



[2018] UKFTT 213 (PC)

**PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION**

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

REF NOS: 2017/0253

BETWEEN

Yvonne Pugh

Applicant

and

Nicola Kain

Respondent

Property address: 84 Hathersage Road, Birmingham B42 2RY

Title number: WK52314

Before: Judge John Hewitt

Sitting at: Birmingham Employment Tribunals

On: 5 and 6 March 2018

ORDER

Representation:

Applicant: Ms Sheeba Eeswaramoorthy Solicitor

Respondent: Mr Glenn Willetts Counsel

Upon hearing the solicitor for the applicant and counsel for the respondent

It Is Ordered that:

1. The Chief Land Registrar shall cancel the original application made 26 September 2016 to enter a restriction in form A in the register; and
2. Any application for costs shall be made in accordance with the directions set out in paragraph 57 of the decision dated 8 March 2018.

Dated 8 March 2018

John Hewitt

By Order of the Tribunal





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Respondent: Mr Glenn Willetts Counsel

KEYWORDS – sole proprietor – common intention constructive trust – facts and detriment

The issue before the tribunal and its decision

1. The issue before the tribunal is an application by the applicant (Mrs Pugh) to enter a restriction in form A in the register to protect a claimed interest in the property arising by way of a “*implied resulting or constructive trust*”.
2. The decision of the Adjudicator is that:
 - 1.1 The Chief Land Registrar shall cancel the original application made by the applicant on 26 September 2016 to enter a restriction in form A in the register; and
 - 1.2 Any application for costs shall be made in accordance with the directions set out in paragraph 57 below.
3. In her closing submissions, Ms Eeswaramoorthy acknowledged that the clear evidence of Mrs Pugh, and her witnesses, Ms Amanda Doherty and Ms Pat Sterrett, which even if accepted, was not sufficient to make out a case that a common interest constructive trust had arisen. If that evidence was accepted, at best there was an indication of an intention by the then owner, Joe Kain, that on his death the property would be sold and the proceeds shared equally between Mrs Pugh and his daughter and his son.
4. In those circumstances the application must fail. In case this matter is taken further or any further or related applications are made, I consider that I should set out my findings of fact on the controversial evidence before me.

NB Later reference in this Decision to a letter and number in square brackets ([]) is a reference to the section and page number of the trial bundle provided for my use at the hearing.

Background

5. First, to set the scene I identify the main persons involved in the proceedings. For the most part I shall refer to them by the first name they were generally known by. In doing so I mean no disrespect to any of them:

Joe: Michael Joseph Kain. Born 4 March 1947. Was married to Yvonne Margaret Kain but they divorced later. There were two children of the marriage, Nicola Yvonne Kain and Neil John Kain.

Joe and Mrs Kain purchased the 84 Hathersage Road, Great Barr, Birmingham B42 2RY (the property) in December 1974 and were registered at Land Registry as joint proprietors. It was the family home and Nicola and Neil were brought up there.

In 1997 following the divorce Joe was registered at Land Registry as the sole proprietor.

Joe died intestate on 5 June 2016 (aged 69). On 3 August 2016 Letters of administration were granted to Nicola [C87].

Nicola: Nicola Yvonne Kain – daughter of Joe

Neil: Neil John Kain – son of Joe

Darren: Darren Manning - partner of Nicola

Sue: Susan Brayne – partner of Neil

Mrs Pugh: Yvonne Pugh – the applicant. Lived at 85 Hathersage Road which is directly opposite the property for most of her life and was brought up there. Became the owner of it following the death of her mother. Has recently transferred ownership to her nephew, Martin Bond. Mrs Pugh and Joe were neighbours for very many years and a friendship developed and blossomed between them from about 2004 until Joe died in June 2016. To a large extent the nature of that relationship is at the heart of the dispute between the parties.

Martin: Martin Bond - nephew of Mrs Pugh and now owner of 85 Hathersage Road.

Amanda: Amanda Doherty – partner of Martin.

