



**PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**LAND REGISTRATION ACT 2002**

**REF No 2019/0066  
BETWEEN**

**MAGDALENA KRAWCZYNSKA**

**Applicant**

**and**

**MIECZYSLAW DOMINIK ROZUK**

**Respondent**

**Property: 10 Stickleton Close, Greenford, and Garage (UB6 9RQ)**

**Title number: MX475689**

**ORDER**

The Chief Land Registrar is ordered to give effect to the application dated 23 August 2018

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 30<sup>th</sup> day of January 2020**





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**Property: 10 Stickleton Close, Greenford, Middlesex**

**Title number: MXM475689**

**Before: Judge McAllister  
5<sup>th</sup> and 12<sup>th</sup> of December 2019**

**Representation: Mr Simon Hill of Counsel appeared on behalf of the Applicant; Mr Fiaz Hussain appeared on behalf of the Respondent**

**DECISION**

**Introduction**

1. The Applicant, Ms Krawczynska, and the Respondent, Mr Rozuk, were in a relationship between approximately December 2007 and July 2017. They lived together in rented accommodation between May 2008 and August 2013. Their child, Zofia, was born on 29 October 2009.

2. On 31 July 2013 the Respondent purchased 10 Stickleton Close, Greenford, Middlesex ('the Property') in his own name for the sum of £235,000.00. The deposit paid was £64,136.40. The balance was secured by a mortgage with the Halifax.
3. Ms Krawczynska left the Property in July 2017. Mr Rozuk continues to live there.
4. By an application to the Land Registry dated 3 October 2018 Ms Krawczynska applied to enter a restriction against the title of the Property in standard form II (to the effect that no disposition of the registered estate is to be registered without a certificate signed by the applicant for registration or their conveyancer that the written notice of the disposition had been given to her).
5. The grounds for the application, in outline, were that both she and Mr Rozuk contributed to the deposit (in her case approximately £25,000, the balance being paid by Mr Rozuk) and that, while Mr Rozuk made the mortgage payments, she paid for all the other outgoings, thereby giving her a beneficial interest in the Property either on the basis of a common intention constructive trust or by reason of proprietary estoppel.
6. Mr Rozuk's case denies that Ms Krawczynska has any beneficial interest. He claims that that he paid the entirety of the deposit, and while he accepts that Ms Krawczynska contributed to some of the monthly outgoings, he denies that these were intended to, or did, give her any interest in the Property.
7. The matter was referred to the Tribunal on 18 January 2019.
8. For the reasons set out below I will order the Chief Land Registrar to give effect to the application.

### **Relevant legal principles**

9. The starting point, as is well known, is that the beneficial interest in a property follows the legal title. The burden is therefore on the applicant to establish that she has an interest. In this case it is said that Ms Krawczynska's interest arises under a common intention constructive trust or by proprietary estoppel.
10. The scope and application of common intention trusts have been considered in a number of recent cases: *Oxley v Hiscock* [2004] EWCA Civ 546, *Stack v Dowden* [2007] 2 AC 432, *Jones v Kernott* [2012] 1 AC 776 and more recently *Dobson v Griffey* [2018] EWHC 1117.
11. The principles derived from these cases can be stated as follows. First, where a property is put into the name of one person only there is no presumption of joint

beneficial ownership even in those cases where the property is bought by a couple who intend to live in the property as a family home. Secondly, the person seeking a beneficial interest must adduce evidence from which it is possible to infer a common intention that each shall have an interest in the property. Thirdly, the common intention need not be communicated explicitly between the parties but may be inferred from conduct. Fourthly the best evidence of such an intention is a financial contribution referable to the purchase of the property. Fifthly, and in any event, the party seeking to establish a beneficial interest must have acted to his or her detriment, by making a financial contribution or carrying out substantial improvements to the property. A common intention by itself is not enough: it is the detrimental reliance which makes it unconscionable for the legal owner to resile from what would otherwise be an unenforceable agreement. Sixthly, the exercise of establishing as to what the parties intended is an objective one, having regard to all the relevant factors. Finally, once the common intention and the detrimental reliance are established, the next stage is the quantification of the claimant's share.

