| | | |
|---|---|---|
| **Neutral Citation No: [2024] NICh 6**<br><br>*Judgment: approved by the court for handing down (subject to editorial corrections)** | *Ref:* | **HUD12513** |
| | *ICOS No:* | **17/76362/A01** |
| | *Delivered:* | **30/05/2024** |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

_____

**CHANCERY DIVISION**

_____

**ALAN DIXON**

**Plaintiff**

**and**

**ANNE SHARKEY**

**Defendant**

_____

**Mr B Devlin BL (instructed by Mark Quigley Solicitors) for the Plaintiff**
**Ms Maria Mulally BL(instructed by John Fahy &Co Solicitors) for the Defendant**

_____

**HUDDLESTON J**

*Introduction*

[1] This is an appeal against the order of the County Court made on 2 March 2021 under which the learned trial judge (LTJ) made a declaration that "the defendant holds a beneficial interest in the property at 3A Deerpark Road, Ardstraw, Omagh, on trust for the plaintiff herself, and their three children."

[2] As a starting point the order provides no clarity as to the respective beneficial interests involved, how they are to be held and/or in what percentages. At the time of the Order some of the children were also minors which would have created additional issues which the Order failed to address.

*Background*

[3] The defendant, Anne Sharkey, became a widow in 1997. She had two children from that previous marriage, both of whom are now aged over the age of 18 years. During her first marriage Mrs Sharkey lived at 68 Cannondale, Omagh, a former NIHE property which had been held jointly with her deceased husband. Upon his death it passed to her by survivorship. When the parties commenced a

relationship in or around 2001, Mr Dixon was living in a property, 7 Abbey Villas, Ardstraw, Co Tyrone, which he held in his own name.

[4] Mr Dixon and Ms Sharkey lived together from approximately 2006 until June 2015 at the property which is in dispute ("the Property") at 3A Deerpark Road, Ardstraw, Omagh.

[5] The parties never married but had three children. The first, Emma, was born in October 2006 and then twins were born in 2008.

[6] Throughout the period of cohabitation the children of Mrs Sharkey's previous marriage lived with the parties at the Property – at least until they went into third level education and moved away.

[7] The Property at 3A Deerpark Road, was built on a site which the plaintiff was gifted by his mother in or about 2005. The title to the Property shows that the plaintiff's father, the late William John Dixon, owned the adjacent property together with the site upon which the Property itself was constructed. Upon his death a life interest accrued to his wife, Matilda Jane Dixon, with remainder to the plaintiff absolutely. Following the discussions referenced above, a conveyance was entered into on 14 December 2006 (and registered on 21 December 2006) under which Mrs Dixon and the plaintiff (for their respective interests) jointly transferred the Property to the plaintiff and the defendant as joint tenants for natural love and affection.

[8] Mr Dixon gave evidence that he had obtained planning permission for the site and that, in fact, construction began towards the end of 2005 and concluded in July 2006 when the parties moved into the Property. It is the plaintiff's case that he bore the entire cost of the construction. The court was furnished with evidence of the fact that he had extended the Alliance & Leicester mortgage secured on the property in which he had resided prior to commencement of the relationship (ie 7 Abbey Villas) in the sum of £42,650 on an interest only basis for a period of 10 years. The court reviewed the documents by which that mortgage was extended in November 2005. There was evidence that the additional funds were lodged to his current account on 30 January 2006. The plaintiff also gave evidence that he had deployed savings of approximately £50,000 to the construction and that he had borrowed a further £8,000 from his mother. His evidence was that the total construction cost was approximately £100,000.

[9] The plaintiff is, by trade, a joiner and did part of the works himself. He furnished several invoices which confirmed payment, by him, of several items of the building itself - for example the costs of building control approval (£2,450), purchase of the windows (£4,450), payment of kitchen deposit (£5,400) and the kitchen. He evidenced the payments through his current account against the additional borrowings that he had taken.

[10] From his evidence 7 Abbey Villas was rented out to third parties from 2001 and that the rent received was used (at least in part) to pay the increased mortgage payments. That property itself was sold by the appellant in or around 2020 after the parties separated at which point the Alliance & Leicester mortgage (then at £33,667) was redeemed.