6. Following Joe's death there was distrust between Nicola and Neil and Mrs Pugh. Nicola made funeral arrangements with the undertakers (and paid the bill) but Mrs Pugh took a fairly direct approach as to the format of the service and did not involve Nicola with the details and set up a meeting to discuss the finer details for a date which Nicola had told her previously was a date on which she would be unable to attend. There were also suggestions that Mrs Pugh had taken some of Joe's valuables from the property and there were concerns about withdrawals from Joe's bank account.
7. Neil made arrangements to change the locks to the property but he allowed Mrs Pugh to attend to remove any of her personal items that might be in the property.
8. Mrs Pugh learned that the property had been put on the market for sale without her knowledge. Mrs Pugh was of the view or believed that she had an entitlement to a one third share of the proceeds of sale. This was disputed by Nicola and Neil.

The application(s) to Land Registry

9. In September 2016 Mrs Pugh made an application to Land Registry to enter a restriction and a unilateral notice in the register to protect her interests. Mrs Pugh (or her solicitors) used the same statement dated 22 September 2016 [C121(a)] to support the applications. This was queried by Land Registry in a requisition dated 27 September 2016 [C109]. In particular it suggested that it did not show a constructive or resultant trust had arisen. In a response dated 14 October 2016 [C111] Mrs Pugh's solicitors said: "*We confirm our client's interest arising from a trust of land where implied resulting or constructive. Our client was repeatedly assured by the deceased*

with intention that she will benefit from the property upon his death and acted purely in reliant on assurances to be detrimental."[sic]. They went on to say that the Practice Guide 19 which had been drawn to their attention did not require the type of trust to be specified.

10. Land Registry raised a further requisition dated 11 November 2016 [C115] and explained that an application for a restriction and a unilateral notice cannot be lodged for the same interest. In particular it said that a trust interest cannot be protected by a notice and cited s33 of the Act. Land Registry also observed that the points raised were more akin to 'proprietary estoppel rights' which were capable, in principle, of protection by a notice. In a reply dated 16 November 2016 [C117] Mrs Pugh's solicitors stated that the RX1 restriction would be appropriate for the case. Lack of detail was again raised by Land Registry [C120] and in reply a further statement made by Mrs Pugh and dated 18 November 2016 [C121] was submitted to Land Registry. The outcome of that was that the application to enter a unilateral notice in the register was abandoned and the application to enter a restriction went forward.
11. Nicola objected to that application and on 27 February 2017 the Chief Land Registrar referred the disputed application to the tribunal. Directions were given. Mrs Pugh's statement of case is at [B1] It is light on detail. By order dated 9 August 2017 Mrs Pugh was required to provide a supplemental statement of case to give much more detail of the alleged common intention and disclosure of documents to support the alleged expenditure relied upon to show 'substantial detriment'. Mrs Pugh's supplemental statement of case filed in response is at [B39]. Again it is light on detail and no adequate further disclosure was given.

The hearing

12. The disputed application came on for hearing before me on 5 and 6 March 2018.

Mrs Pugh was represented by her solicitor, Ms Eeswaramoorthy.

Nicola was represented by Mr Willetts of counsel.

13. Ms Eeswaramoorthy made two applications.

The first was for permission to call Amanda to give oral evidence. No written witness statement had been filed and even at the hearing none was available. However, Amanda and Martin had jointly signed a letter of support [B16]. In effect the application was for that letter to stand as Amanda's witness statement. Ms Eeswaramoorthy had no convincing explanation as to why a proper written witness statement had not been prepared and filed in time. I can only conclude it was lack of care and diligence in case preparation. Further, and perhaps more importantly, no prior notice of the application had been given to Nicola's solicitors. Such professional discourtesy is not acceptable. Having taken instructions on whether any prejudice would arise if Amanda was permitted to give oral evidence on the matters raised in the letter, Mr Willetts said there would not. In the circumstances I decided to grant the application, but I did so with reluctance and bearing in mind the overriding objective. However such lack of care and courtesy is not the way that litigation is conducted nowadays.

The second application was that a Mr Stephen Golding should not be permitted to give evidence on behalf of Nicola on the basis that his evidence was considered to be irrelevant. Mr Willetts opposed the application arguing that it was of relevance. I rejected the application on the basis that the evidence had some bearing on the credibility of Mrs Pugh.