12. In short the essential elements of a common intention constructive trust are a) a common intention that the person claiming an interest should have a beneficial interest in the property and b) that this person acted to his or her detriment on the basis of that intention so that it would be inequitable for the legal owner to deny the claimant an interest.
13. In residential cases it has been held that a constructive trust, rather than a resulting trust, is more likely to arise even where the claimant has provided part of the purchase money at the time of purchase. But there may be instances where the trust is properly described as a resulting trust. The task is to search for the parties' true intentions in relation to the property, which may indicate either a constructive or a resulting trust (see *Marr v Collie* [2017] UKPC 17). In some cases a constructive trust may be indistinguishable from a presumed resulting trust, for example where the claimant's detrimental act consists of a contribution to the purchase and it is the intention of both parties that the interest should be commensurate to the contribution. Neither type of trust will arise, of course, if the contribution is by way of a gift or loan.
14. The alternative claim based on proprietary estoppel, though arguably conceptually distinct, will not, it seems to me, succeed if the primary claim fails. It is narrower in scope in that it requires a representation relating to rights and interests in land which was relied on to the detriment of the person receiving the representation.

## Jurisdiction of the Tribunal

15. The issue of the Tribunal's jurisdiction in cases where the application is for a restriction based on a claimed beneficial interest has been considered recently in two decisions.
16. The Tribunal's primary jurisdiction is to determine matters referred to it under section 73(7) of the Land Registration Act 2002. In a number of authorities the courts have held that 'the matter' is the substantive issue between the parties (see *Jayasinghe v Liyanage* [2010] 1 WLR 2106 and *Silkstone v Tatnall* [2012] 1 WLR 400)
17. A more restrictive view has recently been taken in relation to beneficial interest cases. In *Hallman v Harkins* [2019] UKUT 245 Martin Rodger QC held that the Tribunal's statutory jurisdiction is restricted to disposing of the application for a restriction. Once it is established that the applicant has some beneficial interest, it makes no difference to the disposal of the application what the extent of the interest is. At paragraph 74 of his decision he stated this: '*Where an objection to a restriction cannot be disposed of by agreement section 73(7) requires that the registrar must refer the matter to the FTT. The issue for the FTT is the same as for the Registrar, namely whether in light of the objection it is necessary or desirable to enter the restriction for any of the purposes mentioned in section 42(1). Again, no question of quantification necessarily arises in the determination of that question*'.
18. This decision was cited, with apparent approval, in *Wolloff v Patel* [2019] UKUT 333.
19. There will, of course, be many cases where the Tribunal can readily determine whether or not a beneficial interest has been established without the need to determine the amount. There will also be cases where, in order to determine whether or not an interest arises, the Tribunal will need to make specific findings of fact as to the intention of the parties and the contributions made by them. In such a case the question of quantification 'necessarily' arises.
20. It also follows, in my judgment, that where such findings are made the parties will be bound by them: the findings are necessary to the result of the proceedings. Or to put it another way, they are 'ultimate findings' and not 'evidentiary findings' (*Inhenagwa v Onyeneho* [2017] EWHC 1971).

