



# PUMP COURT

CHAMBERS

TLATA – when does a contribution give rise to a proprietary interest?

**Mark Dubbery**



## Co-habitation and Tolata Claims

In the face of judicial inconsistency, when does a contribution give rise to a proprietary interest under TOLATA, and how do you get your case over the line?

# Warren J In Thomson v Humphrey

“Accepting that matters have moved on since Lord Bridge’s restrictive requirements that there needs to be a direct contribution in terms of the mortgage payments, it is not sensible to attempt to say what will and will not be enough”

# The ambit of this talk

1. A review of fundamentals.
2. Recent cases touching on no contribution/detriment.
3. Key cases on contributions.
4. Short comment on equitable accounting/occupation rent.
5. A brief consideration of proposed legislative reform.

# Fundamentals

The 1996 act offers no assistance in determining the extent of a party's interest. That will be determined by the common law rules applicable to constructive and resulting trusts (although the ambit of the latter has been reduced to something of a sideshow by the Privy Council's decision in **Marr v Collie [2017] UKPC 17**).

The Starting point in a sole names case is still the decision of the House of Lords in **Lloyds Bank v Rosset [1991] 1 A.C. 107** (although there is some debate about the limited application of "limb two" cases). In a joint names case the law is as per **Stack v Dowden [2007] UKHL 17** read together with the decision of the Supreme Court in **Jones v Kernott [2011] UKSC 53**.

It is a mistake to assume that these jurisdictions will provide provide relief in any case. A careful consideration of the conveyancing file should be the first port of call.

An express declaration of trust in TR1 or otherwise is conclusive unless set aside or rectified or displaced by subsequent agreement (**Pankhania v Chandegra [2012] EWCA 1438, Stack v Dowden [2007] UKHL 17**).

The severance of a beneficial joint tenancy will always automatically give rise to a tenancy in common in equal shares (**Goodman v Gallant [1986] Fam 106**).

# Qualification v Quantification

- The Critical distinction that needs to be drawn in the analysis of any case is that between qualification and quantification.
- Qualification is usually takes as given in joint names cases and thus cases like Stack v Dowden are purely about quantification.
- In a sole name case one must establish the qualification as a pre-requisite.

## Joint names, calculating shares

- Stack v Dowden [2007] UKHL 17
- Jones v Kernott [2011] UKSC 53

The search is always for the parties' joint intention as to the extent of their shares.

BUT – what if there isn't a joint intention or one cannot find the joint intention?

Inference v Imputation.

## Stack v Dowden para. 69

- “In law, “*context is everything*” and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions.” **NB as to the extent of their shares.**
- But the principle is “divining the parties' true intentions” see also **Marr v Collie [2017] UKPC 17.**
- Contribution is nothing without intention (or agreement). In Limb 2 the contribution is EVIDENCE of the intention.

# “Context is everything”

- Possession Proceedings
- Bankruptcy Proceedings
- Adjunct to a 1975 Act claim
- Intervenor in Financial Remedies
- *Stack v Dowden*; *Jones v Kernott*

## Nilsson & Anor v Cynberg [2024] EWHC 2164 (Ch)

A property was purchased by a married couple subject to an express declaration of beneficial joint tenancy. The parties later agreed it was to be the wife's alone.

Held (*contra* **Re Iqbal [2024] EWHC 49**) that a subsequent common interest constructive trust was within the ambit of Baroness Hale's analysis in *Stack v Dowden* [2007] UKHL 17: “...*an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel*”.

# Lloyds Bank v Rosset [1991] 1 A.C. 107

Lord Bridge delivering the verdict of the court (contrast Pettitt [1970] AC 777 and Gissing [1971] AC 886).

Limb 1 cases – express agreement.

Qualification can still be challenging -agreement to share v agreement as to share and Stack v Dowden can still come into play.

Limb 2 cases – inferred agreement.

from direct contributions towards the purchase price or mortgage installments by the non-owner it being “extremely doubtful whether anything less will do”; *“The judge’s view that some of this work was work ‘upon which she could not reasonably have been expected to embark unless she was to have an interest in the house’ seems to me, with respect, quite untenable”*.

## Le Foe v Woolwich [2001] All ER (D) 325

- The Claimants contributions towards household expenses permitted the Defendant – the sole legal owner of the property to pay the mortgage. This probably offends against Lord Bridge’s formulation of limb 2 in Lloyds Bank v Rosset but can (arguably) be supported by earlier House of Lords authority (e.g. Lord Reid in **Gissing v Gissing [1971] AC 886**).
- Thus, it is probably unnecessary to say that the law has ‘moved on’ from Lloyds Bank v Rosset (per Baroness Hale in Stack v Dowden) it might be more accurate to say that Lord Bridge perhaps overstated how narrow limb 2 was. However, critics will point to the force of that judgement and to how Mrs Le Foe could make out her beneficial interest on other more orthodox grounds.

