

TRANSCRIPT OF PROCEEDINGS

Ref. F00CD054; BM00018A

Neutral Citation Number: [2020] EWHC 2382 (QB)

28 July 2020

IN THE CIVIL AND FAMILY JUSTICE CENTRE AT BIRMINGHAM

Priory Courts
33 Bull Street
Birmingham

Before MR JUSTICE MARTIN SPENCER

IN THE MATTER OF

ABDUL ISHAQ RAZAQ (Claimant)

-v-

IFRAT SHAHEEN (Defendant)

MR S DIN appeared on behalf of the Claimant

MR E GOMER appeared on behalf of the Defendant

**JUDGMENT
(APPROVED)**

MR JUSTICE MARTIN SPENCER:

1. With permission granted by myself on 29 May 2020, the claimant appeals against the decision of Mr Recorder Matthews on 10 January 2020, whereby he made an order in respect of the beneficial interests held by the parties in a property at 453 Chatsworth Road, Chesterfield.
2. The background facts are as follows. In March 2001 the defendant took up a tenancy of the property and she lived there with her three children from a previous relationship. In or

about May 2011, she started a relationship with the claimant and the claimant moved into the property with her and the children in about July 2013. They never formally married according to the laws of this country, but they did enter into a form of Islamic marriage on 21 December 2013. On 11 July 2015 the defendant gave birth to a child of this relationship, Zayn.

3. At about the end of 2016 or beginning of 2017, enquiries started to be made as to the possibility of the claimant purchasing the property under the “right to buy” legislation, and solicitors were instructed, namely PM Law. Furthermore, Halifax were approached with regard to providing a mortgage for the financing of the purchase of the property.

4. As appears from the chronology which is at page 32 of the bundle, there were a number of documents in the early part of 2017 which confirmed the intention of the parties that the property should be conveyed into their joint names and held in equal shares. Thus, for example, on 16 February 2017, PM Law sent to the parties a questionnaire and that was completed indicating their joint wish that the property be held in equal shares, and it was signed by both parties. Again, a month later, on 16 March 2017, an anti-money laundering declaration showed that the ownership and shares in the property were to be 50/50, and that was signed by both parties.

5. The completion of the sale of the property to the claimant and defendant was on 5 June 2017 and this was at a discounted price of £64,900. A discount of 45 per cent from the value of the property was awarded, based on the defendant’s 15-year tenancy. The property was conveyed into their joint names, with each party joint tenant, but paragraph 10 of the TR1 document which would usually set out in terms their respective beneficial interests, was not completed – this is referred to again in paragraph 32 below.

6. Within a very short time after the completion of the purchase, the claimant left the property and terminated the relationship. It is clear that during the relationship he had not been faithful to the defendant and his commitment to the relationship was significantly less than that of the defendant, but on the previous occasions when she had discovered that he had been in other relationships she had forgiven him for the sake of the family.

7. In November 2017, the claimant served a notice of severance of the joint tenancy. These proceedings were part 8 proceedings; that is a claim by the claimant for a declaration that he held a 50% beneficial share in the property.

8. The acknowledgement of service dated 8 March 2019 and signed by the defendant states at paragraph B that she intended to contest the claim, but gave no details of any different remedy that she was seeking, and the matter came before the learned Recorder on the basis that this was a part 8 claim without there being any counterclaim or different action alleged by the defendant against the claimant.

9. At the trial, on 10 January 2020, both claimant and defendant gave evidence, and it is clear that whilst the defendant formed a very favourable impression upon the learned Recorder and he found her evidence to be truthful and honest and straightforward in every respect. The same cannot be said of the claimant.

10. So far as the defendant is concerned, her evidence is reflected at paragraph 30 of the judgment where she is recorded as having said “I would have disputed that as far as I was concerned we were buying a property together”. She was taken through all the documents

which showed her intention and she was fully alive to the fact that the documents said joint tenants, 50/50. She said “That’s what we intended and agreed, on the basis that we were married and having a life together with our children. I thought that that was our intent, so good reason to have 50/50 like most married couples would do”.

11. She said that the claimant had been constantly wanting to buy the property, that he had been on at her about it. He had said to her “It’s for the family; it’s for us; it’s for the future”. She said that those conversations happened regularly and she had felt under pressure to agree to the purchase of the property. She said she came to feel that was what was expected of her, particularly in the period in the run-up to the purchase itself. She told the Recorder: “I felt I agreed to the purchase and I felt deceived by [the claimant] when we planned the future together and I found out he was cheating on me and continued to cheat. I felt like he had broken my trust and threatened the roof over my head. He was unfaithful. There was deception in relation to the relationship”.

