



Neutral Citation Number: [2023] EWHC 544 (Ch)

Case No: PT-2021-000287

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 20/3/2023

Before:

MASTER CLARK

Between:

DUDLEY HESLOP

Claimant

- and -

(1) MONA HESLOP
(2) JENNIFER SEALES

Defendants

Alexander Hill Smith (instructed on Direct Public Access) for the **Claimant**
The **Second Defendant** in person

Hearing dates: 4 July, 17 October, 3 November 2022 (followed by written closing submissions)

Approved Judgment

I direct that this approved judgment, sent to the parties by email at 10am on 20 March 2023, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

.....

Master Clark:

1. This is my judgment following the trial of two Part 8 claims:
 - (1) PT-2021-000928 (“the CC claim”) – issued in the County Court at Central London and transferred to the Business and Property Courts by my order dated 3 August 2021;
 - (2) PT-2021-000927 (“the HC claim”) – issued in the High Court on 1 April 2021.

Parties and the claim

2. The parties are siblings, the children of Mrs Pearline Albertha Hylton (“Mrs Hylton”), who died in Scotland on 4 December 2018 aged 90. A fourth child, Monica Aitcheson, is not a party to the claim.
3. The claimant, Dudley Heslop, is the eldest child and the sole executor of Mrs Hylton’s will dated 13 March 2012 (“the Will”). Probate was granted to him on 17 July 2019.
4. The first defendant, Mona Heslop, has never acknowledged service, although she has attended hearings, and been permitted to make comments.
5. The second defendant, Jennifer Seales, is resident and was served with the claim forms in Scotland, and accepts that she was validly served there.
6. For clarity and without intending any disrespect, I refer to the parties by their first names. Dudley and Mona are children of Mrs Hylton’s first marriage, and Jennifer a child of her second marriage.
7. The claims concern the beneficial ownership of a house in Jamaica, 168 Armstrong Avenue, Coral Garden, St James (“the Property”). The Will provides for each of the 4 children to receive a 22% share of Mrs Hylton’s share and interest in the Property, and for Chloe Hylton, Jennifer’s daughter, to receive a 12% share. The Will is witnessed by Dudley, so that he is barred from taking under it: s.15, Wills Act 1837.
8. Dudley has conducted the claims in person, only instructing counsel to attend the hearings in the claim. Jennifer has acted in person throughout, and has attended hearings by remote video from her home in Scotland.
9. The trial was listed to be heard on 4 July 2022. However, when Dudley was called to give evidence, it became apparent that he had not served all of the trial bundle on Jennifer. The trial was therefore adjourned to 17 October 2022, when Dudley and Jennifer both gave oral evidence.
10. At the hearing on 17 October 2022, there was insufficient time for closing submissions, and the trial was adjourned to 3 November 2022. At that adjourned hearing, I adjourned it again on Jennifer’s application by email, supported by a fit note from her GP. In order to limit the costs of Dudley caused by the adjournment, at his counsel’s invitation, I directed that the parties file written submissions on 17 November (Dudley closing submissions), 15 December (Jennifer closing submissions) and 22 December 2022 (Dudley reply). Jennifer did not file any written submissions, though on 15 and 16 December 2022, she filed further documentary evidence (see paragraph 24 below).

11. On 26 January 2023, Jennifer filed further medical evidence showing that she suffers from several severe and debilitating conditions; and asking for an extension of time for her written submissions until 27 February 2023. In the event, she did not file any written submissions by that date; and on 7 March 2023 filed further documentary evidence.

The CC claim

12. In the CC claim, Dudley alleges:
 - (1) Mrs Hylton provided all of the purchase monies of £135,500 of the Property;
 - (2) Mrs Hylton asked her attorney to add Jennifer's name to the title and he proceeded to create a joint tenancy;
 - (3) Dudley and Mona became beneficiaries of the trust thereby created on 3 April 2012, when Mrs Hylton severed the joint tenancy, and granted them a share of her equity;
 - (4) Jennifer has failed to account for the rents of the Property since 3 April 2012.
13. The relief sought in that claim is an order appointing Dudley and Mona trustees of the trust, and requiring Jennifer to give an account of the rental income from the Property. I note that in this claim the joint tenancy is not challenged.

The HC claim

14. The HC claim substantially overlaps with the CC claim. In it, Dudley alleges that
 - (1) Mrs Hylton provided all of the purchase monies of £135,500 of the Property;
 - (2) Mrs Hylton asked her attorney to add Jennifer Seales to the title, creating a joint tenancy;
 - (3) The joint tenancy was mistakenly created because Mrs Hylton "failed to inform her attorney that she had four children";
 - (4) When Mrs Hylton returned to her attorney to make a will, she was told that she could not make a will because she had created a joint tenancy so that the Property would pass to Jennifer when she died;
 - (5) In April 2012, Mrs Hylton severed the joint tenancy;
 - (6) Mrs Hylton signed transfers granting Dudley 46% and Mona 46% (presumably of her interest).
15. The relief sought includes an order declaring that Jennifer has no beneficial interest in the Property by virtue of not providing any of the purchase monies.

