REF/2016/0498

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

RICHARD GEOFFREY WHITEHOUSE

APPLICANT

and

LOUISE JERVIS

RESPONDENT

Property Address: 23 LINWOOD DRIVE, HEDNESFORD, CANNOCK WS12 4SA

Title Number: SF218172

Before: Judge Martin Dray

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 4 October 2017

DECISION

Applicant Representation: Julian Shaw, Counsel, instructed by Wright McMillan Bennett

Respondent Representation: John Brennan, Counsel, instructed by Ansons Solicitors

Introduction and background

1. References in square brackets are to the corresponding pages in the hearing bundle.

2. In about 2001 the parties to these proceedings formed a relationship. The relationship broke down, and the parties separated, in late 2015. In these proceedings the Applicant claims a beneficial interest in the subject property, 23 Linwood Drive, Hednesford, Cannock ("the property"), in which property the parties formerly cohabited. The Respondent is the sole legal owner of the property under title no. SF218172. She was registered as the proprietor on 19 February 2009.

3. Soon after the breakdown of their relationship, in March 2016 the Applicant applied to HMLR for the entry of a restriction in Form A against the title to the property. [A7] The application was put on the basis of a claimed resulting trust said to arise from the Applicant's contribution in February 2009 of £26,885.81 towards the purchase price of the property. [A10-11]

4. The Respondent caused her then solicitor, Nigel Beaman, to object to the application. A detailed letter of objection dated 20 April 2016 was sent. [A19] It was acknowledged that the Applicant had contributed towards the acquisition of the property, the sum being put by the Respondent at £26,300. The crux of the objection was that the Applicant had allegedly agreed to gift the money to the Respondent and, indeed, had signed a declaration to that effect at the offices of the Respondent's conveyancing solicitors, Walker & Co, on or about 9 February 2009. [A20]

5. HMLR referred the dispute to the Tribunal in July 2016. [A17]

6. The Applicant filed a statement of case. [B1] The Respondent also filed a statement. [B9] Each was a short document of c.3 or 4 pages, and fairly general in nature. Each was verified by a statement of truth.

7. The Tribunal issued directions in March 2017. [A26] These included requirements for: (i) disclosure; (ii) witness statements. The parties gave limited disclosure, of which more anon. No witness statements additional to the statements of case were filed.

8. I heard the matter on 4 October 2017. Both parties were represented by counsel for whose assistance I am grateful. Each party gave oral testimony under oath. Each adopted their statement of case as their evidence, and (with my permission and without objection)

expanded considerably on the same in examination in chief. Each was thoroughly cross-examined. No other witnesses were called.

9. At the hearing the Applicant's case was put on the basis of an asserted common intention constructive trust ("CICT"). In his skeleton argument and in opening counsel for the Applicant, Mr Shaw, explained that Applicant did not allege any express discussion between the parties founding a CICT: skeleton, para.9. He disavowed a claim to a CICT based on an *express* common intention, advancing a case based only on *inferred* common intention. However, after the evidence, he submitted that I can and should find an express common intention based on the discussions between the parties to which the Applicant spoke in the witness box, and he relegated the inferred intention case to a fall-back. I return to this change of position later on.

10. Although canvassed in his skeleton argument and in opening, by the end of the hearing Mr Shaw had abandoned any claim to a beneficial interest based on (a) resulting trust and/or (b) proprietary estoppel. He also confirmed that he did not advance a *Pallant v Morgan* equity case. So I deal with the case as a CICT claim alone.

11. The Applicant asserts a CICT arising at the time of the acquisition of the property. Although post-acquisition events (e.g. the work to the property which the Applicant claims to have undertaken) are relied on, if necessary, to support (a) an inference of the requisite common intention at the date of acquisition (based on the overall conduct of the parties) and (b) detrimental reliance, no claim is made for a post-acquisition CICT (if a CICT arising at the date of acquisition is rejected).

12. At the outset I record that the legal burden of establishing a CICT is on the Applicant. He must prove that, notwithstanding that the property is in the sole name of the Respondent (which carries with it a presumption that the property is beneficially owned by her alone), the parties had a common intention (actual or inferred) that the equitable ownership of the property would in fact be shared. It is not for the Respondent to disprove that. I bear this burden firmly in mind.

13. I do not believe that there is any real dispute about the applicable legal principles. They are set out in *Stack v Dowden* [2007] 2 AC 432 and *Jones v Kernott* [2012] 1 AC 776. I

have them in mind but do not consider it necessary to rehearse them in this judgment. The outcome of the present case hinges in the main on the findings of fact I make.

Common ground

14. I begin with the uncontroversial facts. Insofar as there was any (minor) disagreement on such points, I make the following findings based on the evidence:

(1) The parties' relationship started in around 2001.

(2) At the time they were both prison officers. They worked at the same establishment. They had been promoted at the same time. They were paid at the same rate although the Applicant worked more hours and hence took home more pay. In 2009 the Respondent was working part-time (29 hours a week); the Applicant was working full-time.

(3) The Applicant owned his own property at 32 Grosvenor Way, Brierley Hill. He had a mortgage on this property.

(4) The Respondent owned her own property at 76 Greenwood Park, Hednesford. Again, this was mortgaged.

(5) At Christmas 2004 the Respondent told the Applicant she was pregnant.

(6) Their son, Leon, was born in August 2005.

(7) At all times throughout their relationship the Applicant and Respondent maintained their own, separate bank accounts. For instance, in 2009 the Applicant had an account with HSBC [A11] and the Respondent banked with Lloyds Bank [B20].

(8) The subject property, 23 Linwood Drive, is a 4 bedroom bungalow.

(9) In 2009 the Respondent acquired the property. She did so by way of exchange with one Irene Bradley to whom she transferred 76 Greenwood Park. She completed the purchase on 13 February 2009: see entry B2 on the registered title. The purchase price was £175,000: see entry B2 on the registered title. The relative values of the two properties meant that the Respondent (who was trading up) had to pay £50,000 equality money to Mrs Bradley (who was downsizing).

(10) £25,000 of the required £50,000 came from the Applicant. He raised this sum by increasing the mortgage on 32 Grosvenor Way, apparently telling the mortgagee that it was to fund renovations to that property.

(11) The balancing £25,000 came from the Respondent. She raised this by re-mortgaging with Barclays Bank (t/a the Woolwich).

(12) Consistent with the fact that the property was being transferred into her sole name, the Woolwich mortgage was/is in the Respondent's sole name. [A23]

(13) Mr Whitehouse signed a document (in standard form), entitled "Occupancy Form" agreeing to postpone to Barclay's rights as lender "any right of occupation and share of interest in the property" which he might have in the property. [A24]

(14) Walker & Co, solicitors (of 206a-212 Stafford Street), acted for Respondent and the Woolwich in connection with the acquisition. Unfortunately, the firm destroyed the paper file in 2015. [B18]

(15) Consequent on the Respondent's acquisition of the property, both parties moved into the property where they cohabited as man and wife until the breakdown of their relationship in December 2015.

(16) From quite soon after the time when the Applicant first moved in with the Respondent (the timing and location of which is disputed), the Applicant rented out 32 Grosvenor Way to his cousin who had fallen on hard times. The rent covered just the outgoings, with no profit element for the Applicant. The Applicant did not pay any part of the income from 32 Grosvenor Way to the Respondent.

(17) In January 2013 the parties opened a bank account in their joint names with Lloyds TSB. [C91] This account was operated during the rest of their relationship, but (as noted above) each retained a sole account. Each paid money into the joint account from their own account, although the payments were not entirely regular in frequency or amount.

(18) From the joint account were paid various general household liabilities and expenses including: the monthly Woolwich mortgage repayments; utilities (gas, electricity, water, council tax, Sky TV subscription); food shopping (e.g. at Morrisons); fuel; meals out; DIY expenditure (e.g. Screwfix Direct, Ikea).

