Lexis®Nexis Case Summaries

Williams v Nilsson and another

[2021] EWHC 3184 (Ch), [2021] All ER (D) 27 (Dec)

The Administrative Court granted the appellant's applications for permission: (i) to appeal against the judge's decision to grant the respondents, who were her bankrupt ex-husband's trustees in bankruptcy, orders for possession and sale of the property she had owned with the bankrupt in order to realise the bankrupt's 50% interest in the property; and (ii) to rely upon new evidence (in the form of a transcript of a financial remedy hearing the appellant and the bankrupt) in support of that appeal. The court held that on balance, there had been an agreement made between the appellant and the bankrupt that any appreciation in the value of the property after he had moved out and before the property had been sold would belong to the appellant. In making that finding, significant weight was attached to the transcript which fully corroborated the appellant's claim of such an agreement being made.

Catchwords

BANKRUPTCY – BANKRUPT'S ESTATE – WHETHER TRUSTEES IN BANKRUPTCY HAVING INTEREST IN FORMER MATRIMONIAL HOME

Background

The appellant was married to W (the bankrupt) and they had a child together. In July 2004, they were registered as joint proprietors of the family home in Staffordshire (the property), which was subject to charges. Based upon a drive-by valuation of £245,000 to £260,000 as at December 2017, it was estimated that there was equity in the property of some £55,000 after allowing for costs of sale/redemption of the charges.

In September 2011, the appellant and the bankrupt separated with the bankrupt moving out of the property in January 2012. The appellant remained living at the property with their child, who was then aged 13. Having moved out, the bankrupt made no contributions towards the property including towards the mortgage payments. In June 2016, the bankrupt petitioned for divorce. In September 2016, the bankrupt was declared bankrupt on his own petition.

In December 2016, financial remedy proceedings were issued. A final hearing was listed before the district judge on 18 May 2017 (the FR hearing), which was not effective as a result of the Official Receiver not being in attendance or represented at that hearing such that the court was unable to make any property adjustment order in favour of the appellant. In August 2017, a final order was made by consent in the financial remedy proceedings which provided that there be a clean break in life and death with no order for costs.

In January 2018, the respondents were appointed as the bankrupt's trustees in bankruptcy. The respondents applied for orders for possession and sale of the property in order to realise the bankrupt's 50% interest in the property valued at some £28,000. The total sum estimated to clear the bankrupt's estate, including costs and expenses, was some £140,000 with the bankrupt's interest in the property being the only significant asset in his estate.

The application was opposed by the appellant. She claimed, among other things, that there had been no dispute over their home and it had been a simple agreement of beneficial interest when the bankrupt had moved out, as he had made it clear that he would not be contributing anything to the property and that she was going to have sole responsibility for the home and all payments. She contended that they had both agreed it was only fair that the appellant retain 100% beneficial interest from that point on. The house at that time had not warranted a sale as it had very little, if any, equity in it.

The respondents' application was granted. The consequential order provided for: (i) a declaration that the appellant and the respondents each had a 50% beneficial interest in the property; (ii) the property to be sold; and (iii) the appellant/bankrupt to deliver up vacant possession of the property.

The appellant applied for permission to appeal against the judge's order, relying on three grounds of appeal.

Issues and decisions

Whether the judge had erred in finding as a fact that there had been no agreement made in 2011 between the appellant and the bankrupt sufficient to establish either a common intention trust or a proprietary estoppel (Ground 1).

The appellant's primary submission in relation to Ground 1 was that had the transcript of the financial remedy hearing between the parties (the transcript) been before the judge, that evidence would probably have been conclusive in favour of the appellant's case, which led on to consider the question of whether the appellant should be allowed to rely upon the transcript in support of her appeal.

By virtue of CPR 52.21(2)(b), the appeal court had a discretion whether or not to receive evidence which had not been before the lower court. When determining whether to do so, the court should seek to give effect to the overriding objective of doing justice and, in doing so, attempt to strike a fair balance between the need for concluded litigation to be determinative of disputes and the desirability that the judicial process should achieve the right result. It had to be considered whether the evidence could have been obtained with reasonable diligence for use at the trial; whether the new evidence would have had an important influence on the result; and whether the evidence was apparently credible (see [20], [21] of the judgment).

