

TRANSCRIPT OF PROCEEDINGS

NEUTRAL CITATION NUMBER: [2019] EWHC 1947 (Ch)

Ref. CH-2018-000239

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS**

Rolls Building
Fetter Lane

Before MR JUSTICE SNOWDEN

IN THE MATTER OF

KUMAR ANTON ROHITHA BULATHWELA (Appellant)

- v -

**EDWARD THOMAS AND ANN NILSSON
(Joint trustees in the bankruptcy of Rani Malathi Samarakkaodi Bulathwela)
(Respondents)**

**MR ARFAN KHAN (instructed by DCK Solicitors) appeared on behalf of the Appellant
THE RESPONDENT was not represented**

**JUDGMENT
20th MAY 2019
(AS APPROVED)**

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MR JUSTICE SNOWDEN:

1. This is a renewed oral application for permission to appeal by Mr and Mrs Bulathwela. The appeal relates to a decision of District Judge Hart given in the County Court at Central London on the 9th of August 2018 in which the District Judge found that a property at Whitchurch Lane in Edgware was solely owned by Mrs Bulathwela, and that Mr Bulathwela had no beneficial interest in it. That property was purchased in 2004 and is registered in the sole name of Mrs Bulathwela.
2. Mrs Bulathwela was subsequently made bankrupt and the respondents to the appeal are her Trustees in Bankruptcy. The District Judge had the opportunity to hear evidence and did hear Mr Bulathwela being cross-examined over his claim to have a beneficial interest in the property primarily because it was said that he provided the money for the deposit and made payments towards the mortgage. In a relatively short judgment on this point, the District Judge dismissed Mr Bulathwela's arguments.
3. One of the fundamental difficulties faced by the District Judge was that she had no documentary evidence to support either of the two assertions made by Mr Bulathwela. The only support for Mr Bulathwela's assertions were similar assertions by Mrs Bulathwela.
4. The only documentary evidence that the District Judge considered more specifically was referred to in paragraph 21 of her judgment where she referred to a charge executed over the Whitchurch Lane property in favour of the Legal Services Commission, to which Mr and Mrs Bulathwela both owed money. That legal mortgage was executed by both Mr and Mrs Bulathwela who purported to charge the property.
5. It is contended by Mr Bulathwela that this should have convinced the District Judge that he was entering into the charge because he had a beneficial interest in the property. What the District Judge said about that in paragraph 21 was: "However, absent any evidence to explain why the deed stated that both Mr and Mrs Bulathwela were granting a charge over the property and whether this was at the instance of the Legal Services Commission or the respondents, I do not find that the terms of the mortgage deed per se are sufficient to establish an inferred common intention on the part of the respondents".
6. In the application for permission to appeal, the appellants initially relied upon a number of grounds which Mr Khan, who has appeared for them today, tells me that they no longer wish to pursue. These include reliance on the anti-deprivation principle and the principles in cases such as *British Eagle International Air Lines Ltd v Cie Nationale Air France* [1975] 1 WLR 758.
7. The sole ground upon which permission is now sought is that the District Judge reached the conclusion which she did against the weight of the evidence and, in particular, first, that she did not make any express findings rejecting the statements by Mr and Mrs Bulathwela as incredible, and secondly, that she did not place sufficient weight upon the fact that the charge in favour of the Legal Services Commission had been executed by both Mr and Mrs Bulathwela. It is said that the District Judge inadequately weighed, or wrongly weighed the evidence that was before her and that an appeal court would have the opportunity to weigh that evidence up correctly.

8. I refused permission on paper because I was not satisfied that there was any realistic prospect of success on an appeal.

9. By a very narrow margin, however, I am persuaded by Mr Khan that I should grant permission to appeal in this case. There is, I think, a real prospect of persuading an appeal court that the District Judge ought to have dealt more fully with the evidence (such as it was) from Mr and Mrs Bulathwela and the implications to be derived from the Legal Services Commission charge. But I make very clear that in granting permission on this limited ground I express no view on the merits beyond saying that it has a real prospect of success.

10. A further point was made by Mr Khan that on an appeal an application would be made to adduce what is suggested to be fresh evidence in the form of a witness statement dated the 4th of December 2018 from Mr and Mrs Bulathwela's daughter, Miss Norton.

11. I think that the form of that witness statement is inadequate in that it consists of unattributed assertion and statements of legal conclusions. I certainly do not think such statements fulfil the second and third criteria of the *Ladd v Marshall* [1954] 1 WLR 1489 test as being evidence which probably have an important influence on the result of the case and which are apparently credible. I also have no material before me to explain why that material, which plainly could have been available at the time of the hearing before the District Judge, was not relied upon at the time. For that reason, I would not grant permission for the witness statement of Miss Norton to be relied on at the appeal.

12. Whether a further application in relation to any similar or other evidence should be made is not for me to say. That will be a matter for those advising Mr and Mrs Bulathwela. Suffice to say, if such an application is to be made, I do not think it satisfactory that the application should simply be made at the appeal hearing. It should be made within a limited timescale, for which I will give directions, and then it can either be determined on paper ahead of the appeal hearing, or if it is more convenient for it to be determined at the same time as the appeal hearing, any further directions that are needed can be given so that at least the parameters of the dispute will be clearly set out for the judge hearing the appeal.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge