



Neutral Citation [2022] UKUT 00310 (TCC)

Case Number: UT/2022/000014

UPPER TRIBUNAL
(Tax and Chancery Chamber)

At the Royal Courts of Justice

SDLT - Section 45 Finance Act 2003- sub-sale scheme-whether assessment should have been made on husband and wife jointly

Heard on: 6 September 2022

Judgment date: 17 November 2022

Before

UPPER TRIBUNAL JUDGE TIMOTHY HERRINGTON
DEPUTY TRIBUNAL JUDGE TRACEY BOWLER

Between

STUART FOX

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Stuart Fox appeared as litigant in person

For the Respondents: Mr Michael Ripley, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. The Appellant, Mr Fox, appeals against the decision (“the Decision”) of the First-tier Tribunal (“the FTT”) (Judge Charles Hellier and Michael Bell) made on 3 December 2021. In the Decision the FTT dismissed Mr Fox’s appeal against an assessment to stamp duty land tax (“SDLT”) issued on 24 March 2010 in respect of the purchase of a house (“the Property”). Mr Fox had declared that the chargeable consideration for the purchase was £10,000 such that no SDLT was due, relying upon a scheme (“the Scheme”) in which he and his then wife (whom we refer to as Mrs Fox) had participated which was designed to save SDLT. The Scheme involved a sale of the Property to Mrs Fox and a sub-sale to Mr Fox. HMRC did not accept that the consideration stated on the SDLT return of £10,000 was correct and raised an assessment on the basis of chargeable consideration for the purchase by Mr Fox of £1,085,000.

2. It is accepted by Mr Fox that the Scheme did not work as planned. The case before the FTT was that Mr Fox should only be liable for half of the SDLT on the basis that he acted as trustee for himself and Mrs Fox; or that the sub-sale contract and/or the transfer to him were invalid such that there was no transaction within the terms of the legislation imposing SDLT contained in section 45 of the Finance Act 2003 (“section 45”).

3. The FTT rejected Mr Fox’s arguments and confirmed that he was liable to SDLT on the revised chargeable consideration of £1,085,000.

4. By a decision dated 31 January 2022 Judge Hellier granted permission to appeal against the Decision on the grounds that the FTT erred in law in its conclusions regarding the existence of an implied trust, the sub-sale being a contract which fell within section 45 and the transfer of the Property to Mr Fox.

RELEVANT LEGISLATION

5. The appeal focuses on the provisions contained in section 45 which insofar as relevant stated at the relevant time:

“45 Contract and conveyance: effect of transfer of rights

(1) This section applies where—

(a) a contract for a land transaction (“the original contract”) is entered into under which the transaction is to be completed by a conveyance,

(b) there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person other than the original purchaser becomes entitled to call for a conveyance to him, and

(c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.

References in the following provisions of this section to a transfer of rights are to any such assignment, sub-sale or other transaction, and references to the transferor and the transferee shall be read accordingly.

(2) The transferee is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44 (contract and conveyance) has effect in accordance with the following provisions of this section.

(3) That section applies as if there were a contract for a land transaction (a “secondary contract”) under which—

(a) the transferee is the purchaser, and

(b) the consideration for the transaction is—

(i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by the transferee or a person connected with him, and

(ii) the consideration given for the transfer of rights.

The substantial performance or completion of the original contract at the same time as, and in connection with, the substantial performance or completion of the secondary contract shall be disregarded except in a case where the secondary contract gives rise to a transaction that is exempt from charge by virtue of subsection (3) of section 73 (alternative property finance: land sold to financial institution and re-sold to individual)...

... (6) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b)(i).

(7) In this section “contract” includes any agreement and “conveyance” includes any instrument.”

THE FACTS

6. The FTT set out its findings of fact at [14] to [26], [36] and [49] to [51] of the Decision. So far as relevant they are summarised as follows with references below to paragraphs in the form [x] are to paragraphs in the Decision unless indicated otherwise.

7. Initially, Mr and Mrs Fox had contemplated a straightforward ordinary purchase under which they together contracted to buy the Property and under which completion would be by a transfer of the freehold to the two of them jointly [16].

8. The Scheme envisaged that Mrs Fox should agree (by the “First Contract”) to purchase the Property from the vendors for £1,075,000, that she should agree (by the “Second Contract”) to sell it to Mr Fox for £10,000 and that the two contracts should be completed by a transfer directly from the vendors to Mr Fox [14]. It was intended that Mr Fox would be liable to SDLT by reference only to the consideration of £10,000 [15].

9. In conformity with the Scheme, the documents for the purchase and transfer comprised:

(1) a contract stated as being between Mrs Fox and the vendors for the purchase of the Property for £1,075,000;

(2) a contract on matching terms stated as being and between Mrs Fox and Mr Fox for the purchase by him of the Property for £10,000; and

(3) a form TR1 by which the vendors transferred the freehold directly to Mr Fox. This was executed as a deed by the vendors, Mr Fox and Mrs Fox and recited that the vendors had received from Mrs Fox as sub-vendor £1,075,000 and that Mrs Fox had received £10,000 from Mr Fox [17]

10. The following payments were made [18]:

(1) on 12 January 2006 deposit monies of £30,000 were paid to the solicitors acting for Mr and Mrs Fox - Heath Buckeridge - by Mr or Mrs Fox (although the payment was described in a completion statement from Heath Buckeridge as being received from Mr Fox only);

(2) also on 12 January 2006 the £30,000 deposit was paid by Heath Buckeridge to the vendors' solicitors;

- (3) on 18 February 2006 £12,000 from a joint offset mortgage account in the names of Mr and Mrs Fox was paid to an account in the sole name of Mr Fox opened on that date with First Direct;
 - (4) on 20 February 2006 £10,000 from that account of Mr Fox was paid to Heath Buckeridge. Mr Fox made no other deposits into or withdrawals from that account during the following 7 months. The only purpose of opening the account and transferring the £10,000 through it was to demonstrate that the £10,000 paid by Mr Fox was not from jointly held funds and therefore to indicate that what was purchased with that money was not to be held jointly [36];
 - (5) on 3 March 2006 £10,000 was paid from Heath Buckeridge to an Abbey National account in the sole name of Mrs Fox;
 - (6) five months later, on 27 July 2006, £15,000 was paid from Mrs Fox's Abbey National account to Mr and Mrs Fox's joint account;
 - (7) on 23 February 2006 £132,070 was paid from Mr and Mrs Fox's joint offset mortgage account to Mr and Mrs Fox's joint current account;
 - (8) on 27 February 2000 £132,070 was paid from Mr and Mrs Fox's joint current account to Heath Buckeridge;
 - (9) on 28 February 2006 £913,750 was paid from Cheltenham & Gloucester to Heath Buckeridge;
 - (10) £1,045,000 was paid on 28 February 2006 (the date of completion) by Heath Buckeridge to the vendors' solicitors.
11. Therefore the total paid by Heath Buckeridge to the vendors' solicitors was £1,075,000 and £10,000 was paid to Mrs Fox. The £1,075,000 comprised the £30,000 deposit, the £132,070 joint account money and the £913,750 mortgage, less £70.
 12. The monies received from Cheltenham and Gloucester were a loan to Mr Fox only and secured by a mortgage on the house. Mr Fox was the sole mortgagor. [19]
 13. Completion took place on 28 February 2006. At that time the TR1 was dated and delivered. That form specified Mr Fox as the sole transferee and the section of the form dealing with trusts (which was applicable where there was more than one transferee) was left blank. [20]
 14. A form SDLT1 was completed and received by HMRC on 29 March 2006. It: (i) specified the total consideration for the transaction as £10,000 and the tax due as nil, (ii) specified the sole purchaser as Mr Fox, (iii) specified the vendors, declaring that there was no connection between purchaser and vendor and (iv) declared that the purchaser (Mr Fox) was not acting as a trustee. [21]
 15. The FTT went on to weigh up the factors for and against finding that Mr Fox was to hold the Property on trust for himself and Mrs Fox jointly. In doing so it made the following findings [49-50]:
 - (1) Although Mrs Fox held an Abbey National account in her sole name there were few movements on this account and only a modest balance. Substantially all, if not all, of Mr and Mrs Fox's financial transactions were usually in jointly held accounts and their assets were, for the most part, usually held jointly.
 - (2) The house they sold prior to the purchase had been held jointly.
 - (3) The deposit of £30,000 had been sourced from a joint bank account;

- (4) The £10,000 which Mr Fox paid to Heath Buckeridge was paid out of an account in his sole name, but that account had been opened to receive a payment of £12,000 from Mr and Mrs Fox's joint flexible mortgage account;
 - (5) Mrs Fox received £10,000 on completion but remitted £15,000 to the couple's joint current account 4 ½ months later;
 - (6) Some two years after completion the house was conveyed into joint names;
 - (7) In 2007 the mortgage loan which had been Mr Fox's sole liability was repaid from the joint account;
 - (8) The house was treated as a joint asset in the divorce settlement between him and Mrs Fox and Mrs Fox resided there at the time of the Decision;
 - (9) Mr Fox understood that the Scheme involved two sales and SDLT being levied on the second and not on the first. Under the first sale Mrs Fox would buy the property from the vendors for £1,075,000 and then she would sell it to him for £10,000. The two contracts would be completed by a transfer from the vendors to him;
 - (10) Mr Fox's name was removed from the initial draft contract under which the Vendors were to sell the Property and that indicated a change in the parties' intentions in relation to the purchase so that it was then intended that only Mrs Fox should purchase from the vendors. That indicated that the parties intended to follow the steps in the Scheme;
 - (11) The setting up of a First Direct account in Mr Fox's sole name, and a payment from it of the purchase price of £10,000 under the second contract to Heath Buckeridge indicated an intention that this money was intended to be seen as a payment of money belonging solely to Mr Fox and being used to acquire an asset to be owned solely by Mr Fox; otherwise this money could have been paid to Heath Buckeridge directly from the joint mortgage account rather than being routed through that account.
 - (12) Heath Buckeridge paid £10,000 to the Abbey National account held in the name of Mrs Fox only. That it was retained there for a while until £15,000 was several months later remitted to the joint account indicated an intention to show that the £10,000 belonged to Mrs Fox only and therefore that the Scheme was being pursued.
 - (13) The absence of any indication on the SDLT1 form that Mr Fox held as trustee indicated that Mr Fox did not intend to hold as trustee.
 - (14) The loan of £913,750 from Cheltenham and Gloucester, which was secured on the Property was the principal source of finance for the Property and was the liability of Mr Fox alone. That was consistent with his having a 100% interest in the Property as the Scheme would require.
16. The FTT then concluded that while Mr and Mrs Fox originally intended to hold the Property jointly, when the Scheme was proposed they decided to take the steps necessary to give it effect. The effect of those steps was intended to make Mr Fox the sole beneficial owner of the house and Mrs Fox the sole owner of the £10,000. Mr and Mrs Fox intended and recognised that this would be the outcome following completion although they wished to revert to joint ownership at some later time when they would (and in fact did) transfer the house and the money into joint ownership and repay the Cheltenham and Gloucester loan from joint funds.

[51]

THE DECISION

17. It was accepted by Mr Fox that the Scheme did not work as planned because he and Mrs Fox were connected persons for the purposes of section 45. That meant that the consideration given by Mrs Fox under the contract for her purchase was to be treated as part of the consideration given under the notional contract created by the opening words of section 45 and under which Mr Fox was the purchaser. Therefore the total consideration deemed to have been given pursuant to that notional contract was:

- (1) the £1,075,000 given by Mrs Fox under the contract entered into by her with the vendors; plus
- (2) £10,000, being the amounts to be given by Mr Fox for the transfer of rights under the sub sale contract between him and Mrs Fox.

18. As a result the SDLT was due on £1,085,000; i.e. £10,000 more than if the Scheme had not been carried out. The only question before the FTT was whether the Property was beneficially owned jointly by Mr and Mrs Fox following the transfer with the result, as contended by Mr Fox, that he should only be liable for one half of the SDLT payable in respect of the consideration.

19. However, the FTT was satisfied that, despite overlooking this problem with the implementation of the Scheme, those involved with it appeared to have been concerned that if either Mr and Mrs Fox did not act beneficially for him or herself the Scheme would not work. That was because paragraph 3 Schedule 16 Finance Act 2003 provides that:

- (1) "(1) ... where a person acquires a chargeable interest ... as trustee this Part applies as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the ... persons for which he is trustee ...".