[11] The defendant worked as a dinner lady and her evidence to the court was that she provided whatever cash she had to purchase items for the new property. She gave an estimate that this may have amounted to as much as £100,000 but other than her oral evidence there was little by way of substantiation of these payments, or the items bought. Her evidence was that the entirety of the rental income she received on the letting of Cannondale, Omagh (to which I will return) (approximately £380 per month) together with her salary of circa £420 per month was deployed to meet the household expenses of the family. She states that she purchased food and expenses for all five children, paid half of all heating oil payments and made payments towards the family car, electricity, and phone. The case is also made on her behalf that she bought a caravan at a cost of £23,000/24,000 from the proceeds of a life policy on her deceased husband which was used by the family during the period of co-habitation.

[12] It is very clear from the evidence that the parties maintained separate bank accounts and dealt with their finances separately throughout. Indeed, the defendant says that that was one of the issues within the relationship and that the plaintiff was secretive as regards his financial affairs.

[13] The plaintiff in his affidavit evidence disputes the extent of the defendant's financial contribution to the family. He puts it thus:

> "She paid for some of the outgoings for the children but certainly not all, she paid for some of the food but not all, and the only other bills she did pay was the electricity and phone. Her income as a dinner lady was limited and I had to carry the additional burden of paying the mortgage and supporting the family with limited contribution from her. I was willing to do that for a time as I believed at some point 68 Cannondale would be sold. However, I would emphasise that whatever her financial contributions may have been at no stage did we agree to set aside our agreement that she sell 68 Cannondale and pay for her 50% of the property at 6A Deerpark Road."

[14] That, in essence, is the dispute. The plaintiff says that there was an agreement between the parties that the property at 68 Cannondale was to be sold and the net proceeds contributed towards the construction costs of the Property but that it was an agreement that was never fulfilled. It is common case that the Cannondale Property was marketed in 2007 but the sale fell through because of a title dispute

after which it was decided to take it off the market because of the collapse in the property market at that time. The plaintiff, at para [6] of his affidavit, puts it thus:

> "The defendant at the time had no option but to wait for the market to improve or she would have lost money on her sale, but as time went on and the market did improve, it became apparent that the defendant had no intention of selling her property at 68 Cannondale. By 2013 our relationship had begun to deteriorate and one of the many issues we had included the fact that the defendant would not fulfil the bargain we agreed in 2007 that she would sell 68 Cannondale and make her long awaited financial contribution towards 3A Deerpark Road. I had shouldered all the financial burden of paying for the construction throughout and it was upsetting that the defendant sought to renege on the agreement."

[15] The defendant, in her affidavit, puts the position thus:

> "When the subject property at 3A Deerpark Road was being constructed the plaintiff suggested that I sell my property at 68 Cannondale, Omagh, Co Tyrone, so as to assist with the construction of the property at 3A Deerpark Road. In furtherance of this, my property at 68 Cannondale, Omagh, was placed on the market and agreed for sale. However, due to an issue with the boundary, the sale fell through. The plaintiff and I both agreed that it would be prudent to rent the property and the rent monies could be used towards household bills. **At no time since the sale fell through in or about 2007 did the plaintiff ask for the property at 68 Cannondale, Omagh, to be sold and it was mutually agreed that it was beneficial for the rental income of £380 per month to be used towards the family." [emphasis added]**

[16] In her oral evidence the defendant pinpoints the deterioration of the relationship from 2008 (upon the arrival of the twins). She says that when she moved to the Property, she was labouring under an apprehension that they would get married but that "in the ensuing years when I asked the plaintiff about our proposed marriage, he became vague and failed to proceed with our proposed marriage always making excuses."

[17] After their separation in 2015, the defendant and her children lived with relatives until the tenancy in respect of 68 Cannondale ended. The plaintiff's evidence is that she had to borrow £3,000 from her mother to make that property habitable (i.e. by the installation of a new kitchen and bathroom). She commenced

living there with her three (then infant) children. The two oldest children she avers had been unable to return to the property due to the limited accommodation and so continued to live with relatives when they returned from third level education.

[18] The defendant's submissions in summary are that:

(a) Although there were initial discussions to sell 68 Cannondale, the parties subsequently agreed to retain it and use the rental money to discharge household expenses at the subject property;

(b) That the relationship was a cohabiting relationship and that the parties were engaged in 2006/2007 with the intention of marriage; that the property was transferred into their joint names in 2006 in anticipation of Emma's birth (on 12 October 2006) with the intention that it be used as a family home; that the property was constructed with a mortgage secured on 7 Abbey Villas (owned by the plaintiff) but that the entire rental income of 68 Cannondale (owned by the defendant) was used for family expenses together with the fruits of her labour and that she "contributed to the household as much as she reasonably could."