Jurisdiction

16. The location of the Property gave rise to a preliminary issue as to whether the English court had jurisdiction to determine the claims. This was determined in Dudley's favour by Deputy Master Dray on 18 November 2021.

Governing law

17. As to the governing law of the issues arising in this claim, the test is which system of law is the arrangement said to give rise to the resulting trust most closely connected: *Lightning v Lightning Electrical Contractors* 1998 WL 1044250 referred to at *Dicey & Morris on Conflict of Laws*, 15th edn, commentary on rule 184, paragraph 29-085:

"In *Lightning v Lightning Electrical Contractors Ltd*, the question arose as to the law applicable to a presumed resulting trust. LEC purchased a property in

Scotland, which it registered in its own name. Lightning, the managing director of LEC, claimed that he had provided the entire purchase price for the property and that it was accordingly held on resulting trust for him by LEC. Both Lightning and LEC were resident in England. A question arose as to whether the trust would be governed by English or Scottish law. The court ruled that English law was applicable as the relationship between the parties was based in England. It rejected the application of the *lex situs*. Millett L.J. commented that: “Such a rule would lead to bizarre results if, for example, A’s instructions were to buy properties in more than one jurisdiction, for the consequences of the same arrangement might then be different in relation to the different properties acquired.”

18. *Lightning* was followed but distinguished in *Martin v Secretary of State for Work & Pensions* [2009] EWCA Civ 1289, [2010] W.T.L.R. 671 . In *Martin*, the purchase monies used to acquire property in France were provided by someone who was resident in England. However, the primary motive behind putting the property into the name of the third party was to take advantage of the French laws of succession. It was held accordingly that the question of an implied trust was to be governed by French law, not English law. At paragraph 31, Mummery LJ stated the reason why French law applied: “The whole focus of the admitted common intentions of the parties was on provisions of French succession law.” No analogous factor is present here.
19. In neither *Lightning* nor *Martin* did the Court of Appeal find it necessary to decide whether the Recognition of Trust Act 1987 applies to a constructive or resulting trust: see *Martin* at [35]. This is because that the 1987 Act imports the same “closest connection” test to determine the choice of law: see Art 7 of the Schedule to the Act.
20. Finally, neither side asserted that Jamaican law applied or adduced any evidence as to Jamaican law. In these circumstances, the court will apply English law by default: see *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45, [2022] A.C. 995 at [113] – [115].

Disclosure

21. On 4 January 2022, Deputy Master Arkush ordered that Dudley and Jennifer give disclosure by filing and serving a List of Documents in Form N265, in respect of the following categories of documents in their possession or power:
 - (1) documents relating directly to the purchase of the Property by Mrs Hylton and Jennifer in 2008;
 - (2) documents relating to the source of the purchase monies for the purchase of the Property by Mrs Hylton and Jennifer in 2008, including all savings and bank accounts of Mrs Hylton for 2007 and 2008;
 - (3) documents relating to the entry into and registration of the transfers dated 3 April 2012 and 26 April 2012 in respect of the property;
 - (4) documents relating to the issue and outcome of all proceedings issued by Dudley against Mrs Hylton in her lifetime.
22. Dudley did not fully comply with these disclosure obligations, but Jennifer did not comply at all. Dudley did not apply to compel her to do so. This left the court in the unsatisfactory position of relevant documents not being before it. In particular, Jennifer has not disclosed:

- (1) any bank or building society statements for her own accounts showing monies passing between her and Mrs Hylton;
 - (2) any correspondence (including emails) between her and Mrs Hylton relating to the source of the purchase monies.
23. At the hearing on 17 October 2022, Jennifer produced additional documents including:
- (1) a statement dated 6 November 2006 for an account in Jennifer's name with the Halifax (referred to in paragraph 38 below);
 - (2) a mortgage illustration dated 8 June 2006 showing a loan amount required of £153,000 and a purchase price of £233,000 – see paragraph 38 below;
 - (3) a letter dated 27 July 2009 from Phillip, Traile & Company, solicitors (based in Montego Bay, Jamaica) acting for Mrs Hylton, to Jennifer, addressed to her at the Property;
 - (4) a letter dated 17 June 2019 from Ho Lyn, Ho Lyn & Morris, solicitors (also based in Jamaica) acting for Jennifer to Phillip, Traile & Company;
 - (5) various invoices and receipts for building/decorating materials and labour from businesses or persons in Jamaica, primarily dated in January and February 2014, and also in 2019.
- Dudley, by his counsel, did not object to these documents being adduced in evidence.
24. On 15 and 16 December 2022 (15 December being the date for Jennifer's closing submissions), Jennifer filed various further documents relating to the purchase. Dudley objected to the admission in evidence of this material on grounds including that Jennifer was in breach of Deputy Master Arkush's order, he had complied with it and he would be disadvantaged by its admission. I agree that it would be unfair and wrong in principle to allow Jennifer to rely on these documents at this stage, when the evidence is concluded and Dudley has completed his closing submissions, particularly when there is no suggestion that these documents were not available earlier. The same reasoning applies to the documents filed on 7 March 2023.

