Neutral Citation Number: [2024] EWCA Civ 42

Case No: CA-2022-001457

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS IN WALES**
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**
**His Honour Judge Jarman KC (sitting as a Judge of the High Court)**
**[2022] EWHC 1717 (Ch)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 February 2024

**Before :**

**LADY JUSTICE KING**
**LADY JUSTICE ASPLIN**
and
**LORD JUSTICE NUGEE**

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**Between:**

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| **LLOYD DORIAN WILLIAMS** | **Claimant/ Appellant** |
| **- and -** | |
| **(1) GERWYN LLOYD WILLIAMS**<br>**(2) SUSAN ELIZABETH HAM**<br>**(3) SARA LLEWELLYN JONES and JOHN ALUN LLOYD**<br>**(as Executors and Administrators of LLOYD WILLIAMS deceased)** | **Defendants/ Respondents** |

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**Guy Adams** (instructed by **Redkite Law LLP**) appeared on behalf of the **Appellant**
**James Pearce-Smith** (instructed by **Michelmores LLP**) appeared on behalf of the **1st and 2nd Respondents**

Hearing date: 7 December 2023

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 1 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Nugee:**

*Introduction*

1. Mr Lloyd Dorian Williams, the Appellant, whom I will call **"Dorian"**, is one of the children of the late Mr Lloyd Williams (**"Mr Williams"**) and his wife Catherine (**"Mrs Williams"**). Mr Williams, who was born in 1921 and died in 2018 aged 97, first took on a tenancy of Cefn Coed Farm, a farm of some 140 acres near Neath in South Wales, in 1943 and farmed there for the rest of his life, initially as a sole trader but from 1985 in partnership with his wife and Dorian, who has himself farmed at Cefn Coed since leaving school at 16. In 1986 the freehold of Cefn Coed was acquired in the joint names of the three of them.

2. In 2021 Dorian brought an action against two of his siblings, Mr Gerwyn Williams (**"Gerwyn"**) and Mrs Susan Ham (**"Susan"**), and against the executors of his father's estate, asserting various claims in relation to the ownership of both Cefn Coed and of adjoining accommodation land at Crythan (of some 50 acres), which had been farmed together with Cefn Coed since about 1975, and had been acquired by his parents in 1985. The action was tried in Cardiff by HHJ Milwyn Jarman KC (then QC) (**"the Judge"**), sitting as a Judge of the High Court, in June 2022, and he handed down judgment on 4 July 2022 at [2022] EWHC 1717 (Ch) (**"the Judgment"**) dismissing these claims. As I have indicated I will refer, as the Judge did, to the parents as Mr and Mrs Williams and to their children by their given names, without of course thereby intending any disrespect.

3. This appeal concerns a single question, which is whether the freehold of Cefn Coed was acquired by Mr and Mrs Williams and Dorian for themselves as joint beneficial tenants or as beneficial tenants in common in equal shares. This was only one of the issues, and very much a subsidiary one, at trial. The Judge held that Cefn Coed was acquired by them as beneficial tenants in common.

4. Dorian appeals this issue with the permission of Lewison LJ and contends that the Judge should have held that Cefn Coed was acquired by them as beneficial joint tenants.

5. We heard interesting submissions from Mr Guy Adams on his behalf, and from Mr James Pearce-Smith on behalf of Gerwyn and Susan, who were the active Respondents to the appeal. For the reasons that follow, I prefer those of Mr James Pearce-Smith and would dismiss the appeal.

*Facts*

6. The Judge gave a full and careful account of the facts in the Judgment. For present purposes they can be summarised as follows.

7. Mr Williams was born in 1921. He initially farmed Cefn Coed as a tenant, it being let to him in 1943 by the owner, a Mr Rice Evans. In 1956 he married his wife Catherine. They had 4 children, Rhian (who was not a party to the proceedings), Gerwyn, Dorian and Susan, all born in the late 1950s and early 1960s. Dorian himself was born in August 1961.

8. From about 1975 Cefn Coed was farmed as a single unit with the adjoining accommodation land at Crythan. Mr Rice Evans died in 1978 and Mr Williams tried to buy Cefn Coed from the estate but was outbid, and the freehold was acquired by R J Huggard (Contractors) Ltd (**"Huggard"**) in 1979. In the early 1980s Huggard sought a substantial increase in the rent, and after arbitration the rent was increased from £100 to £1500. Huggard also served a significant schedule of dilapidations which had to be attended to.

9. In 1985 Mr Williams was able to buy Crythan. It was bought for £45,500 and by a conveyance dated 25 May 1985 conveyed into the joint names of Mr and Mrs Williams. Mr Williams was then in his mid-60s and his wife was some 10 years his junior. The land was unregistered and the conveyance contained an express declaration that the land was conveyed to them to hold as beneficial joint tenants.

10. At about the same time a partnership deed was entered into between Mr and Mrs Williams and Dorian in respect of a partnership called Lloyd Williams and Son (or L. Williams and Son) which was formed to take over the farming business formerly carried on by Mr Williams. The partnership deed is dated 1 April 1985 and provides that the partnership was deemed to commence on that date. In the absence of clear evidence to the contrary, the Judge held that it was likely that it was signed before Crythan was purchased. Dorian was then 23 and had been working full time on the farm since leaving school at 16, and has continued to do so since. The partnership deed provided that profits and losses should be divided and borne between his parents and himself in equal one-third shares.