## **Background and evidence**

21. Ms Krawczynska arrived in this country in December 2007 and worked in a nursing home in Hove. She met Mr Rozuk in December 2007 and moved into rented accommodation with him (36 Verulam Road, Greenford) in May 2008. In June 2008 her son, Damian, from another relationship, joined them from Poland.
22. In May 2013 Ms Krawczynska started a new job as a health care assistant at a care home in Greenford earning £21,000 per annum. She is still employed by the same company. At the relevant time Mr Rozuk was a lorry driver earning £35,000 to £40,000 per annum.
23. It is her case that the decision to buy a property jointly was made early in the relationship, sometime in 2008. The reason for the delay in purchasing a property was because they both wanted to live in a particular area of Greenford, and in particular in Stickleton Close. She was clear in her evidence that that the purchase of the Property was as a family home for herself, Mr Rozuk, and the two children. By the time of the purchase she and Mr Rozuk had been in a relationship for over 5 years and had lived together for just under 5 years.
24. Central to Ms Krawczynska's case is her claim relating to the part payment of the deposit. In her witness statement she stated that she sold her studio flat ('the Flat') in Poland for around £30,000 on 21 February 2013. This money was paid into her mother's Polish bank account, and from there, on 4 April 2014, to Mr Rozuk's Polish bank account. This money was ultimately transferred, on her case, to his Barclays Bank account and used to pay part of the deposit. Her evidence was that her mother wanted to help her purchase a property.
25. In cross examination Ms Krawczynska accepted that the Flat belonged to her mother but she said she treated it as hers, and stated that it was also hers in the sense of belonging to the family. It had belonged to her uncle who died in 1990, and he wanted it to be hers. She had lived there with her mother.
26. In response to the question why it was that the Property was not bought in joint names Ms Krawczynska stated that it was stupid of her to trust Mr Rozuk and not to protect her position. She was in love, and saw no reason to do otherwise. She never expected that they would end up in court. With the benefit of hindsight, she said, she should have been smarter. She recalls visiting a Polish broker before the purchase, but cannot remember whether she raised the question of being added as an owner. She added in

re-examination that she was told that broker said that it would be cheaper to obtain a mortgage in Mr Rozuk's name than to obtain a joint mortgage.

27. Mr Rozuk did not dispute that Ms Krawczynska paid the lion's share of the utilities, but not all, and not as much as £600 per month. Ms Krawczynska's evidence was that the agreed overall arrangement was that he would pay the mortgage and she would pay at least most of the bills. He refuted the idea that she was paying because she was to have an interest in the Property, and stated that her payments were simply contributions to the household expenses.
28. Counsel for Mr Rozuk relied on two facts to demonstrate Ms Krawczynska's lack of honesty generally. First, she accepted that she had signed her mother's witness statement in her mother's name. Secondly, she was fined £12,000 for claiming tax credit as a single person. As to the first point, Ms Krawczynska stated that she had not realised she was doing anything wrong and had been asked to sign the statement by her mother. As to the second point, she replied that she repaid £10,000 and paid £2,000 by way of a fine, and that she had been persuaded by Mr Rozuk to make the claim.
29. I heard evidence from Mrs Packowska, Ms Krawczynska's mother. Her evidence was not entirely clear, nor entirely consistent. She confirmed the truthfulness of her statement, even though it had been signed by her daughter. In the statement she stated the Flat belonged to her daughter and that she helped with the process of selling as her daughter was living in England at the time. The sale proceeds were paid into her account, and from there to Mr Rozuk's Polish bank account.
30. In cross examination she gave further details as to the ownership of the Flat. She stated that it had belonged to her daughter until she was 8 years old, and was then transferred into her daughter's uncle's name. The flat was then left to her daughter in his will. Mrs Packowska also stated that the money transferred to Mr Rozuk's account (114,988 sloti) on 4 April 2013 was her money, because she had sold the Flat. She said she wanted to be repaid because 'Mr Rozuk does not deserve to have it.' She asked him at the time of the transfer what would happen if Mr Rozuk and her daughter separated and he replied that there would be no problem; she would get it back. She asked his mother if she could trust him and she assured her that she could.
31. Mrs Packowska went on to say that she transferred the money so that they could buy the Property, and that she was not going to have a share. The Property belongs to Mr Rozuk but she felt her daughter had been swindled by him: she believed they would be

co-owners. Her aim now was for her daughter to recover the money to help her bring up her own daughter. She denied that she had transferred the money to his joint account for any other reason than to help with the purchase of the Property.