(19) The Applicant retained 32 Grosvenor Way until about 2012 when he sold it. The proceeds of sale were not shared with the Respondent. The Applicant regarded the property as his alone.

Major factual issues

15. Beyond the above, the parties' accounts are completely at odds with one another. Issues of particular conflict and potential significance are:

(1) When did the parties start cohabiting? The Applicant says it was from 2001 onwards (albeit with a 6 month hiatus in c.2003/4), i.e. that the parties cohabited at 76

Greenwood Park. The Respondent denies this. She maintains that they only cohabited from 2009 when she acquired the property. Before then, she says, the Applicant only spent some weekends with her.

(2) Did the Applicant ever pay money from his account to the Respondent's account to help with the mortgage and other running costs referable to 76 Greenwood Park? He says he did. The Respondent refutes this.

(3) Did the Applicant undertake DIY improvements at 76 Greenwood Park? He says he did. She says no.

(4) Was the Applicant involved in the run-up to the acquisition of the property? Did he ever visit the property at the time? He says yes. The Respondent says no.

(5) What was discussed between the parties regarding the £25,000 payment which the Applicant was to, and did, make? The Respondent maintains that the Applicant told her it was a gift. The Applicant says it was understood to be investment by him into the property, without which the exchange could not have proceeded; it was not a gift.

(6) Did the Applicant visit Walker & Co's offices, along with the Respondent, and there sign a declaration (in her presence) that he was gifting £26,300 to her? The Respondent says he did on the occasion when he signed the Occupancy Form. The Applicant maintains that he never saw any such declaration and did not sign it. He also says that he did not attend the solicitors' offices, except once to hand in a cheque (the banker's draft for £25,000). His case is that the Occupancy Form was signed at some offices, associated (I believe) with an estate agent, in Pelsall.

(7) Was the Respondent unemployed for a period of about 7 months in 2014/15?

(8) Did the Respondent pay £1,200 pcm into the joint account? She says that she did. The Applicant claims this is untrue and that she paid considerably less.

(9) Did the Applicant carry out substantial DIY work to the property, details of which are listed at [B8]? The Applicant says he did, and in evidence gave an itemised account of the claimed work. The Respondent says this is all untrue. She maintains he did no work to the property. Her case is that she paid for the work to be done by a builder, one Nigel Clayton. To that end she exhibits copies of alleged invoices [B25-B35]. The Applicant contests the authenticity of these, with the exception of (principally) work undertaken to the bathroom which he accepts was done by Mr Clayton (who had previously done work on the Respondent's parents' house)

Documents

16. Apart from the joint account bank statements there is scant documentary material before me. However, the Respondent relies heavily on a handful of documents seemingly retrieved from Walker & Co's computer system [B18].

17. The first document is a letter dated 20 January 2009 from Jonathan Walker of Walker & Co and addressed to the Applicant at 32 Grosvenor Way. It [B15] reads:

> Dear Mr Whitehouse
>
> **Ms L Jervis**
> **23 Linwood Drive, Hednesford, Cannock WS12 4SA**
>
> As you are aware I am acting on behalf of Ms Jervis in her purchase of the above property. I am instructed that you are providing financial assistance to Ms Jervis by way of a gift of £26,300.00.
>
> The Mortgagees will require confirmation that the gift is an outright gift and I enclose a declaration addressed to The Woolwich that the gift is an unconditional gift and there are no conditions attached to the same.
>
> You should consider taking independent legal advice as to the contents of the declaration.
>
> However should you wish to proceed without obtaining independent legal advice please sign and return the enclosed declaration and I shall forward this to the Woolwich.

18. The copy of the letter before me is only a computer saved version. [B18]

19. The second is what is said by the Respondent to be the "enclosed declaration". It takes the form of a letter from Walker & Co to The Woolwich. It [B16] reads:

> Dear Sirs,
>
> **Our Client: Ms L Jervis**
> **Property: 23 Linwood Drive, Hednesford, Cannock WS12 4SA**
> **Account Number: 9246425709**
>
> We write further to our letter dated 09 February 2009.
>
> We hereby provide declaration of Mr Richard Geoffrey Whitehouse
>
> I **RICHARD GEOFFREY WHITEHOUSE** of 32 Grosvenor Way Brierley Hill DY5 2LL declare the gift of £26,300.00 to the above named **LOUISE JERVIS** is unconditional and have no intention of it being repaid and I give up any beneficial right I may have in the property.
>
> **SIGNED** _____
> **Richard Geoffrey Whitehouse**
>
> **DATED** _____

Please confirm the mortgage may now proceed unaltered.

We look forward to hearing from you.

20. It is this declaration which the Respondent says was enclosed with the letter dated 20 January 2009 and was signed by the Applicant at Walker & Co's offices on or around 9 February 2009. The Applicant denies (a) receipt of both, (b) signing the declaration and (c) attending at Walker & Co's offices for that purpose.

21. No copy of the declaration signed and dated by the Applicant has been produced. The Respondent can point only to the unsigned and undated draft.

22. Again, the copy of the document in question before me is only a saved copy. It is not (for instance) signed by Walker & Co.

23. The third document on which the Respondent relies is a letter from Walker & Co to The Woolwich dated 9 February 2009. Unlike the above documents this is a copy of the original, signed by Walker & Co. It bears a stamp "1102200921". I heard no evidence on the point but infer that the stamp: (a) was that of the recipient, The Woolwich; (b) refers to the date of receipt of the letter (namely, 11022009, i.e. 11 February 2009). The copy also bears an electronic barcode. I do not know the origin of this. It is not apparent to me how the Respondent, who disclosed this document, came to be in possession of it. It looks, however, as if it must have come from The Woolwich.

24. The letter of 9 February 2009 [A22] reads:

> Dear Sirs,
>
> **Our Client: Ms L Jervis**
> **Property: 23 Linwood Drive, Hednesford, Cannock WS12 4SA**
> **Account Number: 9246425709**
>
> Our client has called into the office and informed us that part of the balance required to complete required to complete which is £26,300.00 is being provided by her partner Richard Geoffrey Whitehouse.
>
> Mr Whitehouse declares that this is an unconditional gift which will not be repaid and that he does not intend to obtain any beneficial interest in the property whatsoever.
>
> We are required by your Part II instructions to report the above and we would be grateful if you would confirm whether the mortgage may proceed unaltered and whether the funds will be released in good time for completion on Friday 13 February 2009.

Thank you for your assistance.

25. The final document – upon which both parties rely in different respects – is a letter from Walker Solicitors[1] dated 19 April 2016. It [B18] is written in reply to a letter from Mr Beaman dated 15 April 2016 which I have not seen. It reads:

> We have received and note the contents of your letter of the 15th April 2016. We confirm Ms Jervis had contacted this office and spoke to a secretary in your conveyancing department in respect of a gift of £25,000.00 made by Mr Whitehouse.
>
> Noting the date of completion of the work in 2009 we confirm the paper file was destroyed in 2015.
>
> This firm does work with a case management system and we attach copy of a saved letter dated 20th January 2009 with enclosure released to Mr Whitehouse.
>
> The case management system does not record an attendance upon Mrs Jervis and/or Mr Whitehouse as to the signing of the Declaration by Mr Whitehouse.
>
> We trust the above will assist.

26. The Respondent relies on the first and third paragraphs, the Applicant on the fourth. I add that I have not seen the letter of 15 April 2016; thus I do not know the terms of the request made of Walker Solicitors by Mr Beaman.

Disclosure

27. Each party criticised the other's disclosure. In my judgment, whether through oversight or for more sinister reasons, both have manifestly breached their obligations and been unhelpful to the Tribunal in that regard. However, I consider the degree of culpability to be significantly greater on the Respondent's part:
    (1) The Applicant failed to disclose his HSBC statements, except for a single page from 2009 [A11] (the existence of which suggests that he has access to the statements). Disclosure thereof would have enabled verification of the alleged payments he claimed to have made to the Respondent.
    (2) The Respondent similarly failed to disclose her Lloyds statements, except for 4 pages from 2009 [B20-23]. These (likewise presumably available to her) could have supported her denial of the receipt of any payments.
    (3) The Respondent also failed to disclose the joint account statements; these were disclosed only by the Applicant.