11. In 1986 Cefn Coed was also bought, from Huggard. The purchase price was £40,000, the entirety of which was borrowed on mortgage from The Agricultural Mortgage Corporation plc (**"AMC"**), Mr and Mrs Williams having already used their cash savings to buy Crythan. The title had been registered at HM Land Registry in 1979, so the conveyance took the form of a transfer on the appropriate Land Registration form (which was Form 19(Co.) for the "Transfer of whole by a company or corporation"). The transfer was dated 3 March 1986 and transferred the land into the joint names of Mr and Mrs Williams and Dorian. It did not contain any express declaration as to whether the land was to be held by them beneficially as joint tenants or tenants in common, Form 19(Co.) not containing anything prompting one to do this, or indeed any obvious space for such a declaration. The form for an application to register dealings (Form A4) did contain a box (Box 8) asking in the case of a transfer or assent to joint owners:

> "Can the survivor of them give a valid receipt for capital money arising on a disposition of the land? *State yes or no in box*"

But it was in fact left blank.

12. Mr and Mrs Williams and Dorian also executed a legal charge in favour of AMC, again dated 3 March 1986, securing the sum of £40,000 repayable by instalments over 40 years at an initial interest rate of 14% per annum. The Judge found that it was not in dispute that because of the age of Mr and Mrs Williams it would have been difficult for them to obtain the mortgage by themselves and that Dorian was included because he was younger and thus acceptable to AMC.

13. The three of them were registered as proprietors at HM Land Registry on 1 April 1986. At the same time a restriction was entered in the familiar form, that is to say:

> "No disposition by one proprietor of the land (being the survivor of joint proprietors and not being a trust corporation) under which capital money arises is to be registered except under an Order of the registrar or of the Court."

I will refer to this as **"the capital money restriction"**.

14. Both Crythan and Cefn Coed were thereafter shown as assets on the accounts drawn up for the partnership. This formed the basis of Dorian's first claim at trial, which was that they were partnership assets and had "enured" to him alone after the deaths of his parents (his mother in 2013 and his father in 2018). But the Judge rejected this claim, accepting evidence from the partnership accountant that he had included the farms in the accounts without specific instructions to do so, and without having had any conversations about including them, and had done so in order to enhance the balance sheet value of the partnership so as to make it easier for the partners to apply for borrowing in the future if they ever needed to. The accounts were not signed by the partners, and it was not suggested that there was any express agreement by them that either farm would become partnership assets.

15. In those circumstances the Judge held that the inclusion of the farms in the partnership accounts was an indication that the parties intended that they should be partnership assets but not conclusive, and went on to hold that neither farm was an asset of the partnership. Dorian sought permission to appeal this conclusion but such permission was refused by Lewison LJ, and an application to re-open this decision was subsequently also refused: see *Williams v Williams* [2023] EWCA Civ 1465.

16. In 1987 Mr and Mrs Williams sold two fields at Crythan for £15,000 and used the money to reduce the AMC borrowing on Cefn Coed to £25,000. The mortgage was converted to an interest only one the following year.

17. Mr and Mrs Williams made a number of wills over the years. On 10 August 1988 they executed mutual wills. These were professionally drafted by T. Lewellyn Jones of Neath, and bear the reference SLJ, that is Sara Llewellyn Jones, who in each case was the first named executor. She has acted as Mr Williams' solicitor for many years, and is now one of his executors. By their 1988 wills, each of Mr and Mrs Williams left their estate to each other provided the other survived for 28 days. By clause 2 of each will if that did not happen each left their shares in Cefn Coed and Crythan to Dorian and Gerwyn respectively as follows:

> "2. IN the event of my said Wife [Husband] predeceasing me or failing to survive me by a period of twenty eight days then:-
>
> …
>
> c. I GIVE My share and interest in Cefn Coed Farm to my Son LLOYD DORIAN WILLIAMS absolutely
>
> d. I GIVE My share and interest in my Land at Crythan Farm

Cimla Neath to my Son GERWYN LLOYD WILLIAMS absolutely"

18. In 1991 Crythan was transferred into Susan's name.

19. The next wills in evidence were dated 30 October 1998. These were manuscript wills in which each appointed each other executor and simply left the whole of their property to each other.

20. Mr Williams' next will was dated 29 November 2012. It was again professionally drafted by Sara Llewellyn Jones. This contained quite complex arrangements. By clause 4 Mr Williams left "my One Third share and interest in Cefn Coed Farm" to Gerwyn; but by clause 5 he provided that in the event of his wife predeceasing him and "my having inherited her One Third share and interest in Cefn Coed Farm" then he gave her one third share in a new house being built at Cefn Coed to Dorian, her one third share in Cefn Coed Farmhouse to Susan, and her one third share in Cefn Coed Farm to Gerwyn and Dorian.

21. Mrs Williams died on 31 October 2013 and her estate passed to Mr Williams.

22. In February 2014 Sara Llewellyn Jones, who was aware of the capital money restriction on the title of Cefn Coed, asked HM Land Registry for the document which had created the tenancy in common, assuming that such a restriction indicated that it was so held. The Land Registry however told her that they held no such document (later confirming that there was no information in either the transfer or the application form as to how the transferees were to hold the land, and that the restriction had therefore been entered following standard procedure). The discovery that there was no evidence of an express tenancy in common caused Sara Lewellyn Jones to conclude that the property was probably instead held as joint tenants, and in a letter to Mr Williams dated 28 February 2014 she told him that:

> "the Land Registry for some reason entered the restriction without having apparently checked the position. The restriction should therefore not have been on the title and that has mislead me for many years."

