

Lloyds bank plc v rosset effect on joint ownership cases

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In order to answer the issues that arise under this question, the answer must be split into two distinct sections. The first section will deal with the practical position in relations to how an interest in property can be established under a constructive trust, and the second will consider how the steps taken to establish the extent of any such trust has altered since *Lloyds Bank plc v Rosset*. [1]It is important to note at this early stage however, that it is only the way that the court addresses the size of a constructive trust over land which has developed since *Rosset* , establishing the existence of one has not changed.[2]The result of this is that the *Rosset* steps to establishing the existence of trust remain.

Establishing a Constructive Trust

The starting point in respect of the establishment of a constructive trust over land of the type at issue here, actually relates to the notion of a resulting trust. Under a resulting trust, a party who contributes to the purchase price of property, whether or not they are the legal owner of it, takes a share in that property proportionate to their contribution.[3]This approach, as can be seen, is based entirely on the contribution made[4]and the respective ownerships or intentions of the parties are irrelevant, and, of course, the court is restricted in terms of taking these factors into account when deciding the shares in which the property is owned.[5]

Constructive trusts address this issue to a certain extent[6]in that, under *Rosset*, it was held that a trust would arise where the parties had entered into an agreement, arrangement, or understanding that the equitable interest in the property was to be shared, and the party seeking to assert an

interest, in this context a non-legal owner, had acted to their detriment or altered their position on the basis of this belief. This test therefore, requires two elements to be met. The first of these is an agreement. In practical terms, the courts take a relatively relaxed or broad approach in terms of identifying an agreement. All that is required, in this respect, seems to be some form of discussion between the parties with regards to the beneficial interest in the property being shared. It does not matter what the form of this discussion is^[7]or, in practice, even whether it could be construed as an agreement in the ordinary sense.^[8]Detrimental reliance is somewhat more difficult to demonstrate, in that the action cannot be of a type which could be construed as ordinary or expected in the context of the relationship between the parties.^[9]In other words, the action must go beyond one which could be readily explained by the relationship.^[10]

The position set out above primarily applies to circumstances where a non-legal owner wishes to establish the existence of a trust in their favour over land. The statement by Baroness Hale in *Stack v Dowden* ^[11]clearly reflects the approach set out above in *Rosset*, in that a non-legal owner must establish the agreement and detriment necessary for the court to imply a trust in their favour. It should be noted, in this respect, that it was also held in *Rosset* that a trust would be implied without an express agreement if the party attempting to assert the interest had made a direct financial contribution to the purchase price of the property. This is clearly the same requirement as for a resulting trust and reflects Martin Dixon's view that the greater flexibility afforded to the court under a constructive trust limits the

role of resulting trusts considerably in this area.[12]In any event, there seems little doubt that Baroness Hale's statement constituted a true reflection of the law at that time. The question is, both in terms of establishing the existence of a trust and the quantification of an existent one, what kind of proof is required to steer the court away from holding that the beneficial ownership in property ought to follow the legal.

Existing Interest

Whilst it is submitted that the position in respect of establishing a trust where there is single legal ownership is the most easily addressed in terms of development since *Rosset*, the significance of this position is not clear unless compared to the position which has developed in relation to shared legal ownership and therefore, it is this area which will be addressed first.

The position in *Stack v Dowden*, and indeed in the subsequent judgments which are addressed below, does not differ significantly from that in *Rosset* in that the courts look at the intention of the parties when attempting to establish the extent of an interest in the property. However, it is often the case that this intention is not express and does not fall into the agreement type set out in *Rosset*. In such circumstances, the courts must therefore consider some extrinsic evidence in order to ascertain the parties' true intentions in this respect. It should be noted that this approach was not an entirely new one when *Stack v Dowden* was decided. In *Midland Bank v Cooke*, [13]for example, it was held that once the existence of a trust was established, the court could look at the entire course of dealings between the

parties in order to establish the size of each party's interest.[14]This approach could perhaps be seen as the evidence or proof spoken of by Baroness Hale in *Stack v Dowden*; the course of dealings being one which demonstrates a particular intention on the part of the parties.

