

Recent court ruling allows an express trust to be superseded by an unwritten constructive trust

Synopsis: Potential for express trusts to be superseded by unwritten constructive trusts.

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A recent court ruling by the England and Wales High Court (EWHC) has resulted in ambiguity around the possibility of unwritten constructive trusts overriding express trusts.

For clarity, an express trust is created when a settlor or testator establishes a trust with the express or inferred intention of creating a trust. Whilst trusts are usually created in writing, there is generally no requirement that a trust must be in written format to be valid (with the exception of land settlements, which must be in writing). However, the “three certainties” of the trust must be met, i.e. certainty as to whom the beneficiaries are, what property is subject to the trust and a clear intention to set up a trust. If any of these certainties are not met, the trust will fail.

A constructive trust is an equitable remedy imposed by a court to benefit a party who has been wrongfully deprived of their rights, either due to a person wrongfully obtaining or holding a legal property which they should not possess, or due to a breach of fiduciary duty (which refers to the fact that someone who manages someone else’s property or money should act in that person’s best interests and not their own).

In this specific [case](#) a married couple, the Cynbergs, bought their main residence in 2001 in joint names as joint tenants. Eight years later the couple separated and the husband verbally confirmed that he would give up his full interest in the property, on the proviso that his wife promised to leave the property to their children in the event of her passing away. The wife continued to pay all costs associated with the running of the property until the point where the couple divorced in 2018.

Later in 2018, the husband was declared bankrupt by HMRC, who claimed that he continued to possess a 50% interest in the property, which now vested in his trustees in bankruptcy. The wife believed she was the 100% beneficial owner due to the agreement made with her former husband, either as a result of this being deemed a common intention constructive trust, or due to proprietary estoppel.

For reference, “proprietary estoppel” is a legal claim which may arise in relation to rights to use the property of the owner and can potentially even be effective in connection with disputed transfers of ownership. Proprietary estoppel provides rights where...

- An individual is given clear assurance that they will secure a right over a property;
- That individual reasonably relies on that assurance;

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- They act to their detriment on the basis that they have a right over the property;
- It would be inconceivable for the assurance to be revoked.

Having taken the case to court in 2023, the wife's claim was initially successful. However, HMRC appealed the decision on the basis that an express trust could not be superseded by a common intention constructive trust.

The England and Wales Court of Appeal has maintained in previous cases that, where there is an express declaration of trust, constructive trusts cannot override that expressly declared trust. The legal principle of constructive trusts only applies in scenarios where no trust has been declared, as held in the *Pink v Lawrance* case in 1978.

A further ruling in the *Stack v Dowden* case in 2007 appeared to further demonstrate that an express declaration of trust is irrefutable unless it is rectified, rescinded, varied by later agreement or affected by proprietary estoppel, as stated by the [Financial Remedies Journal](#).

However, consideration was then given to what kind of later agreement would be sufficient to override a previously made express declaration of trust. In addition, this led to uncertainty around whether a later agreement capable of giving rise to a common intention constructive trust would actually achieve this. The rulings of a number of judges indicate their opinion is that an express declaration can only be overridden by another express declaration.

Fortunately for Mrs Cynberg, the judge in the appeal case was not of the same opinion. His ruling was that a signed agreement in writing is not required to supersede a previously made express declaration of trust in respect of the beneficial ownership of property, if there is an indication that a common intention constructive trust was created to overrule the original beneficial ownership agreement.

The judge held that Mrs Cynberg had effectively obtained Mr Cynberg's beneficial interest in the former marital home, even though the agreement did not meet the statutory requirements (i.e. it wasn't in written form) and deemed that a common intention constructive trust had arisen. HMRC's appeal was dismissed on this and other grounds.

Comment

In summary, the ruling in this case indicates that a verbal agreement does not satisfy the requirement for an express declaration of trust to be in writing when it relates to land, but it does give rise to a properly constituted constructive trust. It will be interesting to see how this develops in future cases.

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