On balance and notwithstanding the significant interests in fostering finality in litigation, it was just that permission be granted to the appellant to rely upon the transcript in accordance with the overriding objective and for the following primary reasons: (i) the importance of the case to the appellant; (ii) the lack of assistance/guidance given to the appellant as a litigant in person by the court at the multiple case management hearings as to what the appellant needed to do to ensure that the transcript was put in evidence and despite the appellant having flagged at an early stage of the proceedings and repeatedly thereafter the potential importance of the transcript to her case; (iii) the appellant having very good reason for not producing the transcript at trial in circumstances where she as a litigant in person was reasonably led to believe by court staff that she required, and indeed sought as a preliminary issue at trial, the permission of the judge to obtain the transcript; (iv) the transcript containing credible evidence that would have had an important influence on the central issue of whether or not there had been an agreement in 2011 as alleged by the appellant; and (v) the reception of new evidence on appeal usually led to a re-trial, which would necessarily result in further delay and expense, and so should usually only be allowed if imperative in the interests of justice: the present case was one of those rare cases where the appeal court could properly reverse a trial judge's finding of primary fact without the need of a re-trial and having regard to the pressing need for a proportionate solution to the proceedings (see [40] of the judgment).

On balance, there had been an agreement made between the appellant and the bankrupt that any appreciation in the value of the property after he had moved out and before the property had been sold would belong to the appellant. In making that finding, significant weight was attached to the transcript. Unlike in the present proceedings, the bankrupt had actively engaged with and participated in the Family Court proceedings and in which he had been under an absolute duty to provide full, frank and clear financial disclosure. The transcript fully corroborated the appellant's claim of such an agreement being made with the bankrupt in 2011. Further, such an agreement was entirely consistent with: (i) the appellant's and the bankrupt's expressed and shared intention not to 'disrupt' or 'unsettle' their daughter after they had separated and while she was still at school; and (ii) the appellant's and the bankrupt's undisputed dealings with the property post separation – the appellant had remained living in the property with their young child and had paid the mortgage instalments/outgoings without the bankrupt making any financial contribution or taking any steps for the property to be sold while their child was still at school (see [45] of the judgment).

Finally, the appellant had acted to her detriment (assuming sole responsibility for paying the mortgage instalments/outgoings) sufficient to give rise to a common intention constructive trust (see [46] of the judgment). Permission would be granted for the appellant to rely upon the transcript. Permission to appeal would be granted and the appeal would be allowed on Ground 1. Having allowed the appeal on Ground 1, it was not necessary to deal with Grounds 2 and 3 (see [47]-[49] of the judgment).

Transview Properties Ltd v City Site Properties Ltd [2009] EWCA Civ 1255, [2009] All ER (D) 255 (Nov) applied

National Guild of Removers & Storers Ltd v Bee Moved Ltd and others [2018] EWCA Civ 1302, [2018] All ER (D) 83 (Jun) applied

Staechelin and others v ACLBDD Holdings Ltd (a company incorporated in the Bailiwick of Jersey) and others [2019] EWCA Civ 817, [2019] 3 All ER 429, [2019] All ER (D) 111 (May) applied

Lykiardopulo v Lykiardopulo [2010] EWCA Civ 1315, [2011] 1 FCR 61, [2011] Fam Law 237, [2010] All ER (D) 225 (Nov) considered

Barton v Wright Hassall LLP [2018] UKSC 12, [2018] 3 All ER 487, [2018] 1 WLR 1119, [2018] All ER (D) 109 (Feb) considered

Judgment date
25 November 2021

Judge
Judge Richard Williams (sitting as a High Court judge)

Representation
Richard Power (Direct Public Access) for the appellant.
Andrew Brown (instructed by Irwin Mitchell LLP) for the respondents.