name of bankrupt person]) at [address for service]".

Once the trustee in bankruptcy has been notified in this way, he will be aware that the debtor's beneficial interest, which forms part of the bankrupt's estate, attaches to any proceeds of the disposition, rather than to the registered estate or charge itself.'

26. The effect of a Form J restriction is, therefore, different to the effect of a bankruptcy restriction. A bankruptcy restriction prevents registration of disposition until the trustee in bankruptcy has been registered as proprietor. By this means it prevents an unlawful disposition of the registered estate by the bankrupt between the date of the bankruptcy order and that date upon which the trustee is registered as proprietor in his place. A Form J restriction, on the other hand, serves only to ensure that the trustee in bankruptcy is alerted to a disposition of the registered estate by the joint registered proprietors, so that he can look to them to account for any proceeds of sale. This operation of the Form J restriction is described by way of an illustration in Land Registry Practice Guide 34 (entitled 'Personal Insolvency', updated 6th April 2017) at paragraphs 5.1 to 5.2.

27. In the present case Mr Dhillon and the Respondent were at all material times the joint proprietors of the registered estate in the Property. This was not, therefore, a case in which s.86(4) could have been engaged. The application which was made by the former trustees in the present case, to enter a Form J restriction, was the correct form of application to make in circumstances in which those trustees claimed that there had been vested in them Mr Dhillon's beneficial interest in the Property.

28. The 'statutory scheme' which Mr Bowles described, and the provisions of s.86(4) of the 2002 Act in particular, were at the forefront of his submission that the Tribunal's jurisdiction was limited to deciding whether or not it appeared that the registered estate was affected by the bankruptcy order. But, for the reasons that I have explained, this is not a case in which s.86(4) could have been engaged, and so the foundations for Mr Bowles' submissions that the Tribunal's jurisdiction is so limited falls away.

ii) The Tribunal's Jurisdiction on Trustees' Application to Enter a Form J Restriction

29. The result of my analysis so far is that the application which has been pursued by the Applicants in the present case, to enter a Form J restriction, is the appropriate form of application to pursue in circumstances in which (a) the bankrupt is a joint proprietor of a registered estate and (b) the applicants, as his trustee in bankruptcy, contend that there has vested in them by operation of law a beneficial interest in the registered estate. The next issue which needs to be considered is the extent of the Tribunal's jurisdiction in a case in which an application for a Form J restriction is made, but opposed.

30. The Land Registration Act 2002 contains provisions which are of general application to restrictions. They are contained in sections 40 to 47 of the Act.

31. Section 42(1) of the Land Registration Act 2002 provides that '*[t]he registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so for the purpose of (a) preventing invalidity or unlawfulness in relation to dispositions of a registered estate, (b) securing that interests which are capable of being overreached on a disposition of a registered estate or charge are overreached, or, (c) protecting a right or claim in relation to a registered estate or charge.*'

32. By section 43(1) of the Land Registration Act 2002 it is provided that '*a person may apply to the registrar for entry of a restriction under s.42(1) if ... (c) he ... has sufficient interest in the making of the entry.*'

33. Rule 93 of the Land Registration Rules 2003 provides that:

'The following persons are to be regarded as included in s.43(1)(c) of the Act:

...

(j) a trustee in bankruptcy in whom a beneficial interest in registered land held under a trust of land has vested, and who is applying for a restriction in Form J to be entered in the register of that land.'

34. Subject to irrelevant exceptions, s.73(1) of the Land Registration Act 2002 provides that '*anyone may object to an application to the registrar.*' If, as in the present case, an objection is made, then it is provided by s.73(5) that the registrar '*may not determine the application until the objection has been disposed of.*' (There is an exception in respect of objections which the registrar considers to be groundless). By s.73(7) it is provided that '*If it is not possible to dispose by agreement of an objection to which subsection (5) applies, the registrar must refer the matter to the First-tier Tribunal.'* The functions of the First-tier Tribunal include, by s.108(1) of the 2002 Act, '*determining matters referred to it under section 73(7).*'

35. The question which therefore falls for consideration is what is '*the matter*' which the Tribunal is, by s.108(1) of the 2002 Act, required to determine. The answer is, in my view, provided the decision of Briggs J in **Jaysinghe v. Liyanage [2010] EWHC 265 (Ch)**. In that case a Deputy Adjudicator to HM Land Registry had made a decision, following a two day trial, in which he directed cancellation of Kusum Jayasinghe's application to register a restriction against a property in London. Ms Jayasinghe had applied to enter the restriction on the ground that she was the sole beneficiary under a resulting trust of the property in her favour. That application had been opposed by Mr Liyanage, who alleged that Ms Jayasinghe's case was a complete fabrication. After a 2 day trial the Deputy Adjudicator concluded that the Applicant's case was indeed a fiction, and he directed the Chief Land Registrar to cancel her application.

