

[2018] UKUT 362 (TCC)



Appeal number UT/2018/0034

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

JACQUELINE ANN SUMMERFIELD

Appellant

- and -

RICHARD BRADBURY

Respondents

TRIBUNAL: Upper Tribunal Judge Elizabeth Cooke

Sitting in public at London Royal Courts of Justice London on 24 October 2018

Jacqueline Ann Aummerfield for the Appellant

Richard Bradbury for the Respondents

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DECISION

- 5 1. This is an appeal by Mrs Jacqueline Summerfield from the decision of the Land Registration Division of the First-tier Tribunal (“the LRD”) on 14 August 2017 that Mr Richard Bradbury has a beneficial interest in her home, 6 Guernsey Close Congleton, title number CH335300 (“the Property”). The Tribunal proceedings arose because Mr Bradbury applied to HM Land Registry in November 2015 for the entry of a restriction on the title to the Property to protect his claimed interest. Mrs Summerfield 10 objected, so the dispute was referred to the LRD pursuant to section 73(7) of the Land Registration Act 2002
- 15 2. The judge in the LRD decided in Mr Bradbury’s favour; he also expressed the view “to avoid future litigation in some other forum over the issue, and assist the parties in any future negotiations” but without making a finding that would give rise to an issue estoppel, that Mr Bradbury was entitled to a 15% share.
- 20 3. I heard the appeal on 24 October 2018 at the Royal Courts of Justice in London. The parties each presented their own case, without legal representation, and I am grateful to them for doing so calmly and in a well-organised manner.
- 25 4. I have decided to allow the appeal and in place of the LRD’s decision I substitute my decision that Mr Bradbury has no interest in the Property. In the paragraphs that follow I first discuss the decision in the LRD and then consider the appeal. I bear in mind that this is an appellate Tribunal. The appeal cannot be allowed merely because I would have reached a different 30 conclusion, but only because I find that the LRD’s conclusion was one that it could not rationally have reached. In other words, the LRD’s decision was outside the range of decisions which could have been upheld.

35 **The decision in the LRD**

- 40 5. The Property is a four-bedroomed house in Cheshire, worth somewhere in the range of £240,000 (Mrs Summerfield’s estimate) to £280,000 (Mr Bradbury’s estimate) today. It was Mrs Summerfield’s home with her former husband, which they bought in 1968. In 2003 they were divorced, and in 2004 she bought him out, paying him £60,000 for his share and taking out a mortgage in order to do so. The legal title was in her name alone from 2004.

- 5 6. Mr Bradbury lived with Mrs Summerfield at the Property from 2003 until their relationship broke down in 2015. His claim is very simple; he says that they agreed that they would share ownership of the house, and that in reliance on that agreement he would carry out work. He took out two bank loans in order to do so, one for £25,000 in February 2008 and in 2012 another for £19,950 (part of which was used to repay the balance of the first loan). His case is that everything he borrowed was spent on renovations and more besides. He had the drive paved, built a conservatory, had the windows and the front door renewed, installed under floor heating, had tiling done and a new kitchen.
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- 15 7. Mr Bradbury's evidence for what he paid for the work was very limited. He was able to produce bank statements showing the payment of the loans into his account, and was able to show that in both 2008 and 2012 within three or four months the loan had been spent. But the bank statements give no indication as to how the loans were spent; there are numerous cheque payments and cash withdrawals but no indication of the payee.
- 20 8. Mr Bradbury's case is that the work was done partly by a company called Ideal Home Improvements, some of it by friends at "mates' rates" and all of it in small sums which he cannot now identify from his bank statements. He explained to me at the appeal hearing that on one day he withdrew £10,000 from his account in three separate payments – one cash and two cheques – and that he thinks those payments were for the windows and doors, and the conservatory. However, he also has a document headed "Invoice", on the headed paper of Ideal Home Improvements, which lists items of work, gives a figure for each (for example, "Conservatory £15,000") and a total of £31,700. The document is dated 23 June 2008.
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- 30 9. Mr Bradbury told me, and I believe that this was also made clear to the LRD, that the "invoice" was in fact produced only when the dispute surfaced in 2015, despite its date and that it was simply an estimate of the value of the works that Mr Bradbury said he had done. So it is valueless as evidence of payment for such works.
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- 40 10. Mr Bradbury says that he did pay for some other items, including holidays; he also says he did some childcare at the start of the relationship in 2003 when he was unemployed.
11. Mrs Summerfield's case is that although Mr Bradbury did some work, funded by the loans, he spent nowhere near as much on the Property as he says he did and used the loans for other substantial expenditure on himself. As to the beneficial interest, she points out that it would be very unlikely that she would agree to share the ownership of her hard-won home, and

her children's inheritance, at the start of a relationship, having just gone through a divorce.

5 12. Mrs Summerfield also says (and the judge found¹) that Mr Bradbury paid nothing else whatsoever towards the running of the joint household. He paid nothing into the joint account, nothing towards the utility bills, and nothing towards the mortgage. Accordingly his sole financial contribution to the joint household, over the course of 12 years, was the work he did in 2008 and 2012. Meanwhile she paid for everything, and estimates that she 10 spent some £750,000 over the years including her mortgage repayments.

