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Jones v Kernott

Determining parties' competing claims to property

The judgment of the Supreme Court in the case of **Jones v Kernott [2011] UKSC 53** finally brought to an end a long running dispute between an unmarried couple over their entitlement to a jointly owned property following their separation. It also provides clarification as to the approach that will be adopted by the courts in determining co-habiting parties' respective beneficial interests in property.

Previously the leading case was the decision of the House of Lords in **Stack v Dowden [2007] UKHL 17**. In that case, the court went a considerable way towards clarifying the legal principles applicable to determining the parties' respective interests in property. However interpretation of that decision by the lower courts was not without difficulty in subsequent cases.

Stack v Dowden

The House of Lords held that the starting point in the case of jointly owned property is that the parties' beneficial interests in the property will follow the legal title. In other words, if the title is in joint names, they start from the position that they hold the property in equal shares. In the case of solely owned property again the beneficial interest follows the legal title. Therefore the non-owning party seeking to claim an interest in solely owned property would first have to establish that they have any interest in the property at all. Unfortunately this somewhat over-simplistic, one size fits all approach, did not result in an easy decision-making process in subsequent cases.

In **Stack v Dowden** it was explained that there are exceptions but that cases where entitlement to the beneficial interest will be held to be different from the legal interest, would, be very unusual. However the Supreme Court found in **Jones v Kernott** that such cases are not as unusual as originally envisaged. The facts of **Stack v Dowden** were that they were an unmarried couple who lived together for 19 years. The property was jointly owned. The history behind the parties' property ownership and the acquisition of the jointly owned property showed that there was a substantial difference between the respective financial contributions made by the parties towards the purchase.

Factors in support of a greater share

The House of Lords stated that where a party seeks to claim a larger share the court will take into account various factors which include the following:-

- Advice or discussions at the time of purchase
- Why and for what purpose the property was acquired
- Why the survivor can give a receipt for capital
- Nature of the parties' relationship
- Whether there were dependent children
- How the purchase was financed initially and later
- How the owners arranged their finances and paid outgoings
- Financing and construction of extensions or improvements

Where a party attempts to establish a claim to a greater share, then the task of the court is to ascertain the parties' common intention as to what their shares in the property would be in the light of their whole course of conduct in relation to it. The common intention trust in the case of jointly owned property is that they hold the property in equal shares. That is the default option. The nature of the trust is that of a constructive trust mirroring the legal ownership.

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In that case Ms Dowden was able to establish that she satisfied a number of the various factors required to depart from the starting point as to ownership. A key factor was that the parties kept their financial affairs entirely separate, and it was for this reason that the House of Lords was willing to depart from its own stated starting point and infer a common intention that the parties were entitled to the property in unequal shares.

Jones v Kernott – the facts

The parties met in 1980. They were not married. Originally they lived in a mobile home which was purchased and owned by Ms Jones. Following the birth of their first child, the parties purchased 39 Badger Hall Avenue in 1985 in joint names. They had a mortgage supported by joint endowment policies. During this time they built an extension. Mr Kernott moved out in 1993. He made no further contribution towards the property. In 1995 the property was placed on the market but did not sell. The parties agreed to cash in a joint life insurance policy and the proceeds were divided between them. This enabled Mr Kernott to put down a deposit on his own property at 114 Stanley Road.

It was in 2006 Mr Kernott claimed his interest in 39 Badger Hall Avenue. Ms Jones brought proceedings under the Section 14 of the Trusts of Land and Appointment of Trustees Act 1996 for a declaration that she owned the entire interest in 39 Badger Hall Avenue. At the initial trial Ms Jones conceded that when the couple separated they were joint tenants in law and in equity and that she had no claim on Mr Jones's new property at 114 Stanley Road. The Judge decided that it was fair that Ms Jones should be awarded 90% and Mr Kernott 10%. Mr Kernott appealed arguing that the Judge was wrong to infer or impute an intention that the parties' beneficial interest changed after their separation and to quantify them in a way in which he considered fair. Subsequently the Court of Appeal allowed Mr Kernott's appeal and declared the property was owned in equal shares. As a result of that decision the matter came before the Supreme Court.

Jones v Kernott - decision

Before the Supreme Court it was noted that the search is always to establish what the parties actually intended which can be deduced from their words or actions. If the parties' intention can be discovered then it is not open to the court to impose a solution upon them in contradiction to those intentions merely because the court thinks it is fair to do so. The Supreme Court held that there was no need to impute an intention that the parties' beneficial interests changed after separation because the Judge had made a finding that the parties' intentions did in fact change. Whilst the trial Judge had not in so many words inferred an intention that the parties should change their ownership of the property at the time the new property was purchased by Mr Kernott, it was nevertheless reasonable that he could and should have inferred such a change from their conduct. As a result the Supreme Court upheld that Ms Jones was entitled to 90% of the value of the property and Mr Kernott 10%.