Oral evidence

25. Neither side put forward any witness other than themselves.

Dudley

26. Dudley describes his occupation as “amateur historian”. He drafted for Mrs Hylton a number of legal documents, including a letter of complaint dated 18 December 2012 to the Jamaica Legal Council about the conveyancing lawyers who acted in her purchase of the Property (Clark, Robb & Co of Montego Bay, Jamaica (“Clark, Robb”)), a statutory declaration dated 10 September 2009 in support of the complaint, and the Will. He has consistently and persistently claimed a share in the Property on various different bases, in a number of legal claims (considered below).
27. There were a number of aspects of his evidence which I found unsatisfactory. First, he claimed to have acquired a 1/5 share in his mother's flat at 26B Claribel Road, Brixton by paying her £40,000. However, those funds were raised by means of an equity release loan secured on 26B Claribel Road, of which Mrs Hylton was the sole beneficial owner. Dudley did not, when giving evidence, acknowledge that the monies raised were Mrs Hylton's monies, and not his. Secondly, Dudley said in evidence that he only became aware in mid 2022 that Jennifer claimed that £100,000 of her money was used by Mrs Hylton to buy the Property. This is plainly untrue as he refers to this

claim in his manuscript diary in 2013— see para 67 below. Thirdly, Dudley maintained that the documents drafted by him for Mrs Hylton were in her own words and fully understood by her. I reject that evidence: the language used in those documents is not that of a person of Mrs Hylton’s education and experience (as to which, see paragraph 30 below). In addition, the contents of the documents drafted by Dudley are, as will be seen, inconsistent with letters from Mrs Hylton’s own solicitors acting in the purchase as to their instructions, and letters written in accordance with her instructions.

28. Dudley had no direct or indirect involvement with the purchase of the Property, so his relevant evidence is as primarily as to what his mother told him as the circumstances of the purchase. As to this, I prefer the evidence comprising documents created by independent third parties at the time of or relating to the purchase.

Jennifer

29. Jennifer has filed evidence showing that she suffers from several serious medical conditions including vasculitis with pulmonary renal syndrome. As will be apparent, Jennifer’s conduct of the claim has, even making allowances for her acting in person and her medical issues, been unsatisfactory in that she has failed to comply with her disclosure obligations. As a witness, she showed a high level of animosity towards Dudley and was very emotional at times. Her oral evidence went far beyond that in her written statement, and in so far as it did so, I take a cautious approach to it, only accepting it when it is supported by documents created by independent third parties at the time of or relating to the purchase.

Facts

30. Mrs Hylton (née Aitcheson) was born on 27 December 1927 in a small village in Jamaica called Dias. She left school aged 15, and did not attend college or university. She emigrated to the UK in 1948. In 1951 she married the claimant’s father (also called Dudley). Dudley was born in 1954, and Mona in 1955. Their parents divorced in 1960. In 1962 she travelled to the USA and then Canada, where her third child, Monica, was born in 1963. She returned to England in 1964. In 1968 she met and married Adolph Hylton, and Jennifer, who is a child of that marriage, was born in 1969.
31. After spending some time in Jamaica, Mrs Hylton returned to England permanently in 1972, initially in Manchester (where she worked as a carer in an old people’s home) and in 1979, London. In 1981, she obtained a tenancy of a council maisonette at 26B Claribel Road, Brixton, London. In London, she worked as a hairdresser.
32. In 1995, Mrs Hylton exercised her right to buy 26B Claribel Road.
33. In July 2003, Jennifer bought her council property 110 Hailsham Avenue for £90,000, the entirety of which was provided by a mortgage.
34. In 2004, Dudley was added to the title of 26B Claribel Road, so that he could obtain an equity release loan of £42,500. His evidence was that he paid £40,000 of this into Mrs Hylton’s Abbey National account R16666592 HYL – Jennifer disputes that these funds were received by Mrs Hylton. The loan was secured on 26B Claribel Road, and was repaid when it was sold. Dudley’s position was that this entitled him to a 1/5 share of the property, when, as set out above, the funds provided from the equity release loan in fact belonged to Mrs Hylton, since they were raised from her property. There is no

proper basis on which payment of Mrs Hylton's own funds to her could have entitled Dudley to an interest in 26B Claribel Road.