20. As a result of those provisions, if Mr Fox had been trustee of the Property when it was conveyed to him by the TR1, so that he held it on trust for himself and Mrs Fox, Mrs Fox would be treated by paragraph 3 as one of the transferees for the purposes of section 45(3)(i) and the money to be given by her under the contract with the vendors would be treated as part of the consideration for the notional contract. Consequently, SDLT would be applied to consideration of £1,085,000 on that basis.

21. The FTT specifically recognised that if Mr Fox had made payment of the £10,000 to Mrs Fox out of funds held jointly it could be found that he held the Property (once conveyed to him) on trust for them both. The FTT decided that the framers of the Scheme were aware of this issue as shown by the fact that the £10,000 was sourced from an account Mr Fox opened on 18 February 2006 (a few days before completion) in his name only and paid to an account in Mrs Fox's sole name. The FTT concluded that the only purpose of opening that account and transferring the money through it was to demonstrate that the £10,000 paid by Mr Fox was not from jointly held funds such that the Property which was purchased with that money was not to be held jointly.

22. The FTT also considered the various factual matters which pointed towards or against an intention for the Property to be held on completion by Mr and Mrs Fox jointly. The FTT's conclusion was that Mr Fox should, as the Scheme required, be the sole beneficial owner on completion of the purchase of the Property.

23. In that context the FTT considered the argument that the payment of £10,000 to Mrs Fox was not valid consideration because it was sourced from jointly owned funds, i.e. the joint mortgage account, and then passed through Mr Fox's First Direct account which it has been argued should be seen as effectively a joint account. The FTT concluded that the contract between Mr and Mrs Fox was constituted by Mrs Fox's promise to transfer the Property in

return for Mr Fox's promise to pay the £10,000. Those promises were the benefits and detriments which constituted the consideration under the contract. The promise was simply to pay. Mrs Fox honoured her side of the bargain by assenting to the transfer of the Property to Mr Fox in signing the TR1. If what Mr Fox actually paid was in whole or part money belonging to Mrs Fox he would then still owe the balance. However, the failure to perform on his part would not retrospectively void the contract and would not mean there had been no transfer to him.

24. The FTT also considered the argument that the absence of payment of consideration for what section 45(1) describes as the "transfer of rights" affects the operation of that section. The FTT considered that it did not do so because:

- (1) Section 45(1) requires a contract for a land transaction and that was satisfied by the written agreement between Mrs Fox and the vendors;
- (2) Section 45(1) also requires an "assignment, sub sale or other transaction... as a result of which a person other than the original purchaser becomes entitled to call for conveyance" and the agreement between Mr and Mrs Fox was such a transaction;
- (3) Section 45(3) creates a deemed or notional contract under which the consideration for the transfer is specified as the sum of that part of the consideration under the original contract which is to be given by the eventual transferee plus "consideration given for the transfer of rights". The FTT decided that the payment of the £10,000 by Mr Fox was consideration given by him (alone) for the transfer of rights.

25. Finally, the FTT considered the argument that the transfer of the Property to Mr Fox was never completed because the £10,000 remained joint money and concluded that this failed because there was in fact a transfer to Mr Fox. Even if it did not complete the agreement with Mrs Fox it did complete the notional contract created by section 45(3). Furthermore, the TR1 was executed as a deed by four parties. The FTT decided that unless they were all mistaken as to its effect (or it was part of a fraud or executed pursuant to some form of illegal compulsion) it must be regarded as having the effect of transferring the Property to Mr Fox. It was therefore a land transaction.

26. As a result, the application of section 45 resulted in the following:

- (1) the completion of the First Contract is disregarded as a result of section 45(3);
- (2) a new notional contract is created under which the land is to be conveyed for the consideration prescribed by section 45(3), i.e. so much of the consideration which was to be given under the original contract (the First Contract) by the final purchaser or someone connected with him, plus the consideration given for the transfer of rights. That amounted to the £1,075,000 paid to the vendors together with the £10,000;
- (3) the deemed contract was completed by the conveyance to Mr Fox. The chargeable consideration for the land transaction constituted thereby was therefore the consideration deemed by section 45 to be given under it; i.e. the £1,085,000.

