HENMANS LLP

Family law update

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Jones V Kernott – A 2011 Ruling for unmarried couples

The Supreme Court has now given judgment in a landmark case for cohabitees concerning jointly-owned property, *Jones v Kernott [2011] UKSC 53*.

Ms Jones and Mr Kernott purchased their home in 1985 for £30,000. The property was purchased in their joint names; Ms Jones provided a deposit of £6,000. They did not record anything to suggest that the property should be held any differently than 50/50 between them.

Mr Kernott and Ms Jones lived together at the property and had two children before Mr Kernott left in 1993. It was not in dispute that when they separated they each owned 50% so if the property had been sold then the sale proceeds would have been divided equally between them. It was not, however, until 2007 (14 years later) that they came to look again at who owned what share of the house. During the 14 years, Ms Jones alone had paid the mortgage and looked after the children, with no contribution from Mr Kernott.

In 2007, Ms Jones brought a claim under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996 seeking a declaration about who owned what share in the house. She argued that she was entitled to 100% because since Mr Kernott left the property in 1993, he had not contributed to the mortgage or upkeep of the property. Mr Kernott argued that he still had a 50% interest in the property because it had always been held in joint names. By 2008 the property was worth £245,000.

Had they been married, the courts would have had jurisdiction to decide what share each of them was properly entitled to in divorce proceedings. A court could have examined each party's needs and arrived at a result which addressed these needs. As cohabitees, the court did not have the same power.

The first court to hear this case was the County Court. The Judge in that case noted that the house was first purchased to set up a family home. It was bought in joint names and a presumption arose that they intended to jointly share the beneficial ownership of the property as well. Up until 1993 there was no evidence to rebute that presumption. Ms Jones claimed, however, that in the 14 years that followed, there was evidence that their common intention had changed. The Judge agreed with Ms Jones and held that their common intention had indeed changed. In reliance upon the decision of the House of Lords *Stack v Dowden [2007] UKHL 17*, he held that once the initial presumption of joint beneficial ownership is displaced and there is no further clear evidence as to the division of shares in the property it falls upon the court to infer or impute an intention to the parties' as to the division of the property that they, as reasonable and fair people, would have intended. The Judge decided that Mr Kernott was entitled to only a 10% share.

Mr Kernott was not happy with that decision and appealed to the High Court arguing that it was wrong for the court to infer or impute a change of common intention and that it had also been wrong for the Judge to substitute a division that he considered to be fair as between the parties. Mr Nicholas Straus, QC sitting as a High Court Judge dismissed his appeal. Mr Kernott appealed to the Court of Appeal which, by a majority, allowed his appeal.

Ms Jones then brought the matter before the Supreme Court who has now provided a unanimous decision which should help to clarify this area of law.

Lord Walker and Lady Hale in providing their judgements stated that the principal recognised in *Stack v Dowden* is that where people purchase a family home in their names, the presumption is that they intend to own the property jointly. The starting point is different in a case where the property is bought in the name of one party only but that was not the situation here.

The presumption of joint beneficial ownership arises because (i) purchasing property in joint names indicates an "emotional and economic commitment to a joint enterprise" and (ii) the practical difficulty of analysing respective contributions to the property over long periods of cohabitation.

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The presumption may be rebutted by evidence that it was not, or ceased to be, the common intention of the parties to hold the property jointly. This may more readily be shown where the parties did not share their financial resources. In the absence of clear evidence of intention, a question arises as to when the court can infer such intention and when the court can, instead, impute an intention. An inference is drawn where an actual intention is objectively deducted from the dealings of the parties, an imputation is one attributed to the parties by the court. The search is primarily to ascertain the parties' actual intentions, expressed or inferred but if it clear that the beneficial interests are shared but impossible to infer a common intention as to the proportions in which they are shared, the court will have to impute an intention to them which they may never have had.

We now have some clear guidance about the principles which will be applied in cases such as this. The starting point, where a family home is bought in joint names, is that the couple own the property as joint tenants in law and equity. That presumption can be displaced by evidence that their common intention was, in fact, different, either when the property was purchased or later. Common intention is to be objectively deduced (inferred) from the conduct and dealings between the parties. Where it is clear that they had a different intention at the outset or had changed their original intention, but it is not possible to infer an actual intention as to their respective shares, then the court is entitled to impute an intention that each is entitled to the share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

It is important to emphasise that each case will turn on its own facts, financial contributions are relevant that there are many other factors which may enable the court to decide what shares were either intended or fair.

The Supreme Court unanimously agreed that the original County Court judgment was correct and fair in all of the circumstances. Ms Jones was to hold an interest of 90% and Mr Kernott an interest of 10%. In essence the Supreme Court decided that the parties' intentions as to ownership had changed after their separation.

It is clear from this judgment that when unmarried couples buy a property together it is important to ensure that there is an express statement of how the property is to be shared between them. Here at Henmans LLP we can help couples prepare these agreements. We are also able to provide advice in relation to:

- Cohabitation Agreements
- The buying and selling of property
- The transfers of interest in property
- Disputes as to ownership

If you would like to discuss this article and/or any of the issues raised within it, please contact Rachael Oakes, Partner and Head of the Family Team on 01865 781181 or email rachael.oakes@henmansllp.co.uk. Alternatively, you can ask us questions via our LinkedIn discussion group at "Henmans LLP – the specialist family law advice team".

More about the family team:

The family practice team is led by Rachael Oakes and is highly ranked by both the Legal 500 and Chambers directories.

The team has considerable experience in dealing with all consequences of relationship breakdown and they often deal with complex cases involving businesses and trusts.

Their clients are from many walks of life, recommended by members of the legal and other professions, but most of all recommended by existing and previous clients who are testimony to the results we achieve.