14. Ms Eeswaramoorthy acknowledged that she had not complied with directions to file and serve a skeleton argument. Evidently this was for two reasons. First, she did not disagree with the propositions as to the law set out by Mr Willetts in his skeleton and secondly, it was her practice only to file a skeleton if it was necessary after the oral evidence had concluded.

15. Mr Willetts made two applications. One was to submit a substitute [C60] being Mr Goldings witness statement bearing a statement of truth (in all other respects it was identical to the version served previously. There was no objection to that application.

The other was to put in Mrs Pugh's witness statement dated 22 September 2016 which had been filed at Land Registry and which had not been included in the bundle. Again there was no objection that application and the document was allowed in and numbered [C121(a)].

16. The following persons gave oral evidence, mostly on oath but one or two affirmed. All of the witnesses were cross-examined by the opposite party.

Applicant

Mrs Pugh	[B1, C121 and C121(a)]
Amanda Doherty	[B16]
Mrs Pat Sterrett	[B67]

Respondent

Nicola Kain	[C1 and C37]
Neil Kain	[C100]
Darren Manning	[C67]
Keith Foster	[C69]
Roy Wall	[C88]
Sylvia Wall	[C88]
Susan Brayne	[C99]
Stephen Golding	[C60]

The gist of the case for Mrs Pugh

17. In opening Mrs Pugh's case Ms Esswaramoorthy said that the restriction was required to protect Mrs Pugh's beneficial interest in the property based on a common intention constructive trust and also to protect an application that might be made under the Inheritance (Provision for Family and Dependents) Act 1975 (the 1975 Act). Mr Willetts interjected to say that so far as he was aware no such application had yet been made (or referred to in the pleadings) and, even if it has, no application has been made to Land Registry to protect it. He thus submitted I had no jurisdiction in relation to any such claim and that my jurisdiction was limited to the application made on 26 September 2016 to enter a restriction to protect the claim to an interest arising by

virtue of a common intention constructive trust. Ms Eeswaramoorthy did not wish to argue to the contrary and we proceeded on that basis.

18. Given the way in which the hearing unfolded and the several concessions made by Mrs Pugh during cross-examination, I do not propose to go into every detail that was in dispute. Instead I propose to focus on the points which Mrs Pugh considered to be of some significance.

Initially, the main thrust of Mrs Pugh's case was that from 2004 until he died she and Joe were in a relationship, cohabiting and that Joe promised her a one third share of the property. In reliance on that promise she acted in such a way as to cause her substantial detriment. Mrs Pugh said that throughout she had been Joe's carer and had given up work in 2012 to care for him full time. They had a joint bank account and that she made substantial contributions to the running of the property, to household expenses and to repairs, maintenance and to soft furnishings and to Joe's clothes.

Mrs Pugh also suggested that Nicola and Neil had little time for Joe and more or less left her to carry the brunt of looking after him.

As will be seen shortly, not much of that bore resemblance to reality.

Just after taking the oath Mrs Pugh confirmed that her statements of case and witness statements were true. Mrs Pugh did not wish to make any alterations or corrections.

As Mrs Pugh's evidence progressed in cross-examination she made a number of concessions and alterations. Mr Willetts submitted that Mrs Pugh was an unreliable witness, prone to embellishment and untruths. In consequence I should treat her evidence with great caution and reject it save where it is corroborated by other reliable, preferably documentary, evidence. That submission strikes a chord with me.

19. Probably the most convenient way to set out my findings of fact is go through the several statements made by Mrs Pugh as the application/reference progressed to highlight the alterations:

22 September 2016 [121(a)]

20. Cohabited with Joe at 84 Hathersage Road. Was in a relationship for 12 years (since 2004) and during the last 7 years nursed him as a full time carer.
21. *"Mr Kain last wishes was for the property to be split 3 ways between his daughter Mrs Nicola Kain, his son Neil Kain and myself, this was expressly explained to his son Neil and daughter, Nicola."* No evidence as when or how the alleged explanation was given.