GROUND OF APPEAL

27. Judge Hellier gave permission to appeal on the following grounds:

- (1) that the FTT erred in law when it found that monies in particular accounts in the sole names of either Mr Fox or Mrs Fox were held by one or other of them for the named holder's sole benefit;
- (2) the FTT erred in law in concluding that there was a contract between Mr Fox and Mrs Fox which satisfied section 45(1)(b). It did so because it erroneously concluded that

Mr Fox gave consideration in the form of a promise to pay £10,000 to Mrs Fox when such a promise was worthless because all monies were held jointly; and

(3) the FTT erred in law in holding that the TR1 transferred the Property.

SUBMISSIONS BEFORE US

Mr Fox

28. Mr Fox primarily focused on maintaining that at the time all monies in bank accounts, even when in an account in the name of just one of him and Mrs Fox, were in reality jointly held funds. He submitted that this meant that there was no valid second contract entered into between him and Mrs Fox because there was no consideration.

29. Mr Fox relied on the case of *Currie v Misa* (1874) LR 10 Ex 153 to submit that in order for consideration to be found in relation to the Second Contract, Mr Fox would have to be worse off and his wife better off. This was not the case in the situation where he and his wife viewed all funds as being held jointly. He submitted that the case of *Pflum v HMRC* [2012] UKFTT 365 (TC), which held that monies held in a joint account funded entirely by one of the holders of the account which were withdrawn solely by the other holder were to be regarded as belonging solely to the person who had withdrawn the funds should be distinguished because he had not funded a bank account with his own money which his wife could then access. Instead, this was a case of funds having been jointly held for 20 years. However, he recognised that the First Direct account set up in his name on 18 February 2006 for the purpose of the Scheme had been found by the FTT to be in his sole name and the funds in it had been found to be held by him solely even though it was funded from an offset mortgage jointly held with his wife. He did not challenge that finding or the finding that £10,000 from the £12,000 in that account was paid by him to his wife for the sale of the Property.

30. However, Mr Fox submitted that the £10,000 was paid to an Abbey National account which, in practice, held jointly owned funds even though the account was in Mrs Fox's name alone. He confirmed that Mrs Fox was the sole signatory on that account and that she could spend the money as she wished, although he maintained that the couple had viewed the funds as joint funds at that time. Mr Fox submitted that the finding of the FTT that the Abbey National account was in Mrs Fox's sole name should therefore be read in the context of the FTT also stating that "substantially all, if not all, of Mr and Mrs Fox's financial transactions were usually in jointly held accounts and their assets were for the most part usually held jointly".

31. Mr Fox maintained that therefore the Abbey National account represented funds which were jointly owned. The £10,000 paid to that account by him then passed to the joint current account and were used to repay the offset mortgage drawdown. In other words, the monies had simply moved in a circle. As a result, Mr Fox submitted that there was no consideration for the Second Contract. Consequently, under the Standard Conditions of Sale the vendor had no obligation to convey the Property and the TR1 was not valid. In reality, Mrs Fox was the real owner of the Property and she held it at the time as trustee for Mr Fox. Alternatively, later in the hearing Mr Fox recognised that it may be said that the TR1 transferred the Property to him, but he submitted the question was then whether he had the right to call for the conveyance or his wife had simply chosen to transfer the Property to him.

HMRC

32. Mr Ripley submitted that section 45(1)(b) is not limited on its face to transactions which are contracts or sub-sales. However, in this case there was a valid secondary contract. There was consideration in the *Currie* sense in Mr Fox's promise to pay, as found by the FTT. Even if it were considered that the purchaser of the Property had only a contingent right to the conveyance of the Property dependent on payment that was sufficient to qualify as being

“entitled to call for a conveyance to him”. Mr Fox submitted that the contingency would not prevent “entitlement”.

33. Mr Ripley relied upon the case of *Pflum* to maintain that even if the couple regarded funds in bank accounts in sole names as jointly held, the person withdrawing or using the funds was solely entitled to them. Moreover, Mr Fox had accepted that £10,000 was paid from an account in his sole name and to which he was solely entitled. The payment was ultimately made to the Abbey National account in Mrs Fox’s name which was not a joint account legally. The Abbey National account to which the monies were transferred was confirmed as an account solely in her name by Abbey National.

34. There was no circularity as Mr Fox had suggested. The FTT had addressed the movements of the monies and did not consider circularity to exist. It was several months after the payment to the Abbey National account that the monies were then used to repay the offset mortgage drawdown. The FTT’s statement that the couple’s monies were usually held jointly should be read in the context of the Abbey National account being an exception.

