Constructive feedback

A constructive trust establishes beneficial interests in property, as Rupert Butler & Thomas Horton report

IN BRIEF

- An exploration of the Court of Appeal's decision in *Agarwala v Agarwala*.
- Recapitulating the method that the court would apply to determine the distribution of beneficial ownership under a constructive trust, while also emphasising the importance of sufficient and broad evidence to support the claim of beneficial ownership.
- A determination of the "common intention" constructive trust test following *Stack v Dowden*, and clarified in *Jones v Kernott*, in relation to the alternative option of a resulting trust of the kind seen in *Laskar v Laskar*.

The declaration of a constructive trust presents one of equity's practical responses to determine proprietary interests where a claimant has acted to his detriment upon a promise as to the ownership of property. The effect is that the legal owner of the property must accept his role as trustee to the extent of the claimant's beneficial interests. The recent decision of the Court of Appeal in *Agarwala v Agarwala* [2013] EWCA Civ 1763, [2014] All ER (D) 150 (Feb) fittingly restates the principles of how a constructive trust establishes beneficial interests in property.

Agarwala: the facts

Jaci Agarwala was Sunil Agarwala's sister-in-law. Due to Sunil's poor credit rating, he discussed with Jaci the purchase of a property in her name, which was to be converted into bed and breakfast accommodation. In April 2007, the property was purchased in Jaci's name, who held the legal title, with the mortgage also in her name. It was agreed that Sunil would operate and manage the bed and breakfast business, and undertake any necessary works needed on the property.

The parties fell out in July 2008, which resulted in Jaci and her husband taking over the day-to-day running of the bed and breakfast. They changed the locks to prevent Sunil's access.

Sunil issued proceedings claiming beneficial ownership of the property. The heterogeneity between the parties' accounts of their agreement upon which the property had been purchased did not resolve the issue of beneficial ownership. Jaci argued that the property and the business were to be hers, and that Sunil would convert the property and run the bed and breakfast business at no charge. Sunil, on the other hand, argued that Jaci had agreed to help him purchase the property only because of his bad credit rating, and that since he provided the funding of the conversion and mortgage payment, the property and the business were his.

Agarwala: the judgment

In the county court, Judge Moloney QC held that the financial contributions to the purchase and improvement of the property did not assist in the determination of the oral agreement upon which each side based its claim. Upon evidence of contemporaneous e-mails between the parties at the time of the agreement, it was held that Sunil's account was more probable. It was held unlikely that Sunil would have given the property away for nothing or run the business at no charge. Accordingly, it was held that a constructive trust arose in Sunil's favour.

Jaci appealed, on the following grounds:

i. insufficient weight was given to the presumption that beneficial ownership follows legal interest;
ii. by giving evidence first, the burden of proof had not been laid heavily enough against Sunil as the claimant;
iii. insufficient weight was given to Jaci's liability under the mortgage;
iv. insufficient weight was given to evidence that Sunil had referred to her as the "owner", and that he merely acted on her behalf; and
v. a failure to find whether the respondent had acted to his detriment upon a common agreement.

The Court of Appeal dismissed the appeal. It was determined that Judge Moloney QC started with the presumption that the beneficial interest and legal interest coincide. The order in which evidence was given, it was held, was not demonstrative of the burden of proof not being correctly placed upon the respondent (as determined by *Stack v Dowden* [2007] UKHL 17, [2007] 2 All ER 929).

The case was based upon a business venture, and the ability of the appellant to pay mortgage payments was of no significance. There had been an agreement between the parties that Sunil would pay the mortgage, as he did, and therefore the appellant's contention carried no weight when compared with the Master of Rolls' discussion seen in *Laskar v Laskar* [2008] EWCA Civ 347, [2008] All ER (D) 104 (Feb) at paras 27-31. At para 17, Sullivan LJ stated in the Court of Appeal: "Since it was common ground that this was a business venture in which there was an agreement as to the terms on which the property was to be bought, held and used, the fact that the mortgage was in Jaci's name and that she paid the installments was of little help in deciding the issue of beneficial ownership if Jaci was, in effect, a conduit for the payment of the installments out of the profits of the business venture."