36. On appeal to the High Court, Ms Jayasinghe argued that the Deputy Adjudicator should not have embarked upon a trial of the issue whether she had any beneficial interest in the property. He should have ascertained merely whether she had an arguable claim to that effect and directed that her claim should be considered by a competent court, with the restriction for which she had applied remaining in place in the meantime.

37. Briggs J considered the statutory provisions to which I have already referred, and also the detailed procedural provisions of The Adjudicator to HM Land Registry (Practice and Procedure) Rules 2003. He then said this:

14. The procedural code regulating the discharge by the Adjudicator of functions conferred by the Act is set out in The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 (SI 2003 No 2171). Those rules ("the Practice and Procedure Rules") expressly incorporate the Overriding Objective, in a form which, although modified to suit the particular functions of the Adjudicator, broadly corresponds with that to be found in the Civil Procedure Rules: see paragraph 3. Viewed as a whole, the Practice and Procedure Rules contain a procedural code plainly designed to enable the Adjudicator to resolve, where necessary, disputes about substantive rights, rather than merely to conduct a summary process designed to ascertain whether there exists an arguable claim. They include, for example, power to give detailed directions, power to require statements of case, power to consolidate proceedings, to add or substitute parties, to require disclosure and witness statements, power to conduct site inspections and power to compel the attendance of witnesses.

...

17. It is ... apparent from section 73(5) to (7) that determination of the application for the restriction, where there has been an objection, requires the objection to be "disposed of". The disposal of the objection is therefore an integral part of the matter referred to the Adjudicator under section 73(7).

18. It follows from that analysis that the precise nature of the Adjudicator's function on any particular reference under section 73(7) will be significantly affected by an examination of the precise restriction sought, the nature of the claim or right thereby sought to be protected, and the basis of the objection which has led to the reference. It is plain

from section 110(1) that the Adjudicator is given a broad discretion, on a reference under section 73(7), whether to decide "a matter" himself, or to require it to be decided in a competent court, and it is equally plain from the panoply of procedural powers given to the Adjudicator under the Practice and Procedure Rules that a decision to decide a matter himself may properly involve a trial, rather than merely a summary review directed merely to the question whether an asserted claim is reasonably arguable.'

38. The functions of the Adjudicator to HM Land Registry are now discharged by the First-tier Tribunal, and the relevant procedural provisions are contained in The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Those rules are no less comprehensive than were the 2003 rules, and it can be said of them (just as it could of the 2003 rules) that they contain a procedural code plainly designed to enable this Tribunal to resolve, where necessary, disputes about substantive rights, rather than merely to conduct a summary process designed to ascertain whether there exists an arguable claim.

39. The approach in **Jaysinghe v. Liyanage** was approved by the Court of Appeal in **Silkstone v. Tatnall [2011] EWCA Civ 801 at [37]** and, has been applied in a number of recent cases which were decided under the 2013 procedural rules, including **Hibbert v. Hibbert [2018] UKFTT 0421 (PC)**, and **Stapleford Frog Island (Rainham) Limited v. Port of London Authority (Ref 2014/0689)**. I am quite satisfied that the approach which was described by Briggs J in **Jaysinghe** is the correct approach to determining the extent of the Tribunal's jurisdiction in the present case.

40. And so the remaining question is whether the substantive rights which I have described in paragraph 6 (above) form part of 'the matter' which was referred to this Tribunal for determination, and which the Tribunal is therefore required to determine under s.108 of the Land Registration Act 2002.

41. So far as that question is concerned, the first point to note is that the original trustees' power to make the Application depended upon them being being persons '*in whom a beneficial interest in registered land held under a trust of land has vested*', as required by rule 93(j) of the Land Registration Rules 2003. The next point to note is that, by her objection, the Respondent plainly placed in issue whether Mr Dhillon had ever had any

interest in the Property. She made clear that it was her case that Mr Dhillon was a former friend who had '*merely assisted me to purchase this property*' and that he had '*no financial interest in this property*' She subsequently submitted a more detailed letter of objection through her solicitors on the 30th March 2017, through which she repeated that it was her case that Mr Dhillon had had no beneficial interest. As I have stated previously, the parties' Statements of Case and witness statements in the present case made abundantly clear that the question of the beneficial ownership was squarely in dispute, and that this Tribunal was required to resolve it.