She therefore advised him to sign a notice of severance, which he did on 3 March 2014. But it was not served on Dorian straight away, as she wished to check the position with counsel, and there was some quite convoluted evidence over which form of notice was ultimately served, and when, but the Judge made a finding that a notice to sever was served in case any joint tenancy existed, and that has not been appealed.

23. At the same time as signing the notice of severance Mr Williams executed another will (again drafted by Sara Llewellyn Jones) also dated 3 March 2014. This gave "my One Half share and interest" in Cefn Coed Farmhouse to Gerwyn and Susan, and the remainder of his one half share in Cefn Coed Farm to Gerwyn. That was of course consistent with the view that his wife's share had accrued by survivorship to him and Dorian on her death, and that he had thereafter severed, or would sever, the joint tenancy.

24. The advice of counsel however left the position rather less clear. So on 1 October 2014 Mr Williams executed a further will drafted by Sara Llewellyn Jones, which was

in the event his last will. This gave Dorian an option, exercisable within 6 months of his father's death, the effect of which if exercised would be that Dorian would end up owning the new house at Cefn Coed, Cefn Coed Farmhouse would be owned by Susan and Gerwyn, Cefn Coed Farm would be owned by Dorian and Gerwyn, and Dorian would take Gerwyn into partnership as an equal partner. If Dorian did not take up this option, he would forfeit any interest in the will, and in that event Mr Williams gave "all my share and interest in" both the new house and Cefn Coed Farmhouse to Gerwyn and Susan, and all his share and interest in Cefn Coed Farm to Gerwyn.

25. At the same time he signed a memorandum "To whom it may concern" about his will, explaining among other things that he had executed a further will after it had been explained to him that there could be some uncertainty as to whether Cefn Coed Farm could pass to Dorian as the surviving purchaser.

26. Mr Williams was diagnosed with slow onset Alzheimer's in May 2017 (but was assessed by his GP as then having capacity to understand his estate and decide on its distribution). The Judge found that despite his age he remained physically and mentally well until his diagnosis. He died on 6 June 2018.

27. Dorian has not exercised the option given to him by his father's will.

*The Judgment*

28. Two substantive claims were advanced by Dorian at trial. The first is one that I have already referred to, namely that both Crythan and Cefn Coed were partnership assets, and that as a result of his parents' respective deaths these enured for his benefit. Dorian's second claim, advanced in the alternative, was a claim in proprietary estoppel to the effect that he was entitled in equity to the entire beneficial interest in Cefn Coed and/or an interest in Crythan on the basis of promises made to him by his parents that they and the business would belong to him. Gerwyn by counterclaim asserted that he had become a partner in the partnership in or about 2013, and also that if the farms did vest in Dorian, he (Gerwyn) was himself entitled to an interest in them by way of proprietary estoppel.

29. In the Judgment the Judge, after an introduction (at [1]-[10]), set out the background facts (at [11]-[50]) and then dealt in more detail with the two main issues of fact, namely the extent to which Dorian and Gerwyn worked on the farms, and what promises were made to each of them by their parents (at [51]-[60]). He then dealt with Dorian's claim that the farms were partnership assets, concluding that they were not ([61]-[80]). In the course of that consideration he set out the facts which indicated that each farm either was or was not intended to be a partnership asset, saying in relation to Cefn Coed at [79] among other things:

> "A particularly strong indication that it was not intended to be a partnership asset, in my judgment, appears from the wills of Mr and Mrs Williams, only some two years after the purchase, which in the event that the one did not survive the other for 28 days, gave their share in the partnership to Gerwyn but their share in Cefn Coed to Dorian."

30. He then considered who were the partners and in particular whether there was a change of partners subsequent to the 1985 deed (at [81]-[84]), concluding that there was no new partnership and Gerwyn had not become a partner.

31. He continued at [84]:

> "Those findings have the following consequences in law following the deaths of Mr and Mrs Williams. Crythan remains vested in Susan. In the absence of any declaration of the beneficial interests of Cefn Coed, the purchase of it for business purposes and Mr and Mrs Williams' treatment of their shares as separate suggests a tenancy in common. In any event, subject to Dorian's proprietary estoppel claim, the notice of severance was in my judgment effective to sever any joint tenancy. On Mr Williams' death, his share and that which he inherited from his wife, formed part of his estate and pass under his last will to Gerwyn and Susan."

The reference in the third sentence to "Mr and Mrs Williams's treatment of their shares as separate" is evidently a reference back to what he had said at [79] about them leaving their shares in Cefn Coed to Dorian in their 1988 wills; the contrary was not suggested.

32. He then summarised the position with the partnership on his findings (at [85]) and finally considered the proprietary estoppel claims (at [86]-[90]) concluding that Dorian's proprietary estoppel claim was not made out, and that it was therefore not necessary to consider Gerwyn's.

33. By his Order dated 28 July 2022 he made various declarations including a declaration that Cefn Coed was purchased by Mr and Mrs Williams and Dorian as beneficial tenants in common in equal shares.

*Ground of Appeal*

34. Dorian was granted permission to appeal limited to a single ground. This is that the Judge was wrong to find that Cefn Coed Farm was purchased by Dorian and his parents as tenants in common, and ought to have found that it was held jointly by them in law and in equity.

*The law: Stack v Dowden, Jones v Kernott*

35. The question that arises on this appeal is how land is held beneficially when it has been conveyed or transferred into joint names without any express declaration of trust. The most authoritative statement of the law relevant to this question is found in the decisions of the House of Lords and Supreme Court in *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 and *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776 respectively.