35. In June 2005, Mrs Hylton sold 26B Claribel Road. Dudley was paid £30,000 from the proceeds of sale. This was, he said, for spending 3 months fixing up and furnishing the flat, managing it and various expenses. Mrs Hylton received net proceeds of about £135,000. It would appear that this sum was paid into her Abbey National account no H2269386YL ("the Abbey account"), as on 19 August 2005 the balance in that account was £139,015.58.
36. Dudley's evidence was that he had identified 5 "suspicious" transfers in March and April 2006 out of the Abbey account totalling £66,000. His case was that these were loans to Jennifer, to enable her to pay the deposit on a property, 263 Northborough Road, Norbury, London SW16 4TR, which she bought in August 2006, for £233,000. Jennifer did not sell her existing property, 110 Hailsham Avenue until a year later, in August 2007, for the sum of £319,950.
37. Dudley had no direct knowledge of to whom the sums totalling £66,000 were paid or for what purpose; nor did he adduce any documentary evidence as to this. His case was wholly one of inference, namely, that the court should infer from that fact that Jennifer had an existing mortgage of £90,000 on 110 Hailsham Avenue that she would be unable to provide the deposit monies for 263 Northborough Road.
38. As to this, first, Jennifer denied that these sums were paid to her at all. Her evidence was that they were used by Mrs Hylton in relation to land in The Gambia bought by her and on which she built a house. Dudley agreed that Mrs Hylton had built a house in The Gambia, but said that this happened in 2005 and that building a house would not require as much as £66,000. He did not, however, explain how Mrs Hylton would have financed this other than from the proceeds of sale of 26B Claribel Road. Secondly, the deposit for 263 Northborough Road would have been 10% of the purchase price i.e. £23,300, so there is no obvious correlation between it and the sums withdrawn from Mrs Hylton's account. Thirdly, as noted above, at the hearing on 17 October 2022, Jennifer produced a Halifax statement dated 6 November 2006 for an account in her name showing that on 14 August 2006 she paid the sum of about £93,182 into that account. Her evidence was that this sum was raised by way of secured loan on 110 Hailsham Avenue. The statement shows 2 payments out on 16 August 2006: £23,300 and £60,049. Jennifer's evidence was that the first payment was the deposit and the second payment was the balance of the purchase price and legal costs – the mortgage on 263 Northborough Road being £155,295. This is supported by the mortgage illustration document produced by her: although it does not refer to a specific property, it shows a purchase price of £233,000 and a loan amount of £153,000. I accept Jennifer's evidence as to this. She had therefore no need when buying 263 Northborough Road, to borrow from Mrs Hylton. At this date, the equity in 110 Hailsham Avenue was over £200,000. Although there was no evidence as to Jennifer's income at this time, this equity was in principle enough to enable her to raise the funds she needed from her own resources, and without borrowing from Mrs Hylton. I accept that she did so. Indeed, Dudley said that Jennifer was wealthier than his mother at the time.

39. On 29 August and 8 November 2007, 2 cheques each for £50,000 were paid into the Abbey account. Jennifer’s evidence was that she transferred this £100,000 to Mrs Hylton for “safekeeping”, so that she (Jennifer) would not spend it impulsively. She intended to use it for the second phase of building and renovation work at her new home at 263 Northborough Road.
40. Between October 2007 and June 2008, a total of £157,500 was withdrawn from the Abbey account, leaving a minimal balance of £1,407.
41. The statement in evidence from Victoria Mutual Building Society (based in Jamaica) shows that during 2008, Mrs Hylton transferred sums totalling £98,480 to her savings account with it. I find that these sums were derived directly or indirectly from the monies in the Abbey account. In October 2008, while visiting Jamaica, she decided to buy the Property. The purchase price (as stated on the title document) was £135,500.
42. On 4 November 2008, £115,175 was transferred from the Victoria Mutual account to Clark, Robb, the conveyancing solicitors. Dudley’s evidence, unsupported by any documents, is that the remainder of the purchase price, £20,324, “came from her Abbey National accounts”. There was no documentary evidence as to which account it came from.
43. In her witness statement Jennifer states that “[u]ltimately I didn’t want the house purchase I wanted my money back to complete the building work I had started.” Her oral evidence was that she didn’t want her mother to buy a house in Jamaica and that she had expressly told Mrs Hylton not to use the £100,000 in buying the Property, so that its use was without her consent. There is no documentary evidence in support of these contentions.
44. The purchase of the Property was completed on 2 December 2008 in the joint names of Mrs Hylton and Jennifer.
45. The title to the Property was registered at the Jamaican Office of Titles at Volume 138 Folio 102 on 29 December 2008, with the following wording:

