

[2018] UKFTT 176 (PC)

REF/2017/0195

**PROPERTY CHAMBER LAND REGISTRATION  
FIRST-TIER TRIBUNAL  
IN THE MATTER OF A REFERENCE  
UNDER THE LAND REGISTRATION ACT 2002**

**BETWEEN**

**MARGARET MARY BRADSHAW**

**APPLICANT**

**and**

**ANDREW JOHN WILSON**

**RESPONDENT**

**Property Address: 8 Harwill Approach, Churwell, Morley, Leeds LS27 7QW**

**Title Number: WYK53927**

**Before: Judge Owen Rhys**

**Sitting at: Leeds Employment Tribunal, Albion Street, Leeds LS1 5ES**

**On: 1<sup>st</sup> day of February 2018**

---

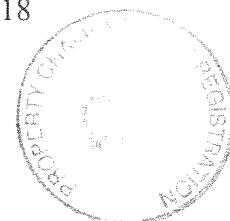
**ORDER**

---

**IT IS ORDERED** that the Chief Land Registrar shall give effect to the Applicant's application in Form RX1 dated 13<sup>th</sup> October 2016.

Dated this 16<sup>th</sup> day of February 2018

*Owen Rhys*



**BY ORDER OF THE TRIBUNAL**





[2018] UKFTT 0176 (PC)

REF/2017/0195

**PROPERTY CHAMBER LAND REGISTRATION  
FIRST-TIER TRIBUNAL  
IN THE MATTER OF A REFERENCE  
UNDER THE LAND REGISTRATION ACT 2002**

**BETWEEN**

**MARGARET MARY BRADSHAW**

**APPLICANT**

**and**

**ANDREW JOHN WILSON**

**RESPONDENT**

**Property Address: 8 Harwill Approach, Churwell, Morley, Leeds LS27 7QW**

**Title Number: WYK53927**

**Before: Judge Owen Rhys**

**Sitting at: Leeds Employment Tribunal, Albion Street, Leeds LS1 5ES**

**On: 1<sup>st</sup> day of February 2018**

**Applicant representation:** In person

**Respondent representation:** In person

---

**DECISION**

---

1. The Respondent (“Mr Wilson”) is the sole registered proprietor of the above-named property (“the Property”) under title number WYK53927. The Applicant (“Ms Bradshaw”) has applied to the Land Registry in Form RX1 dated 13<sup>th</sup> October 2016 for the entry of a restriction against the title. Ms Bradshaw claims that she made a financial contribution towards the purchase of the Property, in that she made a payment of £30,000 which reduced the amount of Mr Wilson’s mortgage loan secured

on the Property. She says that this was done following discussions with him in which it was agreed that she had a beneficial interest in the Property. By contrast, although Mr Wilson admits that Ms Bradshaw paid £30,000 which was used in this way, he says that it was intended as a loan to him, and there was no intention to give her a beneficial interest. Accordingly, he has objected to the application, and the dispute was referred to the Tribunal on 15<sup>th</sup> February 2017. The hearing took place on 1<sup>st</sup> February 2018, and I heard evidence from both parties and also from the Mr Wilson's sister.

2. The parties commenced a relationship in late 2012. They had a child together – Zack, who was born in June 2014. At that time, Ms Bradshaw owned her own property, 2 South Parade, Morley, where she lived with Amelia, her daughter from another relationship. She had owned this property, which was subject to a mortgage, since 2007. Mr Wilson had broken up with his second wife prior to his relationship with Ms Bradshaw, and he also owned a property at 9 Hill Top Close, Leeds. According to him, this had been bought as an “investment”, in that he had refurbished it in order to sell on at a profit. He sold this property in May 2014, and immediately moved in to live at 2 South Parade with Ms Bradshaw and her daughter. It seems that there was an attempt to sell 2 South Parade before Zack's birth – Ms Bradshaw's evidence was that the property was too small for the growing family and that the intention was to buy a larger family home together with Mr Wilson. Mr Wilson certainly played some part in instructing agents although the extent of his involvement is in dispute. It is common ground that a purchaser for 2 South Parade was found, but the sale fell through at the last moment.
3. It is also common ground that she and Mr Wilson agreed that he should purchase a property in his own name, pending the sale of 2 South Parade. She already had a mortgage on her own property, and her income had been reduced due to the fact that she was cohabiting with Mr Wilson. This had an effect on her working tax credit. She was not therefore in any position to contribute to the purchase at that time, and this is not disputed by Mr Wilson. In the event, he purchased the Property in February 2015 at a price of £158,000, funded by a cash payment of £98,000 from his own resources, and the balance of £60,000 by a loan secured by mortgage. Ms Bradshaw says that this house was bought as a home for the family. She says it was agreed that when she

sold her house, she would invest the equity in the Property, and that she would have a share of the Property as a result.