The difficulty that arises in this context and, it is submitted, one which persists and which the court could, if minded to do so, have resolved, is that the *Rosset* requirement for an agreement persists even after *Stack v Dowden* and therefore, whilst using the parties' relationship as a basis for its approach, the court must imply an agreement to share subject to this relationship in order to deviate from the legal position. This approach causes difficulty in two respects. Firstly, the court is restricted where a clear agreement has been entered into, by the content of that agreement, even if in any reasonable circumstances, such an approach is entirely unfair on one party.[15]Secondly, the court will not be able to imply an agreement where the facts do not allow such an implication because the matter has not been addressed by the parties at all. In other words, it is not possible to imply the extent of an agreement where the notion of agreement has not been considered by the parties.

This second issue was more recently addressed in *Jones v Kernott*. [16]In this judgment, it was held that where an express agreement cannot be found and the parties' intentions cannot be implied from their actions, the court is able to impute an intention on the parties on the basis of what is considered fair in the circumstances. In other words, the court can base the extent of a beneficial interest on what the parties would clearly have agreed in the

circumstances if they had given the matter any consideration.[17]The position, therefore, extends the scope of how a beneficial interest can be quantified beyond any real consideration of the nature of the relationship between the parties in a factual sense, to one which allows a fair intention to be imposed upon the parties by the court.

The judgment in *Jones v Kernott* sets out, in some detail, the factors which the court can take into consideration when assessing what the parties' true intentions were or ought to have been in respect of quantifying a beneficial interest in a jointly owned property. These do not require repeating here because they do not impact on the underlying position and, whilst they may constitute the kind of proof envisaged by Baroness Hale in *Stack v Dowden*, they are necessarily factual considerations. What is important, in this context, is the fact that the judgments in *Stack v Dowden*, *Eves v Eves* and *Jones v Kernott* all relate to properties where the legal ownership was shared and, therefore, it was the move away from an equal division that was being considered. The issue which must now be addressed is how these judgments, if at all, impact on the establishment of an interest where the property is subject to sole legal ownership.

Sole Legal Ownership

It may be considered reasonable to suggest that if the court is able to impute an intention on parties in order to establish a fair result and the extent of any beneficial interest, it should not be problematic for it to do so in respect of imputing an intention for the beneficial ownership to be shared where there

is a single legal owner.[18]The courts have not taken this view however and on numerous occasions, have made it abundantly clear that, whilst an intention can be implied, this can only be so on the basis of a direct contribution to the purchase price of the property.[19]Both *Burns* and *Morris* are clearly cases which preceded *Stack v Dowden* and *Jones v Kernott* and therefore, it could be suggested that they were more limited by *Rosset* than may now be the case. However, even judgments which have followed these two significant cases have rejected the notion of imputation of an intention or even the implication of one without a direct financial contribution in terms of whether a constructive trust can be established where there is a single legal owner.[20]

It could be suggested that this position is one which is an obvious reflection of the restrictions of *Rosset* and that the courts consider themselves to remain bound by that judgment. However, such an approach does not take into account the fact that certain areas of these judgments seem for some time to have been suggesting that the *Rosset* position should change. In *Stack v Dowden*, for example, Lord Walker was quite clear in his view that the approach in *Rosset* was too restrictive and that the court should consider a far broader approach to how a constructive trust could be established, [21]and in *Jones v Kernott* Lord Wilson suggested that imputation at the point of establishing an interest should not be ruled out.[22]Indeed, the much earlier case of *Pettit v Pettit* [23]suggests that an intention could be imputed if the circumstances allow. What is perhaps most confusing in this respect is that, if there is apparent judicial support and will in respect of

allowing for greater flexibility in the ability to establish the existence of a constructive trust where there is single legal ownership and where this judicial will has been applied in relation to the defining the extent of a beneficial interest where property is jointly owned, why the approach which has been suggested, but never ruled in, has not been adopted. It may be the case that this is simply a matter of practical consideration on the basis that the cases where the court has been required to address these issues are all joint ownership cases and therefore, the opportunity to change the position in respect of single ownership has simply not arisen. However, it may also be the case, and it is submitted that this is the more likely reason, that such a step is one which the courts consider too large to take without some form of legislative input on the basis of the impact it will have on legal property rights.