42. On this basis, applying the approach which was described by Briggs J in **Jayasinghe v. Liyanage**, my conclusion is that this Tribunal does have jurisdiction to determine whether or not Mr Dhillon had a beneficial interest in the Property as at the date of his bankruptcy. It has jurisdiction to determine that question because it was a question which was placed squarely in issue by the Application and by the Respondent's objection, and it is an issue upon which the Applicants' entitlement to enter the Form J restriction depends.

iii) Other Decisions of the Tribunal in the Context of Applications to Enter Form J Restrictions

43. My view on this question of the extent of the Tribunal's jurisdiction is reinforced by the fact that I have been able to identify a number of cases in which this Tribunal, faced with applications by trustees in bankruptcy to enter restrictions in Form J, has considered the substantive dispute between the parties in relation to the existence of the bankrupt's beneficial interest in the property in question. Those decisions include:

    a. **Oddie & Webster (As trustee in bankruptcy of Marlon Hibbert) v. Armstrong [2018] UKFTT 0439 (PC)**;

    b. **Krausz v. Horton (As trustee in bankruptcy of Moses Krausz) [2017] UKFTT 0811 (PC)**

    c. **McKay v. Brittain (As trustee in bankruptcy of Denis Farncis McKay) [2016 UKFTT 0483 (PCC)**

44. In the last of those cases the Tribunal Judge, Judge McAllister, determined the extent of her jurisdiction by reference to the decision in **Jayasinghe v. Liyanage**.

iv) Other Matters

45. There are two other matters which arise out of Mr Bowles' submissions and which deserve consideration.

46. The first is this. If Mr Bowles' submissions in relation to jurisdiction in a case to which s.86(4) of the Land Registration Act 2002 did apply were correct, then on the basis of my foregoing analysis, the Tribunal's jurisdiction to resolve disputes in cases in which the bankrupt was a sole proprietor of a registered estate in land would always be much narrower than in cases in which he was a joint proprietor. That would be an odd result.

47. Although it is not strictly necessary for the purposes of my decision, I will address this point briefly. I do not agree with Mr Bowles' submission, that if this had been a case in which section 86(4) was engaged, the Tribunal could have had no jurisdiction to consider the question whether or not the bankrupt had held a beneficial interest in the property against which the bankruptcy restriction had been registered. I think that the correct approach to analysing the extent of the jurisdiction in such a case would be that which was described in **Jaysinghe v. Liyanage**, and accordingly that the extent of the jurisdiction would depend upon 'the matter' which had been referred for determination.

48. Whilst Mr Bowles is certainly right that the effect of s.84(6) is that the entry of the restriction would have occurred automatically in a sole proprietorship case (assuming that the registered estate appeared to be affected by the bankruptcy order), any person with standing to do so could then have applied to alter the register by removing the restriction and / or to cancel the restriction on grounds which might have included a contention that the bankrupt had not enjoyed a beneficial interest in the property in the first place. Had an application been made to HM Land Registry on that footing, and had it been objected to, then on a subsequent reference to the Tribunal, the Tribunal would have been required to determine that question.

49. The second point is the suggestion made by Mr Bowles in his skeleton argument (at paragraphs 9 and 10) that the effect of s.363 of the Insolvency Act 1986 is to confer an exclusive jurisdiction upon 'the Court' (as defined in s.373 of the 1986 Act) to decide questions which arise in the context of bankruptcy proceedings, including questions of the extent of the property comprised in the bankrupt's estate. This point was not developed in oral submissions, and so I will deal with it briefly.

50. As I read these provisions there is, quite simply, nothing in them that detracts from the provisions of ss. 108 and 110 of the Land Registration Act 2002 which make clear that this Tribunal's functions include determining matters which are referred to it under s. 73(7) of the Act. And, as I have previously pointed out, it has been the practice of this Tribunal to make determinations of the beneficial interests of bankrupts in similar circumstances in the past.

51. For the reasons that I have described, I do consider that the Tribunal has jurisdiction to determine the whole of the matter which has been referred to it by HM Land Registry, and that that includes the substantive dispute which I described in paragraph 6 (above).

Substantive Matters

52. As I indicated at the beginning of this decision, it is common ground that the Property was acquired in the joint names of Mr Dhillon and Ms Patel. The Applicants say that, because equity follows the law, Mr Dhillon is to be presumed to have been a beneficial co-owner of the property, and that his beneficial half share in the Property has now vested in them. On that basis they say that they are entitled to entry of the Form J restriction.

