Neutral Citation Number: [2020] EWCA Civ 1583

Case No: B2/2019/0348

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE COUNTY COURT AT MANCHESTER**
**HIS HONOUR JUDGE PELLING QC**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

**Before :**

**LORD JUSTICE DAVID RICHARDS**
**LORD JUSTICE HENDERSON**
and
**LORD JUSTICE NUGEE**

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**Between :**

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| **Natalie O'Neill** | **Claimant/ Appellant** |
| **- and -** | |
| **Shaun Holland** | **Defendant/ Respondent** |

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**Mr Simon Charles** (instructed by **Joe Egan Solicitors**) for the **Appellant**
**Mr Leslie Blohm QC and Mr Michael Horton** (instructed on a direct access basis**)** for the **Respondent**

Hearing date : 20 October 2020

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# Approved Judgment

***Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30a.m. on Friday 27th November 2020***

**Lord Justice Henderson :**

## Introduction

1. The central issue on this second appeal is whether the claimant and appellant, Ms Natalie O'Neill ("Ms O'Neill"), has established, on the basis of the facts found by District Judge Obodai ("the District Judge") at a trial in 2017, that she has a 50% beneficial interest as an equitable co-owner in 53 Worsley Road, Farnworth, Bolton ("53 Worsley Road" or "the Property"), where she co-habited with the defendant and respondent to the appeal, Mr Shaun Holland ("Mr Holland"), between late 2000 and July 2012. Legal title to the Property was vested in the sole name of Ms O'Neill's father, Mr John O'Neill ("John O'Neill") from its purchase in March 1999 until March 2008, when he transferred the Property for a nil consideration into the sole name of Mr Holland.

2. At that stage, Mr Holland was in a long-established relationship with Ms O'Neill, the Property had been their home for over 7 years, and they had three young children living with them (Shaun junior, born in 1997; Leonie, born in 2003; and a second daughter, Charlie, born in 2004). In July 2012, however, the relationship between Ms O'Neill and Mr Holland came to an end. Ms O'Neill left the Property with the two younger children, and at a later date Shaun junior also came to live with her. Mr Holland has continued to live at 53 Worsley Road at all material times from July 2012 onwards.

3. In February 2016, Ms O'Neill started the present proceedings in the Manchester District Registry of the High Court. The proceedings were later transferred to the County Court. By her particulars of claim, settled for her by Mr Simon Charles of counsel, who has acted for her throughout and appeared at the hearing before us, she sought (among other relief) a declaration that Mr Holland held the beneficial interest in 53 Worsley Road on trust for the two of them in equal shares. She also sought similar declarations in relation to:

   (a) a portfolio of 12 buy-to-let properties, which had been acquired in the sole name of Mr Holland (or, in one case, in the name of a company of his) on various dates between 2002 and 2010; and

   (b) a further property at 30 Broadway Street, Worsley, Manchester ("30 Broadway"), which she alleged had been bought by them jointly as a future family home, although again it had been acquired in Mr Holland's sole name.

   In support of her case that she had a 50% beneficial interest in the 12 buy-to-let properties, Ms O'Neill alleged that she and Mr Holland had established a joint property business, to which she had materially contributed in various ways, or in the alternative that there had been a partnership at will between them.

4. The original purchase of 53 Worsley Road in John O'Neill's name in 1999 preceded the start of the buy-to-let business. Ms O'Neill's pleaded case was that John O'Neill purchased the Property without a mortgage, for £28,000, with the intention that after it had been renovated he would allow her and Mr Holland to live in it rent-free as their family home. This was denied by Mr Holland in his defence. His pleaded version of events, in summary, was that he bid successfully for the Property at an auction in London and provided the whole of the purchase price of £28,000, but since he did not

want to complete the purchase in his own name he approached John O'Neill, who agreed to take the transfer in his name and hold the Property on trust for Mr Holland. Mr Holland says that he then paid the £28,000 in cash to John O'Neill, and the purchase was duly completed in the latter's name.

5. It appears to be common ground that Mr Holland then refurbished the Property, and he and Ms O'Neill moved in with Shaun junior to occupy it as their home around Christmas 2000.

6. In relation to the buy-to-let properties, Mr Holland denied that there had been any business relationship between him and Ms O'Neill, or any partnership. His case was that the business was his alone, and the properties were vested in his name because they belonged to him and had been bought with his funds. The position was essentially the same in relation to 30 Broadway, which he had bought as a good investment and with no fixed intention to use it as a family home.