"... has witnesses to the last and final wishes of Mr Kain regarding his property and the equal ...equity between his son, daughter and Yvonne Pugh." At the hearing Mrs Pugh conceded that this was an occasion about three weeks before Joe died, and also conceded that Nicola was not present, only Joe, Neil and herself and thus there were no 'witnesses'.

“... Mr Kain's best friend Mr Roy Hall for over 48 years was a witness to Mr Kain's last wishes, who can testify to the last wishes of Mr Kain ...” A witness statement by Mr Hall was included in the bundle, but he was not called to give oral evidence. Mrs Pugh accepted that in his witness statement he said that he first met “[Mrs Pugh] and her partner Joe ...about 5-7 years ago when I started enjoying time at Coppice Caravan Park.” Thus Mr Wall had not been Joe's friend for 48 years and he was not Joe's best friend.

“There was also another witness Mr Martin Bond and his Partner Amanda are also witnesses to the last wishes of Mr Kain.” At one time Mrs Pugh said that Martin and Amanda were both present on the occasion about three weeks before Joe died but that was withdrawn and Mrs Pugh accepted they were not present. Martin was not called to give oral evidence. Amanda was called but her evidence was limited to one alleged occasion in 2014 or earlier when Joe was said to have said that on his passing the house would go to Yvonne and the his two children. Given that Joe did not die until June 2016 it can hardly be said that what was allegedly said by Joe amounted to his ‘last wishes’.

“Nicola and Neil also agreed that the proceeds of the property would be shared equally amongst the three of them.” This was alleged to have been agreed about three weeks before Joe died. Mrs Pugh conceded that Nicola was not present on that occasion and that there was no occasion when Joe, Mrs Pugh, Nicola and Neil were all present when Joe expressed his wishes that the property should be shared 3-ways. Still less was there any ‘agreement’ between those concerned that the property would be shared 3-ways.

18 November 2016 [C121]

22. “When I formed my relationship with Mr Kain ... and during my relationship with Mr Kain he promised me right from the outset that I will get a financial share in the property ...” Mrs Kain accepted that such promise was not made right at the outset of the relationship and that it would have been an astonishing promise to have made at the outset of a relationship. Mrs Kain said at the hearing the promise was made in 2010, but she was unable to explain why this was mentioned for the first time during the hearing and had not been set out in any of her previous statements.

23. “I further say that during my relationship for many years and up until the death of Mr Kain I made financial contributions by way of paying the general household bills, buying new curtains, furnishing the property as and when required and made maintenance contributions and contributions towards the weekly food bills and also contributions were made for general repair works to the property.” Mrs Pugh was unable to produce any documents to support the above. Mrs Pugh accepted that in fact Neil carried out works and repairs to the property mostly using materials paid for by Joe, That the only repair she paid for was a piece of hardboard laid in the toilet to help support the floor. Mrs Pugh also accepted that basically the property was already furnished and equipped at the start of her relationship with Joe and that at that time Joe was not unwell or in need of care and was able to look after himself and the house. She was thus not his carer at that time. Mrs Pugh said that after Joe was diagnosed with cancer of the tongue, he gave up his heavy smoking habit, and that she replaced the curtains in his bedroom in order to help deter him from resuming his smoking habit. Mrs Pugh also accepted that the utility bills on the property were paid by Joe

from his sole bank account. The impression given by Mrs Pugh in the statement was that Joe was financially dependent on her. That was not pursued at the hearing, rather she said that she tended to be dependent on Joe and that he would help her out if she was a bit short and she only had her pension. That evidence tends to chime with the observation made by Ms Eeswaramoorthy in opening that Mrs Pugh was contemplating a claim under the 1975 Act.

19 November 2016 [B9]

24. In this letter, addressed '*To Whom it may concern*' Mrs Pugh repeated the assertion that she made contributions towards; *Heating Bills, Household Insurance, Water Rates*.

