



PUMP COURT

CHAMBERS

**TLATA Claims: Constructive Trusts and
Proprietary Estoppel**

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COMMON INTENTION CONSTRUCTIVE TRUSTS ("CICT")

CICT: two kinds of cases

In a domestic context:

- ‘Joint Names’ cases
 - where a property is registered at HM Land Registry in both parties’ names.
- ‘Sole name’ cases
 - Where a property is registered at HM Land Registry in one of the two parties’ names only.

'Equity follows the law'

- Presumption

- In a 'sole name' case, it is presumed that the property is also owned beneficially on a sole basis: *Stack v Dowden* [2007] 2 AC 432 (at §§33, 54 & 114); *Jones v Kernott* [2012] 1 AC 776 (at §51-52)
- A party who seeks to argue that the legal title does not reflect the beneficial ownership, has the burden of proving it: *Stack v Dowden* (at §68)

Reminder: Two things to prove

- A CICT will only arise by operation of law where a party can prove:
 1. that the parties had a shared common intention that the beneficial interest in the property would be held otherwise than in accordance with the legal title; and
 2. That in reliance upon that intention they have acted to their detriment.

Intention: the two stages

- In a 'sole name' case, the Court should approach the question of intention in two stages: *Jones v Kernott* (at §52)
 1. Has the C established that the parties had a shared common intention to share the property beneficially at all?
 2. If (and only if) the Court is satisfied that the parties had that common intention: how should the parties' respective beneficial interests be quantified?

Stage 1: what evidence is required?

- In a ‘sole name’ case, you can only rebut the presumption that ‘equity follows the law’, with evidence of the parties’ actual shared intentions. Either (*Stack v Dowden* §§124-126):
 - a. As expressed between them (i.e. discussions); or
 - b. As may be inferred from the parties’ conduct in respect of the property, in light of their whole course of dealings in relation to it

Lloyds Bank v Rosset [1990] 1 AC 107

- Express common intention can only be based on an:
“...agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only... be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been”
- Inferred common intention based on the parties’ conduct:
“In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.”

Will anything less do?

- In the absence of a financial contribution to the property, a CICT based on conduct alone, will only be found in:

“exceptional circumstances”

Morris v Morris [2008] EWCA Civ 257 (Sir Peter Gibson at §23)

Working for the family business?

- *James v Thomas* [2007] EWCA Civ 1212
 - Cohabiting couple
 - C had undertaken manual labour work associated with the D's business
 - C contended that this was conduct from which the court should infer a common intention to share the property

Working for the family business?

- *James v Thomas:*

“...so far as the activities of the claimant in support of the farming business conducted by the man with whom she was living are concerned, I cannot see that they are of such an exceptional nature as to lead to any inference such as that contended for by Mrs Gowling, that she must have acted in the belief that she was acquiring an interest in the farm” (per Sir John Chadwick at §26)

“The true position, as it seems to me, is that she worked in the business, and contributed her labour to the improvements to the property, because she and Mr Thomas were making their life together as man and wife. The Cottage was their home, the business was their livelihood. It is a mistake to think that the motives which lead parties in such a relationship to act as they do are necessarily attributable to pecuniary self-interest.” (per Sir John Chadwick at §36)

Pillmoor v Miah [2019] EWHC 3696

- Sole name case
- The couple ran a family shop together
- The evidence of financial contributions to the property was unclear
- The case was run on the basis that a common intention to share the property should be inferred from their conduct in relation to the business

HH Judge Kramer (sitting as a Judge of the High Court):

“...in sole name cases the circumstances which can lead to the inference that there was to be an agreement as to the sharing of the beneficial interest need to be exceptional before one can draw that inference, and, secondly, that taking part in the business of the spouse or, for instance, carrying out works on the property, which isn’t the case here, do not give rise to such inference in the ordinary course...” (at §27)

“If the position is that the evidence is unclear, the court should not adopt the approach, which appears to have been adopted here, of the court to doing the best it can on the evidence available to it, however inadequate. If the evidence is unclear, the answer is for the court to say to the person who has to discharge the burden that they have simply not proved their case.” (at §42)

Renovations / Improvements?

- *Dobson v Griffey* [2018] EWHC 1117 (Ch)
 - Cohabiting couple living on a farm in Devon
 - Farm was purchased in D's sole name with a mortgage in his name.
 - C alleged that prior to the purchase, an agreement had been reached that she would share in the property and that she had relied on that agreement to her detriment by carrying out various renovation and improvement works
 - D denied there was ever any agreement and argued that even if there was, C hadn't acted to her detriment in reliance upon that agreement.

Renovations / Improvements?

- *Dobson v Griffey*: HH Judge Matthews (sitting as a Judge of the High Court):
 - No express agreement between the parties and neither could one be inferred from their whole of course of dealing in respect of it.
 - C had not acted in reliance upon any agreement that she might have been able to prove.

Renovations / Improvements?

“...in a case like the present, a person in the position of the claimant might well be expected to do the kind of things which she did because of the relationship which she enjoyed with the defendant, the home which she had made with him at the farm, and the aspirations which they had for the future, rather than in reliance on some alleged agreement between the parties. On the facts of this case, I do not consider that the claimant did rely on any such agreement as she might have been able to prove. She did what she did because she had decided to make a home with the defendant and hopefully to have children with him there. It is entirely natural to suppose that she would have wanted to use her skills and abilities to make the best possible home that she could for them all, rather than because she was trying to make money.”

Dobson v Griffey [2018] EWHC 1117 (Ch) (at §89)

A new direction of travel?

- ‘Sole name’ cases since *Stack* have frequently refused to find a common intention based on conduct other than a financial contribution.
- But recently...

A new direction of travel?