35. In relation to the claim by Mr Fox that the Property was held on trust, a letter had been written in the context of the Scheme implementation by him to specifically state that there was no trust. Although this was in the context of the First Contract the FTT had relied upon the letter to show that Mr and Mrs Fox were alive to the risks of the transactions not giving rise to sole beneficial ownership at each stage.

36. In relation to the submissions made by Mr Fox that the TR1 was invalid, Mr Ripley submitted that there was no basis to reach that conclusion given the findings made by the FTT.

DISCUSSION

37. The Scheme was designed to rely upon the provisions of section 45 in order to avoid the charge to SDLT which was otherwise chargeable on the purchase price of the Property. The Scheme was supposed to operate on the basis that:

(1) The First Contract (the “original contract” as defined under Section 45(1)) was a contract entered into between Mrs Fox and the vendors for a land transaction (i.e. the freehold of the Property) under which the transaction was to be completed by a conveyance within the terms of section 45(1)(a);

(2) the Second Contract was a sub-sale or other transaction (relating to the same Property and therefore the subject-matter of the original contract) as a result of which a person (Mr Fox) other than the original purchaser (Mrs Fox) became entitled to call for a conveyance to him, therefore satisfying section 45(1)(b);

(3) Mr Fox, the “transferee” (as that term is provided in section 45) was not to be regarded as entering into a land transaction by reason of the transfer of rights, and section 45(3) would apply.

38. Section 45(3) provides for a notional or deemed contract and sets out how the consideration for that contract should be calculated. If Mr and Mrs Fox had not been connected persons the result would have been that the consideration would have been the £10,000 only as the consideration paid for the transfer of the right to call for the conveyance under section 45(3)(b)(ii). No amount would have been added under section 45(3)(a) because none of the consideration under the original contract as was referable to the subject-matter of the transfer of rights to Mr Fox was to be given (directly or indirectly) by Mr Fox.

39. However, those involved overlooked the fact that the provisions in section 45(3)(a) required consideration referable to the subject matter of the transfer of rights to Mr Fox, (i.e.

the Property) which was paid by a connected person to be taken into account. Mrs Fox was connected to Mr Fox.

40. The submissions made by Mr Fox at the hearing before us made clear that his appeal focuses on the adequacy of the consideration under the Second Contract. Mr Fox's case is that the Second Contract was not valid as a result of the inadequacy of the consideration and consequently section 45(1)(b) did not apply because he was not entitled to call for a conveyance of the Property.

41. As the FTT identified, despite those arranging the implementation of the Scheme overlooking the fundamental problem caused by Mr and Mrs Fox being connected persons, they were concerned to ensure that Mr and Mrs Fox should both enter into the transactions under the Scheme on the basis of sole beneficial entitlement in order to avoid the application of paragraph 3 Schedule 16 Finance Act 2003.

42. The FTT therefore carefully considered the basis upon which the contracts were entered into, whether monies were jointly held and whether the Property was ultimately acquired by Mr Fox as trustee. Mr Fox's appeal before us is, in effect, challenging the findings made by the FTT that he paid £10,000 from an account in his sole name, to which he was solely entitled, to an account in Mrs Fox's sole name, to which she was solely entitled. We see no basis for such a challenge to be made.

43. Mr Fox's case has been substantially based on saying that he and his wife would view funds in bank accounts as being jointly held. However, the FTT expressly took this into account. It identified that the First Direct account was specifically set up for the implementation of the Scheme in Mr Fox's sole name and the £10,000 paid from that account was paid to the Abbey National account in Mrs Fox's sole name where the funds remained for some months. The FTT concluded that this indicated an intention to show that the £10,000 belonged to Mrs Fox only in accordance with the Scheme. There is no inconsistency, as suggested by Mr Fox, in these findings with those where the FTT stated that "there were few movements on the [Abbey National] account and only a modest balance. Substantially all, if not all, of Mr and Mrs Fox's financial transactions were usually in jointly held accounts and their assets were for the most part usually held jointly." The fact that prior to the Scheme, bank accounts had been operated and viewed as joint accounts did not prevent the clear steps to set up and use sole accounts from being respected. Indeed, Mr Fox accepted at the hearing before us that the First Direct account was a sole account in his name to which he was solely entitled.