Conclusion

It can be seen from the above that in respect of joint ownership cases, the court now has slightly greater flexibility on the basis that it is able to look beyond the intentions, either express or implied, of the parties and impute an intention where an appropriate one cannot be found. However, in respect of single ownership cases, the position has not changed at all since *Rosset* and therefore, such a claimant remains in a particularly weak position in the absence of an express agreement or financial contribution.

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Cases

<https://assignbuster.com/lloyds-bank-plc-v-rosset-effect-on-joint-ownership-cases/>

- *Burns v Burns* [1984] Ch 317
- *Cooke v Head* [1972] 1 WLR 518
- *Cowcher v Cowcher* [1972] 1 WLR 425
- *Eves v Eves* [1975] 1 WLR 1338
- *Geary v Rankine* [2012] EWHC 1387
- *Grant v Edwards* [1986] Ch 638
- *Hammond v Mitchell* [1991] 1 WLR 1127
- *Jones v Kernott* [2011] UKSC 53
- *Lloyds Bank plc v Rosset* [1991] AC 107
- *Midland Bank v Cooke* [1995] 4 All ER 562
- *Morris v Morris* [2008] EWCA Civ 257
- *Oxley v Hiscock* [2004] EWCA Civ 546
- *Pettit v Pettit* [1970] AC 777
- *Stack v Dowden* [2007] UKHL 17
- *The Venture* [1908] P 218
- *York v York* [2015] EWCA Civ 72

Articles

- K Lees ' *Geary v Rankine: Money isn't everything* ' [2012] Conv 412
- M Dixon ' *Resulting and constructive trusts of land: the mist descends and rises* ' [2005] Conv 79
- M Pawlowski ' *Imputing beneficial shares in the family home* ' T & T (2016) 22(4) 377 - 383
- M Tattershall ' *Stack v Dowden: Imputing and intention* ' [2008] Fam Law 249

- P O'Hagan ' Quantifying interests under resulting trusts' (1997) 60 MLR 420

Books

- Richard Edwards, Nigel Stockwell *Trusts and Equity* (11th edn Routledge 2015)

[1] *Lloyds Bank plc v Rosset* [1991] AC 107

[2] See *Geary v Rankine* [2012] EWHC 1387 and also M Pawlowski ' Imputing beneficial shares in the family home' T & T (2016) 22(4) 377 – 383, 380

[3] *Cowcher v Cowcher* [1972] 1 WLR 425

[4] See *The Venture* [1908] P 218

[5] Richard Edwards, Nigel Stockwell *Trusts and Equity* (11th edn Routledge 2015), 333

[6] See M Dixon ' Resulting and constructive trusts of land: the mist descends and rises' [2005] Conv 79

[7] *Eves v Eves* [1975] 1 WLR 1338 and see also *Grant v Edwards* [1986] Ch 638

[8] See *Hammond v Mitchell* [1991] 1 WLR 1127

[9] *Cooke v Head* [1972] 1 WLR 518

[10] See *Lloyds Bank plc v Rosset* [1991] AC 107

[11] *Stack v Dowden* [2007] UKHL 17

[12] M Dixon ' Resulting and constructive trusts of land: the mist descends and rises' [2005] Conv 79

[13] *Midland Bank v Cooke* [1995] 4 All ER 562

[14] See also P O'Hagan ' Quantifying interests under resulting trusts' (1997) 60 MLR 420

[15] *York v York* [2015] EWCA Civ 72

[16] *Jones v Kernott* [2011] UKSC 53

[17] Ibid and see also *Oxley v Hiscock* [2004] EWCA Civ 546

[18] M Tattershall ' *Stack v Dowden*: Imputing and intention' [2008] Fam Law 249, 250

[19] See *Burns v Burns* [1984] Ch 317 and *Morris v Morris* [2008] EWCA Civ 257 for example

[20] *Geary v Rankine* (n 2) and see also K Lees ' *Geary v Rankine*: Money isn't everything' [2012] Conv 412

[21] *Stack v Dowden* [2007] UKHL 17, [26]

[22] *Jones v Kernott* [2011] UKSC 53, [86]

[23] *Pettit v Pettit* [1970] AC 777