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Judgment: approved by the Court for handing down

(subject to editorial corrections)

2006/116319

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

SARAH JOSEPHINE GRACEY

Plaintiff;

And

ROBIN BECK

Defendant.

MASTER ELLISON

Introductory

[1] These proceedings were commenced by an originating summons issued on 20 December 2006 which (as subsequently amended) claims the following relief:-

> "1. An Order for sale of the premises at [Property A in Rathfriland] pursuant to the Partition Acts 1868 and 1876.
>
> 2. An Order that the proceeds of sale be divided in accordance with the respective equitable interests of the plaintiff and the defendant.
>
> 3. A declaration that the plaintiff is the sole beneficial owner of the items set out in the schedule attached hereto.
>
> 4. Costs.
>
> 5. Further or other relief.
>
> 6. Alternatively the plaintiff claims damages and/or restitution from the defendant in respect of monies paid by her to the defendant or on the defendant's behalf in respect of which it was agreed that she would receive appropriate benefit."

On 30 April 2007 I made an Order directing the following inquiry:-

> "1. An inquiry as to the persons interested in [Property A in Rathfriland], and for what estates and interests and in what shares and proportions and subject to what incumbrances (if any) and in what priority and the amounts thereby secured".

[2] At the hearing of the originating summons and the inquiry on 26 February 2008 Mr Ronan Lavery of Counsel appeared for the plaintiff instructed by Ferris & Co, Solicitors and Mrs Robinson of Counsel appeared for the defendant instructed by Emmet J Kelly & Co.

The Facts

[3] The parties first met in August 2000 when the plaintiff was sixty and the defendant was in his late forties. After a period of courtship lasting several weeks they became engaged in September 2000. At the time the plaintiff was the sole occupant of a house owned by her daughter at Property B in Rathfriland where the plaintiff had previously lived along with three of her four children. Housing benefit had for some five or six years been paid by Northern Ireland Housing Executive to her daughter Wendy which in essence meant that the plaintiff lived rent-free in Property B.

[4] The defendant bought Property A in early 2001, completing the purchase transaction in March 2001. Significantly, he had for some time prior to meeting the plaintiff wanted to acquire Property A if and when it came on the market for sale. At the time of acquisition he was living at another address in Dromore which he continues to own. He paid for Property A entirely out of his own monies with no direct contribution from the plaintiff, but I am in little doubt that at the time it was the common intention of the parties that they would live together at Property A. The title to Property A is registered in a County Down Folio in the Land Registry of Northern Ireland, in which the defendant was registered as full owner of the fee-simple estate with effect from 3rd April 2002.

[5] After the plaintiff told her daughter Wendy of her intention to leave Property B that property was sold to the plaintiff's son Geoffrey. In August 2001 Wendy gave her mother

the plaintiff £10,000 as a goodwill gesture, essentially (as I understand it) for having looked after Property B for so long.

[6] The period between March 2001 when the purchase was completed and August 2001 when the parties moved into Property A was described by the plaintiff in her oral testimony as "exciting". Her evidence is that during that time (and thereafter) there was an agreement or understanding between the parties that "it was 50/50, it was both our home, as much (his) house as my house." She states that in reliance on such an agreement or understanding she spent her £5,000 savings and the £10,000 donated by her daughter on the house and its furnishings. She said she "thought it was (hers) for the rest of (her) life, (her) home".

[7] The plaintiff further claims that after the parties moved into Property A the defendant said on at least four occasions that they would go to a solicitor in the firm Gordon Bell & Son to have the plaintiff's name "put on the deeds". The plaintiff alleges that this subject was raised on each occasion by the defendant rather than her, whereas the defendant denies ever having indicated that it was his intention to share the ownership of Property A, or indeed that the parties were ever engaged.

[8] The plaintiff's case was also that the defendant contributed as little as possible to the costs of decoration, furnishing and refurbishment of Property A and that she had found herself paying for the vast majority of those costs and, in addition, significant outgoings such as domestic fuel oil, while he received her £80 weekly pension credit entitlement and spent it on maintaining horses which he kept at Property A .

[9] There are considerable differences between the parties as to who paid for what in the course of the relationship, which deteriorated to the point that in August 2003 the plaintiff left Property A, returning in October 2003 after a reconciliation which did not endure as the relationship broke down altogether in April 2005.

[10] I am satisfied that the plaintiff not only brought some of her own furnishings from Property B, but paid for a very substantial number of items constituting fixtures, fittings or

furnishings for the house, eg £2,500 for curtains (still at Property A) a substantial number of furnishings from the House of Murphy (also still at Property A) a fireplace costing £1,300, £2,000 towards the £4,000 cost of double-glazing. The plaintiff is claiming a declaration of ownership of items listed in a schedule to the originating summons (which items she wants returned to her in specie) in addition to claiming a beneficial interest in Property A and sale in lieu of partition, or damages and/or restitution in respect of monies paid by her to the defendant or on his behalf.