“Pearline Hylton of 5 Derby Court, Lambert Walk, London SE11 6DY, England Retired Landlady and Jennifer Seales of 23 Northborough Road, London SW16 4TR, England, Housewife as Joint Tenants.”
46. In early 2009 Mrs Hylton travelled to Jamaica, and asked Clark, Robb to draft a new will for her, disposing of the Property. They advised (or readvised) her that she could not dispose of her interest in the Property by will, and that because the Property was held on a joint tenancy, on her death her interest would pass directly to Jennifer.
47. Clark, Robb suggested that she sever the joint tenancy and drafted a document entitled “Transfer to Sever Joint Tenancy” to be signed by Mrs Hylton and Jennifer, the operative parts of which recite that

“HEREBY TRANSFER to ourselves as Tenants-in-Common in fee simple all our estate and interest and all the estate and in to which we are entitled or able to transfer and to dispose of in [the Property]”

This document was sent to Mrs Hylton under cover of Clark, Robb's letter dated 13 March 2009.

48. Dudley's evidence is that in about June or July 2009, Mrs Hylton again travelled to Jamaica and presented the document to Jennifer, but she declined to sign it. Jennifer disputed this in her oral evidence. She said that she travelled to Jamaica with her mother, who did not present any document for her to sign.
49. On 27 July 2009, Phillip, Traile & Company, a firm of attorneys-at-law based Montego Bay, Jamaica, wrote on Mrs Hylton's behalf to Jennifer:

“We are instructed that you and your mother own [the Property] as joint tenants and your mother wishes to sever this joint tenancy and change the tenancy to a tenancy in common so that she can dispose of **her share of the property** by a Will.

As you can appreciate our client is forced to contact you this way as we understand that you were not amenable to her suggestion. In the interest of family harmony we ask that you contact the writer hereof so that the matter can be dealt with amicably. Bear in mind that **your share of the property will remain intact.**”
(emphasis added)

50. On 18 December 2009, Mrs Hylton signed a letter drafted by Dudley to the Legal General Council of Jamaica, complaining that Clark, Robb did not explain to her the implications of adding Jennifer's name to the Certificate of Title to the Property; and that had they done so, she would not have let Jennifer's name be added.
51. The letter enclosed a Statutory Declaration dated 10 September 2009 by Mrs Hylton, and also drafted by Dudley. Although it was executed before a solicitor, Dudley's evidence was that “it was all over in 5 minutes”. The solicitor did not take Mrs Hylton through the statement or explain its meaning.
52. The statement set out that Jennifer did not provide any of the purchase monies for the Property. It stated that Mrs Hylton wanted Jennifer's name removed from the title, and that she was “informed” that she was entitled to have her name removed because:
 - “1) I had only included her name by way of a mistake as the effect of doing so. I did not realise that a joint tenancy effectively meant that she would inherit the whole house;
 - 2) Because she has not contributed anything at all to the purchase price she is not entitled to any “beneficial interest” nor is she entitled to be one of the house's “proprietors”;
 - 3) I have not given any part of the beneficial interest to her as a gift.
 - ...
 - (a) I want the legal and beneficial interest in the house to belong entirely to me, and (b) I wish to point out that at no time has it ever been my intention for Jennifer Seales to inherit the house by way of the joint tenancy. And (c) although the joint tenancy was mistakenly established by me yet I believe

that I am entitled to replace it with myself as sole proprietor because I am the person who bought the house and paid for it.

53. This account of matters was not accepted by Clark, Robb. In their letter dated 23 September 2010 responding to the complaint, they set out that the implications of registration as joint tenants/tenant-in-common were fully explained to Mrs Hylton, continuing:

“Mrs Hylton appeared at all times to have fully understood the nature of her intended joint holding and what it would entail, in particular, the fact that a joint tenant’s share/interest upon death would fall to the surviving joint tenant(s), and NOT to the estate of the deceased.”
54. As to the provision of the purchase price, Clark, Robb stated that

“Based on our instructions, there is inter alia, sufficient evidence to prove at trial, that Mrs Hylton purchased the property entirely from her own resources and without any financial assistance from her daughter. This could provide the basis on which to secure, inter alia, an Order of the Court for severance of the joint holding.”
55. There is no further explanation as to what those instructions were. In the absence of explanation, that statement is consistent with the monies having been paid from accounts in Mrs Hylton’s name, without Clark, Robb having made enquiries as to their origin.
56. No further steps were taken by Mrs Hylton to remove Jennifer from the title to the Property.
57. In the interim however, Dudley applied to the Court of Protection in about May 2010 for an order declaring that Mrs Hylton’s purchase of the Property and adding Jennifer to the title as joint tenant “fell below the standard expected of a person who had testamentary capacity”, and appointing him as her deputy to bring proceedings in Jamaica to rectify the certificate of title. That application was dismissed on grounds including that evidence from Mrs Hylton’s GP showed that she had capacity to manage her property and affairs.
58. He followed this with a claim in Lambeth County Court in late 2010 claiming about £19,000, said to be the value of money, labour and goods put into 26B Claribel Road “in consideration of her September 1997 Will and an Agreement of January 2004” (neither of these were in evidence). I note also that as set out above, Dudley had already received £30,000 from Mrs Hylton for his work and money put into 26B Claribel Road. The basis of this claim was that “the joint tenancy the defendant created when purchasing her house in Jamaica prevents him from inheriting the sum as a carried over investment in her estate”. Mrs Hylton did not respond to this claim and Dudley obtained a default judgment against her.
59. It would appear that Dudley then issued a claim in the County Court at Central London (the court documents were not in evidence) claiming £4,148. The claim was, as described by Mrs Hylton in her witness statement of 31 December in the Part 8 claim