32. Mrs Packowska was pressed as to whether the money was a loan. She replied that it was, and that the money would be repaid if Mr Rozuk and her daughter split up. A loan, therefore, she said, only if their life together failed: if they continued to live together, it was not a loan. Mr Rozuk owned land in Poland which he could use to repay the money if necessary. She repeated her conversation with Mr Rozuk's mother, namely that she wanted reassurance that if Mr Rozuk and her daughter no longer lived together she would get her money back. The answer was clear: that is what she was told. The money was a loan but only if the partnership was successful. If her daughter does have a share in the Property she does not want the money back. The money was not in any way connected with land or properties owned by Mr Rozuk in Poland.
33. Mrs Packowska was clearly angry with Mr Rozuk, whom she accused of destroying his family and her family. She described his actions as 'low level', and referred to his drinking habit and his abusive behaviour.
34. I also heard from Damian, Ms Krawczynska's son. He was 8 when he came to live in this country, and 13 when the Property was purchased. I mean no disrespect when I say that his evidence as to what the parties intended in relation to the Property is of no weight. He confirmed, however, that Mr Rozuk drank frequently and was verbally abusive to his mother.
35. Mr Rozuk began his evidence by stating that he owns some 90 acres of land in Poland, which provides a profit of £40,000 per annum. He also owns a flat in Poland, having sold another in order to obtain the money needed for the deposit for the Property.
36. One flat was sold in July 2011. As I understand his evidence, the money from the sale was paid into his personal account in Poland, withdrawn in cash and paid into the joint account he held with his mother, and then transferred to his London account. It was his mother who, on his evidence, encouraged him to sell the flat or flats in Poland which were yielding a very low rent, and to buy in England. In his written evidence he claimed that he sold a flat in July 2013 for £30,000, but there is no documentary evidence of this.
37. He denied that Ms Krawczynska or her mother provided any money towards the purchase. The money for the deposit came from his Barclays account: £23,500 was paid on 8 July 2013 and £40,636.40 was paid on 26 July 2013. This sum was made up



as follows: £10,000 cash deposit on 15 April 2013; £5,684.40 transferred from an ISA; £5,500 cash deposit, and from a further £47,000 transferred on 16 July 2013 from a joint account with his mother in Poland. This money came at least in part from the sale of two flats owned by him in Poland.

38. At the hearing Mr Rolzuk accepted for the first time that 114,980 Zlotys were transferred from Mrs Packowska's account to an account held by him in Poland on 4 April 2013. There was no satisfactory explanation as to why he made this admission for the first time at trial. The explanation given was that he had forgotten about this transfer, and that his mother in Poland dealt with his affairs and managed his account.
39. It was also his case, as I understand it, that his mother took two separate sums of money from his and her joint account in Poland and paid them into the account into which 114,980 Zloty was also paid.
40. His case, however, is that the Flat was not Ms Krawczynska's but her mother's, and that the payment of the money was a loan to help with the upkeep of a farm owned by him in Poland. He stated that he would like to repay this money to her mother. He then described this money 'as a gift, but not a gift'.
41. Asked further in cross examination about the cash deposit of £15,500 (on his case used as part of the deposit for the Property) he stated that his brother sometimes lent him money. £10,000 was paid into his account on 15 April 2013, 11 days after Mrs Packowska had paid money into his Polish account. The second sum of £5,500.00 was paid into his account on 8 July 2013 and £47,000 (from the joint account with his mother in Poland) was paid to the same account on 16 July 2013.
42. As stated above, at the time of the purchase he was in full time employment as a lorry driver earning some £34,000 a year, with savings of £70,000 in the UK and Poland.
43. Mr Rozuk also accepts that £300.00 and £414.24 were paid by Ms Krawczynska's account to his. Her case is that the second payment was for ground rent, which is supported by an email from the landlord's agents. The second payment was a payment towards the mortgage (on her case) made on 2 November 2016 into his account at a time when his account was overdrawn. On 15 November he made the payment of £760.08 to the Halifax. Mr Rozuk did not accept that the payment of £300.00 was to help with the mortgage.
44. In conclusion he stated that it was always his intention to buy the Property in his own name only because he did not trust Ms Krawczynska.