In a later paragraph she wrote: "*For most of the time I have known [Joe] we have held a joint bank account which paid for Caravan and other expenses...*". At the hearing Mrs Pugh accepted that she and Joe jointly purchased a caravan in 2012 in equal shares. Joe paid his 50% share from his savings and Mrs Pugh took out a hire-purchase loan to fund her share. The joint bank account was opened on 5 December 2012 expressly with the aim that they would make equal payments into it and that ground rent, site fees and other caravan expenses would be drawn down from the account as and when required. It was therefore misleading to suggest that the joint account was in place for most of the period of the relationship and that it was used for general household/living expenditure.

25. Following Joe's death the caravan passed to Mrs Pugh's sole ownership and the joint account was closed and the balance of £6,388.77 was paid out to Mrs Pugh.
26. It was suggested that the fact of the joint ownership of the caravan and the joint bank account was indicative of a cohabiting relationship. I reject that. I infer it was nothing more than indicative of friends enjoying time together in a caravan park and investing jointly in a caravan and opening a joint account expressly for and limited to enable expenditure on the caravan to be shared equally. The evidence of Darren, which I accept was that in the caravan Mrs Pugh and Joe had separate bedrooms.
27. It was not disputed that Mrs Pugh maintained her own bank account and that Joe maintained his own bank account into which his pensions and benefits were paid and from which his general living expenses were paid. At Joe's death the balance on this account was a little over £2,100.

Statement of case 1 [B1]

28. In paragraph (4) Mrs Pugh repeats the assertion that the financial interest in the property was promised "*from the start of the parties' relationship*". At the hearing Mrs Pugh accepted that was not correct.
29. At the hearing Mrs Pugh conceded that paragraph (5) was incorrect, that there was no occasion when she, Nicola and Neil were present when Joe said that he wanted the property shared 3-ways and (as it must follow) there were no witnesses to that expressed wish.

30. Also at the hearing Mrs Pugh conceded that paragraph (6) was not accurate that she did not provide any furniture or contribute to the maintenance of the property and that the only repair she paid for was a piece of hardboard laid in the toilet.
31. Mrs Pugh relied heavily on the assertion that she and Joe were in a relationship and cohabited. So far as I am aware there is no formal legal definition of 'cohabitants'. The Oxford Dictionary of Law 6th ed 2006 defines 'Cohabitants' as "*Unmarried sexual partners who are living in a long-term stable relationship*". The dictionary goes on to observe that unlike some other jurisdictions English Law provides no coherent approach towards cohabitation and unless a specific statutory provides otherwise cohabitants are treated in law no differently than two strangers. Of course cohabitation is not a prerequisite to found a common intention constructive trust. But, some-times it may be an indicator of and support a course of dealings from which inferences might be drawn.
32. Mrs Pugh alleged that she lived with Joe in the property and that it was their home. The evidence before me does not support that allegation. Neil who visited Joe regularly, generally at least once if not twice per week was clear that Mrs Pugh did not live in or sleep in the property. It not disputed that Mrs Pugh was at the property regularly, most days and cared for Joe in the latter years when he became unwell but I find that each evening she went home. I am reinforced in that finding by a number of pieces of evidence including:
- 32.1 Mrs Pugh's oral evidence that "*Joe's house was his house and my house was mine.*" Mrs Pugh was never registered as living at the property for council tax or any other purposes.
- 32.2 Sue's evidence that she regularly went shopping with Mrs Pugh on a Saturday whilst Neil was visiting Joe and on return Mrs Pugh invariably took her groceries into her house at 85 (or sometimes put them in her car) before crossing the road to join Joe, Neil and Sue.
- 32.3 The evidence of Mrs Sylvia Wall. Mr & Mrs Wall were next-door neighbours who lived at 82 Hathersage Road. Mrs Wall told me that for many, many years and at most weekends before Joe got the caravan in 2012 they socialised with Joe in his home enjoying a drink and a game of darts. When Joe started his relationship with Mrs Pugh she tended to join them, but always went back home across the road at the end of the evening. Mrs Wall also said that sometimes during the week they would hear the front door of the property slam shut and occasionally she would say to Mr Wall: "*That'll be Joe chucking her out.*" Mrs Wall also said that she knew Joe very well and that there was no way he would let Mrs Pugh move in. The evidence of Mr Foster, another longstanding neighbour (86 Hathersage Road) and friend of Joe was that he would often see Mrs Pugh backwards and forwards across the road from her house to Joe's house. In the early days of the relationship those visits tended to be at weekends but over the years and as Joe became unwell tended to be more frequent.
33. In none of Mrs Pugh's witness statements or statements of case does she mention that she and Joe had become engaged to be married. Mrs Pugh had disclosed at [B34] a pre-printed undated birthday card which on the front bears the expression "*Fiancé ...*" and inside following some words of endearment there is printed the expression "*For*