53. Ms Patel's case, put in broad terms, is that Mr Dhillon only participated in the purchase of the Property because she needed him to '*lend his name*' to her mortgage application. She says that it had been expressly agreed, prior to purchase, that if the Property was purchased in joint names, Mr Dhillon would not bear any responsibility for contributing to outgoings, and he would not have any beneficial interest in the Property. She says also that, after the Property was purchased, it was she who bore all of the costs and ex-

penses associated with maintaining mortgage repayments, paying utility bills, and maintaining the Property.

54. The parties are agreed as to the law according to which I must approach resolution of this central area of dispute. Both have referred to the decision of the House of Lords in **Stack v. Dowden [2007] UKHL 17**, and both are agreed in light of that decision that:

    a. the starting point is that equity is presumed to follow the law and accordingly Mr Dhillon, by virtue of having been a joint legal owner of the Property, is to be presumed to have been a beneficial joint tenant;

    b. the burden is upon Ms Patel to demonstrate that the true common intention of Mr Dhillon and Ms Patel, at the time of acquisition of the Property, was that their beneficial interests should be different from their legal interests, and in what way.

55. Although (as appears below) this is not a cohabitation case, both parties also agree that, in light of the Privy Council's decision in **Marr v. Collie (Bahamas) [2017] UKPC 17; [2018] AC 631**, my enquiry should still focus upon the evidence of the parties' common intention at the time of acquisition of the Property.

Ms Patel's Case

56. I turn, therefore, to consider Ms Patel's factual case in detail.

57. Ms Patel's family are from Zambia. Along with her sisters, she was sent to the UK to be educated. Throughout the 1990s and early 2000s she lived in rented accommodation in the Ilford area and in 2007, having recently qualified as a dentist, she decided that she wished to buy her own home and to start a career in dentistry in the UK.

58. Mr Dhillon was, according to Ms Patel, introduced to her by her family in early 2007 as a 'potential suitor'. They became friends, but they did not become romantically involved. Whilst Ms Patel continued to live in rented accommodation in the Ilford area, Mr Dhillon at all material times lived in Wolverhampton.

59. At this time Ms Patel was looking for houses to purchase, but she was concerned that her own employment history might not be sufficient to enable her to borrow the funds

that she would need to purchase the sort of property that she wanted. In oral evidence she said that she had approached a mortgage broker who had told her that, based upon her employment history, she would be able to borrow around £180,000 by way of mortgage.

60. Ms Patel's evidence was that, because of this, she had several conversations with Mr Dhillon during the course of which he offered to lend his name so that she could obtain a mortgage. It was her case that Mr Dhillon assured her, during these conversations, that he would not lay any claim to the Property, but equally that he insisted that he would have no responsibility to bear the cost of running the property.

61. Ms Patel viewed the Property in the early summer of 2007. It was her evidence that she viewed it alone, without Mr Dhillon, and indeed that he had no involvement in the acquisition of the Property save for his involvement in arranging the mortgage (as to which see below). Her initial offer to purchase it for £355,000 was rejected, but her subsequent offer to purchase for £357,000 was accepted. At that stage she spoke with Mr Dhillon on the telephone on a couple of occasions, and he repeated his offer '*and there was a clear understanding between us two that he was lending his name only so that I could buy a house of my own.*' Ms Patel agreed to proceed on this footing. It was her evidence that Mr Dhillon then applied for a mortgage in joint names using a broker with whom he had an established relationship. Ms Patel was not involved in the mortgage application, other than to sign forms which Mr Dhillon sent to her.

62. Before Ms Patel's purchase of the Property was completed, she received other offers of financial assistance. The most significant came from father who, on the 12th October 2007, advanced her £120,000 as a loan. Other significant sums were obtained through loan applications which Ms Patel had made to Nat West (for £25,000) and Alliance & Leicester (for £20,000). All of these funds, totalling £165,000, were paid into Ms Patel's bank account between the 26th September 2007 and the 12th October 2007.

63. The sale and purchase of the Property was completed on 15th October 2007 for £357,000. £301,500 of that sum was raised by way of a mortgage advance made by Halifax. The balance was paid from Ms Patel's bank account. The transfer of the Property

was into the joint names of Mr Dhillon and Ms Patel, and the mortgage (which was an interest only mortgage) was also in their joint names.

64. Ms Patel says that, since acquisition of the Property, it has been her home. Mr Dhillon has never lived there. She says that she has personally borne the cost of monthly interest payments under the mortgage, that she has borne all of the costs of running and maintaining the Property, and that she has received no contribution from Mr Dhillon.