[1] The modern incarnation of Walker & Co.

(4) Further, the Respondent did not bring to the hearing the originals of the invoices said to emanate from Mr Clayton, despite the Tribunal's order having required this. [A26] This denied the Applicant and the Tribunal the opportunity to inspect them.

(5) Despite having contacted Walkers Solicitors (see above), the Respondent appears to have omitted to request her former lawyers to reconstruct the destroyed file to the fullest extent possible from the electronic case management system. I find it inconceivable that the only saved documents are those enclosed with the 19 April 2016 letter, now found at [B15-16]. I conclude that an incomplete picture has been put forward.

(6) Similarly, the Respondent has either not contacted The Woolwich for relevant extracts from its mortgage file (which, it may be inferred, will still exist because the mortgage remains live) or, to the extent that she may have done so (bearing in mind the fact that she has a copy of the 20 January 2009 letter[2]), has not clearly produced everything. A partial picture has been presented.

Missing witnesses

28. Further, each party failed to call evidence from sources who might potentially have shed light on the dispute. Neither claimed that they had tried to contact the relevant people but in vain. As the Respondent's counsel acknowledged, neither presented their case to the best advantage. Notable absentees included: (1) Mr Jonathan Walker of Walker & Co (who still practises at the firm) who might well have been able to shed light on the signing (or otherwise) of the alleged declaration of gift, and to speak to the documents referred to above and the contents of the case management system: the Respondent's counsel himself said that the solicitor ought to have been a witness; (2) the secretary Sandra Gardner who witnessed the execution of the mortgage deed [A23] and the Occupancy Form [A24] in February 2009 and who could presumably confirm whether she worked at, and witnessed the signing of those documents, at Walker & Co's offices or elsewhere (e.g. an office in Pelsall); (3) Mr Clayton who could have spoken in relation to the disputed invoices [B25-35] and identified what work he did.

[2] It was also the Respondent who disclosed copies of the execution page of the mortgage [A23] and the Occupancy Form [A24]. Again, it is not obvious where these came from if it was not The Woolwich.

Poor preparation of the case generally

29. Such was the lack of diligence and application that the parties/their solicitors showed in relation to the preparation of the case that they (certainly at least the Applicant's counsel) did not even know how much had been paid for the property! Neither party had obtained a copy of the register on which this information is recorded; at least, no copy is in the bundle. Fortunately, the Tribunal had received a copy from HMLR from which I was able to see that the price was the £175,000 recorded above.

My approach to the evidence

30. In the circumstances I treat both parties' evidence, essentially uncorroborated by independent evidence as it is, with reserve. I approach the account of each with caution and circumspection.

31. In many cases, differences in parties' accounts are readily explicable to mistaken memory recollection (which may include unconscious, inaccurate reconstruction of events *ex post facto*). A classic illustration is that of a road traffic accident. The collision happens in a moment, without any planning or warning. Considerable emotion and shock may result. Each party goes away and later turns the events over in their mind, trying to work out how the accident could have occurred and attempting to identify the party responsible for the same. In the process each can manage, honestly but mistakenly, to convince themselves that the facts were other than they actually were. In addition, the passage of time greatly dims memories.

32. The present is not such a case. The disputed events did not happen in a second. They arose over the course of a relationship which lasted c.14 years. The central matter, namely the purchase of the property in early 2009, did not occur overnight or without prior consideration.

33. In my judgment, the instant case is one in which the conflict between the accounts of the parties is so gross as to be inexplicable except on the basis that one or other is deliberately giving evidence which they know to be untrue. The possibility of merely unreliable, mistaken evidence – the product of erroneous but honest recollection – is, I believe, precluded in the circumstances. Each party cannot be telling the truth. I consider that the

only conclusion to be drawn is that either the Applicant or the Respondent is lying. The question is who?

34. In determining who is lying, I bear in mind the five tests identified by Lord Bingham in his essay "*The Judge as Juror: The Judicial Determination of Factual Issues*".[3] They are:
    (1) The consistency of the person's evidence with what is agreed, or clearly shown by other evidence, to have occurred.
    (2) The internal consistency of the person's evidence.
    (3) The consistency with what the person has said or deposed on other occasions.
    (4) The credibility of the person in relation to matters not germane to the litigation.
    (5) The demeanour of the witness.

35. In evaluating the evidence in this case, I attach the greatest weight to first three tests. I also take account of the contemporaneous documents, although not only are these few in number but (as I shall explain) what can safely be drawn from them is very limited. Further, I bear in mind the inherent probability of the particular matter alleged or disputed (as the case may be) when concluding what is most likely to have occurred, noting that the more improbable the event, the stronger the evidence must be before its occurrence can be established on the balance of probabilities: *H (Minors) (Sexual Abuse: Standard of Proof), Re* [1996] AC 563.

36. I also remind myself that a person can be a truthful person generally but nonetheless telling less than the truth on a given issue. Likewise, an untruthful person may sometimes tell the truth. In other words, the mere fact that a person tells one lie does not necessarily mean that all the person's evidence must be dishonest. Further, I acknowledge that people tell lies for all sorts of reasons, including out of panic, distress or confusion. I bear that in mind too.

37. It is my function to decide the case on the evidence. This may mean that the 'absolute truth' is not brought out, particularly where, as here, the parties have omitted to put relevant and potentially probative documents and witness evidence before the Tribunal. The legal system requires a judge to weigh up what has been heard; it does not guarantee

[3] Published in *The Business of Judging*, (OUP: Oxford, 2000), reprinted from *Current Legal Problems* Vol 38 1985 (p.1-27), cited in *Bailey v Graham* [2012] EWCA Civ 1469.

a perfect result: *Re L-R (Children)* [2011] EWCA Civ 1034 @ [26-27]. My function is to decide whether disputed matters did or did not happen, applying the civil standard of proof, namely the balance of probabilities. There is no room for a fudge, for a finding that something might have happened. The law operates a binary system in which the only values are zero and one. A fact is treated either as having happened or as not having happened: *In re B (Children) (Care Proceedings: Standard of Proof)* [2009] 1 AC 11.

The Applicant's version of events

38. The Applicant said that, aside from a short period of separation, he spent most of his time at 76 Greenwood Park from 2001/2. He would spend the occasional day at 32 Grosvenor Way. But once the Respondent told him of the pregnancy, he basically spent 100% of his time at Greenwood Park, where he had his motorbike. Thereafter (and continuing at the property from 2009) the couple lived as a family with their son.

39. He claimed that the household expenses were shared. The arrangement was quite a loose arrangement. She would pay the bills. He would pay for the couple's social life, e.g. meals out, and for shopping.

40. Whilst at Greenwood Park he had done a lot a work there. When the Respondent had been pregnant she went throughout what he termed a "nesting phase". He had sought to effect this. The only room he had not touched was the bathroom.

41. So far as the purchase of the property was concerned, he said that he and the Respondent were aware that Mrs Bradley had lost her husband and wanted to sell the property. However, it was sticking on the market. She had reduced the asking price several times from the original £240,000 (a figure he regarded as "ridiculous"). There was no interest. He described the property as a "chintzy, undesirable house which needed TLC". People could not see past its decorative state. It had several issues; for example, it was very disjointed with a bathroom in the middle of the property.

42. The couple, he said, had jointly viewed the property. He had inspected it quite a few times. It needed a lot of work. He had been happy to do that. He enjoys DIY. He had regarded the work as definitely within his capabilities. His evidence was that for a month or so before the purchase the couple had discussed what they could do with the property,

e.g. going into the loft, changing the layout, making a blank canvas by putting magnolia paint on the walls and laying uniform carpet throughout. They had a lot of discussions in that period. They sketched out a plan.

