

Stack v Dowden [2007] UKHL 17

In *Stack v Dowden* [2005] EWCA Civ 857 the Court of Appeal allowed a woman cohabitant's appeal against an order for equal division of the proceeds of a jointly owned house; and against an order for her to pay her former partner an occupation rent until completion.

On 25th April 2007 the House of Lords delivered a long-awaited decision on the partner's appeal against that ruling.

The issues before the House were :

- (i) where a property is in joint names but without an express declaration of trust, how are the interests of the parties to be determined;
- (ii) occupation rent pending sale.

The leading speech was delivered by Baroness Hale. The following principles emerge from her speech :

- (i) A declaration in a deed of transfer that a survivor "can give a valid receipt for capital money arising on a disposition of the land" did not amount to an express declaration of a beneficial joint tenancy (para 51).
- (ii) Whilst the current form of TR1 encourages parties to declare their beneficial interests they are not usually required to do so (para 52) so there will continue to be cases in which there is no express declaration of trusts.
- (iii) The starting point is that beneficial interests will be the same as legal interests unless a joint owner proves otherwise (paras 54 to 56). Thus "in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved." (para 58).
- (iv) In a case involving cohabiting parties as opposed to a commercial case of joint ownership, a decision as to the parties' interests in the property is not simply a question of who has contributed what but of ascertaining "the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it" (paras 58 to 60).
- (v) As stated in *OXLEY v HISCOCK*, this is also the case where the property is in the sole name of one of the parties (para 61) although in such cases the Claimant has the additional hurdle of establishing that he or she has any interest in the property.

- (vi) Suggestions in the authorities that quantification simply depends on resulting trust based on contributions to the purchase price (eg in WALKER v HALL [1984] FLR 126, SPRINGETTE v DEFOE [1992] 2 FLR 388 and HUNTINGFORD v HOBBS [1993] 1 FLR 736) should not be followed (para 65).
- (vii) Where a property is in joint names the beneficial interests are likely to be the same as the legal interests unless the facts are very unusual and so disputes are not to be encouraged (para 68).
- (viii) The following factors may be relevant in determining the parties' respective interests (para 69) although the list is not exhaustive (para 70) :
 - (a) advice or discussions at the time of the transfer;
 - (b) the reasons why the home was acquired in their joint names;
 - (c) the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys;
 - (d) the purpose for which the home was acquired;
 - (e) the nature of the parties' relationship;
 - (f) whether they had children for whom they both had responsibility to provide a home;
 - (g) how the purchase was financed, both initially and subsequently;
 - (h) how the parties arranged their finances, whether separately or together or a bit of both;
 - (i) how they discharged the outgoings on the property and their other household expenses. (But as in matrimonial cases it is unlikely to be a case of arithmetical calculation, but more a case of whether each has contributed fully);
 - (j) the parties' individual characters and personalities : it should not be assumed that monetary considerations always take pride of place over natural love and affection.
- (ix) In the relatively unusual circumstances of this case (in particular that throughout a long relationship of some 27 years the parties did not pool their resources; and that Ms Dowden has clearly made greater contributions than Mr Stack) Ms Dowden has established her right to 65% of the property (paras 87 to 92).

- (x) Claims for an occupation rent are governed by the provisions of the Trusts of Land and Appointment of Trustees Act 1996 in sections 12 to 15 which replace the doctrine of equitable accounting (see paras 93 to 94). Thus the statutory criteria should be followed rather than the old cases. As the house was to be sold soon and Mr Stack would not be kept out of his money for long no occupation rent was payable.

Lord Neuberger disagreed with the suggestion that different approaches might apply in commercial and domestic relationships (para 107). He went on to propose that :

- (i) where there is no evidence to the contrary beneficial interests would follow legal interests (para 109);
- (ii) where the only additional evidence was that the purchase price had been provided in unequal proportions there would be a resulting trust in the same proportions (para 110 and following). (In this context there is an interesting discussion as to whether contribution by way of mortgage is the same as a cash contribution (paras 117 to 120);
- (iii) where there is other evidence the Court may be able to deduce an agreement as to shares and in this case a constructive trust arises (para 123 and following). Whilst he accepted that the Court must take all the circumstances into account in assessing shares (para 131) not all would be equally relevant; and he did not accept that because the parties have shared all outgoings over the course of a long relationship, their shares should be taken to be equal (para 132). His Lordship emphasised the difference in this respect between marriage and cohabitation.
- (iv) Whilst shares are normally fixed upon purchase, compelling evidence might show that the parties subsequently agreed to vary their shares (para 138). Such evidence might include substantial expenditure on the property (but not merely decoration or repairs – para 139);
- (v) the “whole course of dealing between the parties” might be relevant insofar as it shed light on the intentions of the parties (para 145);
- (vi) he also concluded that Mr Stack, having been ousted from the property, should have received an occupation rent (para 155).

It is evident that Lord Neuberger's view is a minority as Lords Hoffman, Hope and Walker agreed with the reasons given by Baroness Hale.

There is, however, an interesting passage in Lord Walker's speech relating to properties in single rather than joint ownership suggesting that the law has moved on since *LLOYDS BANK v ROSSET*. In that case Lord Bridge said that if there was no evidence of an express agreement, the Court could infer one from direct contributions to the purchase price but that "it is at least extremely doubtful whether anything less will do." His Lordship suggests that this might be too narrow a view (para 26).

This comment was obiter but arguably may liberalise the law relating to the establishment of a beneficial interest in the case where the property is in the sole name of one of the parties and where there is no evidence of express discussions between the parties capable of establishing an "agreement, arrangement or understanding" that the non-owner is to have a beneficial interest in the property

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26th April 2007