[19] The defendant in the submissions lodged on her behalf by her counsel, suggest:

> "The inference was that each party contributed as much to the household as they reasonably could and that they would share in the eventual benefit or burden equally. This was a cohabiting relationship and not a commercial venture by non-cohabiting individuals. The lands were conveyed to the parties at a time when they were cohabiting with an infant child, and they were engaged to be married in or about this time. The rebutting of the presumption of equal ownership in a joint tenancy case is very unusual and very difficult. The burden is on the appellant to have the presumption rebutted and this had not been established."

[20] The plaintiff/appellant's case is summarised that:

> "Based on the totality of the evidence it is established that:
>
> (i) the defendant did make a promise to the plaintiff that she would clear the mortgage taken out for the construction of the property;

(ii) the plaintiff acted on that promise to fund the construction of the property on his own while placing the title to it in their joint names;

(iii) the defendant broke her promise; and so

(iv) the plaintiff has acted to his detriment in reliance upon the promise, such that he seeks a declaration that the defendant should be estopped from asserting any beneficial interest in the Property and that he be granted the relief sought."

*The law*

[21] The factual scenario outlined above, falls squarely within the *Stack v Dowden* [2007] UKHL 17 line of jurisprudence. In that case the court was dealing with the situation where a property was held in joint names and where the plaintiff asserted that she had a greater beneficial interest in the property – a case with which the court agreed. I think it is important to note that Lady Hale, who gave the leading judgment in the case, commented that the trial judge at first instance focused on the parties' relationship rather than on the factors which were relevant to ascertaining their intentions with respect to the beneficial interest in the property. That is useful guidance in terms of analysing the circumstances here.

[22] There is no dispute that the Property was conveyed to the parties as joint tenants and, as a presumption, that raises the assumption that both parties shared the legal and beneficial joint tenancy in equal shares unless and until the contrary is proved (see Baroness Hale at para [58]).

[23] The onus of proof in doing so, as was pointed out by counsel, quite properly falls upon the plaintiff in the present case as the party seeking to displace that presumption. In looking at that issue Lady Hale in *Stack v Dowden* cited with approval the Court of Appeal in *Oxley and Hiscock*:

> "… **the question really is one of the parties' 'common intention**', we believe that there is much to be said for adopting what has been called **a 'holistic approach'** to quantification, **undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended." [emphasis added]**

[24] In considering the various factors to take into account, Lady Hale (at para [69]) sets out a non-exhaustive list of pointers (some financial, others not) to which the court should have regard. They are of immense assistance to courts having to deal with these issues.

[25] In the present situation I found the plaintiff's evidence to be straightforward and, indeed, substantiated by corroborative documentary evidence. The court was furnished with the arrangements regarding the loan which was secured on his original property at 7 Abbey Villas. That confirms the existence of an interest only term loan. That loan fell for repayment within a timeframe of 10 years. It was a repayment only product. There was no evidence of there being an alternative investment vehicle (such as life insurance) which would secure its payment. The plaintiff gave evidence that, to meet that debt, he had no option but to sell the property at 7 Abbey Villas to discharge the loan that had been secured upon it. Again, the documentary evidence substantiates that position.

[26] Mr Dixon also provided compelling evidence about shouldering the construction costs for the dwelling constructed upon the Property. I have already referenced above the cheque entries which he presented evidencing the sequence of construction from the procurement of planning permission through to the purchase of fixtures and fittings (ie bathrooms and kitchens etc) which he funded, on a transparent basis through his current account.

[27] In addition, there is obviously little doubt that he procured the site from his mother (for natural love and affection) and that, following that, I am satisfied on the evidence that he shouldered the principal cost in terms of the construction of the dwelling upon the Property itself.

[28] What, however, was the underpinning agreement? On that Mr Dixon depicted within his evidence a rational case that the parties had reached an agreement by which not only his property at Abbey Villas would be sold, but that the defendant's property at 68 Cannondale would also be sold and the proceeds of both jointly applied to defray the costs of the Property. Cannondale was a Housing Executive property which was acquired by the defendant and her late husband for about £6,500. It was clear from the evidence that it was put on the market and that the defendant received an offer of £135,000 before the sale fell through because of a boundary issue. It was equally coherent that the parties agreed to defer the sale pending an improvement in market conditions and the rent applied towards living expenses. I do not discern from the evidence, however, any consensus that Cannondale was thenceforward released from the original agreement. It was unlikely in the extreme given that the 10-year mortgage would have to be discharged.