7. The trial took place before the District Judge over six days in September 2017. She handed down her reserved judgment, running to 50 pages and 184 paragraphs, on 4 December 2017. She rejected Ms O'Neill's claim that there had been a business agreement between her and Mr Holland in relation to the buy-to-let properties, and found that any assistance which she had given him in relation to his business was explicable on the basis of their personal relationship. As the District Judge put it, in paragraph 84 of her judgment:

> "The view the court formed of the Claimant's evidence on this issue is that she was happy to help and become involved but only in the context of being the Defendant's partner. Whatever she did, she did because she was in a relationship with the Defendant and not because there was an agreement in relation to the buy-to-let property business."

Ms O'Neill's partnership claim was also rejected, because Mr Charles had realistically accepted that it was unlikely to add anything to the claim based on a business agreement: see paragraph 9 of the judgment. There has been no appeal against the District Judge's conclusions on those issues.

8. In relation to the acquisition of 53 Worsley Road, the District Judge heard oral evidence from Ms O'Neill, from a friend of John O'Neill's, Mr Michael Smith, who according to Ms O'Neill had lent her father £20,000 towards the purchase, and from Mr Holland, who continued to maintain that he had provided the bulk of the purchase price in cash to John O'Neill, although now accepting that he had probably borrowed around £6,000 from him. John O'Neill himself had sadly died in 2009, so the court did not have the benefit of his version of events.

9. It is fair to say that the District Judge was distinctly unimpressed by the evidence of these witnesses, and in particular by the evidence of Mr Holland whom she described on more than one occasion as "a stranger to the truth". The one solid piece of contemporary documentary evidence was the memorandum of sale from the auction house, which named John O'Neill as the purchaser and was signed by Mr Holland in the capacity of "Agent". So far as Mr Smith was concerned, the District Judge found that, even if he had made a loan to John O'Neill, it was not his money which was used

to purchase 53 Worsley Road: see paragraph 133. The District Judge's eventual conclusion, at paragraph 149, was that:

> "53 Worsley Road was purchased by John O'Neill using money from identified and unidentified sources to be a family home for his daughter and her family."

10. I will need to examine in more detail later in this judgment the circumstances in which John O'Neill came to transfer the Property to Mr Holland for no consideration in March 2008. It is enough to record at this stage that the District Judge was satisfied that the circumstances were such as to give rise to a common intention constructive trust in favour of Ms O'Neill, and that her beneficial interest in the Property was a half share. The District Judge stated her conclusion at paragraph 161, in these terms:

> "Therefore, when deduced objectively from their conduct, and applying the principles set out in *Stack v Dowden* and *Jones v Kernott* particularly given that the source of funds had come from her father the court finds that the Claimant's interest was to be a half share. This was intended to be a family home for the Claimant, the Defendant and their children, a family home that would be held in equal shares."

11. The District Judge then went on to consider the evidence in relation to 30 Broadway, concluding at paragraph 173 that it "was a property purchased with the intention that the Claimant would have a beneficial interest in it" for a number of reasons, including that "there was clearly an intention that it would be a family home" and her rejection of Mr Holland's evidence that "Broadway would be an investment property". The District Judge then summarised her reasoning at paragraph 174:

> "The finding that the court makes is that this was a family home and the Claimant has established on the balance of probabilities… that this was to be a family home intended for them to move into in due course to live in and in which she would have a beneficial interest. The court finds that after 53 Worsley Road, the parties intended to move into a bigger home nearer their daughters' school. The determination the court made regarding 53 Worsley Road was that the Claimant's interest was a 50% share. It makes the same finding in relation to 30 Broadway because that was the common intention deduced from all of the conduct and evidence."

12. The District Judge's conclusions in her main judgment gave rise to various consequential issues, which led to two further hearings and reserved judgments. The first further hearing took place on 26 February 2018. It concerned the question whether Ms O'Neill was entitled to an "equity of exoneration" in respect of money which Mr Holland had borrowed on the security of 53 Worsley Road in order to fund the purchase of two further investment properties, which the District Judge had now found belonged to him alone. For the reasons given in a further judgment handed down on 14 March 2018, Ms O'Neill was substantially successful on this issue, although the District Judge found that part of the borrowed money and a deposit refund (together amounting to

£26,223.81) fell outside the scope of the equity of exoneration, because that sum had been used to benefit the family rather than Mr Holland's business.