36. Both these cases, like many others in this area, concerned the question of the respective beneficial interests of an unmarried couple in a house which they bought as their home. In *Stack v Dowden*, Mr Stack and Ms Dowden bought a house together as a family home for themselves and their four children. It was transferred into their

joint names without any express declaration of trust. It was not disputed that they each had a beneficial interest in the property. The question was whether, as the trial judge had held, the interests were split equally, or, as this Court had held, as to 65% for Ms Dowden and 35% for Mr Stack. That required the House of Lords to settle some controversies as to how this question should be approached. The leading speech was given by Lady Hale, with whom Lords Hoffmann, Hope and Walker agreed. She described the issue as framed before the House as being (at [58]]):

> "whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest, or whether a conveyance into joint names establishes a prima facie case of joint and equal beneficial interests until the contrary is shown."

Her answer to this question was (also at [58]):

> "at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved."

37. She then went on to consider how the contrary was to be proved, and in particular whether the relevant technique was that of *resulting* trust (under which beneficial interests are shared in proportions to the parties' financial contributions to the acquisition of the property unless a contrary intention was shown) or that of *constructive* trust (under which all the relevant circumstances can be looked at for the purpose of discerning the parties' common intention): see at [59] where she identifies this as the next question. Her answer was that the relevant technique was that of constructive trust (see at [60]), under which:

> "the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended"

(at [61]).

38. She then went on to summarise the position as follows (at [68]):

> "The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self- exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's estate may well wish to assert that he had a beneficial tenancy in common. It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is

likely that the owners contributed unequally to their purchase."

39. She made a similar point at [69] where she set out some of the many factors other than financial contributions that might be relevant to divining the parties' true intentions and then concluded:

> "In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."

On the facts of the particular case, however, she found that it was a very unusual one in which the parties, despite their long relationship, had kept their affairs rigidly separate and that Ms Dowden had made good her claim for a 65% share (at [92]).

40. *Jones v Kernott* was another case where a house had been acquired in joint names by an unmarried couple who intended it to be their family home. The leading judgment was given by Lord Walker and Lady Hale JJSC (with whom Lord Collins JSC agreed) and they took the opportunity to clarify certain aspects of *Stack v Dowden*. First they reiterated that the relevant principle was not that of resulting trust, as follows (at [25]):

> "The time has come to make it clear, in line with *Stack v Dowden* [2007] 2 AC 432 (see also *Abbott v Abbott* [2008] 1 FLR 1451), that in the case of the purchase of a house or flat in joint names for joint occupation by a married or unmarried couple, where both are responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit (or indeed the rest of the purchase) in unequal shares. The presumption is that the parties intended a joint tenancy both in law and in equity. But that presumption can of course be rebutted by evidence of a contrary intention, which may more readily be shown where the parties did not share their financial resources."

The second was to clarify the circumstances in which the Court could impute a particular intention to the parties as opposed to inferring that they had a particular intention: see at [26] to [36].

*Does the principle in Stack v Dowden apply?*

41. Mr Adams submitted that the principle expounded in *Stack v Dowden*, and reiterated in *Jones v Kernott*, that if joint transferees do not expressly declare what the beneficial ownership is, then equity follows the law and the onus is on the person seeking to show that the beneficial ownership is different from the legal ownership, is not confined to the domestic context. That was also the issue singled out by Lewison LJ when giving permission to appeal. He said:

> "In the light of *Stack v Dowden* it is arguable that the judge began from

the wrong starting point."

42. In general it is no doubt true that the legal owner of any property, real or personal, is *prima facie* also the beneficial owner, and so will be taken to be both legally and beneficially entitled unless there is some reason for concluding otherwise. And since it is normally for the person asserting something to establish it, it would seem to follow that it is for a person asserting that the legal owner of property is not also the beneficial owner to make out their case that the beneficial ownership is different. At this high level of abstraction therefore the general proposition of law seems unexceptionable.

43. Moreover I accept that Lady Hale in *Stack v Dowden* starts her analysis by expressing the principle in general terms. Thus at [53] she poses the question in what circumstances it is to be expected that joint transferees would execute a declaration of trust: is it when they intend their beneficial interests to be the same as their legal interests or when they intend that they should be different? At [54] she answers that question as follows:

> "At first blush, the answer appears obvious. It should only be expected that joint transferees would have spelt out their beneficial interests when they intended them to be different from their legal interests. Otherwise, it should be assumed that equity follows the law and that the beneficial interests reflect the legal interests in the property. I do not think that this proposition is controversial, even in old fashioned unregistered conveyancing. It has even more force in registered conveyancing in the consumer context."

44. That certainly suggests that although she is focusing on "the consumer context" (on which see further below), she considered the principle to apply more widely. That is also apparent from [56] and [57] where she first states at [56]:

> "…the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership…"

and then at [57] immediately follows that with:

> "While there is no case in this House establishing this proposition in the consumer context, this is "Situation A" referred to by Lord Brightman in *Malayan Credit Ltd v Jack Chia-MPH Ltd* [1986] AC 549, 559: "The lessees at the inception of the lease hold the beneficial interest therein as joint tenants in equity. This will be the case if there are no circumstances which dictate to the contrary."…"

45. So the principle that the beneficial interest will follow the legal interest if there are no circumstances to displace this is neither novel nor surprising. I therefore have no difficulty in accepting Mr Adams' submission as an abstract statement of the law (although one should perhaps be cautious about the "mantra" that equity follows the law: see *Jones v Kernott* at [19] per Lord Walker and Lady Hale, cited at paragraph 53 below).