4. The Property needed a considerable amount of work before it was habitable. Mr Wilson carried out this work himself. Ms Bradshaw moved into the Property in March 2016, after 2 South Parade was sold, and the net equity was received by her, in the sum of £32,000. It is not disputed that she paid £30,000 directly to Mr Wilson's mortgagee, in three payments of £10,000 each at the end of May and the beginning of June 2015. The stage payments were due to the fact that there was a daily limit on her bank transfers. There is a conflict between them as to the basis on which the monies were paid. She says that before making these payments, she said that she would prefer to have a legal document in place confirming that she had a beneficial interest in the Property. According to her, Mr Wilson's response was that this would be very costly, and she would have to pay for lawyers herself. He printed off a "cohabitation agreement", which included a reference to beneficial interests but left the percentages blank. She refused to sign this. She says that Mr Wilson pressurised her into transferring the funds, threatening to sell the Property if she did not do so. He assured her that he had told his sister that she had an interest in the Property and that would protect her. It was in this context that she made the payment of £30,000.
  
5. Mr Wilson's story is rather different. He says that the Property was bought as an "investment", and this is what he says about the payment of £30,000. *"At the end of April 2016 we took the decision jointly to use the applicants savings as a short term loan which would enable me to reduce my monthly mortgage paymenst from £500.45 per month to £213.59. The condition of this £30,000 short term loan from the applicant was that I would repay it in full (without interest) from my retirement lump sum due to me on the 12<sup>th</sup> January 2017. I regret not documenting or evidencing the loan agreement in any form other than verbal between myself and the applicant. However, I did investigate via a solicitor some form of legal charge to protect the applicants funds in case of my sudden death as we are not married and this loan was the total extent of her personal savings. The estimated legal fees were £500-600 and we both decided that this did not make sense given that the loan was for a 7 month period before it would be repaid in full. For clarity this loan afforded me the facility*

*to be able to pay for all our family meals out, day trips and activities. I also paid the majority share of the planned holidays in August and September 2016.”*

6. Sadly, the relationship broke down whilst the parties were on holiday in September 2016, and although they both continue to live at the Property they do so as separate individuals and not as a couple.
  
7. The dispute referred by the Land Registry relates to the application to enter a restriction against the title to the Property to support Ms Bradshaw’s claimed beneficial interest. In order to resolve the dispute, it is necessary to decide whether Ms Bradshaw does have an interest which is capable of being protected by a restriction. There is no written agreement or trust in place, so Ms Bradshaw necessarily relies on an interest arising from a resulting, constructive or implied trust. In relation to cohabitees, where the title to the property is vested in one party alone, the general approach appears from cases such as Thompson v Hurst [2012] EWCA Civ 1752 and Curran v Collins [2015] EWCA Civ 404. Where a family home is put into the name of one party only, the starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership, but their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to determine what is fair having regard to the whole course of dealings between them in relation to the property, financial contributions being one of the relevant factors (see paragraph 52 of Jones v Kernott [2011] UKSC 53). Ms Bradshaw must therefore prove that there was a “common intention” – as that phrase has been defined in the numerous authorities on the subject – that he or she was to have a beneficial interest in the other’s property. In this case, therefore, Ms Bradshaw must establish, on the balance of probabilities, that there was some common intention, agreement or understanding that she should have a beneficial interest in the Property, and that this induced her to make some contribution, financial or otherwise, to the acquisition or improvement of the Property. The matters to be proved by someone in Ms Bradshaw’s position are summarised at 24-049 onwards in Snell’s Equity (33<sup>rd</sup> ed.)

8. Both Ms Bradshaw and Mr Wilson gave evidence and were cross-examined on their various statements. Evidence was also given by Mrs Jacqueline Cooper, Mr Wilson's sister, in the form of a witness statement dated 28<sup>th</sup> June 2017. With the greatest respect to her, this did not take matters any further, since she did not and did not claim to have any knowledge of the discussions and agreement with Mr Wilson which Ms Bradshaw alleges.
  
9. In the light of their evidence, and the other material placed before me, my findings are as follows:
  - (a) Prior to the purchase of the Property, the parties were living together at in 2 South Parade. They lived there with their child, Zack, and Ms Bradshaw's daughter. As Mr Wilson accepted in evidence, they were a family unit.
  - (b) 2 South Parade was unsuitable for the expanded family, and both parties wanted a larger property. They discussed various properties that were on the market, as the phone text messages demonstrate. This was a common venture.
  - (c) The original plan was for Ms Bradshaw to sell 2 South Parade and release funds which could be used to purchase a new property, but the proposed sale in the summer of 2014 fell through because the buyer was unable to obtain a mortgage.
  - (d) It was therefore agreed that Mr Wilson would buy the new property, and when 2 South Parade was sold, she would invest the equity from the sale into that property as her contribution to its purchase.
  - (e) When 2 South Parade was sold, Ms Bradshaw wanted some legal documentation to protect her investment in the Property. Mr Wilson discouraged her from seeing lawyers, saying that she would have to pay them herself. She was not in a financial position to afford this. Mr Wilson did produce a blank cohabitation agreement, which did not specify the size of the parties' respective shares in the Property. She refused to sign it.
  - (f) In the event she paid £30,000 to Mr Wilson's mortgagee without any written agreement in place. Both parties intended this payment to reflect that fact that Ms Bradshaw was entitled to a share in the Property, although they did not discuss the actual size of the share. Ms Bradshaw believed that this sum would be used to reduce the loan and thereby the term during which repayments had to be made.