44. Furthermore, the cases of *Re Bishop* [1965] Ch 450 and *Pflum v HMRC* [2012] UKFTT 365 (TC) to which we had referred the parties prior to the hearing, are directly relevant to this issue. In *Re Bishop* the court considered the nature of monies withdrawn from a joint bank account to which a husband-and-wife jointly contributed. The question to be determined was whether any investments bought by the husband out of the monies in the account were owned solely by him or were owned jointly with his wife. In holding that the investments concerned were owned solely by the husband, Stamp J at Page 456 of the judgment said:

"Where a husband and wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then, in my judgment, in the absence of facts or circumstances which indicate that the account was intended, or was kept, for some specific or limited purpose, each spouse can draw upon it not only for the benefit of both spouses but for his or her own benefit. Each spouse, in drawing money out of the account, is to be treated as doing so with the authority of the other and, in my judgment, if one of the spouses purchases a chattel for his own benefit or an investment in his or her own name, that chattel or investment belongs to the person in whose name it is purchased or invested: for in such a case there is, in my judgment, no equity

in the other spouse to displace the legal ownership of the one in whose name the investment is purchased. What is purchased is not to be regarded as purchased out of a fund belonging to the spouses in the proportions in which they contribute to the account or in equal proportions, but out of a pool or fund of which they were, at law and in equity, joint tenants”.

45. As stated in *Pflum* at [57]

“The essence of joint ownership of a bank account where withdrawals can be made without restriction by either party is that the sums belong to the party who withdraws them, and this principle underlies the decision in *Re Bishop*.”

46. In the case of an account such as we see in this case, which is in a person’s sole name, there can be even less basis to suggest that sums belong to anyone other than that individual.

47. We are therefore satisfied that the £10,000 was money withdrawn from a bank account in his sole name by Mr Fox and paid to Mrs Fox by transfer to her bank account in her sole name for the Property in accordance with the Second Contract. There was therefore clearly consideration for the Second Contract, provided by Mr Fox out of his own money. As a result, under the terms of the contract Mr Fox was entitled to call for a conveyance of the Property and the requirements contained in section 45(1)(b) were satisfied.

48. Having reached that conclusion, it is not necessary to consider the validity of the TR1. The application of section 45 is determined by the satisfaction of the provisions in sections 45(1)(a), (b) and (c). However, we note that we see no basis to disturb the FTT’s findings regarding the TR1.

49. It is also clear to us that the FTT’s conclusion that Mr Fox did not hold the Property as trustee for himself and his wife was one to which it was entitled to make. The FTT weighed up the factors in favour of, and against, finding an implied trust. Mr Fox has not identified any matters which the FTT is said to have failed to have taken into account. Instead, Mr Fox’s challenge is essentially a disagreement with the conclusion reached by the FTT, but given the analysis carried out by it, we find no error of law in that conclusion. In essence, the Scheme required that Mr Fox be the sole beneficial owner on completion of the purchase of the Property. That was the parties’ intention and that intention was reflected in the transactions, care being taken to ensure that monies moved between sole bank accounts of Mr and Mrs Fox, Mr Fox providing a letter disclaiming any trust interest under the First Contract and the TR1 completed with the box identifying a trust left blank.

50. The result is therefore in line with the actions and intentions of the parties save for the fact that the Scheme did not work as a result of Mr and Mrs Fox being connected. Mr and Mrs Fox entered into the Scheme to avoid SDLT. The Scheme did not work as a result of the connected persons’ rule, but it is entirely clear, as found by the FTT, that the parties took clear steps to structure transactions in line with the Scheme.

51. Consequently, the FTT was right in conclusion, as summarised [26] above, that as a result of the application of section 45 the chargeable consideration for the land transaction in this case was £1,085,000. Mr Fox alone is liable to pay the SDLT chargeable in respect of that consideration as he is to be regarded as the transferee under the conveyance that vested the property both legally and beneficially in him alone.

52. We are therefore satisfied that there was no error of law in the Decision.

DISPOSITION

53. The appeal is dismissed.

**JUDGE TIMOTHY HERRINGTON
JUDGE TRACEY BOWLER**

Release date: 17 November 2022