- My Fiancé*” beneath which there is written in manuscript the words: “*Happy Birthday Joe XXX*”. At the hearing Mrs Pugh claimed that she and Joe had become engaged, but no details were given. Nicola told me that the writing on the card was that of Joe, but that she was unaware of any engagement and that Joe had never mentioned it to her. I find that the card was genuine and that it was given to Mrs Pugh by Joe.
34. Mrs Pugh also disclosed a further birthday card [B31]. On the front it bears the message: “*Birthday Wishes For Someone Special*”. Inside following the printed words: “*You are one of those special people who makes the world a nicer place to be...*”. Beneath those words written in manuscript are the words: *Thanks for looking after me over the last 12 months. Hope I can make it up to you in the future. Lots & lots of love. Joe XXX Roll on 2016*”. There was no dispute that those words were in Joe’s handwriting. I infer the card was given to Mrs Pugh on her birthday in 2015.
 35. The evidence of Nicola, Neil, Darren and Sue was that none of them had any knowledge of any engagement and that Joe had never mentioned it to any of them. I accept that evidence. Mr Roy Wall who lived next door at 82 Hathersage Road told me that he had known Joe for 55 years as they had been at school together. He (and his wife) had been close friends with Joe until about 12 months before Joe’s death when there had been a falling out. Mr Wall said that during one of his chats with Joe, Joe mentioned that Mrs Pugh wanted a ring and he, Joe said: *But I ain’t giving her no bloody ring.*” Mr Wall accepted that Mrs Pugh cared for and looked after Joe towards the end of his life. He said that Joe was happy to let her do so because it suited him. To some extent Mr Wall considered that Joe was using Mrs Pugh. Mr Wall said that Joe enjoyed female company and that after his divorce he had a relationship with a lady called Janet and then after that Ann, followed by Mrs Pugh but that Joe never had any intention of another marriage.
 36. I am not persuaded that Mrs Pugh and Joe were engaged to be married or that Joe had an intention to marry Mrs Pugh. I accept that Joe gave to Mrs Pugh a birthday card intended for a fiancé, but I infer it given to her as something of a sop, perhaps to keep her happy and quiet.
 37. Mrs Pugh also relied upon the evidence of Amanda. I have concerns about the independence of Amanda. Apart from the unexplained transaction entered into between Mrs Pugh and Amanda’s partner, Martin, whereby Mrs Pugh has transferred 85 Hathersage Road to him yet still resides in 85 Hathersage Road, the letter at [B16] is not a short factual account of a conversation alleged to have taken place in about 2014 but was plainly intended to be critical of and to disparage Nicola and Neil, I assume for some form of ulterior motive. On the balance of probabilities I find the alleged conversation about Joe’s wishes for the property did not take place. But, even if it did, it does not assist Mrs Pugh’s case.
 38. Finally, there is the evidence of Mrs Pat Sterrett [B67]. Again, this witness statement is highly critical of Nicola and Neil. In cross-examination Mrs Sterrett accepted that some of those criticisms are unfounded, based on a misunderstanding or reliant only on what Mrs Pugh had wrongly told her. Again I treat this evidence with caution.
 39. The gist is that Mrs Sterrett was a long term friend of Joe’s sister, Ann Walker. Mrs Sterrett and Ann are no longer friends, having fallen out. Mrs Sterrett said that she had

met Joe and Mrs Pugh for the first time in about 2013/14 when they were all visiting Ann at her home. A second meeting took place in about 2016. At that time Ann was visiting Mrs Sterrett in her home and Joe wanted to see Ann so Joe and Mrs Pugh called round. Evidently during the course of conversation Joe remarked that Mrs Sterrett's house was a large house. Mrs Sterrett took that to be an implication it was a valuable house and that she, Mrs Sterrett, was a wealthy widow. Mrs Sterrett was keen to quash that notion and stated that the house was left to her in a will. Mrs Sterrett said that the reference to a will prompted Joe to remark that he was leaving his house to Mrs Pugh. Mrs Pugh intervened to say that would not be fair and on reflection Joe said that instead he would leave the house 3-ways to include Mrs Pugh and Joe's son and daughter.