43. The Applicant's testimony was that the pair of them discussed buying the property. They decided to go ahead. According to him, it was agreed that of the £50,000 difference between the value of the two properties (Greenwood Park and Linwood Drive) she and he would each put in half. This was to be achieved by each re-mortgaging. There was no discussion about a joint mortgage on Linwood Drive; he already had his own mortgage and did not want two mortgages. This was the deal they came up with.

44. He repeatedly rejected the notion that his £25,000 was a gift to her, remarking, "I didn't have £25,000 to give to anybody", saying he was not flush with money. The money was not given by him to avoid her increasing her hours, for as it was he had 2 rest days a week and she 3 – so they could take care of Leon between them. (To put this in context, the Respondent says that she had obtained a re-mortgage offer for the £50,000 she needed to pay Mrs Bradley, and that it would see her monthly repayments increase. She claims to have informed the Applicant that in order to meet the extra costs she intended to return to full-time work (39 hours a week). According to her, the Applicant offered her the £25,000 to avoid the need for her to increase her hours because he did not want to pay for extra child care which that would necessitate.)

45. In cross-examination the Applicant said that throughout the process of buying the property the Respondent made it clear that they would "share the property" at Linwood Drive. He was putting in money (the £25,000) and she promised him the money, together with something to reflect the works he would be undertaking at the property, would be paid back to him. Pressed on this, he denied that the "ownership" of the property was to be shared, but maintained that he was entitled to be "repaid".

46. Asked if he was thus contending for a loan, he firmly denied this. He said he was never "lending" the money; it was "an investment". Had all gone well, they could have sold the property and moved to somewhere nicer (although, as events turned out, that never happened). His evidence was that had the property's value fallen, he would not have

been entitled to all his money back. He explained that he believed he would be entitled to a percentage.

47. He said that all this was the result of "an agreement" between the Respondent and him, made before the property was bought. They had discussed matters quite extensively between them in the month before the purchase; there were several conversations over that period to this end. The proposal had come from the Respondent.

48. The Applicant denied having seen the 20 January 2009 letter [B15] and declaration [B16] before these proceedings. He had only seen the mortgage deed [A23], which he had incorrectly signed as a witness (his signature was deleted, and he was replaced as witness by Ms Gardner), and the Occupancy Form [A24]. These had been signed at the offices in Pelsall.

49. According to the Applicant, after the property was bought the bills (including the mortgage) for the property were paid from the Respondent's sole account but he was giving her money towards them. After a period, they decided to open the joint account. This was a more formalised arrangement than what had preceded it (which had caused quite a bit of conflict because of the grey areas, whether each was paying their share, and because e.g. a meal might have been forgotten in the reckoning). The joint account was, he said, used for family expenses, including anything that Leon needed. He went on to say that the Respondent had not paid into the joint account between September 2014 and May 2015 because she was then out of work. This meant that he had then to pay more in in order to make up the shortfall, which he had done. He also gave evidence that the Respondent sometimes "wrote her own rulebook" as to what she paid in.

50. As regards the work he said he had undertaken at the property, the Applicant gave detailed particulars. He alluded to having done electrical wiring, fitted new economical radiators, fitted PVC windows, and a lot more besides. He had that he had gained experience by working with his uncle, a qualified plumber. He volunteered that he had not done the works listed in some of the invoices allegedly generated by Mr Clayton, e.g. those at [B25], [B27], [B30] & [B34/35]; he accepted that such works had been undertaken by Mr Clayton. It was put to him that he had not done any work at all at the property, to which he responded, "totally wrong".

The Respondent's version of events

51. The Respondent said that at no stage did the parties live together at Greenwood Park. Any suggestion to the contrary was wrong. She had a single person council tax discount at Greenwood Park, and the Applicant paid council tax for Grosvenor Way. Grosvenor Way was his postal address.

52. Allied to this, the Applicant had not undertaken any building work at Greenwood Park. This had all been done by her father, the Respondent said.

53. In relation to the purchase, the Respondent told me that the Applicant would not have been aware of her dealings with Mrs Bradley because she was buying the property. All his evidence on the subject, about his visits to the property and so on, was made up.

54. The Applicant's contention that she had not in fact obtained an offer to increase her mortgage by £50,000 was rejected by the Respondent, as was his claim that she could not have afforded the repayments herself. She said she had a quote to increase her mortgage to £100,000. She pointed to her income (£1,500 pcm) as being sufficient to fund the £401 pcm borrowing costs.

55. The Respondent's evidence was that the Applicant offered her £25,000 as a gift in order that she need not return to full-time work . He did not want to incur increased childcare costs. There would have been a need for before and after school care. She agreed to his offer. The money was most definitely a gift; it was not a loan. Also, the money was offered to her by the Applicant only after he had increased his own mortgage (without reference to her).

56. Although the Applicant's bankers' draft was for £26,885.18 [A11], she had repaid the legal fees, such that his net contribution was £25,000. Of the fees, she had repaid £1,285.81 to the Applicant on 11 February 2009. [B23] The balance, she said, was offset by what he owed her for purchases she had made for Leon.

57. In cross-examination the Respondent claimed to have a letter (presumably from Walker Solicitors) confirming that the 20 January 2009 letter had been sent to the Applicant, which letter is not in the bundle, i.e. a letter other than the 19 April 2016 [B18] letter.

58. According to the Respondent, the Applicant and she went to the offices of Walker & Co where the Applicant signed not only the Occupancy Form but also the form of declaration at [B16]. This document was signed by him, she maintained. Indeed, she saw him sign it. The Occupancy Form had not been signed in Pelsall. They had made a specific journey to the solicitors to sign both documents and also hand over the cheque (bankers' draft). The Applicant had been given his own copy of the declaration by the solicitors. The destruction of the file was why she was now unable to produce a signed copy.

59. So far as financial matters were concerned, the Respondent's case was that the Applicant had never made payments to her bank account (beyond some "for Leon" – see e.g. the £587.50 payment on 3 April 2009 [B21]) before the joint bank account was opened. Hence he had made no such payments at all at Greenwood Park, and payments at the property only from 2013. The only payments he had made before the joint account were maintenance for Leon.

60. In relation to the joint account the Respondent said that each paid £1,200 pcm into it. She denied that the Applicant paid any money towards the mortgage or for improvements to the property. The contributions were towards household bills and for Leon only.

61. The Respondent claimed to have spent £50,000 herself on improvements to the property since 2009. She pointed, in particular, to a payment received by her (into the joint account) from Winterthur Life of £8,362.09 on 3 March 2009. [B21] She also said that money had gone a legal dispute she had had with a neighbour who had blocked a driveway.

62. She said the Applicant had not carried out improvements; these had been undertaken by Mr Clayton, and she relied on the invoices at [B25-35]. The Applicant, she said, had been restoring Grosvenor Way and thus had had neither the time or money to renovate the property. Besides, he is not a qualified plumber, electrician etc. She was asked about the works the Applicant had listed; she denied he had done them.

63. The Respondent's evidence was that she never been out of work for a period of months. She had left the prison service in February 2014 and had received a £50,000 pay-out. She had been in receipt of jobseekers' allowance for just a matter of weeks.

64. It was put to the Respondent that the parties had a relationship for 15 years, had lived together at Greenwood Park and then at the property, had discussed how they would swap the properties, with each putting in £25,000 and taking a mortgage to do so, and that the Applicant had then followed this with financial contributions. Her answer was that this was "all incorrect".

65. All in all, on the central issue in the case, her position was summarised in paragraph 16 of her statement:

> "It was never our common intention that the property would be an investment for both of us. There is no evidence to that effect. …"

Assessment of the witnesses

Summary

66. I have considered and evaluated both parties' accounts and their evidence carefully.

67. Having done so, I have no hesitation in preferring the evidence of the Applicant to that of the Respondent. Where their accounts conflict, I accept the Applicant's version of events and reject that of the Respondent.