# No contribution?

## Hudson v Hathway [2022] EWCA Civ 1648

Lewison LJ:

*A party claiming a subsequent increase in her equitable share as a result of a post-acquisition changed common intention must show detrimental reliance on that changed common intention.*

Referring to **Guest v Guest [2022] UKSC 27** at para 10:

*...detriment is relevant to both the arising of the equity and to the remedy. Without reliant detriment there is simply no equity at all. This reflects the notion that it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise.*

# No contribution?

## Hudson v Hathway [2022] EWCA Civ 1648

Partner (later bankrupt) sent the following e-mails:

*Which leaves the house, a bad asset which is preventing all of us [from] .. moving on with our lives.... You know what, I want none of the proceeds of that either. Take it.*

*Under this arrangement, I've no interest whatsoever in the house, so whilst I will continue to contribute, I won't do so forever*

# No contribution?

## Hudson v Hathway [2022] EWCA Civ 1648

Those e-mails bearing the word “Lee” at their conclusion were “signed” for the purposes of s.53 (1)(a) and (c) of the LoPA 1925.

# No contribution?

## **Reid-Roberts & Anor. V Mei-Lin & Gudmundsson [2024] EWHC 759**

*Whats App messages do not conclude with the Bankrupt's name, but his name is in the header to the messages for the purpose of identifying the Bankrupt as the sender and authenticating the message as originating from him.*

Some question as to the quality of that authentication as it can be edited by the recipient. Maybe a call for expert evidence in an appropriate case.

# No contribution?

## Reid-Roberts & Anor. V Mei-Lin & Gudmundsson [2024] EWHC 759

**Xydhias v Xydhias [1999] All ER 386** *provides binding authority to the effect that whilst the parties to the divorce proceedings can engage in negotiations to resolve issues in relation to a property adjustment order, any agreement they reach will have to be approved by the judge having the conduct of the matter. It will then be recorded in the appropriate Court order.*

## **Per Guest v Guest [2022] UKSC 27:**

*The court has a flexible discretion to fashion a remedy which does justice in the circumstances of the particular case. But, in exercising this discretion, the aim is to award a remedy which does all that is necessary, but no more than is necessary, to prevent B from suffering detriment as a result of having relied on a promise of a gift of property which A no longer intends to make.*

# Sufficient Detriment

**Contrast: Parris v Williams [2008] EWCA Civ 1147; Graham-York v York & Ors, Leeds BS**

Detriment that was substantial in the sense of being more than trivial was sufficient to bind the promisor to his promise.

Whereas in Guest the discretionary remedy reduced the expectation loss from £1.3m to £610,000.

# Graham York v York & Ors.

- *The property was purchased in the sole name of Norton York in late 1982 for £55,000. It was purchased with the assistance of a mortgage loan of the order of £45,000 from Barclays Bank, as Miss Graham-York then knew. The mortgage deed is dated 15 October 1982.*
- *The judge accepted that during the period 1976–1985 Miss Graham-York worked and contributed her earnings to the joint expenditure of the home, first elsewhere and then, from 1985, at the property. The couple did not move into the property until 1985, but its purchase fell within this period. The judge found that Miss Graham-York's earnings from performances with Norton York's band and on her own account would have materially assisted in the purchase of the property.*

# Graham York. v York & Ors.

- No finding of an express agreement and no findings as to assurances alleged to have been given.
- *The judge expressly recorded her conclusion that “even if [Miss Graham-York] were telling the truth about her financial contribution during the 33 years of their cohabitation it does not amount to much”*
- *In the light of her findings the judge then proceeded to this **unchallenged** conclusion, at paragraph 41:— “Having found that her income did contribute to the family income before and at the time of the purchase of the property I can infer a common intention that she was to have a beneficial interest in the property [paragraph 61 Stack v Dowden referring to Oxley v Hiscox (sic)].”*

# Graham York. v York & Ors.

- *Thus it is irrelevant that it may be thought a “fair” outcome for a woman who has endured years of abusive conduct by her partner to be allotted a substantial interest in his property on his death. The plight of Miss Graham-York attracts sympathy, but it does not enable the court to redistribute property interests in a manner which right-minded people might think amounts to appropriate compensation. Miss Graham-York is “entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property” . It is these last words, which I have emphasised, which supply the confines of the enquiry as to fairness.*
- ***...the judge focused on the relevant consideration, which was the extent of Miss Graham-York's contribution, both financial and non-financial, in relation to the property which was their family home for many years.***

**NB this is “quantification” NOT “qualification”.**

# **Burns V Burns [1984] CH 317 CA**

*“performance of domestic duties and staying at home to look after the children, contribution to rates and certain utility bills and purchase of some fittings and fixtures and domestic chattels was insufficient to give rise to any interest”*

(Warren J in Thomson v Humphrey)

## **James v Thomas [2007] EWCA Civ 1212.**

- C worked (unpaid) in D's business.
- C contributed to costs of renovation and subsequent mortgage payments.
- Claim failed. There was no common intention to share the beneficial interest whether actual or to be inferred.