40. I find that this alleged conversation was a rather strange one to take place with a relative stranger. Evidently it was sparked by a reference to a will. So far as I am aware Joe never made a will. Mrs Pugh told me he would not pay the cost of having a will drawn up. In a letter dated 7 January 2017 [B18] Mrs Sterrett said something slightly different and that the alleged conversation came up because Joe had suffered a traumatic operation on his tongue. I find Mrs Sterrett is partisan. I treat her evidence with caution. On the balance of probabilities I find that the alleged conversation did not take place. Again, even if it did, it does not assist Mrs Pugh's case.

The gist of the case for the respondent

41. In view of the findings above I can take this relatively shortly. In the presentation of her case Mrs Pugh has made what I find to be incorrect and unfair criticisms of Nicola and Neil and consider that I should summarise my findings of fact to that the record is clear. I found Nicola, Neil, Darren and Sue to be honest witnesses doing their best to assist me. They gave evidence in a careful, thoughtful and consistent way. I find I can rely upon them with some confidence. I prefer their evidence where it is at odds with that of Mrs Pugh.
42. I find that Nicola was not estranged from Joe and the assertion that Nicola did not visit Joe for over five years is unfounded. Nicola accepted that there were occasions when she and Joe did not get on but there was no serious falling out. Indeed, there was a period when Nicola and her family stayed with Joe in the property whilst their own home was being renovated.
43. I find that Neil visited Joe regularly generally at least once per week at the weekends and sometimes during the week as well. I also find that Neil regularly carried out works and repairs at the property at the request of Joe who paid for the materials used. There may have been occasions when Joe gave Neil some money for his time and trouble but I do not find that to be in any unusual, wrong or inappropriate. Neil also helped Joe organise new central heating which Joe paid for.
44. I find that there was no occasion when Joe mentioned to Nicola and/or Neil that he had a wish that after his death the property should be sold and shared 3-ways with Mrs Pugh.
45. I accept Sue's evidence that there was an occasion in about 2014 when she and Joe went to visit Joe's sister, Joan Ohren. In conversation Joe told Joan that he was leaving some money to his grandchildren and the family home to Neil and Nicola. I

also accept Sue's evidence to the effect that Mrs Pugh sought to keep Joe to herself and tended to dissuade Sue and Neil from visiting him. The impression the family got was that Mrs Pugh was fairly aggressive and controlling. I am reinforced in this conclusion by the evidence of Mrs Wall which was to similar effect. When Joe was very poorly Mrs Pugh was his main carer and supervised his medications. Out of courtesy Mrs Wall would enquire of Mrs Pugh if it was ok to pop in and visit Joe. Mrs Wall was quite keen to mend the rift in her relationship with Joe but was rebuffed by Mrs Pugh who invariably had one reason or another why a visit was not appropriate or convenient.

46. I further accept Sue's evidence that for the most part Joe kept his house and garden neat and tidy and carried out most of the domestic chores himself until the last few months before his death. This was confirmed by Mr & Mrs Wall.
47. I find that Mrs Pugh was not a full time carer for Joe from about 2012 onwards and that she gave up work "...to provide full time care to [Joe]". Not only do I prefer the evidence called by the respondent on this point, it also tends to be inconsistent with the decision that Joe and Mrs Pugh arrived at in 2012 to jointly purchase the caravan. I find that Mrs Pugh was a full time carer for Joe only for the last two or three months of his life.
48. Finally, for avoidance of doubt, I accept the evidence of Mr Golding concerning the incident over his late mother's will in 2003, but that evidence has not played a part in the conclusions I have arrived at.