In reaching its decision, the Supreme Court set out the principles to be followed in considering such cases.

1. In a joint names case the starting point is that equity follows the law and that the parties are entitled to the property in equal shares;
2. That presumption can be displaced by showing either:
 - (a) that the parties had a different common intention at the time when they acquired the home; or
 - (b) that they later, by their conduct, formed the common intention that their respective shares would change.
3. The common intention if it can be inferred is to be deduced objectively from the parties conduct.
4. Where the common intention as to division of the property cannot be deduced from their conduct, each is entitled to that share which the court considers fair. In considering what is fair the court will have regard to the whole course of dealings between the parties.

The court noted that the examples of the sort of evidence which might be relevant to drawing such an inference are those factors in support of a greater share set out in **Stack v Dowden** as listed above in this article. In reaching this decision, the judgments given by the Lords varied on the question of whether or not in this case there was sufficient evidence from which the parties

intentions could be inferred.

The difference between inferred and imputed intention

This was explained by Lord Neuberger in **Stack v Dowden** as:-

An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties in the light of their actions and statements. An imputed intention is one which is attributed to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended whereas inference involves concluding what they did intend.

In the judgment of Lord Walker and Lady Hale, they accepted that the search was primarily to ascertain the parties actual shared intentions whether express or to be inferred from their conduct. However there are two exceptions:-

- (1) where there is a resulting trust presumption, however this would not normally apply in a domestic context; or
- (2) where it is clear that the beneficial interests are to be shared, but it is impossible to divine a common intention as to the proportions in which the property is to be shared.

In either of those two situations they held that the court is driven to impute an intention to the parties which they may never have had.

Lord Collins on the other hand was of the view that the common intention to displace a presumption of equality can in the absence of an express agreement be inferred (rather than imputed) from their conduct and where it is not possible to ascertain or infer what share was intended each will be entitled to a fair share in the light of the whole course of dealing between them in relation to the property.

Lord Kerr and Lord Wilson in their judgments stated that where it was impossible to infer what the parties had intended their shares in the property should be, as in this case, the court should proceed to impute a common intention that the parties hold the property in the proportions determined.

Resulting trusts

This decision confirms that resulting trust principles will no longer be applicable to determining ownership of property in a normal domestic context, the assumptions as to human motivation, which led the court to impute particular intentions by way of a resulting trust, are not appropriate to the ascertainment of beneficial interests in a family home. The fact that the parties may have contributed unequally to the deposit or the purchase will not give rise to a resulting trust in unequal shares.

Financial contributions will remain relevant in either inferring the common intention to be deduced from the parties conduct, or where such an intention cannot be inferred and the court has to determine what is fair.

Solely owned property

The Supreme Court observed that whilst the decision did not involve solely owned property, in such situations the starting point is different as there is no presumption of joint beneficial ownership. The first issue is whether it was intended that the other party would have any beneficial interest in the property at all. If so, then the second issue is, what that interest is. In such a case the parties common intention must be deduced objectively from their conduct. If a shared common intention to share beneficial ownership is found but it does not indicate in what shares, the court will have to proceed to determine what is fair, taking into account the factors highlighted above.

Equitable Accounting

Having conducted a detailed calculation of the parties shares in the property, the Supreme Court concluded that there was no scope for further accounting between the parties. However if the parties beneficial interests had remained the same i.e. 50/50 there would have been a possibility for cross claims for occupation rent by Mr Kernott and for a half share of the mortgage interest and

endowment premiums paid by Ms Jones. The court noted that this had not been undertaken and that it would have involved a quite disproportionate effort.

Practical considerations for Trustees in Bankruptcy

Whilst this case did not involve the bankruptcy of either party, the task faced by a trustee in bankruptcy in establishing a bankrupt's interest in a property will be directly affected by this decision. Although it is tempting and to a certain extent was encouraged by the decision in **Stack v Dowden** in the case of jointly owned property to start from the position of ownership in equal shares, that is not necessarily the end of the matter. Trustees should undertake careful and measured enquiries in order to establish the parties' intentions as to the beneficial interest in a property throughout the ownership of the property. Failure to do so may result in previously unknown claims to shares in the property that significantly reduce the value of the bankrupt's interest.

Conclusion

Whilst the decision can be welcomed as providing further clarification as to the approach to be adopted in determining the parties' respective beneficial interests in property, it also recognises the complex nature of modern property ownership.