referred to below for “£1,200 for allegedly looking after pigs in a farm in Jamaica when he was 15 years of age (over 40 years ago), a sum of £100 he allegedly lent me which has now increased to £500, and a sum of £1000 for sharing his accommodation with him at 60 Rectory Gardens which was a squat” and “£1000 for collecting rent from my tenants at 26 Claribel Road, which was never handed to me”.

60. A yet further Part 8 claim issued by Dudley on 10 November 2010 (HC10C03654) to which Mrs Hylton and Jennifer were defendants. This sought a declaration that Mrs Hylton held the Property on constructive trust for her 4 children, and was under a duty to apply to rectify the title “to protect the interests of her beneficiaries”.
61. Mrs Hylton made a statement dated 31 December 2020 in opposition to this claim. This included the following statements

“ [Dudley] is jealous of the fact that I had [Jennifer] as a joint owner of [the Property].

...
I purchased [the Property] with my own money. [Dudley] has not made any contributions towards my purchase, financial or otherwise.

...
I have an understanding with [Jennifer] that whenever I desire to end our co-ownership and have [the Property] transferred into my sole name, she will consent to do so.

...
[Dudley] in his statement said that I had made a mistake by including [Jennifer] in [the Property]. But I would like to say that if I had made a mistake, I shall rectify this mistake in my own time.

...
I feel very bitter, disappointed and outraged by the fact that [Dudley] is trying to take over my own property which I purchased by my own money where he made no contribution whatsoever.”
62. Mrs Hylton’s opposition was supported by Jennifer whose witness statement of 31 December 2010 stated that she had read her mother’s statement and fully agreed with her reasons for opposing the claim.
63. In February 2011 Dudley discontinued this claim, and was ordered to pay Mrs Hylton and Jennifer’s costs.
64. On 13 March 2012, Mrs Hylton made the Will. The font of the Will is the same as other documents drafted for her by Dudley. He does not expressly state that he drafted it, but it is clear from his witness statement dated 15 November 2020, paras 130-133 that he did so.
65. Shortly thereafter, on 3 April 2012, Mrs Hylton executed a document entitled “Transfer of Land” which on its face transferred her interest in the Property to Mona (43%), Dudley (43%) and herself (14%) as tenants in common in equal shares.
66. This was followed by a further transfer by which Mrs Hylton transferred “6% of my estate and interest” in the Property to Mona and Dudley as tenants in common in equal

shares. This document was referred to by Dudley in his witness statement of 15 November 2020, but not exhibited; and only filed (at my direction) after close of evidence. It is dated 3 April 2012, but Dudley’s evidence is that it was executed on 26 April 2012.

67. In April 2012, Mrs Hylton moved to sheltered accommodation at Flat 8, Lingham House, Lingham Road, Stockwell. Around this time, Dudley began keeping a manuscript diary. This includes the following relevant entries:

- 14 January 2013 “Mona thinks Jennifer has discovered the joint tenancy has been severed so that’s why she wants a meeting.”
- 11 March 2013 “Call from Jennifer ... ‘I have money invested in that house’”
- 18 March 2013 “Visited Pearl ... - Jennifer had put money into Coral Gardens house for repairs”
- 11 October 2013 “Withdrew £80 and took this to Pearl yesterday evening
– Mentioned that Jennifer had invited Mona to a meeting and she had told Mona that she had put £100,000 into the Coral Gardens house. She agreed she had.
She asked who was selling the house and when I said Jennifer she didn’t raise objections.
- When I asked her what she had done with the remaining £100,000 she had in her account before buying the house she did not have an answer. – It seems that Jennifer has given her instructions to say she contributed £100,000”

Legal principles

Beneficial ownership

68. The principles applicable to this case are found in the decision of *Jones v Kernott* [2011] UKSC 53 , [2012] 1 AC 776, in which a family home was held in joint names, at [51]:

- “(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.
- (2) That presumption can be displaced by showing
- (a) that the parties had a different common intention at the time when they acquired the home, or
- (b) that they later formed the common intention that their respective shares would change.
- (3) Their common intention is to be deduced objectively from their conduct. ...
- (4) In those cases where it is clear either
- (a) that the parties did not intend joint tenancy at the outset, or
- (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property,
- “the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property”.... In our judgment, “the whole course of dealing ... in relation to the property” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ actual intentions.

