

## Arif v Anwar

### [2015] EWHC 124 (Fam)

26/01/2015

#### **Barristers**

Nicholas Fairbank

#### **Court**

Family Division

#### **Practice Areas**

Financial Remedies

#### **Summary**

In determining the beneficial ownership of a property as between a father and son where the son had contributed half the estimated value of the property to pay for refurbishment works, the court held that no constructive trust arose as to a 50 per cent share in the property because there was no agreement as to the precise extent of the son's entitlement. However, a proprietary estoppel arose in the son's favour since he had allowed money held in his name to be used in the belief that he would acquire some interest in the property, and he was entitled to a declaration as to the extent of that share.

#### **Facts**

In matrimonial proceedings, the court had to determine the beneficial ownership of the former matrimonial home as a preliminary issue.

The property in question, which was worth £1.75 million at the time of the instant hearing, had been registered to the claimant wife by a transfer dated November 26, 2001. In November 2003, the wife executed a declaration of trust of the whole property in favour of the first respondent husband. From June 2006 to June 2007, the second respondent (R), who was the husband's son from his first marriage, paid over £500,000 towards refurbishment works on the property. That sum was said to represent half the agreed value of the property at that time and, according to the husband, there was an agreement between himself and R that he would receive a 50 per cent beneficial share in the property in return. The sum was funded partly from the sale proceeds of a property which the husband had held in trust for R. In 2011, the husband asked the wife to transfer the property to himself and R. The draft transfer contained a declaration that the property would be held on trust for the husband. The wife refused to sign the transfer. She moved out of the property and petitioned for divorce. The husband declared bankruptcy. During disclosure, the husband produced a declaration of trust dated November 23, 2001 which recited that his late first wife had held the property on trust for the husband, who in turn gifted the entire beneficial ownership to R at the age of 21, until which time the property was to remain in the beneficial ownership of the husband. The husband claimed that that document had been in draft form only and was never intended to be implemented. The court had to determine whether there was sufficient in the

bankruptcy estate for some financial provision to be made for the wife. The issues included: (i) the effect of the 2001 declaration; (ii) whether an agreement was made in mid-2006 that R would have a half share in the property; and (iii) whether any proprietary estoppel arose in R's favour.

### Held

(1) If the 2001 declaration was valid, then its effect was conclusive irrespective of the fact that the husband had acted inconsistently with it. However, there were several factors which indicated that the document was probably not intended to have immediate effect and had only been prepared in readiness for possible implementation. Those factors included certain errors, the fact that it was not stamped or acted upon in any way, the fact that the husband immediately acted contrary to its terms by joining in a transfer to the wife, and the fact that it was not handed over to anyone until late 2010. Accordingly, the 2001 declaration was valid and had to be given legal effect (see paras 33, 36-37, 39 of judgment). (2) In order to change the position that the wife held the property upon a bare trust for the husband, there had to be an assignment by the husband of part of his equitable interest. The court could give effect to agreements made subsequent to the original acquisition which were capable of changing the entitlement. However, that principle could not be used to displace the principles otherwise applicable where there was a formal declaration of trust and the question arose whether the expressed beneficial interest had been effectively transferred to another party, Lloyds Bank Plc v Rosset [1991] 1 A.C. 107 distinguished. In the instant case, although there was some sort of understanding as to the shared occupation of the property, there was insufficient evidence that in mid-2006 a clear agreement had been reached between the husband and R that the latter should be entitled to a 50 per cent share in the property in return for the payment of £500,000. If there had been any such clear agreement, the form of transfer that the wife had been asked to sign in 2011 would have been incomprehensible. Although it was improbable that R had paid that money without expecting to acquire some sort of interest in the property, there was no agreement as to the precise extent of that entitlement. Therefore, no constructive trust arose as to 50 per cent of the property (paras 40, 42, 47-49, 55-58, 62). (3) R's contribution to the refurbishment gave rise to a proprietary estoppel in his favour since he had allowed money held in his name to be used in the belief that he would acquire some interest in the property. Based on evidence as to the origins of the sums paid, R was declared to have a 25 per cent share in the property in order to ensure that he suffered no detriment (paras 68-69, 96).

Preliminary issue determined

### Permission

Lawtel 

To read the judgment, please click [here](#).