13. The judge in the LRD, in a very brief decision, referred to the "invoice" as a summary of work done, and noted the lack of any documentary evidence of payment. Nevertheless he found that "on balance" Mr Bradbury spent 15 more than the total of the two loans on the property, but did not say how much. As to the beneficial interest, he accepted Mr Bradbury's evidence that there were discussions early in the relationship about shared ownership, and concluded "I do not consider that he would have made substantial financial contributions to the Property other than on the basis 20 that he had an interest in it. And that it is most unlikely that he would have done so by way of gift to [Mrs Summerfield] as she contends."

25 **The appeal**

14. Mrs Summerfield challenges the judge's finding of fact as to the amount Mr Bradbury spent, and challenges his finding that there was an agreement to share in the beneficial interest.

30 *The amount Mr Bradbury spent on the Property*

15. As to the finding of the contribution, as Mrs Summerfield says Mr Bradbury has the burden of proof. He says that there are receipts but that he does not have them. It is clear from Mr Bradbury's own explanation of the paper from Ideal Home Improvements that it does not amount to 35 evidence that he paid anything at all. On his own account he paid "mates' rates" for a number of items, so if this paper is supposed to be evidence of the value of work done it is clear that Mr Bradbury on his own account paid less than £31,700, though how much less is not known.

¹ In paragraph 9 of his decision the judge wrote "the Respondent [that is, Mrs Summerfield] accepted in cross-examination that the Applicant paid the utility bills and certain furnishings". In his refusal of permission to appeal the judge said that that was a typographical error and that it was the Applicant (Mr Bradbury) who accepted that the Respondent (Mrs Summerfield) paid for those items, but that that factor did not make a difference to his decision.

16. The bank statements provide evidence that the loans were spent, but not of what they were spent on.
- 5 17. In the absence of any supporting evidence one would expect the judge to have explained why he found that Mr Bradbury was telling the truth about the amount spent and Mrs Summerfield was not, but he gave no explanation.
- 10 18. Accordingly I find that the LRD's finding that Mr Bradbury spent more than the total of the two loans (over £45,000) on the Property was irrational because it was not based upon the evidence before the Tribunal.

Was there an agreement to share the beneficial interest in the Property

- 15 19. Because the LRD's finding of fact as to the money Mr Bradbury put into the Property cannot stand, its use of that finding to support a finding that there was an express agreement to share the beneficial interest (as Mr Bradbury claimed and as Mrs Summerfield denied) cannot stand either.
- 20 20. However, I make it clear that even if I had upheld the LRD's finding of fact as being within the range of decisions open to it, I would have allowed this appeal because the conclusion the LRD drew from that finding was not a rational conclusion.
- 25 21. The judge gave no reason for his conclusion other than the amount paid. He attached no weight to Mrs Summerfield's argument that she would have been most unlikely to give away a beneficial interest in her home shortly after divorce and at the start of a new relationship. He did find that it was understandable that she did not want to put Mr Bradbury's name on the legal title to the Property because of her recent divorce (paragraph 13 of the LRD decision) but does not appear to have considered that exactly the same consideration would naturally lead her to be very reluctant to make an agreement to share the beneficial ownership.
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- 35 22. The judge felt that Mr Bradbury would only have spent so much on the Property if he had an interest in it, and made no mention of the fact that Mr Bradbury contributed nothing else, or very little, to the running of the home. He made no mortgage contributions, nor did he pay anything towards the utility bills, council tax or furnishings. I accept that he may have paid for holidays, as did Mrs Summerfield, and that he may have paid for other small items as he now says. But the loans he took out cost him a little over £400 per month from 2008 onwards. The judge regarded that payment as either an investment in a home of which he was a joint owner, or as a gift; he did not consider the obvious alternative that Mr Bradbury's
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5 expenditure (whether £45,000, or some lesser expenditure of unknown amount) was regarded by the parties as his contribution to the joint household in which he otherwise lived for free. Mr Bradbury lived in the Property for 12 years, and even on the inflated figure that the judge found plausible his housing would have cost him around £100 per week over that period. In the circumstances of this case considerably more would have been expected as evidence of an agreement to share a beneficial interest.

10 23. Accordingly the judge ignored a perfectly sensible and obvious reason for Mr Bradbury's contributions, namely a modest contribution in return for housing. I intend no criticism when I say that Mr Bradbury's contribution was modest; he was earning much less than Mrs Summerfield. But that does not mean that his contribution entitled him to a beneficial interest.

15 24. I find that the LRD's conclusion as to the existence of an agreement to share beneficial ownership could not be justified on the evidence of fact that was before it, and could not have been justified even if its finding of fact about Mr Bradbury's contribution had been upheld.

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Conclusion

25 25. This appeal is therefore allowed. There is no question of a re-hearing, since there has been no suggestion that Mr Bradbury has any fresh evidence to offer, let alone that he should now be allowed to adduce it. I substitute this Tribunal's decision for that of the LRD, and I direct that the registrar shall cancel the restriction entered against Mrs Summerfield's property. She should send this Tribunal's order to HM Land Registry to ensure that that cancellation takes place.

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26. If Mrs Summerfield wishes to make an application for costs she may do so within 28 days; Mr Bradbury will have 21 days to reply and if he does so she will have a further 21 days to respond. If Mrs Summerfield has paid any costs to Mr Bradbury in the LRD then those costs should be repaid.

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TRIBUNAL JUDGE ELIZABETH COOKE

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RELEASE DATE: 7 November 2018