## Submissions

45. Mr Hill for Ms Krawczynksa submitted that the necessary common intention that his client should have a beneficial interest is to be inferred from the discussions between the parties at the time of the purchase, and in any event from the financial contribution made by Ms Krawczynska.
46. As to the evidence of discussions, he referred to Ms Krawczynska's evidence that she and Mr Rozuk had decided to look for a property; that she went with him to the broker and only decided not to be named on the mortgage because of the better deal available to Mr Rozuk alone, and that the Property was described by her 'as our dream home'.
47. As to the financial contributions, Mr Hill relied on three payments. The first is the payment of £300.00 transferred from her account to Mr Rozuk's account on 2 November 2016 which, he says, was clearly used to pay the mortgage instalment on 15 November 2016. The first attempt to pay the instalment due on 1 November 2016 failed because of insufficient funds. The payment of £300.00 (together with other payments which had been made into Mr Rozuk's account) allowed the instalment to be met.
48. The second is the payment of £412.00 for the ground rent. It was a condition of the lease that this should be paid. If not paid, the lease was liable to be forfeited. Mr Hill asked rhetorically: if his client had no interest in the Property why did she pay this sum?
49. The third and the most important financial contribution was the payment of 114,000 Zloty (£25,000.00) into Mr Rozuk's account in Poland. Mr Rozuk only accepted on the first day of the hearing that this money had indeed been paid into his account. It is also clear from the details of another Polish bank account that £47,000 was transferred into his Barclays account on 16 July 2013. A further £15,000 was paid into his account here in cash.
50. The only evidence of a sale of a flat in Poland was the sale in July 2011. The overwhelming inference to be drawn from the above account is that the money paid by Mrs Packowska into his account was indeed used as part of the deposit. Mrs Packowska paid money into his joint account on 4 April 2013; on 19 April 2013 the estate agents dealing with the sale of the Property confirmed that his offer had been

accepted, and contracts were exchanged on 24 July 2013. Mr Rozuk's failure to accept that Mrs Packowska had paid any money into his account in April 2013 lends support to the submission that he was not telling the truth on this point. I should accept Mrs Packowska's evidence.

51. Mr Hill further submitted that the money paid by Mrs Packowska was not a gift, nor, properly analysed, can it be described as a loan. The recipient of the benefit of the money was Ms Krawczynska.
52. Mr Hussain emphasised the fact that Ms Krawczynska had not been truthful when she stated that the money came from the sale of her Flat, and whilst the evidence of Mrs Packowska was not entirely clear, she seemed to accept that the money was a loan, to be repaid to her in the event that the relationship between her daughter and Mr Rozak broke down. Mr Rozuk stated in evidence that he would pay this money back. In any event, he submitted that there is no evidence that the money paid into the joint account by Mrs Packowska was used to pay for the deposit on the Flat. The sum of £25,000 does not fit with the paper trail.
53. He further submitted that there is no credible evidence that there were any discussions between Ms Krawczynska and Mr Rozuk as to the joint ownership of the Property: the reference to the advice given by the broker (that the mortgage should be in his name only in order to get a better deal) was given for the first time in re-examination. If she or her family had contributed £25,000 it is extraordinary that no written record was kept of this large sum. In other words, he submitted, there is no good explanation as to why the Property was not in joint names.
54. Finally, in relation to the contributions made by Ms Krawczynska to the outgoings, the claim itself is exaggerated (she did not pay an average of £600 per month) but in any event any such contribution was for living expenses only and was not referable to the purchase of the Property. In evidence she accepted that she would be expected to contribute even if she did not have any share in the Property. As for the two payments of £300.00 and £414.42 these are ad hoc, one off payments, which do not make any pattern or indicate any course of conduct from which it can be inferred that she has a beneficial interest. Ms Krawczynska's evidence was in any event seriously undermined by her willingness to sign her mother's statement, and the evidence relating to her fraudulent claim for tax credits.