- (5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).”

69. These principles apply not only to the purchase of a family home, but to the purchase of properties in other circumstances: see *Marr v Collie* [2017] UKPC 17, [2018] AC 631 at [40].

Severance

Method

70. Severance is the method by which a joint tenancy is converted into a tenancy in common. It is established law that the ways in which a joint tenancy may be severed include by alienation of the joint tenant’s interest: *Williams v Hensman* (1861) 1 J & H 546 at 557; *Megarry & Wade* The Law of Real Property 9th edn at paras 12-037 to 12-040. This does not require notice to be given to the other joint tenant.

Effect of severance

71. Where land is held by two persons as beneficial joint tenants, each will share equally on severance, even though they may have contributed unequally to the purchase price: *Goodman v Gallant* [1986] Fam 106 at 143. This reflects the fact that notwithstanding the differing contributions by agreeing to hold as beneficial joint tenants, the parties have agreed that their shares should be equal.

Discussion and conclusions

72. The issues arising in the claims (or at least the HC claim) are:

- (1) How the beneficial interest in the Property was held when it was bought;
- (2) If the beneficial interest was held on a joint tenancy, whether that joint tenancy was severed.

Beneficial ownership

73. The starting point is, as noted above, that the beneficial interest follows the legal interest.

74. This presumption can be displaced by showing that the parties had a different intention at the time of purchase. Dudley’s pleaded case is based on the fact, as he alleges, that Jennifer did not contribute to the purchase price of the Property.

75. As to this, I find:

- (1) Jennifer transferred £100,000 to Mrs Hylton in late 2007.
- (2) Jennifer did not need to borrow monies from Mrs Hylton in order to pay the deposit and balance of the purchase price of 263 Northborough Road (as Dudley suggested she did), as she was able to do this from her own resources.
- (3) Jennifer had no other reason (and Dudley did not suggest she had) to borrow £66,000 from Mrs Hylton in 2006.
- (4) The £100,000 was not therefore paid to Mrs Hylton in repayment of a loan.
- (5) The £100,000 was not a loan or a gift to Mrs Hylton. It was transferred to her to hold for Jennifer, effectively on a bare trust. Mrs Hylton was therefore obliged not to use it for her own purposes.
- (6) The monies used for the purchase price were directly or indirectly derived from the monies in the Abbey account – into which both the proceeds of sale of 26B

Claribel Road and the £100,000 were paid. Dudley did not suggest that Mrs Hylton had any other substantial resources available to her.

- (7) Whether or not Jennifer consented to the use of the £100,000, Mrs Hylton would of course have been aware of the origins of the purchase monies.
 - (8) Mrs Hylton returned some of the £100,000 to Jennifer – there was no documentary evidence as to when this happened and how much was returned.
 - (9) In these circumstances, it is to be inferred that Mrs Hylton intended a form of co-ownership to reflect the use of the £100,000 towards the purchase price, and did not intend that she should be the sole beneficial owner of the Property.
76. The following documents support this conclusion:
- (1) The draft “Transfer to Sever Joint Tenancy” enclosed with Clark, Robb’s letter dated 13 March 2009 (see para 47 above).
 - (2) Phillip, Traile’s letter dated 27 July 2009 (see para 49 above) referring to the joint tenancy, and to Mrs Hylton’s wish to dispose of her share by will, while leaving Jennifer’s share intact;
 - (3) The statutory declaration dated 10 September 2009, referring at para 11 to Mrs Hylton’s wish to replace the joint tenancy with a tenancy in common; and setting out that it was only because of “unexpected problems” in severing the joint tenancy that she “**now**” wanted Jennifer’s name to be entirely removed from the title.
 - (4) Clark, Robb’s letter dated 23 September 2010 (see para 53 above) in which they state “Mrs Hylton and her daughter Jennifer Seales were registered as joint tenants of property in keeping with her instructions”.
 - (5) Dudley’s diary entry for 14 January 2013: “Mona thinks that Jennifer has discovered the joint tenancy has been severed ...”.
 - (6) Dudley’s diary entry for 11 March 2013 recording Jennifer saying to him: “I have money invested in that house”.
 - (7) Dudley’s diary entry for 11 October 2013 recording Mrs Hylton’s agreement that Jennifer had put £100,000 into the Property.
 - (8) Mrs Hylton’s witness statement dated 31 December 2010 in claim no HQ10C03654 in which she refers to Jennifer as a joint owner, and to their co-ownership; and to severing the joint tenancy;
77. In addition, as noted above, the CC claim is predicated upon the validity of the joint tenancy.
78. If as Dudley submits, Mrs Hylton intended that she should be the sole beneficial owner of the Property, she would not have sought to sever the joint tenancy, since the effect of doing so is to create a tenancy in common in equal shares. The appropriate course of action to establish sole beneficial ownership would have been to obtain declaratory confirmation from Jennifer that she held the Property on trust for her mother. Severance would only have been necessary and appropriate because the beneficial interests were held on a joint tenancy, and severance was an act which affirmed that joint beneficial interest.
79. The primary documents relied upon by Dudley in support of his mother intending to be the sole beneficial owner of the Property were:
- (1) Mrs Hylton’s statutory declaration dated 10 September 2009;