13. The second further hearing dealt with other issues of equitable accounting, on which the District Judge ruled in a written judgment dated 31July 2018. On that day, she also dealt with costs (ordering Mr Holland to pay 70% of Ms O'Neill's costs of the proceedings, with an interim payment on account of £40,000) and gave directions for the sale of the Property and distribution of the proceeds of sale. All of the orders made by the District Judge are conveniently recorded in a single order also dated 31 July 2018. The order for sale of the Property was stayed pending the first appeal, which was heard by His Honour Judge Pelling QC, sitting in the County Court at Manchester, on 17 January 2019, and set aside by him when he allowed the first appeal.

## The first appeal to His Honour Judge Pelling QC

14. The grounds on which Mr Holland was granted permission to appeal to the County Court fell into two groups. The first group, grounds 1 and 3, challenged the District Judge's findings that Ms O'Neill had a beneficial interest in 53 Worsley Road and 30 Broadway respectively, relying in particular upon the absence of any finding that she had acted to her detriment in reliance on any common intention, or on any other circumstances justifying the imposition of a constructive trust. The second group consisted of three grounds challenging various aspects of the way in which the District Judge had dealt with the equitable accounting issues. Those grounds would not arise if the appeal were to succeed on both grounds 1 and 3.

15. Judge Pelling also gave Ms O'Neill permission to rely on a respondent's notice in relation to ground 1, which contended that the District Judge's conclusion on 53 Worsley Road should be upheld by reason of her findings: (a) in paragraph 157 of her judgment, to the effect that the reason why the Property was not put into joint names was because Mr Holland had wrongly told Ms O'Neill that she would not get a mortgage; and/or (b) that it would be unconscionable to permit the denial of the agreement or common understanding between the parties. The source of the latter finding was not in the main judgment of the District Judge, but in paragraph 11 of her judgment on 31 July 2018 where, in the context of refusing Mr Holland permission to appeal, she said in relation to her main judgment:

> "What I did not say was that all of those matters identify a finding of unconscionability, and therefore make a finding of unconscionability. Insofar as that is required, then this short extemporary judgment is by way of an addition to my judgment… that was handed down dated 4 December 2017 and can be treated as added to it."

Since the District Judge's decision in the main judgment had not yet been embodied in a formal order (the order of 31 July 2018 was not sealed until 7 August 2018), it was in my view still open to the District Judge to supplement her original judgment in this way, and the contrary has not been argued by Mr Holland.

16. On the hearing of the appeal, Mr Holland was represented by Mr Michael Horton of counsel, who has also appeared for him in this court, although now led by Mr Leslie Blohm QC (who did not appear at any earlier stages in the litigation). In the event,

Judge Pelling allowed Mr Holland's appeal on grounds 1 and 3, essentially because (in his view) the crucial ingredient of detrimental reliance by Ms O'Neill had neither been pleaded by her nor established by the District Judge's findings of fact.

17. I will need to return to Judge Pelling's reasoning in more detail later in this judgment, but at this stage it is sufficient to quote two key passages. The first comes at the end of the judge's review of the case law, where he said at paragraph 16 of his judgment:

> "The authorities that I have referred to earlier in this judgment clearly establish that when the property in issue is registered in the sole name of one of the parties, a party claiming a beneficial interest by reference to a common intention constructive trust must establish (a) a common intention (whether by express agreement or otherwise) that both should have the beneficial interest, and (b) that the party claiming a [*beneficial*] interest on this basis has acted to his or her detriment on the basis of that common intention. As the Court of Appeal held in *Curran*, a finding that the claimant had not acted to her detriment in any way is itself fatal to a claim of this sort."

18. The second passage comes from the judge's discussion of ground 1 (relating to 53 Worsley Road), at paragraphs 22 to 23:

> "… In my judgment, this ground has been made out. Had the Judge approached the question she had to decide by identifying the two issues that arose on the case law, I doubt whether she would have fallen into error. However, she did not do so, and in consequence failed to identify the need to find that [*Ms O'Neill*] had acted to her detriment in reliance upon the common intention. As was submitted on behalf of [*Mr Holland*], the requirement is fundamental, because, as he put it, equity does not assist a volunteer – a shorthand way of repeating precisely what Lord Diplock had said in *Gissing* many years previously…
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> 23. If and to the extent it was submitted by Mr Charles that the principles I have summarised above are no longer good law, I reject that submission in the light of the conclusions reached and the reasoning adopted by the Court of Appeal in *Curran*. I reject the submission that, by analogy with the modern approach to proprietary estoppel, there is at least potentially an overlap between the two issues that arise that abrogates the need to establish detrimental reliance. That is not the effect of the overlap approach, even in proprietary estoppel cases, but in any event there is no support for such an approach in *Curran*. Mr Charles submitted that where there was a common understanding, there would be a lot less reliance required in order to make good the entitlement to a beneficial interest. Again, there is no support for that proposition in the authorities that matter, being those I have referred to earlier. Those authorities make clear what must be established. The reality is that the claimant did not plead that she had suffered any

> detrimental reliance, and the Judge did not find that she had suffered any. On that basis, the Judge was wrong to conclude that [*Ms O'Neill*] had a beneficial interest in 53 Worsley Road."

