

## N v N and F Trust

**[2006] 1 FLR 856**

16/12/2005

### **Barristers**

Kate Branigan QC

### **Court**

Family Division

### **Facts**

During the interlocutory stages of ancillary relief proceedings, the wife claimed that the matrimonial home was the subject of an ante-nuptial settlement, such that the court had the power to vary the terms of the settlement under s. 24(1)(c) of the Matrimonial Causes Act 1973. The property was purchased by a Bahamian company, all of the shares of which were owned by a trust, in respect of which the husband was one of the beneficiaries. The property had been purchased to be the matrimonial home. After 3 years of discussions the trustees granted an assured short-hold tenancy of the property to the husband and wife. The husband argued that the creation of the tenancy overrode the underlying trustee-beneficiary relationship. The wife argued that the property was bought in contemplation of marriage and, by its purchase, a licence to occupy it as the matrimonial home was indefinitely settled on the husband and wife. She further argued that the subsequent grant of the tenancy did not alter the fundamental relationship of trustee and beneficiary, which pre-existed the creation of the tenancy and continued to exist after it.

### **Held**

Held - declaring that the matrimonial home was subject to an ante-nuptial settlement -

(1) The question for the court to determine was what was the real substance of the arrangement that governed the property. The property was bought by the trustees during the parties' engagement and prior to their marriage. The intervening tenancy agreement did not alter the character or true relationship between the husband and the trustees. The creation of the tenancy agreement was more a matter of form than substance: it had been entered into primarily in order to satisfy the requirements of the mortgagee. The relationship between the husband and the trustees always continued to be one of trustee and beneficiary, rather than one of landlord and tenant. Accordingly, the arrangement constituted an ante-nuptial settlement (see paras [33 ]-[38 ]).

### **Permission**

Reproduced with kind permission from Justis 