[11] It was the practice of the parties to put receipts into a tin box and the defendant exhibits to his affidavit a significant number of such receipts in his name in support of his claim that the decorating, improving and maintaining of the property was carried out by him at his sole or predominant expense. The plaintiff makes the point, however, that for delivery purposes, irrespective of who made payment, receipts and delivery dockets were made out in the defendant's name rather than that of the plaintiff. Accordingly, for example, she is adamant that among the items covered by receipts she bought a washing machine and a fridge freezer (both of which she took away with her when she finally left Property A). She asserts (credibly) that it is easy to produce receipts but no cheques are exhibited to the defendant's affidavit by way of corroboration. For my part I prefer the plaintiff's evidence in this area to that of the defendant and the detailed computation towards the end of this judgment, while excluding some items I find were paid for by the defendant, will read accordingly.

[12] The general picture which emerges is that the plaintiff used up the entire £15,000 capital which had been available to her initially and contributed significantly on a regular basis after moving in by reason, for example, of the deployment of £80 weekly pension credit to which she was entitled and the plaintiff's payment of significant outgoings such as the cost of fuel oil deliveries.

Legal Principles

[13] However it is important not to lose sight of the fact that the plaintiff recovered a substantial number of the items she paid for, and that the house was bought by the defendant for £110,000 entirely out of his own monies. I am not satisfied that enough was said or done before or at the time of acquisition in or about March 2001 to establish the existence at that time of a common intention that the plaintiff was to have an interest. At paragraph 22-39 of Snell's Equity (31st Edition 2004) it is stated:-

> "In the absence of an express trust, a claimant may nevertheless acquire an interest if she can establish a common interest. Three related questions arise: first, whether there is an intention that each party is to have an interest in the property; secondly, whether the party not having the legal title has acted to his or her detriment; and thirdly, what is the size of the interest each party is to have? In all these questions it is relevant, though not essential, that the claimant has made contributions to the purchase price ...
>
> The principles which apply are closely akin to those underlying the doctrine of proprietary estoppel. In both the claimant must have acted to her detriment in reliance on the belief that he would obtain an interest. In both equity acts on the conscience of the legal owner to prevent him from defeating the common intention ... The remedy by which an estoppel is enforced is discretionary, while under a constructive trust the claimant is entitled to her agreed beneficial share."
>
> (Emphasis added.)

[14] "The first and fundamental question" is whether "there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding" reached between the parties sharing the house as their home "that the property is to be shared beneficially": Lloyds Bank Plc -v- Rosset [1991] 1 AC 107 at 132 per Lord Bridge. It is not enough that (as in the instant case) the parties agree that they will occupy the property as a joint home as this may not reflect any intention with respect to proprietary interests.

[15] Snell at paragraph 22-40 on page 566 goes on to state the following:-

> "(2) *Conduct*

> In the majority of cases there is no evidence to support a finding of an express agreement or arrangement. The intention to share the beneficial interest may be inferred from the parties' conduct. The evidence will typically depend on `expenditure referable to the acquisition of the house'. Thus for this purpose expenditure on furniture and household expenses cannot be taken into account, much less decorating of the house and supervising the carrying out of repairs in it, doing housework and bringing up a family. Such conduct does not so readily support an inference that the claimant intends to acquire an interest specifically in the house. Indeed, it seems that such expenditure cannot be taken into account even though it thereby assists the other party in paying the cost of acquisition. `Direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage payments, will readily justify the inference necessary to the creation of the constructive trust' – but it is `extremely doubtful whether anything less will do'. Further payment made after a house has been acquired and paid for is not referable to its acquisition, albeit the payment was derived from the proceeds of sale of a former matrimonial home."
>
> *(Emphasis added.)*

[16] Accordingly, the first of the three related questions listed in *Snell*, namely whether there was a shared intention that the plaintiff had an interest in the property, must be answered in the negative. The second question (as to detriment) and the third (as to the size of interest acquired) are therefore irrelevant in the absence of clear agreement or estoppel subsequent to the time of acquisition of Property A.

[17] It may be wrong to discount altogether the possibility of a plaintiff in similar circumstances to those of the instant case acquiring an interest. *Snell* puts the position as follows (at 22-41):-

> "Where there is no common intention at the time of the acquisition that the claimant is to have an interest, then in the absence of subsequent agreement or estoppel she will acquire no interest in the property simply by doing work on it or by spending money to improve it. The position may be different, however, as between husband and wife. One of them may acquire a share, or an enlarged share, in property if he or she makes a substantial contribution in money or money's worth to the improvement of property belonging beneficially to the other or to them both."

(*Emphasis added.*)

[18] Under the foregoing principles set out in Snell (and the case-law therein cited) the possibility of an informal common intention or an estoppel situation arising by words or conduct after an acquisition is not discounted, but the burden of proof is very much on the plaintiff to establish that she has acted to her detriment in reliance upon a declaration or an express or implied promise (or acquiescence in a mistaken belief on her part) that she would take an interest in the property.