46. But legal disputes never take place in a vacuum. They are always rooted in the real world. Where land is bought and transferred into joint names, there will always be a background to the purchase and other surrounding circumstances that shed light on the context in which the purchase took place. And in this area of law "context is everything" as Lady Hale said in *Stack v Dowden* at [69]; see also *Marr v Collie* [2017] UKPC 17, [2018] AC 631 at [54] per Lord Kerr.

47. Moreover even before coming to the context of the present case, there are some general points that can be made. First, it is not possible in English law – and has not been possible since the reforms of the 1925 legislation – for more than one person to hold the legal title to land except as joint owners, since title to land cannot now be held as tenants in common: see ss. 34 and 36 Law of Property Act 1925. This is of course in order to simplify the devolution of title and make conveyancing easier. But what it means is that if land is to be co-owned, and is acquired in more than one name (as it will typically be, as the only alternative is to acquire it in the name of only one of the co-owners, or that of a third party, neither of which is likely to be as satisfactory), then it must be held by them at law as *joint* tenants not tenants in common. And, as Lady Hale points out in *Stack v Dowden* at [55], all joint owners must hold the land on trust. So in a joint names case, the question is not whether the legal owners are trustees or not; the question, as Lady Hale says at [55], is "what are the trusts to be deduced in the circumstances"?

48. Second, the issue in joint names cases is not usually over the identity of the beneficiaries. In the majority of cases – and the present is no exception – there is no dispute that the legal owners are also the beneficial owners. The very fact that the property is acquired in joint names is a powerful indication that the parties were each intended to have beneficial interests in it: see *Stack v Dowden* per Lady Hale at [63]. The question therefore is not who owns the property beneficially but how their beneficial interests are shared, and how that is to be determined in the absence of either an express declaration of trust or an express agreement between them. That was of course the issue in both *Stack v Dowden* and *Jones v Kernott*: in each case it was not disputed that a house transferred into the joint names of A and B was held by them on trust for themselves, the dispute being whether they held it equally or in some other proportions, and how that was to be decided.

49. Third, the present is an atypical case in that there is no dispute of that type. It is common ground that the parties were intended to be equal co-owners, the only issue being whether that took the form of a joint tenancy or a tenancy in common in equal shares. Although there are other, largely conceptual, differences between the two types of co-ownership, for practical purposes the significant distinction is the right of survivorship. This is not usually an issue in most cases of the *Stack v Dowden* type. Most such disputes are disputes between two co-owners who are still alive and whose relationship has broken down, and in such circumstances if there is any possibility of a beneficial joint tenancy one or other of the parties is very likely to be advised to serve a notice to sever any joint tenancy that exists, something that can be done very simply. The dispute will almost always therefore not be about whether they own the property equally as joint tenants or equally as tenants in common, but whether their shares are equal or not.

50. So the issue in the present case can be reduced to this. Given that there is no dispute that Mr and Mrs Williams and Dorian acquired the property on trust for themselves as

equal co-owners, was it intended that they should be joint owners with the right of survivorship, or tenants in common in equal shares with no right of survivorship?

*The relevant context*

51. In *Stack v Dowden* Lady Hale began her speech by identifying the issue before the House as follows (at [40]):

> "My Lords, the issue before us is the effect of a conveyance into the joint names of a cohabiting couple, but without an explicit declaration of their respective beneficial interests, of a dwelling house which was to become their home."

The same was true in *Jones v Kernott*. Lady Hale variously referred in her speech to this as the "consumer context", the "domestic context" and the "cohabitation context" (and in *Jones v Kernott* she and Lord Walker referred to "the context of the acquisition of a family home"), but there is no reason to think that these various expressions were intended to have any different meaning. And the analysis and guidance in both cases is throughout focused on such a context and is heavily dependent on the nature of the relationship between the parties.

52. This is apparent from many passages. It is not necessary to set them all out, but see in particular Lady Hale's speech in *Stack v Dowden* at [42]:

> "Another development has been the recognition in the courts that, to put it at its lowest, the interpretation to be put on the behaviour of people living together in an intimate relationship may be different from the interpretation to be put upon similar behaviour between commercial men. To put it at its highest, an outcome which might seem just in a purely commercial transaction may appear highly unjust in a transaction between husband and wife or cohabitant and cohabitant."

See also at [45] where there is a discussion of the nature of cohabitation, [58] ("at least in the domestic consumer context"), [68] ("In family disputes…"), [69] ("the domestic context is very different from the commercial world") and [87] ("In some, perhaps many, cases of real domestic partnership…"); and in the speech of Lord Walker at [33] ("In the ordinary domestic case…").

53. Similarly in *Jones v Kernott* Lord Walker and Lady Hale said at [19]:

> "The presumption of a beneficial joint tenancy is not based on a mantra as to "equity following the law" (though many non-lawyers would find it hard to understand the notion that equity might do anything else). There are two much more substantial reasons (which overlap) why a challenge to the presumption of beneficial joint tenancy is not to be lightly embarked on. The first is implicit in the nature of the enterprise. If a couple in an intimate relationship (whether married or unmarried) decide to buy a house or flat in which to live together, almost always with the help of a mortgage for which they are jointly and severally liable, that is on the face of things a strong indication of emotional and economic commitment to a joint enterprise."

And then, after referring at [20]-[21] to how such a relationship had been described by others ("couple embarking on a serious relationship", "materially communal relationship … in which … they pool their material resources"), they continued at [22]:

> "The notion that in a trusting personal relationship the parties do not hold each other to account financially is underpinned by the practical difficulty, in many cases, of taking any such account, perhaps after 20 years or more of the ups and downs of living together as an unmarried couple. That is the second reason for caution before going to law in order to displace the presumption of beneficial joint tenancy."