12. She was asked in cross-examination whether what Mr Razaq had said was untrue in relation to the property, and she said “Well, it was the fact that he was – he almost constantly demanded his 50 per cent when the relationship broke down, for a home that was supposed to be a long-term project or long-term for the family. He pretty much demanded his half share of the property at the end of the relationship. When I discovered he’s been on these websites I felt deceived and taken advantage of” – that being a reference to dating websites.

13. She confirmed in her witness statement and in her evidence that following the completion of the transfer of the property to them, the claimant’s behaviour had changed. She said “I felt his behaviour changed, it was pretty much as soon as the house was bought. At about that time he was back on the dating sites. I feel that it was a fake act”.

14. She confirmed that she felt that he had engineered the whole situation for his own financial gain, saying “I felt that was his intent. I do not feel he ever intended it as a family home”.

15. As I stated, the learned Recorder accepted that evidence, describing Miss Shaheen as “almost disarmingly straightforward in her evidence” and being a credible and honest witness in the answers that she gave.

16. The learned Recorder’s findings in relation to Mr Razaq were different. He said: “I frankly find his answers not credible, they were not consistent with the documents, and in the end, where there is any dispute in terms of underlying facts, I am afraid I do not find him a credible witness and I prefer the evidence of Miss Shaheen”.

17. In his judgment, the learned Recorder set out in clear terms at paragraph 43 the case on behalf of the claimant. He said this:

“The claimant’s case is really very straightforward indeed, it is that all that has been said is very interesting but that in the end it is quite clear from the defendant’s own evidence that she intended that the parties should be buying as joint tenants, they intended to buy on a 50/50 basis, all of the documentation reflects that intention but if there was some fraudulent misrepresentation which induced that agreement and there was deceit, that would have to be the subject of a proper counterclaim, it would have to be properly and fully pleaded. That has never been done and that, in reality, that reflects the fact, as put to Miss Shaheen in cross-examination, that this was a situation

that both parties intended that the marriage should subsist and intended to put it into joint names just as all the documents suggested, but there were then matters within the relationship which meant that, pretty swiftly, the marriage or the relationship broke down and fell apart. That is perhaps not untypical but that it is has got nothing to do with the fact of the ownership of the property”.

18. It was submitted that on the basis of the authorities the judge should look at the documents and at the transaction which took place and that gave him the answer and he should look no further.

19. On behalf of the defendant it was submitted that the authorities are more nuanced than that and that the Recorder should find that the legal document did not reflect the actual intention of the parties and that the authorities permitted him to come to a different conclusion, in other words, not simply to apply a 50/50 proportion that the parties had agreed as far as the formal legal documents were concerned, and in particular he was referred to the decision of the House of Lords in *Stack v Dowden* [2007] UKHL 17, and the decision of the Supreme Court in *Jones v Kernott* [2011] UKSC 53.

20. The learned Recorder was referred in particular to paragraphs 8 and 69 of the decision in *Stack* and the judgment of Baroness Hale of Richmond. I start slightly earlier where Lady Hill said this, at paragraph 56:

“Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership, so in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases it is upon the joint owner who claims to have other than a joint beneficial interest.”

21. In paragraph 58 she took this up again, stating:

“The issue as it has been framed before us is whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest or whether a conveyance into joint names establishes a prima facie case of joint and equal beneficial interests until the contrary is shown. For the reasons already stated, at least in the domestic consumer context a conveyance into joint names indicates both legal and beneficial joint tenancy unless and until the contrary is proved.”

22. Then at paragraph 68 she said this:

“The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased’s estate may well wish to assert that he had a

beneficial tenancy in common cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase.

69. In law ‘context is everything’ and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties’ true intentions. These include any advice or discussions at the time of the transfer which cast light upon their intentions then, the reasons why the home was acquired in their joint names, the reasons why (if it be the case) the survivor was required to give a receipt for the capital monies, the purpose for which the home was acquired, the nature of the parties’ relationship, whether they had children for whom they both had responsibility to provide a home, how the purchase was financed, both initially and subsequently, how the parties arranged their finances, whether separately or together or a bit of both, how they discharged their outgoings on the property and their other household expenses.

When a couple are joint owners of their home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It would be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties’ individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context mercenary considerations may be more to the fore than they would be in marriage but it should not be assumed that they always take pride of place over natural love and affection.

At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.”