The law and conclusions

49. The law as summarised by Mr Willetts in paragraphs 11-17 of his skeleton argument dated 26 February 2018 were not disputed by Ms Esswaramoorthy. I need not set them out in this decision.
50. This is a sole proprietor case where the property had been acquired before the relationship between Joe and Mrs Pugh commenced. Joe was the legal and beneficial owner of the property. There is a 'heavy onus of proof' on a person who wishes to prove a contrary position.
51. Thus Mrs Pugh has to prove some form of implied trust. To do that Mrs Pugh has to prove that Joe and she both had a common intention that when the property was registered in Joe's sole name in 1997 the beneficial ownership was to be shared between them in some proportion. Plainly that was not the case because the relationship did not commence until 2004.
52. In the alternative Mrs Pugh has to show a common intention of Joe and herself that she was to have an immediate share in the beneficial ownership and that intention was followed by acts of 'detrimental reliance'. Mrs Pugh's own evidence was that there was no such common intention. Joe never intended that during his lifetime Mrs Pugh would have any interest in the property. Mrs Pugh's case, at its highest, was that she was promised a one third share of the proceeds of sale of the property after Joe had died. It may be that on an occasion Joe did tell Mrs Pugh that he would leave a one third share of the proceeds of sale to her, but there is no reliable evidence before me

that that was a promise, in the sense of a binding as opposed to a mere statement of intent. Even if Joe did say it I am not convinced he really meant it. To put that intent into effect Joe would have had to make a will. Clearly Joe did not want to do that. Mrs Pugh said that Joe was not willing to spend the money on a will. He could have had a stab at a home-made will if he really did have it in mind to leave something to Mrs Pugh, but there was no evidence he ever did so.

53. The authorities are quite clear that the acts of 'detrimental reliance' have to amount to substantial acts of detriment. In this case Mrs Pugh has not been able to identify or prove any such substantial acts of detriment. There may have been occasions when Mrs Pugh spent modest amounts of her own money on such as curtains for the bedroom or a piece of hardboard for the toilet, but these are hardly detrimental and are certainly not substantial. And they were not incurred in reliance on any promise. In evidence Mrs Pugh said the curtains were bought in an effort to dissuade Joe from resuming smoking. The hardboard was for comfort and convenience.
54. For all of the above reasons I find that the application to enter a restriction in the register must fail. The strong impression I get is that Mrs Pugh feels aggrieved that after all she did for Joe and the love and care she gave to him, she was left nothing in his estate and that she has tried to bolster a case to support a claim to a beneficial interest in the property by dint of a common intention constructive trust to try and get something out of the estate.
55. Accordingly, I have made an order requiring the Chief Land Registrar to cancel Mrs Pugh's application to enter a restriction in the register.

Costs

56. In this jurisdiction, as in the civil courts, costs follow the event save in exceptional circumstances. At present I am not aware of any such circumstances. My current inclination is that a costs order should be made in favour of Nicola. I will however, give careful consideration to any application for a costs order that may be made.
57. If the parties are unable to reach agreement on costs, any application(s) for costs shall be made in accordance with the following directions:
 - 57.1 Any application for costs shall be made in writing by **5pm Friday 27 April 2018**. The application shall be accompanied by a schedule of the costs and expenses incurred/claimed supported by invoices/fee-notes where appropriate. A breakdown shall be given of any work carried by solicitors and the charge-out rate and grade(s) of the fee-earner(s) shall be set out. A copy of the application and supporting schedule shall be sent to the opposite party at the same time as it sent to the tribunal.
 - 57.2 The recipient of an application for costs shall by **5pm Friday 18 May 2018** file with the tribunal and serve on the applicant for costs representations on the application and on the amount of the costs claimed and any points of objection they wish to take.
 - 57.3 The applicant for costs shall by **5pm Friday 1 June 2018** file with the tribunal and serve on the opposite party representations in reply, if so advised.

58. In the absence of any objections I propose to make a determination on any application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 57 above.

Dated this 8 March 2018

John Hewitt

By order of the Tribunal