[29] I asked the defendant what her intentions were had she concluded the sale in 2007. Her evidence to me was that she would have retained the proceedings of sale outright herself for herself and her family. Frankly, I find that unconvincing in the context of the circumstances which prevailed at that point and before the breakdown in the relationship. Indeed I found the defendant's evidence overall less than compelling – both her evidence-in-chief and the replies that were elicited through cross-examination both in relation to the parties' joint intentions, her own intentions,

and the running of the finances of the family during the course of the nine-year relationship.

[30] If I were to accept the logic of her case, she would be entitled to 50% of the beneficial interest in the Property and at the same time benefit from Cannondale whilst, as I have indicated above, the plaintiff has had to sell his own separately owned property in order to finance the construction of the Property. If one were to take the "pot" as a whole, the defendant would, on her case, receive a much greater portion in that she retains Cannondale and would at the same time be entitled to 50% of the value of the Property. I do not find that was the 'common intention' of the parties.

[31] In terms of her financial and non-financial contribution, I accept that the defendant did deploy most of her income in maintaining and paying for the family expenses. I accept, however, equally that the plaintiff's evidence that (after discharging the mortgage etc) he contributed what he could to the joint running costs of the family of two adults and five children. To that extent, my conclusion, from the evidence, is that they both jointly contributed to the maximum extent which they could, to maintain the day-to-day expenses of maintaining what was a large and blended family until the breakdown of the relationship. To that extent there was an equal sharing of the 'revenue costs' which both honoured.

[32] In terms of the dwelling, the defendant said that she estimated her contribution in terms of soft furnishings etc for the Property to amount to £100,000. She also gave evidence of the acquisition of the caravan for the joint use of the family. Both are, I consider, side issues to the main point of establishing what was the "common intention" in respect of the Property itself. In the case of the soft furnishings no independent or corroborative evidence was provided of the amount and given that the total construction cost was in the order of £100,000 it seems unlikely that a similar sum was spent on soft furnishings. Other than the plaintiff's oral evidence nothing was advanced to substantiate this figure but even if it was so there was no suggestion that in doing so it had been agreed that the defendant would thereby be entitled to a share in the Property. Indeed, if acquired by the defendant the furnishings remained her property. In the case of the caravan, the defendant either still retains that or is entitled to/has benefitted from 100% of its value. Neither aspect of the defendant's evidence on these two issues goes directly to the points at issue nor was it compelling.

[33] Specifically, I asked the defendant how she had felt that, faced with an interest only mortgage, it could or would be discharged otherwise than by the contribution of capital from the sale of one or other of the ancillary properties (ie either Cannondale or Abbey Villas). Again, the defendant's answer was somewhat unconvincing. She said that she wasn't aware or concerned herself with that issue. Whilst I accept the plaintiff may have taken a greater lead on the financial transactions, nonetheless the defendant could not have been unaware of the

existence of a mortgage and, more importantly, the need for it to be paid off within the 10-year horizon if they were to be able to continue living at the Property.

[34] Considering the evidence, I am satisfied that the common intention of the parties was that the Property was transferred into joint names but on condition that there was an equal contribution (in terms of capital) from both parties. The defendant's contribution was to come from the sale of the Cannondale house. The fact that Cannondale was put on the market in 2007 is, I feel, corroboration of that position and the parties' intentions at that time. I think it is the reality that by the time the effects of the financial recession were receding the relationship had deteriorated to such an extent that the defendant had reconsidered her position and decided not to proceed with the sale. She was perfectly entitled to take that course of action, but in doing so, she was unilaterally departing from the previous arrangement (in equity) which the parties had. As a result, she did not actually contribute in financial terms to the construction of the Property, and so, in my view, is not entitled to a beneficial interest in it. This is one of those cases where the presumption of interest following the conveyancing of the Property can be departed from because the evidence, in my view, is sufficiently compelling to evidence a contrary position based on the parties' (unfulfilled) common intention.

[35] In terms of the contributions made to meeting household expenses, I consider that the parties were equally matched in that they each paid what they could towards the joint running of the Property and the maintenance of a large and growing family. In taking that approach, however, I discern no common intention that the defendant should, thereby, accrue a beneficial interest in the capital value of the Property itself. The only common intention that I can discern from the facts is that she would have accrued that entitlement had she invested the proceeds of the sale of the Cannondale property which, in the final instance, never came to fruition.

[36] In all the circumstances, therefore, I will allow the appeal and find in favour of the plaintiff/appellant. As a consequence I will include an Order that Ms Sharkey execute a transfer of her interest to Mr Dixon. If she fails to do so when requested, then the matter is to be relisted before me with a view to the Chancery Judge executing such a transfer.

[37] As the defendant is legally aided, legal aid taxation will apply in the usual way.