23. The learned Recorder also cited the decision of the Supreme Court in *Jones v Kernott* at paragraph 46, where it was said:

“It is always salutary to be confronted with the ambiguities which later emerge in what seemed at the time to be comparatively clear language. The primary search must always be for what the parties actually intended, to be deduced objectively from their words and their actions. If that can be discovered, then, as Mr Nicholas Strauss QC pointed out in the High Court, it is not open to a court to impose a solution upon them in contradiction to those intentions merely because the court considers it fair to do so. In a case such as this, where the parties already share the beneficial interest and the question is what their interests are and whether their interests have changed, the court will try to deduce what their actual intentions were at the relevant time. It cannot impose a solution upon them which is contrary to what the evidence shows that they actually intended. If it cannot deduce exactly what shares were intended, it may have no alternative but to say what their intentions as reasonable and just people would have been, had they thought about it at the time. This is a fallback position which some courts may not welcome but the court has a duty to come to a conclusion

on the dispute put before it. In this case there is no need to impute an intention that the parties' beneficial interests would change because the judge made a finding that the intentions of the parties did in fact change."

24. In the context of those authorities, the learned Recorder found that although Mr Razaq was initially committed to the family and that when consideration was first given to the purchase of the property there was some ambiguity in relation to his intentions, by the time the actual transfer took place in June 2017 his intentions had changed. The learned Recorder said that if his intention had changed but that was not communicated to Miss Shaheen, it would be unconscionable for the court to give effect to the transfer despite having reached such a conclusion. He said this:

"The clear direction given by the Supreme Court and the House of Lords is that in these types of cases they are not commercial disputes and the court looks at the matters more broadly. That is the clear implication of the wording of Baroness Hale in the passage that I have referred to. She talks about it being very unusual for there to be a case where one adopts a different approach to the straightforward approach but in my view in this case it is a very unusual case because of the very short period of time between the date of the transfer and the breakdown of the marriage and that requires the court to examine the reasons behind the breakdown of the marriage and what the intentions of the parties were in the run up to that breakdown."

25. He found that the intention of the claimant in the run-up to the transfer was that he had already decided the marriage had failed and was not going to subsist. He clearly had a sound basis for making that decision from the evidence that was given, not least the evidence of the claimant himself in his witness statement.

26. In those circumstances, the learned Recorder asked himself this question: "What was the claimant's intention in respect of the purchase of the property?" He said this at paragraph 59 of the judgment:

"It seems to me that doing the best I can on all of the evidence, on the balance of probabilities, that the claimant had come to the position that he wanted, essentially, his share of those contributions recognised. His belief was that the marriage had essentially failed and they were living together but not as a couple, that he wanted that to be protected and his keenness to get the transaction completed whilst, as I say, the initial thoughts were probably in connection with the family, that his keenness in getting that transaction completed were entirely driven because of his view about the imbalance in terms of contributions coming up to that time ...6. For those reasons I come to the conclusion that having looked at all the evidence in this case there was a clear lack of agreement about what then legal interest should be and if the clear intention or if that knowledge had been available to the defendant at that time she would never have concluded this transaction. Indeed, as she said, she would have carried on renting."

27. Thus, on the basis of that finding, the learned Recorder considered himself at liberty to reconstruct the intention of the parties in the light of their knowledge of the true position, and in particular Miss Shaheen's intention, and on that basis he awarded her 90 per cent of the value of the property with 10 per cent for the claimant.

28. On this appeal, Mr Din, who also represented the claimant in the court below, submits that there was no scope for the learned Recorder to find otherwise than that it was the intention of the parties that both the legal and the beneficial ownership should be held in equal shares, and in particular no scope behind that and on the basis of the evidence make an order in some different distribution. He submits that the defendant cannot claim that the beneficial shares are held unequally because, on her own evidence, equality was agreed between them and she is unable to prove a common intention that the shares were to be unequal. He says that on the evidence it is not even necessary for the claimant to rely on the presumption of equal beneficial shares because the evidence showed that there was an actual common intention of equal beneficial shares. Thus, he submits that all the personal allegations that the parties made against each other and all the findings of the learned Recorder in relation to the relationship of the parties were irrelevant to the issue of the parties' common intention so far as the beneficial shares in the property were concerned.

29. He refers to the conclusion of the learned Recorder at paragraph 61 of the judgment to which I have already referred and submits that the learned Recorder was factually wrong because the actual common intention remained unchanged, and it was wrong in law because the defendant did not even attempt to argue that there was any intention, never mind a common intention, that their beneficial shares should be unequal.

30. Both before the Recorder and before me he has submitted that in the end this is a simple case where the parties agreed to the conveyance of the property into their joint names because it was their clear intention at the time, as reflected in the contemporaneous documents and as admitted by the defendant in her evidence, that they should hold the property in equal beneficial shares.

31. For the respondent, Mr Gomer in helpful written and oral submissions, suggests at paragraph 29 of the written submissions that the court's role in each case is to determine the parties' intentions as to the beneficial interest. Thus far there is no disagreement between him and Mr Din.