My assessment of the Applicant's evidence

68. I regard the Applicant as an honest and reliable witness.

69. It was put to the Applicant that his account about the parties' pre-acquisition "agreement" was invented. Reliance was placed on the absence of any reference thereto in the Form RX1. [A10] The Applicant said that he had told his solicitor about it, and I accept this. Although it plainly would have been better if the solicitor had expressly alluded to the same, I do not consider that the raising of, and exclusive reliance on, a resulting trust – in the context of a verifiable contribution to the deposit for the property – to undermine the thrust of the Applicant's evidence; I regard the approach taken by the lawyer as understandable, even if simplistic.

70. Challenge to the Applicant was also, understandably, advanced on the basis that the case (of an express agreement) he put forward in cross-examination was novel, not foreshadowed in his statement of case, counsel's skeleton/opening and/or his examination-in-chief. His account was, it was put and submitted, inconsistent with his previous statements. The Applicant rejected that criticism. I believe him. Whilst it is undoubtedly the case that (as recorded above) the case was initially presented by his lawyers as one of inferred agreement (based on contributions) only, I consider that the Applicant was telling the truth in his oral account. I do not accept that he made things up in the witness box.

71. At one point in cross-examination the Applicant, in rebuffing the suggestion of fabrication, alluded to paragraph 11 of his statement. [B3] There he had said:

> "Although the Respondent and I never made an agreement about this payment to the mortgage and Legal bills, it was the common intention that the property would be an investment for both of us."

72. This is something of an oxymoron. The Applicant was presumably referring to the second part of the sentence but, against that, the first phrase can certainly be said to repudiate any suggestion that there was, in fact, an express agreement.

73. I have regard to the fact that the statement gives no particulars of the express agreement to which the Applicant now speaks. However, seen in context, such matters, though plainly not insignificant, do not cause me to doubt the fundamental veracity of the Applicant's evidence. The context includes not only the Applicant's testimony as a whole but also, specifically, paragraph 7 of the same statement. [B2] This reads:

> "*The Respondent and I discussed 'Exchanging' these properties* although there was a considerable amount of work to be undertaken, *we decided that it would be a good investment for us*, I would be able to carry out most of the repair work myself."

74. To my mind, this supports the conclusion that the parties had had discussions in relation to the acquisition of the property; matters were not left entirely unspoken. Moreover, the reference to "a good investment for us" naturally connotes the property being seen as a joint asset, providing (all being well) a return for both parties; this is entirely consistent with the Applicant's case.

75. The context also includes paragraph 17 of the statement. [B3] This refers to the Applicant saying that the purchase of the property was a "joint venture", in the context of which the Applicant paid the £25,000. Again, this language is, in my judgment, indicative of an common intention to share the property.

76. I bear in mind the Applicant's denial of an intention to share "ownership" of the property. Of itself, that might be thought to undermine his position. However, it must be seen in the light of his steadfast assertion that the Respondent agreed to "share the property". On reflection, I do not believe that, when he alluded to "ownership", the Applicant had in mind beneficial entitlement; to my mind he was likely speaking of the legal ownership only – i.e. the fact that the title to the property (along with the mortgage) would be going into the Respondent's sole name.

77. Asked why he did not insist on the property going into joint names, the Applicant said that they were a couple, a family, and that he just didn't even consider this. There was also the fact that he did not want two mortgages. These factors explain why matters proceeded as they did. I do not believe that they undermine his evidence as to the alleged agreement. To my mind, his relaxed approach tends to underscore the fact that he was fully confident in an understanding and expectation that the property was to be shared (without any need for his name on the deeds), a confidence which I find had been engendered by his discussions with the Respondent.

78. I consider that the Applicant's denial of the £25,000 being a loan (as opposed to an "investment" in relation to the shared property) to be genuine and accurate. I find his acknowledgment that he would not recover his money if property values fell to be telling and supportive in this regard. On a fair appraisal of the Applicant's evidence, he was not describing a loan. He never categorised the £25,000 as such. His reference to expecting to be "repaid" is perfectly consistent with a belief that the property was to be shared and so generate some form of return. Also, the Respondent denies any loan, maintaining that the money was gifted; it is no part of her case that she received a loan. I reject any notion that the £25,000 was loaned.

79. In my judgment, it is inherently improbable that the Applicant would simply have gifted the Respondent £25,000. It is not as if he was awash with cash. The parties were paid the same (although the Respondent took home less because she worked fewer hours). The £25,000 was roughly equivalent to his annual salary. To raise the £25,000 he had to borrow, secured against 32 Grosvenor Way (from which property he did not derive a commercial rent). In the circumstances the Applicant's case has a clear ring of truth.

80. When questioned why he had not got written confirmation that the Respondent would repay him, he said that they had been in a relationship and that you trust someone in that situation. Again, I consider he gave an honest account.

81. Likewise, when the Applicant gave details of the work he claimed to have done to the property, he gave an account based on a virtual walk-through of the property, room by room. The account was fast-flowing and convincing. I accept it.

82. The Applicant readily made admissions where appropriate. He accepted that he didn't pay the Respondent a rent when they were Greenwood Park. He didn't share the (limited) income from Grosvenor Way, nor its proceeds when it was sold. He admitted historical cannabis use. Such concessions were made candidly. I believe that the overall manner in which he gave his evidence supports my assessment of the Applicant as a careful and honest witness who was doing his best to tell the truth without exaggeration.

My assessment of the Respondent's evidence

83. In contrast, I found the Respondent's evidence to be alarming and unconvincing in several important respects.

84. As noted above, the Respondent maintained that the parties did not cohabit until 2009. Of itself, this might be thought somewhat surprising (although, I accept, not necessarily wholly implausible) bearing in mind that the parties: (a) had been in a seemingly stable relationship since about 2001; (b) had a son together, for whose upbringing both took responsibility, in 2005. But there is more. In her statement, paragraph 2 [B9] the Respondent said that the parties did not live together at 76 Greenwood Park. Paragraph 3 [B10] then went on, "Our relationship continued although *at no stage did we live together*." Her position was unequivocal and unqualified. No doubt for this reason the

Respondent's counsel invited her to correct paragraph 3 before she adopted her statement as her evidence. She then confirmed that the parties had in fact lived together from February 2009 to December 2015. This seems to be a marked change of position from that which would be understood from her statement as drafted and signed, although the Respondent maintained that paragraph 3 was referring only to the time at the Greenwood Park property. Whilst I consider that there is something in that observation, given the position of paragraph 3 in the overall chronological narrative of the account in the statement, it is nonetheless: (a) telling that her counsel saw fit to invite her to correct (not augment) her statement, suggesting that he did not believe paragraph 3 to have the meaning suggested by the Respondent; (b) remarkable that nowhere in the written statement does the Respondent acknowledge that the parties ever cohabited. This casts doubt on the integrity of her evidence on this score.

85. Moreover, even the revised, current account of the Respondent is manifestly at odds with that in the letter of objection dated 20 April 2016. [A19] That contains the following:

> "Mrs Jervis owned 76 Greenwood Park, Hednesford; Mr Whitehouse owned a property in Dudley ...; they formed a relationship and Mr Whitehouse moved into my client's property in 2001 or 2002. I am instructed that Mr Whitehouse's property was in need of substantial repair, and while he carried out repairs, he let the Dudley property to his cousin. He paid nothing to my Client, when they lived together at 76 Greenwood Park."
>
> ...
>
> "I am instructed that Mr Whitehouse left his own property in Dudley and moved in with my client in about 2002. He rented his own property in Dudley to his cousin ..."

86. Faced with this the Respondent said that her former solicitor, Mr Beaman, had a brain tumour and had got confused; it was not the account she had given him. She said that she had told him they didn't live together at Greenwood Park; she had merely said that the Applicant spent some nights there. Mr Beaman had, she said, misunderstood her. Although it appears that Mr Beaman unfortunately did (at least later) have cancer, I reject utterly the idea that he got the wrong end of the stick and "misinterpreted" matters, as the Respondent would have it. The letter of objection is clear. Moreover, it was not suggested by the Respondent that she had ever sought to have the alleged mistakes corrected, and no erratum has been identified.