## Conclusion

55. I do not accept Ms Krawczynska's evidence that there were discussions between her and Mr Rozuk to the effect that the Property would be held jointly, save in so far as such an intention arises from the payment of the deposit, which I deal with below. Her evidence on this point is weak, and to a large extent is based on claim made only in cross examination that she was advised against having a joint mortgage by a broker. The description of the Property as a 'dream home' is not in itself in any way probative of any discussions as to joint ownership. Moreover, the fact that the parties had been in a relationship for a number of years, and had a child together, does not assist Ms Krawczynska.
56. I accept that two payments were made which were, in a strict sense, referable to the purchase of the Property. I accept that £300.00 was paid into Ms Rozuk's account by Ms Krawczynska and that this helped pay one mortgage instalment. I also accept that on one occasion Ms Krawczynska paid the ground rent on the Property.
57. However, I agree with Mr Hussain that neither of these payments give rise, without more, to a beneficial interest claim. I do not accept the submission that any payment, however small, referable to the purchase of the Property directly or indirectly can of itself be evidence of a common intention constructive trust. These payments, in my judgment, were made simply to tide over the family finances, and have no more significance than the payments made towards food or utilities.
58. Nor do I accept that any interest arises by reason of the contributions made by Ms Krawczynska to the household expenses. In the absence of an express agreement, in the sense of 'express discussions between the partners, however imperfectly remembered and however imprecise the terms might have been' (*Lloyds Bank v Rosset* [1991] 1 A.C 107 at 132), there can be resulting trust in respect of such indirect contributions, and a common intention will not necessarily be inferred. In this case, Ms Krawczynska accepted that she would have contributed in any event to household expenses even if she had no interest in the Property. I should also add that Mr Hill did not press the point that a beneficial interest had arisen by virtue of her contributions to the household expenses.

59. This leaves the issue of the alleged payment towards the deposit. The exact figure in issue is 114,988 Polish Zloty (which has been variously converted to £25,000 or £22,000 in the course of the hearing). I am satisfied on the evidence that this sum was paid into Mr Rozuk's account by Mrs Packowska from the sale of the Flat for the purpose of assisting in the purchase of the Property. Mr Rozuk's evidence on this point was in every respect unconvincing. He only accepted on the day of the trial that the money had come from Ms Krawczynska's mother, and then attempted to explain it away by reference to an alleged loan towards other interests of his in Poland. The evidence relating to the payment of monies into his English account (from which the deposit was paid) is not inconsistent with the claim that part of the monies received from Poland came from this source.
60. I found Mrs Patrowksa to be a believable and honest witness, doing her best in what was clearly a very stressful situation for her, having to deal with the added difficulty of giving her evidence through an interpreter. This money was not paid in respect of any loan involving properties or assets in Poland, but was to be used, and was used, to help with the purchase of the Property for the benefit of her daughter and grandson. I do not accept therefore that the payment of the deposit was entirely from Mr Rozuk's funds.
61. I am also satisfied that the money was not in the nature of a loan or a gift. I make due allowance for Mrs Packowska's difficulties with the English language, and, I suspect, for the lack of familiarity with English property law. It was not a loan to Mr Rozuk because, as she stated, she would not have expected any repayment if the relationship had survived, and it was not a gift to Mr Rozak because, as she stated, she believed her daughter and he would be co-owners, and because she was adamant that Mr Rozuk should not keep the benefit of this money. In any event, from her evidence and that of her daughter, I am not satisfied that Mrs Packowska could have a separate claim to this money. The evidence as to the ownership of the Flat was not entirely clear but it seems to have been a family asset, and it was her evidence that Ms Krawczynska's uncle had left it to Ms Krawczynska in his will.
62. In my judgment the money advanced by Mrs Packowska towards the purchase of the Property gives rise to either a resulting trust or a constructive trust where the intention held by both parties was that Ms Krawczynska should have an interest commensurate with that contribution, giving her, therefore, a proportionate share in the equity. This

intention is not negated by the fact that I have found that there was no intention that Ms Krawczynska should have a beneficial interest arising in any other way.

63. I will accordingly order the Chief Land Registrar to give effect to the application.

64. In principle, as the successful party, Ms Krawczynska is entitled to her costs. A schedule in Form N260 is to be filed and served within 14 days of receipt of this judgment. Mr Rozuk may then respond within a further 14 days. I will then consider what order to make.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 30<sup>th</sup> day of January 2020**

