

USING THE EQUITABLE TOOLKIT: UNRAVELLING COMPLEX PROPERTY ARRANGEMENTS IN PASSI & ORS V HANSRANI

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The recent judgment in *Passi & Ors v Hansrani* (2024) EWHC 2062 (Ch), which involved the disputed beneficial ownership of eleven properties in a family portfolio, serves as a cautionary tale. It illustrates the importance of exercising care and formality in relation to arrangements involving family property. It is also an interesting look at how the 'equitable toolkit' can be deployed to dismantle convoluted family transactions while being sensitive to families' 'traditional' cultural values.

Factual Background

SH and his wife, KH, came to the UK from India in 1964 and 1966, respectively. They were joined by their four children: a son, RoH (the Defendant), and three daughters, RJH, PH and RvH (three of the four Claimants, the fourth Claimant being RJH's daughter, who did not take an active role in the proceedings). Throughout the 1960s and 1970s, the family built up a portfolio of rental properties in Leicester. Mr Hansrani died in 1987.

One of the eleven disputed properties was in RoH's sole name. The remainder were in the joint names of RoH and his parents or sisters, or owned jointly between his sisters. RoH managed the rental properties and distributed the rent amongst the family, although there was nothing in writing that formalised or clarified the arrangement and who was to receive which rent. This arrangement continued for years until the family members fell out.

Mrs Hansrani died intestate in 2005. RoH and RvH did not administer their mother's estate until several years after her death. In 2011, at a time when RoH had separated from his wife, he removed his name from several joint accounts he held with his sisters. He also removed his name from the title of some of the properties he was managing for the family and transferred the title to the one that was registered in his sole name (which he had been living in with his wife) to his sisters. RoH eventually reconciled with his wife in 2019, and his sisters were blamed for their estrangement. Consequently, RoH stopped paying his sisters their share of the rental income from the properties. In May 2022 RoH's sisters issued proceedings against him.



RoH's sisters' case was that their parents were the driving force of the family's property portfolio, buying all but two of the eleven disputed properties, and claimed:

1. Declarations that they, not RoH, were, either individually or collectively, the legal and beneficial owners in relation to six of the properties (the 'Disputed Ownership Properties').
2. Possession orders and orders rectifying the title in relation to three of the eleven properties that remained in RoH's joint name.
3. Unpaid rent from RoH as managing agent and/or fiduciary in relation to ten of the eleven properties.

There were also claims for unpaid loans made to RoH and an account for their mother's cash, gold and jewellery.

By contrast, RoH claimed that he was always the driving force and true owner of the family's property portfolio and counterclaimed the following:

1. Declarations that he was the beneficial owner of the Disputed Ownership Properties.
2. The transfer of properties held in joint names with RJH into his sole name.
3. RoH denied that he was his sisters' agent or fiduciary and denied that he owed them any rent in relation to any of the disputed properties.

RoH's position was that he purchased the disputed properties and put them in his sisters' names to hold for him on resulting trust. The Claimants' position was that the presumption of the resulting trust is rebutted and that the equitable title reflects the legal title by (i) the wording of the transfers i.e., an express trust; or (ii) oral agreement and detrimental reliance i.e., a constructive trust.

Legal Principles

Legal and beneficial ownership of land

It is well established that there is a presumption that equitable title follows the legal title. The presumption can be rebutted on the balance of probabilities. The court first looks at whether there is:

1. A written declaration of trust.
2. Then, whether there is a common intention constructive trust, i.e., that there was a common intention that both parties should have a beneficial interest, and that the claimant has acted to his/her detriment based on that common intention.
3. Only then, consider whether there is a common intention resulting trust, i.e. an agreement between the parties that all or part of the beneficial ownership remains with the transferor of property.

This approach is known as the 'equitable toolkit'. In the absence of a written declaration, an express agreement, or inference from conduct of common intention, if there are two unequal contributors to the purchase of a property, it is presumed that they own the property as tenants in common in proportion to their respective contributions. To establish the resulting trust, there must be an actual contribution by the party to the property purchase.

Joint accounts

Where (i) there is no express declaration or (ii) common intention cannot be established, and only one source of payments into a joint account, there is a rebuttable presumption of a resulting trust, i.e., that all the money in the joint account is held on trust by the account holders for the person who provided all the money.

The Court's Decision

The trial judge, HHJ Tindal, took the view that that witnesses' oral evidence demonstrated that the family "attached less significance to transfer of legal title than property lawyers would normally do". In his view, reaching a conclusion that equitable title follows legal title for each property would duck rather than resolve the real fact-finding issues. Accordingly, he found that:

- RoH's claims regarding beneficial ownership of three of the contested properties were substantiated by evidence of his contributions and the nature of the transactions. He was satisfied that he had established sole beneficial ownership by common intention constructive trust and in the alternative by resulting trust because:
 - He had purchased the properties and put them in his father's name out of respect.
 - He made the sole financial contribution to the purchase.
 - Following his father's death, it was agreed between RoH and his mother that he was the sole beneficial owner, and he relied on that agreement by undertaking works.
- In relation to the properties where there was an express declaration of beneficial joint ownership, it was impossible, on the parties' contradictory oral evidence, to conclude that there were implied trusts.
- RoH has no liability to account for rent in relation to the three properties of which it was established he was the sole beneficial owner. In relation to the other properties, it was held that by receiving money on behalf of his sisters, RoH took on the role as their agent such as to make him a fiduciary with a liability to account to them.

Practical Takeaways

HHJ Tindal expressed his surprise and frustration about the "convoluted arrangements" and lack of clear documentation, with which the Hansrani family held their property and conducted transactions between themselves. He also expressed concern about the parties' respective positions which he described as "extreme" and distorted by the acrimony of the dispute.

The decision in a subsequent case, Nilsson v Cynberg (2024) EWHC 2164 Ch, handed down three weeks after the decision in Passi creates a degree of uncertainty in relation to the interplay between express declarations of trusts and implied trusts. Prior case law took the approach that, where there is an express declaration of trust, it could not be superseded by an unwritten constructive trust. The judge in Cynberg disagreed.

Although the complexity of the facts in Passi is particularly specific, it should function as a cautionary tale to private client and property advisers. Whilst advisers should always remain

sensitive and mindful of families' cultural practices and traditions (and notwithstanding the decision in Nilsson), informal arrangements and promises should always be avoided. Instead, advisers should promote and encourage careful estate and succession planning, together with regular, open communication between family members.



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