19. Judge Pelling went on to reject the argument raised by Ms O'Neill's respondent's notice:

> "24. … The point which is made on behalf of [*Ms O'Neill*] is that the Judge could have found detrimental reliance by reference to her finding that the reason the property was not conveyed into joint names was because [*Mr Holland*] told [*Ms O'Neill*] that she would not get a mortgage. I reject that submission. That point is one that is relevant as to whether or not there was a common intention. It is not relevant to whether [*Ms O'Neill*] acted in reliance upon there being a common intention."

20. Judge Pelling then considered the evidence relating to 30 Broadway, and again reversed the decision of the District Judge for reasons which he summarised at the end of paragraph 30 of his judgment:

> "I do so because she was wrong to conclude that because 30 Broadway was intended to be a family home, it followed that it was the common intention of the parties that [*Ms O'Neill*] would have a beneficial interest in it. Even if that is wrong, it would be necessary for [*Ms O'Neill*] to demonstrate conduct to her detriment in reliance upon such an intention. The factual findings made by the Judge preclude such a finding. The only activity on which reliance could be placed falls short of what could fairly and reasonably be regarded as detrimental reliance conduct, particularly in a context where [*Mr Holland*] paid for the property and its outgoings."

21. In the light of his conclusions on grounds 1 and 3, it was unnecessary for Judge Pelling to deal with the remaining grounds and he therefore said nothing about them. By paragraph 4 of his order dated 17 January 2019, Ms O'Neill's claim to a beneficial interest in 53 Worsley Road and 30 Broadway was dismissed. The position had therefore been reached, subject to any further appeal, that Mr Holland was the sole legal and beneficial owner of all fourteen properties in which Ms O'Neill had asserted a beneficial interest.

## The grounds of appeal to this court

22. Ms O'Neill now appeals to this court, with limited permission granted by Lewison LJ on 30 July 2019. The two grounds for which Lewison LJ granted permission both relate to 53 Worsley Road:

> (1) Ground 1 seeks to uphold the District Judge's finding of a constructive trust of the Property in equal shares as being a justified exercise of her discretion in the light of her findings that:

(a) the parties intended to share the beneficial interest in 53 Worsley Road;

(b) John O'Neill provided the money required to purchase the Property;

(c) but for Mr Holland's assertion that Ms O'Neill could not obtain a mortgage, the Property would have been transferred from John O'Neill to Ms O'Neill and Mr Holland as joint owners;

(d) the parties' intention (deduced objectively from their conduct) was that Ms O'Neill and Mr Holland were each to have a 50% share of the beneficial interest in the Property; and

(e) it would be unconscionable for Mr Holland to deny or renege on the parties' agreement that Ms O'Neill had a beneficial share in the Property (relying for this point on paragraph 11 of the additional judgment given on 31 July 2018).

(2) Ground 2 seeks to uphold the District Judge's decision for the reasons set out in Ms O'Neill's respondent's notice in the County Court.

23. In granting permission on those two grounds, Lewison LJ observed that they "raise an important point of principle, namely whether the fact that the Appellant's father provided the funds for the purchase of 53 Worsley Road amounts to detriment upon which the Appellant can rely".

24. The third ground of appeal (Ground 3) was in these terms:

> "The Judge failed to recognise that in respect of 53 Worsley Road the parties had made an agreement pre-acquisition by which they agreed that they would jointly hold and make use of 53 Worsley Road with the result that, pursuant to the doctrine set out in *Rochefoucauld v Boustead* [1897] 1 Ch 196 and/or *Pallant v Morgan* [1953] Ch 43, it would be inequitable to permit [*Mr Holland*] to treat the property as his own. The result is that the [*District Judge's*] decision to utilise a constructive trust/equitable remedy to prevent such an unconscionable outcome was a decision open to her and hence not one which should have been reversed upon appeal."

Lewison LJ adjourned this ground to the hearing of the appeal, observing that although it appears to be a new point, it is a point of law to be applied to the District Judge's findings of fact, and "it is by no means clear" that the course of evidence before her "would have been any different if the point had been taken at the time."