[19] The three related questions were reviewed by the House of Lords in the recent case of Stack v Dowden [2007] UKHL 17. At paragraph 61 of Baroness Hale of Richmond's judgment she refers to the decision of the Court of Appeal in Oxley v Hiscock [2004] EWCA Civ 546 as follows:-

> "61. *Oxley v Hiscock* was of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the purchase. As to the second, Chadwick LJ said this at para 69:-
>
> > '... in many such cases, the answer will be provided by evidence of what they said and did at the time of acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this court and below) 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* and in that context, the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and

housekeeping) which have to be met if they are
to live in the property as their home'".

However it must be borne in mind that the above relates only to quantification of a share (the second of the "three related questions") as opposed to the existence of a share. Baroness Hale made clear in her judgment in Stack at paragraph 63 that the court was not in that case "concerned with the first hurdle".

[20] A key problem with the plaintiff's claim to a beneficial interest is the timing of the expressions of desire to put her name on the deeds, namely after the purchase had been completed in March 2001 (and after the parties had moved into the house in September 2001). My finding that the parties were engaged to each other in advance of the acquisition of the property does not advance significantly the plaintiff's claim in that respect. Baroness Hale equates the right of unmarried cohabitants with those of married ones as follows at paragraph 40 of Stack:-

> "The principles of law are the same, whether or not the couple are married, although the inferences to be drawn from their conduct may be different: Bernard v Josephs (1982) CR 391, per Griffiths LJ".

[21] However the references to an intention stated after the parties moved into Property A to have her name put on to the deeds are consistent with the plaintiff's evidence that before they moved in "it was 50/50, it was both our home and as much your house as my house." That said, crucially there is no evidence of any agreement or understanding existing before the date of acquisition of Property A.

Conclusion

[22] The plaintiff's contribution, whilst substantial, is not sufficiently referable to the acquisition of the property to merit a finding that she is entitled to a proprietary interest. Moreover on several occasions during cross-examination the plaintiff firmly eschewed any desire to pursue her claim to an interest in Property A. Her Counsel complained about the

line of questioning being a matter of mixed fact and law. However the plaintiff appeared very insistent that she only wanted to recover the chattels and money due to her, and wanted "nothing to do with [Property A]".

[23] While I appreciate that if she had had recourse to legal advice during her testimony it is possible that she would have adopted a quite different stance, she would presumably have had the benefit of prior legal advice and the plaintiff's vehemence on the point is a factor that should be taken into consideration (albeit it is not critical to her claim to a beneficial interest, which fails on other grounds). The burden is very much upon her to demonstrate that she is entitled to a beneficial interest in Property A, ie, to surmount the "first hurdle" referred to by Baroness Hale of Richmond in Stack, or alternatively establish a clear subsequent agreement or an estoppel situation making it unconscionable not to recognise or grant her an interest. The plaintiff's apparent lack of desire to pursue such an interest merely reinforces my view that she has failed to discharge the relevant burden of proof.

[24] I have analyzed carefully the evidence about payments alleged to have been made by the plaintiff by cheque or cash for fixtures, fittings, decoration, furniture, and in respect of the defendant's motor vehicle.

[25] The following are the amounts I find the plaintiff paid and which it would be proper to require the defendant to pay to the plaintiff in these proceedings.

Date of invoice or cheque	Item	Amount £
18.8.00	Car tyres	124.00
14.6.01	Double glazing	2,000.00
29.6.01	Glass doors	300.00
1.6.01	Bathroom and plumbing	310.00
12.10.01	Bathroom and plumbing	135.00
2.5.01	Deposit for fireplace	300.00
19.6.01	Balance for fireplace	1,000.00
13.6.01	Lighting	169.00
1.10.02	Lighting	150.00
19.2.01	Curtains	2,500.00
17.9.01	Large oval mirror (amount not quantified in evidence, estimated at:)	500.00

7.9.01	Green leather chair (not quantified, Estimated at:)	300.00
19.4.01	Vacuum cleaner	200.00
22.3.01	Hall unit	480.00
15.2.02	Repair of burst pipes [at the property],	192.00
22.2.02	Furniture	150.00
9.4.02	Garden furniture	225.00
11.4.02	Garden furniture	200.00
2.7.01	Decorating supplies	43.70
16.8.01	Decorating materials	39.50
17.8.01	Decorating materials	121.50
18.8.01	Wallpaper rolls	118.50
18.8.01	Paint	75.60
20.8.01	Paint	37.50
2.04.	Paint	18.90
3.12.01	Motor insurance premium	650.00
	Total	10,338.20

[26] I have not included in the above calculation any amounts I found to have been spent by the defendant, or amounts spent by the plaintiff on an engagement ring, flower arrangements or domestic fuel oil (which oil would long since have been used for the benefit of both parties), or in respect of any object which the plaintiff removed from the property upon or after the end of her relationship with the plaintiff.

Order to be made

[27] The Order I shall make will include the following:-

(a) a declaration that the plaintiff is the sole beneficial owner of the items listed in the schedule attached to the originating summons;

(b) a requirement that the defendant pay the plaintiff £10,338.20 together with interest at the rate of 5 per cent per annum from the commencement of proceedings, 20 December 2006, down to judgment;

(c) no order as to costs save for legal aid taxation of the costs of the plaintiff and the defendant respectively.