## **Morris v Morris [2008] EWCA Civ 257**

*Per Sir Peter Gibson:*

*‘...One looks in vain in the claimant’s evidence, whether by way of her witness statements or the evidence she gives orally, to find a clear statement that she herself had the belief or expectation that she was entitled to an interest in the land...’[23].*

*‘the court should be cautious before finding that the activities of a wife or a cohabitant can only be explained on the footing that she believes that she was acquiring an interest in land’ [25].*

## **Walsh v Singh [2009] EWHC 3219.**

- C claimed express representations had been made to share the beneficial interest equally after which she contributed (physically and legally) to works and gave up a promising legal career. The judge found that the representations had not been made.

## **Thompson v Humphrey [2009] EWHC 3576 (Ch).**

C gave up her employment and worked in D's business (albeit the Warren J found 'for two or three weeks early on').

*“Effectively she took on the role of what each of them described as a traditional wife... the defendant said to her that she did not need to worry about this, as he would look after her and the children. I accept that part of her evidence, whilst noting it says nothing about how he would carry out that commitment, let alone that it shows that she was to have an interest in the property”.*

## **Sandford v Oliver [2019] UKFTT 451**

- Makes the point that it is the intention underpinning an action that matters not the action per se.
- Renovations were not done *‘with any eye to increasing the home as a capital asset which he would ultimately share in, but because it would enhance his and his family’s standard of living’*
- The court was dismissive of expenditure on items such as Sky TV or the water bill in the context of a constructive trust claim.

# Occupation Rent

See TLATA s13(5) post Stack v Dowden

## **Ali v Khatib [2022] EWCA Civ 481**

Re: occupation rent in the context of administration of an estate.

Andrews LJ:

*The starting point in every case is that a co-owner in occupation is not obliged to pay occupation rent merely because he is living in the property and the co-owner is not.*

# Occupation Rent

## **Ali v Khatib [2022] EWCA Civ 481**

*Something more has to be shown which makes it just and equitable that he should pay that other owner for his use and occupation of the property – for example, that he is exploiting the property for his own financial gain, or that he has precluded the co-owner from exercising a right of occupation that he (or she) wished to exercise. The focus should therefore be on the behaviour of the person in occupation.*

# Proposed legislative Reform

The TLATA regime has been under sustained scrutiny for some considerable time.

- The 2011 Law Commission report: “Intestacy and Family Provision Claims on Death” addressed intestacy and family provision for cohabitees. It produced a draft bill and recommended *inter alia*:
  - (i) Provision on intestacy for unmarried partners who had lived together for five years;
  - (ii) Where the couple had a living child at the date of the deceased’s death this would be reduced to 2 years
  - (iii) S1(1)(ba) of the 1975 Act would be extended to all cohabitees who had a child together regardless of the length of that cohabitation.

# Proposed legislative Reform

The House of Commons Women and Equalities Committee supported those recommendations (and those of a previous 2007 report) in its own report: “The rights of cohabiting partners” (19 July 2022).

## Response

*“the Government is of the view that reform of inheritance and family provision rights for cohabitants needs to be considered as part of the wider approach to reform of the law on cohabitation rights, so that a consistent approach is taken.*

*...the Government intends to take a cautious approach in this area and would want to consult ahead of pursuing any reforms.”*

# Proposed legislative Reform

Labour manifesto 2024 contained a commitment:

*“...to strengthen the rights and protections of women in cohabiting relationships”.*

# Proposed Legislative Reform

## **Law Society Gazette 24<sup>th</sup> February 2025:**

*Reform of the law on cohabitation could come sooner than expected after the government confirmed it will consult on the issue this year.*

*Asked by the House of Commons justice select committee for a timetable on reform, Lord Ponsonby of Shulbrede, the minister in charge of family justice, marriage and divorce, said that a formal consultation will be issued this year ‘to build public consensus on what cohabitation reform should look like’.*

# Proposed legislative Reform

*The minister said the current government did not share the previous administration's view that cohabitation reform must wait until existing work on marriage and divorce law have concluded.*

*Family law group Resolution has previously said the current 'unfair' cohabitation laws consign too many families to misery and dire financial hardship.*

Thank you.