54. The context of the present case is very different. Cefn Coed was a farm. It did of course provide a home for Mr and Mrs Williams and their family, but it was also, and primarily, a business which provided their livelihood. If Mr and Mrs Williams alone had been partners and had bought Cefn Coed in their names, this would therefore have been an example of what was referred to by Lord Walker in *Stack v Dowden* at [32] as "both an emotional and commercial partnership", and by him and Lady Hale in *Jones v Kernott* at [31] as a case where "domestic partners were also business partners". As they there say, that *might* have constituted a reason for adopting a "classic resulting trust" analysis, although there would, I think, have been strong arguments the other way. Marriage is *par excellence* the model of a relationship based on mutual affection and sharing of both financial and other resources rather than commercial considerations, and it is noticeable for example that when they bought Crythan the year before Mr and Mrs Williams did so expressly as beneficial joint tenants although the savings they used to buy it had doubtless been built up from the farm business over many years in which the business legally belonged to Mr Williams alone.

55. But it is not necessary to speculate further as Cefn Coed was not acquired in the names of Mr and Mrs Williams alone. It was acquired in the names of them and Dorian. However close they were as a family, the relationship between Dorian and his parents cannot be equated to that between a married or unmarried couple. They were, and on the Judge's findings had been for almost a year, business partners. Unlike a married (or unmarried) couple they were obliged by the partnership deed to account to each other meticulously. It was, as Mr Adams himself pointed out, the farm business which effectively paid for the acquisition of Cefn Coed by making the mortgage payments. The purchase was on Dorian's own pleaded case something which he urged on his parents as a commercial decision, the rent payments that they would otherwise have to make being a big contribution towards the mortgage repayments. It will be recalled (see paragraph 8 above) that the freehold had a few years previously been acquired by Huggard who had substantially increased the rent and also required significant dilapidations to be attended to.

56. In other words the purchase of the freehold was a commercial decision made by the partners for the benefit of the partnership business by replacing the uncertainties of rent and other obligations owed to a landlord with the greater predictability of mortgage payments. It was no doubt an astute decision, but there is also no doubt that it was a commercial one.

57. In those circumstances it seems to me that the Judge's statement at [84] of the

Judgment that the purchase of Cefn Coed was "for business purposes" was amply justified. Mr Adams submitted that the farm was a "family farm", or a "communal family enterprise". So no doubt it was, but the significant point is that it was an enterprise.

58. Once that conclusion has been reached, the case seems to me to be straightforward. As I have already said, there is no dispute in this case that Mr and Mrs Williams and Dorian were intended to be equal co-owners. That seems realistic, given that the purchase was taken in the names of the three of them and that the entirety of the purchase price was raised on mortgage which would have to be repaid from the profits of the business in which they were equal partners. The sole dispute is whether they should also be taken as intending that their co-ownership should be joint, with the right in particular of survivorship, or a tenancy in common in equal shares. Here there is a very longstanding and well established principle that equity will usually assume that co-owners acquiring property for business purposes do not intend survivorship, as indeed Mr Adams accepted.

59. The principle is stated in clear terms in *Megarry & Wade, The Law of Real Property* (9th edn, 2019). At §12-21 the editors introduce the question as follows:

> "Unlike the common law, equity did not favour a joint tenancy. Equity often did not follow the law where it was merely feudal in character, and equity in this case was more concerned to achieve fairness than to simplify the tasks of conveyancers. Equity therefore preferred the certainty and equality of a tenancy in common to the chance of "all or nothing" which arose from the right of survivorship. "Equity leans against joint tenants and favours tenancies in common." This maxim meant that a tenancy in common would exist in equity not only in those cases where it would have existed at law, but also in certain other cases where an intention to create a tenancy in common ought to be presumed. There are several such special cases, in all of which persons who were joint tenants at law were compelled by equity to hold the legal estate upon trust for themselves as equitable tenants in common. These rules, which have not been altered by the 1925 legislation, remain applicable and are stated in their present form."

The footnote to the third sentence cites from a case in 1735 (*R v Williams* (1735) Bunb 342) in which it was said that "Survivorship is looked upon as odious in equity".

60. Then at §12-29 under the heading "Partnership assets and property acquired for business purposes" the editors say:

> "Where partners acquire land as part of their partnership assets, they are presumed to hold it as beneficial tenants in common. It was an ancient rule that the right of survivorship had no place in business. The rule extends to any joint undertaking carried on with a view to profit, even if there is no formal partnership between the parties, and even if the property has not been purchased but acquired by inheritance by the persons who use it for business."

The footnote to the second sentence refers to cases dating back to 1611 (*Hammond v Jethro* (1611) 2 Brownl & Golds 97), and to a rule found in Coke (Co. Litt. p 182a) expressed in Latin as *"jus accrescendi inter mercatores ... locum non habet"*, which can be translated as "the right of survivorship has no place among merchants", a rule that was applied at law to chattels but not to land. As the main text shows equity took a different view and applied the same principle to land.

61. On the findings of the Judge the present is not a case where partners acquired land as part of their partnership assets, but it is a case where land was acquired for business purposes. So unless the decisions in *Stack v Dowden* and *Jones v Kernott* have undermined this principle, it seems to me that the Judge was not only entitled but right to apply it.