65. Against this background Mr Upton, on behalf of Ms Patel, makes two short submissions. The first is that this is a case in which there had been an express agreement between Mr Dhillon and Ms Patel, prior to the date of acquisition of the Property, that Mr Dhillon would not have an interest in the Property. That, he says, is evidence from which I can conclude that there was a common intention that Ms Patel should be the sole beneficial owner. The second submission is that, even if I reject Ms Patel's evidence of that express agreement, nevertheless I should conclude from the circumstances in which the purchase took place that the parties had a common intention that Ms Patel should be solely beneficially entitled to the Property. The circumstances upon which he particularly relies are those to which Baroness Hale drew attention in paragraph 69 of **Stack v. Dowden**, and they include the following:

    a. the reasons why the Property was acquired in joint names;

    b. the nature of the relationship between Ms Patel and Mr Dhillon;

    c. how the purchase was financed, both initially and subsequently;

    d. how the parties arranged their finances subsequent to acquisition;

    e. how the outgoings on the Property were discharged.

My Findings on the Evidence

66. The only oral evidence which I heard was from Ms Patel. Although the Applicants had filed a witness statement (that of Mr Wolloff), for obvious reasons Mr Wolloff had been unable to give any direct evidence of facts relevant to the issues in the case. His statement contained comment and argument, and added nothing to the evidence save in so far as it exhibited contemporaneous documents. In these circumstances Mr Upton indi-

cated that he would not have any questions to put to Mr Wolloff in cross-examination, and so Mr Wolloff was not called.

67. As Mr Upton submits, if I accept Ms Patel's evidence at face value, it is difficult to reach any conclusion other than that she and Mr Dhillon intended that she would be the sole beneficial owner of the Property. But Mr Bowles submits that I am entitled to regard Ms Patel's evidence critically. He points to a number of anomalies and implausibilities which, he says, make Ms Patel's account of events unlikely. In the circumstances he invites me to reject Ms Patel's evidence of common intention.

68. Mr Bowles' first point is that the arrangement which is described by Ms Patel is inherently improbable. On her case, she had no romantic or business involvement with Mr Dhillon in 2007, and he was nothing more than a friend. What is more, he was a friend who had only been known to Ms Patel for a matter of a few months by the time the Property was purchased in October 2007. Why, Mr Bowles asks, would Mr Dhillon have been prepared to expose himself to liability for a substantial mortgage if he stood to gain nothing from the arrangement?

69. Ms Patel could not give a satisfactory answer to this point when it was put to her in cross-examination. Her response was simply that it had been agreed that Mr Dhillon would have no liability to contribute towards the cost of keeping the Property, and she implied through her evidence that this was a sufficient explanation for Mr Dhillon's commitment. But this evidence failed to answer the point that, on her evidence, Mr Dhillon would have exposed himself to a substantial liability without deriving any benefit from the transaction himself. Ms Patel's witness statement contained some evidence that Mr Dhillon had participated in similar arrangements with other friends previously, but there was no detailed evidence of those earlier arrangements, and in any event this limited evidence simply emphasised the same question: what did Mr Dhillon have to gain from these arrangements, and if he had nothing to gain, why would he expose himself to a mortgage liability?

70. From the evidence that I heard, it is clear that Mr Dhillon had been involved in a number of acquisitions of freehold property as investments, both before and after his involvement in Ms Patel's purchase of the Property. On that basis I think that it is unlikely

that he did not understand the financial risk to which he was exposing himself by taking on joint liability for the borrowings which were used to purchase the Property. I agree with Mr Bowles that it might be regarded as surprising that, given the short duration of his friendship with Ms Patel, Mr Dhillon would have been prepared to take on that liability. Nevertheless, as Mr Upton said in his closing submissions, 'it does happen', and I do not regard Mr Bowles' submission that the arrangement is inherently unlikely as a sufficient reason for rejecting Ms Patel's evidence of her discussions with Mr Dhillon.

71. Next, Mr Bowles pointed to the fact that, on Ms Patel's own evidence, by October 2007 she had obtained funding from other sources (viz. the personal loans made by Nat West and Alliance & Leicester, and the £120,000 loan from her father) which, coupled with a mortgage of £180,000 which her mortgage broker had told her she would be able to raise, would have almost enough to enable her to buy the property in her own name without Mr Dhillon's involvement. Why, she was asked, had she not simply proceeded with the purchase on her own, if Mr Dhillon was not intended to have an interest in the Property?

72. Ms Patel's response was to explain that her father's decision to advance the £120,000 was made at a very late stage in the process of acquisition of the Property. Although it would have been possible for her to have explored the possibility of taking out a mortgage in her own name at that stage of the transaction, she explained that she was fearful of the risk that delay might result in the purchase being lost. For that reason she proceeded with the purchase in joint names.