While the e-mails referred to in the judgment were sufficient to find the existence of a common agreement between the two parties, it was imperative that Sunil had acted to his detriment upon it. The Court of Appeal was satisfied that the judge's reference to Sunil's work put into "buying, converting and running the business, and the monies that he (but not she) put into [the property]" was sufficient to satisfy the "second limb" of this test (see Sullivan LJ at paras 30-32). The absence of any financial contribution from Jaci before taking over the business, in comparison to the detriment incurred by Sunil following the agreement, was sufficient for the determination that Sunil should have a beneficial interest in the property, which was held on trust by Jaci.

Comment

The case demonstrates a "classic" example of the application of a constructive trust. There was no express written agreement to determine the beneficial interest of the property. Therefore, and in accordance with

s 53(2) of the Law of Property Act 1925, Sunil was able to rely on the doctrine of constructive trusts. Sunil had acted upon the agreement that was determined by the court and which represented the parties' common intention, to his detriment (*Lloyds Bank v Rosset* [1991] 1 AC 107, [1990] 1 All ER 1111). The circumstances of the case demonstrate, as the judgment confirms, that Sunil was entitled to a share in the ownership of the property by way of an equitable share held on constructive trust to him.

The starting point for constructive trusts, confirmed in the decisions of *Stack v Dowden*, and *Jones v Kernott* [2011] UKSC 53, [2012] 1 All ER 1265 is that the parties' beneficial interests mirror their legal interests. This presumption is rebuttable, and it is the evidential burden upon the party claiming a beneficial interest that assists the court in determining whether the presumption should be rebutted. This flexible approach, as demonstrated in Agarwala, accommodates the scenarios where there are heavily disputed facts that require the court's determination of the beneficial ownership of the property.

The determination, or "inference", or imputation (see Lord Kerr in *Jones v Kernott* at para 72), the court must make following these facts is that there is a common intention of how the beneficial ownership should be held. The reading of *Agarwala* suggests that Judge Moloney QC inferred the common intention between the two parties, based upon the content of their e-mails. From this common intention, and evidence of detrimental reliance, which is pivotal to the determination of a constructive trust, the judge's task has become a simple one in determining the existence of a constructive trust.

That said, while the Court of Appeal noted that the mortgage arrangements in *Agarwala* were "very different" to those seen in *Laskar*, it is difficult to determine why the resulting trust approach which Lord Neuberger MR applied in that case, was not also used. Sunil made the contributions to the purchase of the property and paid the mortgage repayments, using Jaci as a conduit at all times; Sunil made all the financial contributions to the acquisition and development of the property. Taking the resulting trust approach, which focuses directly on respective financial contributions to determine beneficial ownership, the outcome would have been the same as that achieved by the Court of Appeal's finding of a constructive trust.

Agarwala was representative of a business venture, mixed with familial relations, which correlates to the financial investment that was made between the related parties in *Laskar* (see Lord Neuberger MR at para 17). Given the court's emphasis on the use of constructive trusts in cases concerning the family home in *Jones v Kernott* (see Lord Walker and Lady Hale at para 24-25), the decision in *Agarwala* suggests a dwindling application of the resulting trust, in favour of the constructive trust as the norm in acquisition cases (rather than quantification cases, such as *Stack v Dowden*), and which has permeated through the Privy Council's decision in *Abbott v Abbott* [2007] UKPC 53, [2007] All ER (D) 432 (Jul) and more recently witnessed in *Aspden v Elvy* [2012] EWHC 1387(Ch), [2012] All ER (D) 192 (May). Admittedly, it could be understood that the use of Jaci as a conduit is an example of the "very unusual" cases where the common intention constructive trust is to be applied, as envisaged by Lady Hale at para 17 in *Stack v Dowden*. For example, the direction of the court could return to the resulting trusts doctrine should there be no familial connection between the parties involved, and where there are no technicalities to the financial contributions involved.

Nevertheless, and as para 30 of Lady Hale and Lord Walker's judgment in *Jones v Kernott* states: "[W]e accept that the search is primarily to ascertain the parties' actual shared intentions, whether expressed or to be inferred from their conduct. However… the classic resulting trust presumption… might perhaps arise where domestic partners were also business partners: see *Stack v Dowden*, para 32."

While it is appreciated that the common intention constructive trust is tailored for the domestic family context, the decision in *Agarwala* does not go far enough to provide the distinction necessary between cases of its sort and that seen in *Laskar*, where the resulting trust was applied. The ambulatory nature of the constructive trust is in danger of adding further ambiguity between equity's mechanisms used to prevent injustices hidden behind legal ownership. **NLJ**

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