87. I find that the Respondent told Mr Beaman what is recorded in the letter, and that she subsequently denied the cohabitation in a lie designed to try to paint the impression of there being distance between the parties at the time of the purchase of the property in 2009, and thus to enhance her denial of the property being acquired on a shared basis.

88. On another issue touching on the nature of the parties' relationship, in cross-examination of the Applicant it was suggested that the Respondent had not allowed him to move into Greenwood Park with Leon because he smoked cannabis. The Applicant frankly admitted having used the drug in the past but he denied the issue ever having been a factor impinging on the parties' living arrangements. It is noteworthy that the Respondent herself did not allude to this supposed reason in her written material. At the hearing she said that the point had been omitted therefrom because her solicitor had not considered it to be relevant. She claimed that the Applicant had not been allowed to look after their son (by her) because he was a cannabis user and that, even though the couple lived together and worked shifts, she couldn't trust him to look after Leon when she was not there; the task was, she said, entrusted to both sets of grandparents.

89. In view of their relationship (and, as I have found, cohabitation) I consider it fanciful of the Respondent to suggest that the Applicant was not permitted by her to look after their child. I also do not believe that she told her solicitor this. Given that the statement is at pains to state that the parties did not cohabit, I find it incredible that a solicitor would not have included the reasons for that, if the same had been advanced by the client. I regard the point as one invented by the Respondent, again presumably to paint a picture of the parties not being especially close at the relevant time.

90. Next in sequence is the Respondent's assertion that the Applicant never visited the property, and knew nothing of note about it, before its purchase. The Applicant spoke with considerable knowledge of, and in considerable detail about, such matters, and in my judgment he did not concoct the account. Moreover, I find it wholly inconceivable that, with the parties in a longstanding and committed relationship and (as I have found) cohabiting at 76 Greenwood Park, the Respondent would not have discussed the intended move with the Applicant beforehand. Likewise, the idea that he would have seen the (substitute) property (his new residence) only after the event (the purchase/move) is risible, even if the property was to be the Respondent's alone (and even if, on the her case, the Applicant only stayed some weekends at Greenwood Park); this is not how

couples in a long-term stable relationship (as I find the parties to have been) operate in such situations.

91. What of the 'gift' of the £25,000? Here, the Respondent has what at first blush seems to be an array of documentation to substantiate her case, and contradict that of the Applicant. But on examination the documentation poses more questions than it answers.

92. There is plainly no doubt that the Respondent told Walker & Co that the Applicant was gifting her money towards the purchase of the property, and that Walker & Co believed that and acted on such basis – and I bear this in mind. However, although that is *consistent* with the money indeed having been a gift, it is not necessarily *probative* of it. It is quite possible that the Respondent was telling her solicitors and the Woolwich what suited her, so that they would not have doubts about her ability to service the mortgage.

93. The key question is whether the Respondent's instructions to Walker & Co actually reflected the true position *vis-à-vis* the Applicant and the basis on which he was advancing the money to her. In this regard serious issues arise.

94. One issue is that the documentation consistently refers to the sum being advanced as £26,300. This is not the £25,000 to which the Respondent speaks in her statement (paragraphs 7 & 9) [[B10/11] and to which she (and the Applicant too) spoke orally. Nor is it what she actually accepted from him at the time (after partial repayment of the legal fees). No explanation for the discrepancy between the documentation and the agreement has been advanced. I note that the letter of 19 April 2016 [B18] refers to a conversation with a secretary regarding a "gift of £25,000" but: (a) this letter is years after the event; (b) no copy of the case management system record of such a conversation has been produced by the Respondent; (c) it does not explain, and is not consistent with, the contemporaneous documentation. In the circumstances I attach little weight to it.

95. Another is that there is no independent evidence that the Applicant ever received the letter of 20 January 2009 [B15]. Given that it was addressed to 32 Grosvenor Way and that (although that was indeed his official address for post, and where for instance he paid council tax) the Applicant lived full-time at 76 Greenwood Park, with his cousin living at Grosvenor Way, the Applicant's denial of receipt is plainly plausible.

96. The Respondent says in her statement (paragraph 10) that the letter of 19 April 2016 [B18] confirms that the letter of 20 January 2009 was sent to the Applicant. I do not agree. It does no more than confirm that a copy of the letter is saved on the system. I do not believe that the words "released to Mr Whitehouse" directly evidence posting or other transmission; they are apt simply to refer to the Applicant being the addressee. As the Respondent's counsel said in closing, [B18] is a gloss on the underlying events. In any event, even if the letter was sent, that does not constitute proof of receipt – and it is receipt that is material.

97. As for the Respondent's suggestion during her cross-examination that there is a separate, undisclosed letter confirming that the 20 January 2009 letter was sent, I find that incredible. No satisfactory explanation for the non-provision, and non-inclusion in the bundle, of this supposed document was given. The Respondent simply said that she had not seen the bundle before. This is no answer. I do not buy the suggestion.

98. A further point is that counsel for the Respondent was unable to explain how the draft declaration [B16] could in fact have accompanied the letter of 20 January 2009 [B15]. I raised with him the fact that the first line of the draft declaration reads, "We write further to our letter dated 09 February 2009." That is obviously a reference to the letter of that date [A22]. Yet as at 20 January, Walker & Co plainly could not have known that they were going to write to the Woolwich on that date (some 2-3 weeks in the future). This all points to the draft declaration at [B16] having come into existence no earlier than 9 February, and thus calls into question: (a) what accompanied the 20 January letter; (b) indeed, whether that letter was ever actually sent at the time. Counsel speculated about a soft copy of the declaration having been overwritten but, faced with the paucity of material and want of supporting evidence, his theories are, with respect, entirely conjectural. Surmise is not proof. The bottom line is that the actual document at [B16] simply could not have accompanied the letter at [B15], always assuming that the letter was in fact sent by the solicitors (as opposed to being a draft composed but never actually transmitted).

99. The foregoing also raises the question: if [B16] was not sent to the Applicant in January 2009, when (if ever) was it sent, and under cover of what? Again, there is a significant

blank. All that can be said is that the text of [B16], referring to the letter of 9 February [A22] and also including the request, "Please confirm the mortgage may now proceed unaltered", rather suggests that the Woolwich had responded to the 9 February letter (presumably no earlier than 11 February when it received the same) and had raised a query thereon. If so, the draft declaration – which seems to have sought to address concerns raised by the mortgagee – cannot have come into existence until that time.

100. A further point, of considerable importance, is that there is no copy of any declaration, signed by the Applicant, to hand. This is a case of Hamlet without the Prince, so to speak. I do not of course lose sight of the fact that the file of Walker & Co has been destroyed. However, I find it astonishing that a firm of solicitors would, in 2015, destroy an original signed declaration (if it held the same); that would smack of gross negligence. As Mr Beaman himself put it in the letter of objection, "It would be strange if an original document signed by Mr Whitehouse, would be disposed of …". [A20]

101. Aside from the absence of a signed declaration itself, there is more. Walker Solicitors' letter of 19 April 2016 [B18] confirms that the case management system does not record an attendance upon the parties (or either of them) in relation to the signing of the declaration. This negative does not positively demonstrate that a declaration was not signed but it manifestly casts real doubt on the matter. It all fits with the Applicant's evidence that he never attended the solicitors' offices for that purpose.

102. The Respondent's counsel placed weight on content of the 9 February letter. [A22] He submitted that no honest, prudent firm of solicitors would have written in the terms of that letter to the Woolwich, for whom the firm was acting, had the Applicant not made and signed a declaration of gift (to their knowledge). I do not agree. (1) The letter refers to the Respondent alone ("our client") having "called into the office"; no mention is made of the Applicant having attended. (2) The central passage, the second paragraph, can fairly be read as simply a report of the account provided by the Respondent herself; this is in line with the third paragraph ("we are required … to report the above"). (3) The letter does not refer to any signed declaration and neither does it purport to enclose the same. (4) I have alluded above to the fact that draft declaration at [B16] must have post-dated the 9 February letter. For these reasons I do not think there is anything in the submission.