73. Ms Patel's concern that delay might have jeopardised her acquisition of the Property is entirely plausible, and in my judgment is a sufficient explanation for her failure to explore the possibility of obtaining a mortgage in her own name at a relatively late stage in the process of acquisition of the Property.

74. Next, Mr Bowles queried why Ms Patel did not take steps, after acquiring the Property, to re-finance the purchase and remove Mr Dhillon from the title. As Mr Bowles pointed out, by the time the purchase of the Property was completed Ms Patel had raised, through loans, more than £100,000 in excess of the sum which she had needed to purchase the Property. Those monies could have been used to reduce her borrowings with

her mortgagee, and she might then have explored the possibility of having the Property transferred into her sole name, with a mortgage in her own name. But she did not do so. Her answer, when this point was put to her in cross examination, was to say that by this time she was '*thinking more about keeping the [excess] funds and investing in other opportunities; other properties.*'

75. Once again, I do not regard this as being at all implausible. In circumstances in which Ms Patel had achieved her objective of acquiring the Property to live in as a home, and in circumstances in which there was no reason for her to believe that Mr Dhillon would resile from his assurance that he would claim no interest in the Property, there was no particular urgency for Ms Patel to procure Mr Dhillon's removal as a registered proprietor. There is no evidence that he was seeking to be released. What is more, her evidence that she was by this time considering how the excess funds might be applied to other property investments appears to me to be consistent with other evidence that I heard (and to which I refer, below).

76. Next, Mr Bowles pointed to the conflicting positions that Ms Patel had from time to time adopted in relation to whether or not she and Mr Dhillon had ever executed a deed of trust according to which the Property was declared to be held by them on trust for her alone.

77. When she was first notified by HM Land Registry of the fact that an application had been made to enter a Form J restriction against the Property, Ms Patel objected in a letter dated 9th January 2017. In that letter, Ms Patel asserted that Mr Dhillon was '*a former friend who merely assisted me to purchase this property*' and she went on to say '*[h]e had not paid anything towards it and I have a Trust Deed in place at the purchase time to reflect this...*'

78. A similar letter of objection had been sent to HM Land Registry by Mr Dhillon. In his letter, Mr Dhillon had asserted that '*[w]e have a trust deed drawn up shortly after the purchase to reflect this which is lodged with a solicitors. I can forward this to you if needed as soon as I return home.*'

79. Some time later, Ms Patel prepared a more formal '*Notice of Objection to Registration of Bankruptcy Restriction*' within which she asserted that she had '*been advised by Mr*

Dhillon that a Trust Deed making clear that the only beneficial interest in the Property was the Respondent's was completed at around the time of the purchase. Unfortunately, neither the Respondent or Mr Dhillon have been able to locate a copy of the document. The search for this document has been complicated by the fact that the solicitors acting for the Respondent have ceased trading and it has not been possible to obtain a copy of the conveyance file.'

80. By the time when she signed her Statement of Case in these proceedings, on the 28th November 2017, Ms Patel's case was advanced purely on the basis of an implied constructive or resulting trust. No express reference was made to the deed which had been relied upon in her earlier letters of objection. When she signed her witness statement, on the 7th June 2018, she explained the earlier references to the deed as follows:

'*[In my letter of objection of the 9th January 2017 I said] that there was a Trust Deed in place at the time when I purchased the Property which reflected [our agreement as to beneficial ownership]. I said this because I was led to believe by the Second Respondent that there was a Trust Deed but I now believe that the Second Respondent and I may not have executed a Deed of Trust in 2008.*'

81. Mr Dhillon, at a time when he remained a party to the proceedings, sent a letter to the Tribunal dated 21st November 2017. That letter was included within the hearing bundle, and Ms Patel was cross examined upon its contents. In that letter Mr Dhillon said of the deed that '*I posted to [Ms Patel] the only copy I had of the original trust deed setting out the fact that I have no beneficial interest in the property to support the purchasing solicitors own documentation about the share split in the property, which was 100% to Ms Patel and 0% to Mr Dhillon.*' Ms Patel, in cross examination, said that she had never received a copy of the trust deed which Mr Dhillon claimed to have posted.

82. From these contemporaneous documents it can be seen, therefore, that whilst Ms Patel's original objection to the application to enter the restriction relied upon an alleged deed of trust which was positively asserted to exist, she subsequently modified her position to one of apparently accepting that no such deed had ever been signed. Mr Dhillon had also been inconsistent in the accounts which he had given. He had initially asserted that there was a deed of trust and that it was lodged with solicitors and could be forwarded

to HM Land Registry, but latterly he had said that he had posted the only copy of the deed to Ms Patel.