10. In reaching these conclusions, I have preferred the evidence of Ms Bradshaw to that of Mr Wilson, where there is a conflict. Ms Bradshaw gave her evidence in a very clear and coherent fashion. She gave careful and considered answers to the questions put to her by Mr Wilson, and her evidence remained consistent throughout. I did not find Mr Wilson to be as impressive. He is clearly very upset about the breakdown of the relationship, and he seems to have convinced himself that the arrangements with regard to the Property were as he contends. However, Ms Bradshaw's evidence as to the arrangements made with Mr Wilson is also, in my judgment, much more aligned with the inherent probabilities, and other realities, of the situation. In particular:

- (a) It is clear that the purchase of the Property was a joint decision. The parties were in a relationship and had a child. They could not know that the relationship would break down so quickly, and were understandably focused on a future life together. The fact that there was an attempt to sell 2 South Parade before Zack was born indicates that it was intended that Ms Bradshaw would contribute to the purchase of, and have an interest in, the new property.
- (b) It is inherently unlikely that Ms Bradshaw would agree to sell her own property unless she was satisfied that she would have some interest in the new family home. Nor is it probable that she would agree to pay £30,000 (interest free, according to Mr Wilson) – effectively her only capital resources – to the mortgagees of the Property unless she believed that she had an interest in it.
- (c) Mr Wilson's case makes no real sense. According to him, he asked Ms Bradshaw for £30,000 as a "short-term" loan. He knew that he was going to receive a lump sum from the Fire Service on his retirement in January 2017, and it was his intention to repay Ms Bradshaw at that time. The purpose, according to him, was to reduce the mortgage repayments over a period of 7 months. However, Mr Wilson accepts that the mortgage repayments were not reduced until September 2016, some three to four months after the payment was made. He has produced no documents relating to the mortgage despite the standard order for disclosure. He says that the mortgagee delayed reducing the instalments, despite the fact that the monies were received at the end of May and beginning of June 2016. This seems improbable, and there are no documents to support it. In any event, there is no suggestion that he and Ms Bradshaw had any difficulty in meeting their regular outgoings, including the mortgage repayments, so there would be no reason to borrow money to



reduce them. Incidentally, I do not accept Mr Wilson's evidence that Ms Bradshaw made no real contribution to the family finances. She was in part-time work with a bank at this time and I find that she paid for the food shopping and other items referred to in her letter dated 29<sup>th</sup> May 2017.

(d) In my view the facts speak for themselves. The repayments were not reduced immediately because that was not the original agreement with Ms Bradshaw, which was to pay off part of the loan and to reduce the mortgage term. Given that Mr Wilson was on the point of retiring, that made obvious sense.

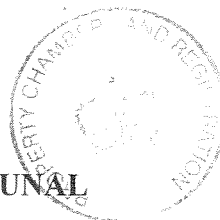
11. Mr Wilson made much of the statement by Ms Bradshaw in her RX1 that she moved into the Property in February 2015, when in fact she did so in March 2016. He says that this was a deliberate falsehood, which undermines her credibility generally. Ms Bradshaw readily accepted that this date was wrong. She says that her solicitor confused the date of purchase with the date on which she moved in. This seems perfectly plausible, and since the inaccuracy was bound to be noticed by Mr Wilson it is hard to see how Ms Bradshaw could have hoped to gain from it. I do not therefore consider that this issue in any way affects her credibility.

12. I have therefore concluded that Ms Bradshaw does have a beneficial interest in the Property. There was a common intention, as between her and Mr Wilson, that she should have a share in the Property. The payment of the £30,000 was made by reference to that common intention. This finding is sufficient to dispose of this dispute, since such an interest justifies the entry of a restriction. However, the parties did not address me on the respective size of their shares, and this issue was not addressed in the evidence. I do not therefore feel able to deal with this aspect of the matter, however undesirable it might be to leave this issue unresolved. It is not simply an arithmetical exercise, by calculating the percentage of the purchase price represented by £30,000. As was made clear in Jones v Kernott, it is necessary to consider the matter more widely, and to look at all the circumstances, in order to ascertain the parties' intentions, where no express discussion took place. In this case I very much hope that the parties themselves might be able to reach an agreement as to their respective shares without further litigation being necessary. They do, after all, have a child in common.

13. I shall therefore direct the Chief Land Registrar to give effect to the Applicant's application in Form RX1 dated 13<sup>th</sup> October 2016

Dated this 16<sup>th</sup> day of February 2018

*Owen Rhys*



**BY ORDER OF THE TRIBUNAL**