103. What of the fact that the mortgage ultimately proceeded? The Respondent relied on that: see e.g. paragraph 11 of her statement. However, this is very far from determinative in the Respondent's favour. It might of course reflect the fact that the Applicant had signed the declaration of gift. However, it is also consistent with other events. In particular, it is readily conceivable that the Woolwich was satisfied with the Occupancy Form [A24] signed by the Applicant (and dated 11 February) and did not require anything else. After all, by that form the Applicant agreed to subordinate any interest he might have to that of the bank.

104. All in all, I find that on the balance of probabilities there was, as per the Applicant's evidence, never any signed declaration. I reject the Respondent's evidence that the Applicant saw and signed, in her presence and at the solicitors' office, any declaration of gift.

105. For completeness, I do not attach significance to the fact that the Respondent repaid some of the legal costs associated with the purchase. Both parties were agreed that the amount which the Applicant agreed to advance was £25,000. They merely differed as to its categorisation, i.e. whether it was a gift or not. The legal costs were additional to the £25,000 sum and did not impact on it.

106. Another unsatisfactory feature of the Respondent's evidence was in relation to the joint bank account, operated from 2013. Her statement said (paragraph 12) "the only sums paid into the joint account were £1,200.00 per month *by each of us*". [B11] It seems to me that this statement was written before she learned that the Applicant had sight of the joint statements. Questioned about her payments into the joint account over its three year active life, she maintained that she had indeed paid £1,200 pcm. She also denied that she had been unemployed for a period of months, as suggested by the Applicant. Yet analysis of the statements [Tab C] reveals, incontrovertibly, that: (a) she rarely paid £1,200 pcm, and certainly did not paid that on average; (b) over the 3 years, the Applicant paid in considerably more than the Respondent; (c) over a 7 month window spanning a period in 2014/15 (when, according to the Applicant the Respondent was out of work) she made no payments whatsoever.

107. The Respondent's riposte – not foreshadowed in her statement – was that her apparent under-payments and lack of contributions were justified and explained by her having deducted sums she had spent on the family from her own resources, although the only specific illustration she could give was of a family holiday to Mexico; she claimed to have spent £10,000 on that. She had no documents to substantiate that. But she said that was the arrangement the parties had. However, I consider that the Respondent conjured all this up during her evidence when her primary account was exposed to be unsustainable on review of the bank statements. I reject her testimony. The joint account statements show that most expenses of the nature that one would expect a family to incur were discharged therefrom; the notion that there was significant other expenditure paid from elsewhere is not obvious, at least in the absence of substantiation. Further, it strikes me that the total absence of payments by the Respondent for a prolonged period is best explained by the Respondent having been out of work, rather than her offsetting sums.

108. Also on the matter of finances, the Respondent said in paragraph 12 of her statement [B11] that the £1,200 paid into the joint account by the Applicant was "towards the household bills and for Leon's maintenance only." This is true in part, in that it is undoubtedly the case that the household bills were discharged out of the joint account. However, it is an incomplete picture. That picture is completed by the following sentence, "The Applicant did not pay any money towards to the mortgage or for improvements to the property". When questioned, the Respondent maintained that the Applicant "paid the household expenditure other than the mortgage". But that part of the story is distorted and misleading, if not downright wrong. The Applicant did not pay the mortgage directly from his own (sole) account, but it is certainly the case that the mortgage was paid monthly from the joint account, and hence indirectly by him (in part).

109. There is also the matter of the works undertaken at the property. As mentioned above, the Respondent brought forward copies (not originals) of invoices allegedly generated by Mr Clayton. The Applicant disputed the authenticity of the majority, claiming that he had undertaken the works in question. When cross-examined, he said that he believed the invoices are mostly forgeries.

110. All the invoices [B25-35] bear the words, "PAID IN FULL", written in manuscript diagonally (in a south-east direction) across the page, over the underlying printed text (the

description of the work allegedly undertaken). All also bear, at the foot of the page, the signature of Mr Clayton immediately above his printed name.

111. In cross-examination the Respondent said that the calligraphy is hers. She said that she wrote the same after she had paid each invoice and that Mr Clayton only signed the invoices to acknowledge receipt (i.e. confirm payment), not before (i.e. on issue of the invoice). I have to say that I do not believe a word of this. Common sense and experience suggests that if a builder is paid by a client and proceeds to issue a receipt, it is the builder who will himself endorse (using a stamp, or by his own handwriting) the invoice as paid; he will not leave the task to the client. Further, the signatures on the invoices, languishing as they do at the bottom of the documents, are wholly detached from the superadded words denoting receipt of payment. I consider that they are in no way acknowledgment of payment; they are simply authentication of the person issuing the invoice in the first place. In the circumstances I am satisfied that the disputed copy invoices are not genuine, and that they have been fabricated by the Respondent who has used some real documents as templates.

112. To this I add that although the Respondent claims to have spent £50,000 on improvements to the property (statement, paragraph 12 [B11]), she has failed to produce any evidence e.g. bank statements to evidence this claim. By the same token, there is no evidence of payment by her of the supposed (and contested) invoices. Although she received the Winterthur payment and, even if she received a substantial pay-out from the prison service, there is no clear evidence that such monies were actually used by her to defray expenditure on home improvements. As for the legal dispute with a neighbour she mentioned, I do not believe that any expenditure thereon can be classed as money "on improvements".

Overview

113. Accordingly, all in all I consider that the Respondent gave dishonest evidence. I do not accept her versions of the material events where those are in dispute. I accept the Applicant's account in all respects where the parties' accounts differ.

114. Therefore, concentrating on the principal matters, I find as follows:

(1) The parties started cohabiting in 2001 at 76 Greenwood Park. With the exception of a 6 month break, they continued to live together there until early 2009, when the property was purchased, at which time they both moved into the property. At all material times they lived together (from 2005 onwards with Leon) as a family.

(2) The Applicant paid money to the Respondent towards the running of 76 Greenwood Park. Whilst at Greenwood Park the Applicant also undertook DIY improvements.

(3) The Applicant visited the property at the time when the parties were considering its acquisition. He was fully aware of, and consulted in relation to, the purchase.

(4) The parties expressly discussed the intended purchase. The Respondent told the Applicant that she needed help to raise the £50,000. The Applicant agreed to provide half, i.e. £25,000. In this context it was agreed and understood by both that the purchase was an investment for them both. The Applicant did not offer the £25,000 as a gift, and it was not accepted, or understood by the Respondent, as such. Neither was the £25,000 was advanced or accepted as a loan. Also, the Respondent knew that the Applicant was borrowing to fund the provision of that sum.

(5) In the conversations they had in the run-up to the purchase the Respondent expressly and distinctly led the Applicant to believe that the property was to be shared, this entailing that (all other things being equal) he would be repaid (in some unspecified way) for both the £25,000 he was inputting into the purchase and the value of the work he would be undertaking to the property – in the broad sense that he could expect to recoup his investment down the line through, e.g. an uplift in the value of the property. Allied to this there was a consensus between the parties that the property was a shared project and joint venture.

(6) As a result of their conversations both parties understood and intended that the property would be shared – notwithstanding that the title (and the mortgage) would be in the sole name of the Respondent.

(7) The parties did not, however, distinctly discuss, still less agree, their respective shares; they did not quantify how the property was to be shared.

(8) The Applicant did not see or receive the [B15] letter and [B16] draft declaration, or any similar documents, indicating that he was allegedly gifting the money.

(9) The Applicant did not sign the [B16] declaration or anything to like effect.

(10) The Applicant signed only the Occupancy Form [A24]. This was signed not at the offices of Walker & Co but at Pelsall.