83. Mr Dhillon was not called to give evidence about these issues, but Ms Patel was asked why she had positively asserted, in her original letter of objection, that there was a trust deed in existence, if it was now her position that she had not signed such a document. Her response was to say that her reference to a '*trust deed*' had been prompted by a conversation with Mr Dhillon, which had taken place shortly before the initial letters of objection were sent, and during the course of which Mr Dhillon had told her that a '*trust deed*' had been in existence. She told me that she thought that Mr Dhillon's references to a '*trust deed*' must have been a reference to the oral agreement, which had been reached at the time of acquisition, that he would not have an interest in the Property.

84. I found this explanation of the language used by Ms Patel to be unconvincing. Ms Patel is clearly a well educated lady, and even allowing for the fact that she is not a lawyer I find it unlikely that she does not understand that a trust deed is a document. What is more, it is clear from the language used by Ms Patel in her subsequent '*Notice of Objection to Registration of Bankruptcy Restriction*' of 30th March 2017 that she was making a positive assertion, at that time, that she had been told that a document had existed which regulated the beneficial ownership of the Property, and she was advancing a case that attempts had been made to locate the document. But the mere fact that, under the pressure of giving evidence at a formal hearing, Ms Patel's explanation of her use of language was unconvincing is not in itself a reason for me to reject all of her evidence of common intention.

85. What other conclusions can I draw from this evidence? Mr Bowles made much of the changes in position in the various accounts which I have set out above. But, on analysis, the accounts which were given by Ms Patel appear to have been consistent with her developing understanding as the case progressed. At the time of her original letter of objection of the 9th January 2017 she had recently had a telephone conversation with Mr Dhillon in which he had made reference to a trust deed, and so she referred to it. In her subsequent letter of objection dated 30th March 2017 (which was prepared by her solicitors on her behalf) she made it entirely clear that the trust deed to which she was referring was one which Mr Dhillon told her had existed. She did not suggest that she had an

independent recollection of it having been created. By the time of her witness statement, in the absence of any contemporaneous evidence of the execution of the deed of trust having been found, she accepted the possibility that it might never have existed.

86. It is true that Mr Dhillon's descriptions of the last known whereabouts of the deed were inconsistent. But I do not see why inconsistencies in Mr Dhillon's accounts should be held against Ms Patel. In a different context, Mr Bowles suggested that I could draw an adverse inference from Ms Patel's failure to call Mr Dhillon as a witness. But Ms Patel explained that she was unable to call him as a witness because she has lost touch with him.

87. The next point which was relied upon by Mr Bowles was the content of a draft will which had been prepared for Mr Dhillon in 2010. That draft will have been located by Mr Dhillon's original bankruptcy trustees who, in the course of investigating Mr Dhillon's bank statements, identified an annual payment of £35 being made to Heritage Will Writers. When the original trustees wrote to Heritage Will Writers querying the payment, they were advised that it was an annual charge to store Mr Dhillon's will and power of attorney. Heritage Will Writers were unable to provide a signed copy of the will, but they returned a final draft. By clause 4 of that draft will, Mr Dhillon had left to his '*business partner Jagruti Patel free from all taxes and duties payable on or by reference to my death all my share or interest at the date of my death in Inform Direct (hereinafter called "the Business") including (a) all assets of mine used in the Business; (b) all my interest in the premises at 120 Springfield Drive; and (c) all loans due to me from the Business.*'

88. It therefore appeared from this draft will that, at the date when it was prepared, Mr Dhillon believed that he had a continuing interest in 120 Springfield Drive. In his letter to this Tribunal of the 21st November 2017, Mr Dhillon provided the following explanation for this document:

'*The "Will" referred to by the trustee is not genuine nor valid, as it was drawn up only as a mock sample, using people we knew at the time, one for each of us, to cover a business proposal that was being considered at that time with Daljit Dhillon (Bob Chadda's) wife, myself and Ms Patel, as part of the documentation we all thought would be need-*

ed. But as the deal never even go off the ground, so all dummy paperwork, including the alleged "Will" was discarded, Therefore, it is unsigned and lacks authority.'

89. As Mr Bowles pointed out, Mr Dhillon's explanation of this draft will raises as many questions as it answers. What was the business 'Inform Direct'? What was the nature of the business relationship between Mr Dhillon and Ms Patel which he describes? If the Will was 'discarded' as a 'dummy', why did Mr Dhillon pay £35 per year for the document to be safeguarded by Heritage Will Writers?