62. But it is clear that there is nothing in those cases which suggests that the principle has been undermined or affected in any way. I have already pointed out that neither case concerned the question of survivorship, and that in both cases Lady Hale and Lord Walker are careful to confine their remarks to the case of cohabiting couples in an intimate relationship, and go out of their way to say that commercial cases are different. Moreover in *Stack v Dowden* at [57] Lady Hale (after referring to *Malayan Credit Ltd v Jack Chia-MPH Ltd*) says this:

> "This is a reminder that the parties may not intend survivorship even if they do intend that their shares shall be equal. In many commercial contexts, and no doubt some domestic ones, it will be highly unlikely that the parties intend survivorship with its tontine "winner takes all" effect."

That certainly suggests that she did not intend to cast any doubt on the long-standing principle of equity that property acquired in joint names for business purposes would be presumed to be held beneficially as tenants in common rather than as joint tenants with the accidents of survivorship.

63. So although I have accepted Mr Adams' submission (paragraph 41 above) that the principle that the onus is on the person seeking to show that the beneficial ownership is different from the legal ownership is not confined to the domestic context, that is I think only the starting point. Where such property is acquired for business purposes, the Court will very readily assume that survivorship, and hence joint tenancy, was not intended. As I have pointed out, the effect of putting such property into joint names is no doubt to raise a powerful inference that the legal owners were intended to be beneficially interested in the property, but if the legal title is in more than one name, the parties have no choice but to hold the legal title jointly, as legal tenancies in common have long been impermissible. In those circumstances, the inference that they thereby intended a beneficial joint tenancy with its right of survivorship rather than a tenancy in common seems to me likely to be in many contexts a much weaker one, and in the case of land bought for business purposes one that is easily and normally displaced by the presumption that such property is intended to be held in common.

*Did the Judge err in the present case?*

64. The remaining question is whether there is any reason in the present case why the

Judge was wrong to apply this principle. I will say straightaway that I do not think there is. It is no doubt the case that the circumstances may be such as to displace the presumption that business property is to be held in common rather than jointly. But they would I think have to be fairly unusual. And like other evaluative decisions based on the facts, the conclusion reached by the Judge on this question cannot be overturned on appeal unless it was one that was not open to him. It is a commonplace that a trial judge's factual findings – not only his findings of primary fact but his evaluative conclusions based on the primary facts – are not to be lightly overturned, and in a case like this where the trial judge heard oral evidence from all the surviving members of the family and from other witnesses over several days and was immersed in the whole sea of evidence in a way we can never be, it is particularly difficult to do so. In the present case there is nothing to my mind to suggest that he erred at all, let alone reached a decision that was not open to him. On the contrary I think he was plainly right.

65. Out of deference to Mr Adams' careful submissions however I will consider briefly the points he advanced on behalf of Dorian.

66. Mr Adams said that the mortgage was taken out by the partnership. Mr Pearce-Smith, while accepting that the mortgage payments were paid out of the partnership business, did not accept that the mortgage was itself taken out by the partnership, and for what it is worth I think he was right that this was not a finding actually made by the Judge, or that should have been made. The mortgage deed defines "the Borrower" as Mr and Mrs Williams and Dorian, not as Lloyd Williams & Son, and what we have seen of it does not so far as I can see refer to the partnership at all; and although the mortgage debt was shown as a liability in the partnership accounts, that was the only logical thing to do once the partnership accountant had made the decision to include the farms as partnership assets. It does not show that the mortgage debt was actually a partnership liability any more than the accounts show that Cefn Coed was actually a partnership asset.

67. But more significantly I do not accept that such a finding would have assisted Dorian's case. As we have seen, the principle that land acquired for business purposes is held in common applies equally whether the land is a partnership asset or not, and I do not see that it makes any difference to the present question whether the mortgage was or was not strictly a partnership liability either. Mr Adams placed reliance on the partnership accounts whose balance sheet balanced the net assets of the partnership with a capital account, the latter labelled "Capital Account (Joint)". This as I understood it was the basis of Mr Adams' submission that the partnership assets would accrue (or "enure") to the surviving partner, seemingly without any payment to the deceased partner(s). That seems to me to read far too much into the form of the accounts, which to my mind indicate no more than that the accounts have been drawn up by balancing the net assets of the partnership with the partners' capital accounts taken together without attempting to identify their individual share of the capital; the suggestion that the partners thereby agreed that, on the death of a partner, the surviving partner(s) would become entitled to their share of the assets without payment would seem to be flatly contrary to the provision in the partnership deed that in the event of the death of a partner his share in the assets should belong to the surviving partners, but that his estate should be entitled to receive an amount equal to the fair value of his share in the capital.

68. Mr Adams said that the mortgage was a joint borrowing and that this alone justified the inference of a joint beneficial ownership. But I do not understand why. A mortgage usually consists in essence of two things: a covenant by the borrower to pay, and a charge by way of mortgage of the borrower's land. That is true here where clause 1 contains the covenant by the Borrower (that is, Mr and Mrs Williams and Dorian) to repay AMC with interest, and clause 2 contains the charge by the Borrower of the land in favour of AMC by way of legal mortgage. The latter was necessarily entered into by Mr and Mrs Williams and Dorian jointly as they were (or would shortly be) the registered proprietors so that a registrable legal charge could only be granted by the three of them jointly. A purported charge by one alone would not have created a legal charge. As to the covenant to pay, it seems natural that where a joint charge is given to secure a borrowing, the borrowing should also be joint. Doubtless there was also provision to the effect that the liability of the individual covenantors was joint and several, as this is invariably required by mortgagees (for good reason); although we have not in fact seen a complete version of the mortgage, there is no reason to suppose that such a provision was omitted.

69. In those circumstances the fact that the mortgage was entered into jointly seems to me to say nothing about whether the beneficial interests were held jointly or in common.