- (2) Mrs Hylton's letter dated 14 December 2009 to the Legal General Council of Jamaica;
 - (3) Mrs Hylton's witness statement dated 31 December 2010 in claim no HQ10C03654, and Jennifer's witness statement in the same claim confirming the truth of Mrs Hylton's statement.
80. As to (1) and (2), these were drafted by Dudley and, in my judgment, limited reliance is to be placed on them for that reason. In any event, in the statutory declaration, Mrs Hylton's assertion that Jennifer did not contribute to purchase price is factually inaccurate in the light of my findings above; and even if accurate, her statement that she did not intend to give any beneficial interest to Jennifer is inconsistent with seeking, as she did, to create a tenancy in common. The position in respect of the letter is similar: Mrs Hylton's complaint is that she has been unable to sever the joint tenancy.
81. As to (3), the witness statement, Dudley relied upon the statement by Mrs Hylton that she purchased the property with her own money; and that she had an understanding with Jennifer that whenever she desired to end their co-ownership and have the property transferred into her sole name, she (Jennifer) would consent to do so. He also relied upon the fact that Mrs Hylton refers in the statement to "my property", and to herself as having no intention that Dudley or any other of the adult children should benefit from it. Jennifer's evidence was that this witness statement was focussed on rebutting Dudley's claim, and was not true on these points.
82. There is a straightforward conflict between this evidence and the other evidence discussed above. I note that even in this statement Mrs Hylton refers to the joint tenancy, and the fact that she had instructed lawyers to take steps to sever it. On the balance of probabilities, I consider that the most likely explanation for the contents of this witness statement (and Jennifer's confirmatory statement) is that Mrs Hylton and Jennifer were concerned to present a united front to Dudley and for those purposes a full account of the origin of the purchase monies was not given.
83. Mr Heslop also relied upon Mrs Seales' oral evidence that:
- (1) the idea of purchasing 168 Armstrong Avenue was entirely that of her mother;
 - (2) the property was purchased contrary to her wishes;
 - (3) she wanted nothing to do with the purchase;
 - (4) her (Mrs Seales') only involvement was to sign the transfer.
84. This, Mr Heslop's counsel submitted, established that Mrs Seales never intended to have a beneficial interest in the Property, and this was, he said fatal to her claim to have one. Her only remedy was, he said, a personal claim for the monies against Mrs Hylton and now against her estate. I reject this argument. First, it is clear, as I have found, that Mrs Hylton intended Jennifer to have an interest in the Property, both at the outset and subsequently – she intended to hold it on trust for herself and Jennifer. Jennifer considered she was entitled to a share of the proceeds of sale of the Property i.e. to some sort of proprietary interest in it, rather than just a personal claim against her mother. These facts are sufficient in my judgment to prevent the presumption from being displaced.
85. If I am wrong about that, Jennifer would in any event have a tracing claim against Mrs Hylton in respect of the monies used by her for the purchase without her consent: see

Foskett v McKeown [2001] 1 A.C. 102. She would be entitled to trace the monies into the Property in Mrs Hylton's hands. As Lord Millett sets out in *Foskett*:

“The simplest case is where a trustee wrongfully misappropriates trust property and uses it exclusively to acquire other property for his own benefit. In such a case the beneficiary is entitled at his option either to assert his beneficial ownership of the proceeds or to bring a personal claim against the trustee for breach of trust and enforce an equitable lien or charge on the proceeds to secure restoration of the trust fund. He will normally exercise the option in the way most advantageous to himself. If the traceable proceeds have increased in value and are worth more than the original asset, he will assert his beneficial ownership and obtain the profit for himself. There is nothing unfair in this. The trustee cannot be permitted to keep any profit resulting from his misappropriation for himself, and his donees cannot obtain a better title than their donor.”

86. Such a beneficial interest would not of course be that of a joint tenant, but of a beneficial tenant in common in proportion to the monies used in the purchase. Quantifying it would require an enquiry as to how much was paid back to Jennifer, a task which the court is not required nor in a position to carry out in these claims.

Severance of the joint tenancy

87. If, as I have found the Property, was held on a joint tenancy, it remains to consider whether this was severed. This can be dealt with quite shortly. The transfer made on 3 April 2012 was an act of alienation by Mrs Hylton, sufficient to effect a severance, so each thereafter held a one half share in the Property as tenants in common.