90. Mr Dhillon was not at court to answer these questions, and Ms Patel was apparently unable to do so. In her witness statement she said that she had been entirely unaware the existence of the draft Will, and she relied upon the content of Mr Dhillon's letter of the 21st November 2017. In her oral evidence, she denied having had a business relationship, and could not understand why Mr Dhillon had referred to her as a business partner. Whilst I entirely accept Mr Bowles' point that the evidence that has been adduced is incomplete and to that extent unsatisfactory, there is no evidence from which I can conclude that Ms Patel's evidence on these points was anything other than truthful, and Ms Patel has provided a perfectly satisfactory explanation for her failure to adduce evidence from Mr Dhillon on this, and other issues.

91. Finally, in his skeleton argument Mr Bowles relied upon evidence of payments passing between Mr Dhillon and Ms Patel and submitted that '*despite being asked the Respondent has failed to provide full details of the source of the funds which she has used to pay the mortgage. This failure, which it was in the Respondent's gift to rectify allows the Tribunal to draw an inference that the source of the funds supports the Applicant's case.*' When he was asked, Mr Bowles identified the particular payments upon which he relied as two payments which were made by Ms Patel to Mr Dhillon on 23rd July 2008 (of £10,000) and 29th July 2008 (of £20,0000), some months after the purchase of the Property. Quite clearly, as these were payments being made *by* Ms Patel *to* Mr Dhillon, they cannot be regarded as payments which were referable to mortgage repayments in respect of the Property. Ms Patel's evidence was that, to the best of her recollection, they were loans which were made to Mr Dhillon for the purpose of business investment by him.

92. In these circumstances I accept Ms Patel's evidence of the circumstances in which the Property came to be acquired, and in particular of the discussions which she had with Mr Dhillon prior to acquisition of the Property. I find that it had been expressly agreed between Ms Patel and Mr Dhillon that, whilst he would become a joint proprietor so that she could raise the required mortgage finance, he would in fact have no interest in the Property, and would not contribute to the costs of acquisition.

93. Even if I had not accepted Ms Patel's evidence that there was an express oral agreement to that effect, I would have been satisfied from the other evidence that I heard that this was the common intention of Ms Patel and Mr Dhillon. I take into account in particular:

    a. that at the time of acquisition they were just friends, and were not romantically involved;

    b. the Property was purchased for use by Ms Patel as her home; on the evidence that I heard, Mr Dhillon never lived in it;

    c. Ms Patel, alone, paid the mortgage and all of the outgoings relating to the Property. There is no evidence of Mr Dhillon having made any direct or indirect contributions, save through having 'lent his name' to the mortgage.

94. I should add that, whilst both parties were agreed that my focus should be upon the question of common intention, I have also considered whether Mr Dhillon should be regarded as having enjoyed a beneficial interest in the property by operation of a presumption of resulting trust, arising because of his joint liability for the mortgage. However, given my conclusion that Mr Dhillon and Ms Patel had expressly agreed that he would not bear any of the costs associated with acquisition of the Property, it seems to me to follow that the parties could not have intended that Mr Dhillon's liability under the mortgage should be regarded as a contribution to the purchase price of the Property. In my view this is a case in which, as in **Carlton v. Goodman [2002] EWCA Civ 545**, any presumption of resulting trust is rebutted by the evidence of common intention which I have heard.

95. I therefore conclude that Mr Dhillon has never enjoyed a beneficial interest in the Property, and I will accordingly direct the Chief Land Registrar to cancel the Application.

Costs

96. The normal consequence of the outcome which I have directed is that the Applicant, as the unsuccessful party, would be ordered to pay the costs of the Respondent. I have been provided with the Respondent's summary schedule of costs which indicates a claim for costs in the total sum of £32,610 including VAT. I am told that a copy has been served upon the Applicants' solicitors.

97. My preliminary view is that the level of costs claimed by the Respondent does not warrant a detailed assessment, but I will nevertheless provide the parties with an opportunity to make written representations about:

    a. whether there is any reason why I should depart from the normal rule that the Applicant, as the unsuccessful party, should be ordered to pay the Respondents' cost of this reference;

    b. whether costs should be subject to detailed assessment or summary assessment;

    c. assuming that the costs are summarily assessed, what costs should be awarded.

98. Any submissions on those issues submissions should filed by 4pm on Friday 1st February 2018.

BY ORDER OF THE TRIBUNAL

David Taylor

PROPERTY CHAMBER LAND REGISTRATION

Dated this 17th January 2019