70. Mr Adams relied on the fact that in the mortgage deed the Borrower (Mr and Mrs Williams and Dorian) charged the land "as Beneficial Owner". But I do not see that that takes matters any further. On any view the three of them were together the beneficial owners of the land and this therefore does not tell you, or even shed any light on, whether their beneficial ownership was joint or common; indeed the mortgage was no doubt drafted by AMC and, as Lady Hale says in *Stack v Dowden* at [67], it is a matter of indifference to mortgagees where the beneficial interests lie. But quite apart from that, the words were, as any conveyancer would immediately recognise, undoubtedly not included for the purpose of declaring (incompletely) the parties' actual beneficial interests but for a quite different reason. They are a standard formula that was formerly used in conveyances and other dispositions so as to give the disponee the benefit of the covenants for title implied by statute: see s. 76(1) of the Law of Property Act 1925 as it then stood.

71. Mr Adams said that whereas if parties were shown to have contributed unequally to a purchase that might justify in particular cases the inference of a resulting trust, it was different where the parties contributed equally, where the presumption was that their interests would be joint. But that, for the reasons I have explained above, is not the case where land is shown to have been acquired for business purposes.

72. Mr Adams said that the onus was on the defendants (Gerwyn and Susan) and that they did not advance any positive case whatever as to the parties' intention. He said that all that the Judge relied on was the fact of the purchase being for business purposes. For the reasons given above, however, I think that was sufficient. And the fact that the Judge's conclusion on this is very briefly expressed is no reason to doubt its cogency. It is no doubt a reflection of the fact that this point was very much a subsidiary one at trial, the significant questions being whether the farms were partnership assets, whether Gerwyn was a partner, and whether Dorian (and if necessary Gerwyn) had rights arising by proprietary estoppel.

73. Mr Adams said that the Judge should not have placed any reliance, as he did, on the

fact that Mr and Mrs Williams purported to dispose of their interests in Cefn Coed in their 1988 wills. He put forward two reasons. First, he said that Mr and Mrs Williams' later understanding of the position was irrelevant, and that their statements of intention were inadmissible. I see no warrant for this in the cases. Indeed the whole thrust of *Stack v Dowden* is that the search is for the parties' intentions, actual or inferred, and see per Lady Hale at [90] where she says:

> "The context is supplied by the nature of the parties' conduct and attitudes towards their property and finances."

If this is the relevant context, then the parties' statements of their intentions and understanding seem to me not only admissible but central to the Court's task. Of course the Court, as in any case, is likely to be wary of self-serving statements made after a dispute has arisen, but statements made much nearer the time, and before there is any hint of disagreement, are apt to provide relevant insight into the parties' intentions at the time of purchase.

74. Mr Adams' second reason for submitting that the Judge should not have placed any weight on the 1988 wills was that Sara Llewellyn Jones, who was responsible for drafting the wills, admitted in 2014 that the capital money restriction had misled her for many years into thinking that Cefn Coed was held as a tenancy in common (see paragraph 22 above). It followed that the form of the wills may simply have reflected her misunderstanding of the position, and hence her advice to Mr and Mrs Williams.

75. There is some force in these points, and Sara Llewellyn Jones, although a party to the action as executor of Mr Williams' estate, did not give oral evidence at trial and so this issue was not explored in cross-examination. Nevertheless, as Mr Pearce-Smith submitted, that does not rob the Judge's point of all salience. The 1988 wills were made quite shortly after the purchase of Cefn Coed. They are not long or difficult documents and are plainly based on the assumption that Mr and Mrs Williams have separate interests in Cefn Coed which they can leave by will. If that was contrary to an intention that they had recently formed that Cefn Coed should pass by survivorship, then one might have expected that to leave some trace in the record, and there is nothing to suggest that this was the case.

76. But even if Mr Adams is right on this particular point, I do not see that it makes any difference. For the reasons I have given the Judge's conclusion in favour of a tenancy in common would have been justified on the basis of the purchase of Cefn Coed for business purposes alone, even without the point about the wills.

77. Finally Mr Adams said that Mr and Mrs Williams bought the land for inheritance purposes, that is to pass the farm down intact to the next generation, which at the time meant Dorian, Gerwyn having in about 1982 started subcontracting for a motorway construction company. But that would require findings of fact to that effect, and I do not see in the Judgment any such finding. What the Judge did find was that a statement made by Mr Williams in his October 2014 memorandum to the effect that during the 1980s "we did mention to Dorian that he would inherit the farm" if Gerwyn was running a contracting business was likely to be an accurate recollection, supported as it was by evidence from another witness that he had heard Mr Williams in March 1988 tell his [the witness's] father that he was going to leave Cefn Coed to Dorian. But these statements do not amount to a finding that Mr and Mrs Williams

bought the farm "for inheritance purposes", and in any event a statement by Mr Williams that he intended to leave the farm to Dorian (something that the Judge found was limited to the period when Gerwyn was working on the motorways) does not assist on whether Cefn Coed was bought as joint owners or owners in common, as this intention could be given effect to equally well by leaving the farm to Dorian by will (as was indeed provided for by the 1988 wills) as by survivorship.

78. Having considered all the points advanced by Mr Adams, I am unpersuaded that the Judge made any error in holding that Cefn Coed was acquired by Mr and Mrs Williams and Dorian as beneficial tenants in common in equal shares. I think the Judge, very experienced as he is, came to the right conclusions for the right reasons.

79. I would therefore dismiss the appeal.

**Lady Justice Asplin:**

80. I agree.

**Lady Justice King:**

81. I also agree.