- *Amin v Amin (Deceased)* [2020] EWHC 2675
(Ch) (Nugee LJ)
 - Having noted the different starting presumption in joint and sole name cases, Nugee LJ stated:

*“But that apart, it seems to me that the exercise that Lord Walker and Lady Hale envisaged is similar in a sole name case to that in a joint names case. In each case what needs to be found to displace the presumption that equity follows the law is a common intention that the beneficial ownership should be something different from the legal ownership; and (save for the case where there is evidence of express discussions as referred to by Lord Bridge in *Lloyds Bank v Rosset*) that is to be deduced objectively from their conduct.” (at §32)*

A new direction of travel?

- *Amin v Amin*

“...if one stands back from the detail, the broad question is always: what did the parties intend? Once one allows the parties’ intention to be inferred from their conduct, it seems to me to make no sense to try and make a sharp divide between evidence that enables an inference to be made as to their common intention that the beneficial interests should not follow the legal ownership, and evidence that enables an inference to be made as to what they intended those beneficial interests to be. Those questions are necessarily bound up together.

In my judgment the Judge was right to say that financial contributions and many other factors could enable the Court to decide not only what shares the parties intended, but also whether there was a common intention at all that the sole legal owner should not be the sole beneficial owner.” (at §34 - 35)

Detrimental Reliance

- As well as proving the necessary common intention, a party claiming the existence of a constructive trust must prove that they have acted to their detriment in reliance upon that intention: ***Gissing v Gissing* [1971] AC 886**; affirmed in ***Stack v Dowden* (at §124)**

Household expenses?

- *Grant v Edwards* [1986] Ch 638 (CA)
 - Although payments towards household expenses might be sufficient, they will not necessarily be.

*“it must be conduct on which [the claimant] could not reasonably have been expected to embark unless she was to have an interest in the house”
(per Nourse LJ at 648G-H)*

A specious excuse?

- *Curran v Collins* [2015] EWCA Civ 4040
 - Sole name case
 - C contended that D had given an excuse for not putting the family home into joint names – that life insurance would be too expensive – and claimed that she had relied on this as evidence of an intention to share the property
 - D denied her claims

A specious excuse?

- Judge at first instance found that the C had not acted to her detriment in reliance on that specious excuse, “*or at all*”.
- In the Court of Appeal, Lewison LJ (at §78)

“That in itself is fatal to Ms Curran’s case.”

O'Neill v Holland [2020] EWCA Civ 1583

- Sole name case
- Concerned a family home that was originally purchased by the C's father in 1999 and was a home for the parties between 2000-2012
- In 2008, the property was transferred to the D's sole name
- C contended it would have been transferred into joint names, but only the D could take out a mortgage.
- Parties separated in 2012 and C claimed a CICT had arisen in 2008 when the property was transferred to the D

- At first instance:
 - DJ found a CICT in the C's favour
- On first appeal by D:
 - HH Judge Pelling QC allowed the appeal, holding that an act of detrimental reliance had neither been sufficiently pleaded or established on the evidence by the DJ
- On second appeal to the Court of Appeal:
 - C argued that her detrimental reliance was established on the facts as found by the DJ, on the basis that she was worse off as a result of the transfer to the D in 2008.

Per Henderson LJ (at §27)

“Judge Pelling was in my view right to hold that detrimental reliance remains an essential ingredient of a successful claim to a beneficial interest in a residential property under a common intention constructive trust, in the class of case where the legal estate is in the sole name of the other party”

As to the case pleaded by the C (Henderson LJ at §62):

“Had this pleaded case been accepted in full by the District Judge, it seems to me that there would have been a clear detriment to Ms O’Neill when the transfer was made into the sole name of Mr Holland, instead of into her sole name (or joint names) as had originally been intended. Viewed objectively, Ms O’Neill would have exchanged a situation where the Property was in the sole beneficial ownership of her father, and she was able to occupy it rent-free as her family home for the foreseeable future, for a situation where the beneficial interest was presumptively vested in Mr Holland alone, as the sole legal owner, and she would have to assert and establish an interest under a common intention constructive trust if she wished to share in the value of the Property or have any say in its future use. On those assumed facts, the court would in my judgment have had no difficulty in concluding that sufficient detrimental reliance by Ms O’Neill was made out, if the necessary common intention were first established”

O'Neill v Holland [2020] EWCA Civ 1583

- *“In the event, the District Judge did not accept the pleaded case of either party in relation to 53 Worsley Road. But the findings which she made...did not differ very much from the case which Ms O’Neill had originally pleaded. Instead of a transfer into her sole name, the original plan (as found by the District Judge) was that the Property would be transferred into the joint names of herself and Mr Holland. This was then reflected in the instructions which Mr Holland himself gave to the solicitors acting for him and Ms O’Neill, and that is what would have happened but for the problem caused by the fact that the mortgage offer which he had obtained was in his sole name. When this was drawn to his attention by Mr Batty, Mr Holland chose not to try to obtain an amended mortgage offer in joint names, but instead procured Ms O’Neill’s agreement to the transfer proceeding into his name alone. The end result was therefore that she had no legal interest in the Property when the transfer took place, instead of the situation originally envisaged when she would have been a legal co-owner presumptively entitled to share the beneficial ownership jointly with Mr Holland. Viewed objectively, that was again a position of clear detriment incurred by Ms O’Neill in reliance on Mr Holland’s misrepresentation that she would be unable to obtain a mortgage”*

Lessons?

- Consider the effect of alleged events, even if they were performed by a third party.
- Plead reliance on those events carefully.
- Detrimental reliance remains an “*essential ingredient*” of a CICT and a failure to plead and establish this is liable to be “*fatal*” to the claim.