(11) After the purchase the Applicant continued to make payments to the Respondent. These were not limited to bills and maintenance for Leon. They included payments which went towards the mortgage.

(12) In reliance on the parties' agreement and understanding the Applicant: (a) provided the £25,000 (funded by the mortgage on Grosvenor Way which he alone discharged); (b) subsequently (during the time the parties lived together at the property) undertook the extensive work of renovation and improvement to the property itemised in the list at [B8]; (c) provided finance to the Respondent (as above) and from 2013 contributed to the joint account, paying (in round terms) a contribution of £1,200 pcm which went, in part, to discharge the monthly mortgage instalments for the property.

(13) The Respondent was unemployed, and did not pay any money into the joint account, for a c.7 month window spanning part of 2014/15. Unlike the Applicant, over the 3 year life of the joint account the Respondent did not routinely pay an average of £1,200 pcm into the joint account; she paid considerably less than he did.

(14) The Respondent did not pay for, or cause Mr Clayton to undertake, most of the works which are the subject of the purported invoices at [B25-35]. With the exception of those invoices which are undisputed by the Applicant, the remainder of the works were in fact carried out by the Applicant himself.

The result

115. In the light of my findings of fact, I conclude that the Applicant has established his CICT case. Before its acquisition the parties expressly agreed that the property would be shared. The Applicant acted in reliance and to his detriment on the basis of the express agreement, an understanding common to the parties. That is a classic situation in which a constructive trust arises. It would in the circumstances be manifestly unconscionable for the Respondent to deny the Applicant a share in the property.

116. Given that I have found that there was express agreement that the property be shared, the question whether an agreement to share the property should be inferred from the parties' conduct does not arise. However, for completeness I record that, had it done, in all the circumstances of the case I would (despite the heavy onus on the Applicant to displace the presumption which flows from the title being in the sole name of the Respondent) have drawn such an inference from the parties' dealings in relation at large

and specifically those in relation to the property itself. To my mind, the investment of £25,000 into the property – a direct contribution to the purchase price – coupled with the ensuing payments towards the mortgage and the Applicant's significant investment of time into the improvement of the property are, in particular, ample foundation for such inference, considered in the context of the case as a whole.

117. In this regard I acknowledge that this was not a cohabitation in which the parties unreservedly threw their lots together into one. Each retained their own bank account. The pooling of resources was extensive but nonetheless curtailed. The Applicant retained his own property, which was treated as such. The Respondent bore sole legal responsibility for the mortgage on the property. Nevertheless, I am satisfied that (absent express agreement) it would be appropriate to draw the inference that the parties intended to share the property to some degree.

118. The existence of a CICT means that it is appropriate for the restriction sought by the Applicant to be entered on the register of title. Consequently, I shall direct the Chief Land Registrar to give effect to the Applicant's application in whole, as if the Respondent's objection thereto had not been made.

Quantification

119. Both parties invited me, in the event that I were to uphold the Applicant's claim (as I have done), to determine the shares in which the property is held between them. Understandably, neither is anxious for there to be a separate round of proceedings in a different forum in which much the same evidence as I have heard will need to be considered afresh to resolve the issue of quantification.

120. The Applicant (rightly to my mind) does not claim an equal share in the property. For the Applicant it was submitted that his share should be quantified at 21.43%. This represents the aggregate of (i) the £25,000 deposit he paid and (ii) one-half of the additional £25,000 borrowed by the Respondent towards the repayment of which the Applicant contributed (e.g. through the joint account) – a total of £37,500 – expressed as a percentage of the purchase price of the property (£175,000). No express claim was made for the value of the Applicant's works, despite the extent thereof and the fact that the Applicant said that he had anticipated the same greatly increasing the property's

value. On this basis I was invited to impute to the parties an intention that they hold the property on this basis, leaving the Respondent with a 78.57% slice of the equity.

121. The Respondent, denying that the Applicant has any share at all in the property, did not volunteer a suggested split in the event that I found in favour of the Applicant. Moreover, the Respondent invited me to adjourn consideration of the issue of quantification. It was submitted that the Respondent's solicitor had not appreciated that the question of shares might be determined by the Tribunal and that consequently the Respondent had not adduced evidence relating to all her alleged investment in the property etc., and its impact on value, which considerations might bear on the division of the equity. Further, in evidence the Respondent said that she had only submitted invoices referable to particular works identified in the Applicant's statement [B8] (and although I have disregarded many of those invoices as fictitious I do not know what else there may be out there). Also her counsel made the point that the pleaded case had centred on a resulting trust, the thrust of the Applicant's case only having (clearly) changed on receipt of the Respondent's skeleton argument; this, he said, made it understandable that matters of quantification had not been addressed in detail previously.

122. I consider the preceding points to be fairly made, and I did not understand the Applicant to dissent from the adjournment request. In the circumstances I do not proceed to make any findings as to the shares in which the property is held. Moreover, I am not convinced that it would have been open to me to do so in any event.

123. The problem for the parties is that, having concluded that a CICT exists, I am bound to direct the Chief Land Registrar as above. Having done so, my role – to determine the referred application for a restriction – is (save in relation to costs) exhausted; I am *functus officio.*

124. I do not consider that in the circumstances I have any jurisdiction in the future to determine the extent of the parties' beneficial shares in the property under the CICT. The Tribunal is a creation of statute and its remit is constrained by the applicable legislation; it has no inherent jurisdiction.

125. In this regard I bear in mind the decision of Morgan J in *Inhenagwa v Onyeneho* [2017] EWHC 1971 (Ch). From that I extract the following propositions:

(1) An issue estoppel can only arise if there is a decision of tribunal acting within its jurisdiction. [39]

(2) The jurisdiction of the Tribunal is on "the matter" referred under s.73(7) of the Land Registration Act 2002, although the function of the Tribunal in that respect will depend on the context. [41-46]

(3) Before a decision can give rise to an issue estoppel, the decision must be necessary to the relevant decision. [47-49]

(4) The Tribunal's jurisdiction is to determine the issues which go to the merits of the dispute in relation to the matter referred for determination, not the merits of other disputes between the same parties, even disputes relating to the same title, if those disputes are different from the dispute in relation to the matter referred for determination. [62]

(5) Although a tribunal may make findings on matters where those findings throw light on the findings necessary to determine the dispute in relation to the matter referred for determination, if findings are made which are not ultimate findings, as distinct from evidentiary findings, they will not give rise to an issue estoppel, and the parties will not be bound by them in subsequent litigation. [57-62].

126. In the circumstances of this case:

(1) The matter referred for my determination is whether or not the restriction should be entered on the register.

(2) To determine the matter, it is necessary to decide (as I have done) whether a trust exists in favour of the Applicant, i.e. whether he has a beneficial interest in the property.

(3) It is, however, not necessary to quantify that interest in order to determine the matter.

(4) Hence if I were now to proceed to do so, not only would I lack jurisdiction but also my decision and findings as to the parties' shares would not bind the parties; the exercise would thus be an idle one.

127. Consequently, if the parties cannot agree the shares, they will need to resort to a different forum for resolution of the issue of quantification.

Costs

128. In this Tribunal costs generally follow the event. Accordingly, I am provisionally minded to order that the Respondent do pay the Applicant's costs, subject to any representations which the parties may wish to make in relation to costs. Any such representations should be made within 2 weeks, copied to the other party. If a party seeks costs, it must also file and serve a schedule of costs in form N260 (or similar) at the same time. Any counter-representations must be made within 4 weeks from today. After then I shall make my decision in relation to costs. The parties are referred to the accompanying Order in this regard.

Disposition

129. I uphold the Applicant's CICT claim and shall direct the Chief Land Registrar to give effect to the referred application for the entry of a restriction on the title to the property as if the Respondent's objection thereto had not been made.

Martin Dray

Judge Martin Dray

Dated this 23rd day of October 2017

BY ORDER OF THE TRIBUNAL