32. He says it does this by applying a forensic sieve to the situation and asking itself the following three questions: (1) Is there direct evidence of the parties' intentions, for example a trust deed which records the parties' intentions or a declaration of trust in the TR1? This is a reference to the conveyancing document where, at paragraph 10, there is the opportunity for the parties to make an express declaration of trust. In this case paragraph 10 if the TR1 was not completed. (2) If the answer to 1 above is no, can the parties' intentions to depart from an equal split be inferred from the evidence - and he refers to, in particular, the judgment of Lady Hale in *Stack v Dowden*, and then (3) If the intention cannot be inferred from the evidence, can the court impute to the parties a different intention from the evidence, and he refers to the judgment which I have just referred to in *Jones v Kernott*.

33. Mr Gomer has submitted that in this context, referring to Lady Hale's dictum that context is everything, the intention of the parties is to be interpreted more widely than as submitted by Mr Din but must be interpreted in the context of what the parties understood at the time to have been their intentions in relation to the relationship. Thus, he expands the concept of intention in relation to the beneficial interest in the property to include their intentions that the marriage or relationship should continue and that the property would be provided for them as a matrimonial home for them all to live in with the three children from the previous relationship and Zayn from their relationship. Thus, in circumstances where that was not the claimant's intention but that he effectively misled the defendant into agreeing to

this transaction upon a false basis, their common intention was no longer a common intention because this wider interpretation of the concept of intention meant that their intentions diverged so far as the marriage was concerned.

34. He therefore submits that the approach of the learned Recorder was absolutely correct and that the learned Recorder was entitled, in the absence of a common intention in that sense, to depart from the presumption of equal shares and find the shares in the proportions that he did.

35. In my judgment, there is an important distinction to be drawn between what the parties intended so far as their relationship was concerned and what the parties intended so far as their beneficial interests were concerned. That can be shown by the fact that, had the parties signed a document expressing in terms their intention that the property should be held in equal shares beneficially, as Mr Gomer concedes, the court could not go behind such a document and seek a different interpretation of their intention by reference to the various matters which have been relied upon in this case.

36. In my judgment, if that is true of a document that is signed, there is no principled reason, or reason in law, why it should not also be true of a common intention which is proved by the contemporaneous documents that came into existence to which I have already referred in the run-up to the conveyance, and also in relation to the defendant's admission in evidence that that was what she intended. As Mr Din submitted to the learned Recorder and has submitted to me, the evidence was all one way, namely that both parties intended that the property should not only be conveyed into their joint names but that it should be held in 50/50 beneficial shares.

37. It is true that the defendant intended that upon the basis of a misunderstanding on her part, namely that the claimant was committed to the relationship and that this purchase and conveyance was a demonstration of that commitment but that does not deprive her of having the intention that was expressed.

38. In my judgment, the concept of intention cannot be expanded in the way in which the learned Recorder did in this case and which Mr Gomer has submitted to me is correct where there are documents and other evidence which show what the intention was. The wider concept of intention seems to me only to come into play where there is not clear evidence as to the actual intention at the time that the transaction was carried out, namely the conveyance of the property into joint names.

39. I have no doubt Miss Shaheen would not have agreed to either the purchase of the property or to it being conveyed into their joint names had she known the true intention of the claimant in relation to the relationship, but if it was her case that she had been induced to enter into the conveyance by deceit or fraud or misrepresentation the appropriate course would, as Mr Din submitted, have been to have raised a counterclaim to that effect, and then there would have been pleadings and the case of each party would have been set out clearly and tried on the evidence.

40. It seems to me that, on the basis of the Recorder's findings, had any such claim been made, the defendant would probably have succeeded, but that was not the position. This remained at all times a Part 8 claim in relation to the declaration as to the respective beneficial ownership of the property and therefore the initial enquiry of the Recorder was, or should have been, the narrow one, namely to answer the question: 'is there evidence on

which I can determine the parties' intentions at the time that the conveyance was entered into, as to the beneficial shares in which the property should be held?'

41. Effectively, this is the first of the three questions posed by Mr Gomer, namely "Is there direct evidence of the parties' intentions?" Mr Gomer suggested that in the absence of a trust deed or a declaration of trust or some other document which satisfies the provisions of section 53 of the Law of Property Act, the answer to that question has to be no, in which case you go on to consider questions 2 and 3. In my judgment, that is too narrow an interpretation and it is perfectly possible to have direct evidence of the parties' intentions other than in such a document and there was and is such evidence in this case.

42. On that basis, in my judgment, the learned Recorder should never have gone beyond question 1 and, as Mr Din submitted, should have answered the question "Is there direct evidence of the parties' intentions?" in the affirmative, namely that it was the parties' intention at the time of the conveyance, that the property should be held in equal beneficial shares. That should have been the end of the matter and that should have been the declaration made by the Recorder.

43. In those circumstances, and not without some considerable regret, I allow this appeal and declare that the property is and was held in equal shares.

This transcript has been approved by the Judge