25. The fourth ground of appeal (Ground 4) related to 30 Broadway and sought to reinstate the findings and conclusion of the District Judge. Lewison LJ refused permission to appeal on this ground, saying that:

> "The judge correctly analysed the law. The absence of any finding of detrimental reliance in relation to 30 Broadway was fatal to the Appellant's case."

26. It follows that Ms O'Neill's second appeal to this court is confined to the question whether the District Judge was right to conclude that she had a 50% beneficial interest in 53 Worsley Road. She has been refused permission to appeal in relation to 30 Broadway, on the express basis that the absence of any finding of detrimental reliance by her in relation to that property was fatal to her case.

## The requirement of detrimental reliance

27. Judge Pelling was in my view right to hold that detrimental reliance remains an essential ingredient of a successful claim to a beneficial interest in a residential property under a common intention constructive trust, in the class of case where the legal estate is in the sole name of the other party. The requirement can be traced back to the seminal speech of Lord Diplock in Gissing v Gissing [1971] AC 886, where he said at 904-905:

> "Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the English law of trusts and in particular, in the kind of dispute between spouses that comes before the courts, the law relating to the creation and operation of "resulting, implied or constructive trusts." Where the trust is expressly declared in the instrument by which the legal estate is transferred to the trustee or by a written declaration of trust by the trustee, the court must give effect to it. But to constitute a valid declaration of trust by way of gift of a beneficial interest in land to a cestui que trust the declaration is required by section 53 (1) of the Law of Property Act, 1925, to be in writing. If it is not in writing it can only take effect as a resulting, implied or constructive trust to which that section has no application.
>
> A resulting, implied or constructive trust — and it is unnecessary for present purposes to distinguish between these three classes of trust — is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

28. In Grant v Edwards [1986] Ch 638 (CA), the well-known case of a cohabiting couple where the house in which they lived had been conveyed into the joint names of the first defendant and his brother, and the claimant's name was not on the title because her partner (the first defendant) had falsely told her that this would cause her prejudice in her pending matrimonial proceedings against her husband from whom she had

separated, all three members of the court referred to the need for detrimental reliance to be established. The leading judgment was delivered by Nourse LJ, who said at 646H:

> "In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it."

29. To similar effect, Mustill LJ said at 651G:

> "In a case such as the present the inquiry must proceed in two stages. First, by considering whether something happened between the parties in the nature of bargain, promise or tacit common intention, at the time of the acquisition. Second, if the answer is "Yes," by asking whether the claimant subsequently conducted herself in a manner which was (a) detrimental to herself, and (b) referable to whatever happened on acquisition."

Mustill LJ added, at 652D:

> "In order to decide whether the subsequent conduct of the claimant serves to complete the beneficial interest which has been explicitly or tacitly promised to her the court must decide whether the conduct is referable to the bargain, promise or intention. Whether the conduct satisfies this test will depend upon the nature of the conduct, and of the bargain, promise or intention."

30. The third member of the court, Sir Nicolas Browne-Wilkinson V.- C., said at 654D-E:

> "If the legal estate in the joint home is vested in only one of the parties ("the legal owner") the other party ("the claimant"), in order to establish a beneficial interest, has to establish a constructive trust by showing it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest; (b) that the claimant has acted to his or her detriment on the basis of that common intention."

31. With regard to the nature of the detriment which has to be shown, Sir Nicolas Browne-Wilkinson said at 657A-B:

> "In many cases of the present sort, it is impossible to say whether or not the claimant would have done the acts relied on as a detriment even if she thought she had no interest in the house. Setting up house together, having a baby, making payments to

> general housekeeping expenses (not strictly necessary to enable the mortgage to be paid) may all be referable to the mutual love and affection of the parties and not specifically referable to the claimant's belief that she has an interest in the house. As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is, in my judgment, sufficient detriment to qualify. The acts do not have to be inherently referable to the house…"

32. The landmark decisions of the House of Lords in Stack v Dowden [2007] UKHL 17, [2007] 2 AC 432 and of the Supreme Court in Jones v Kernott [2011] UKSC 53, [2012] 1 AC 776 were primarily concerned with the ascertainment of the beneficial interests of the parties in cases where legal title to the property was in their joint names. There was no express discussion in either case of the need to establish detriment in a "sole name" case, although it is worth noting that in his dissenting speech in Stack v Dowden Lord Neuberger of Abbotsbury said at [124], in the context of discussing beneficial ownership on acquisition in joint names cases:

> "In many cases, there will, in addition to the contributions [*to the purchase price*], be other relevant evidence as at the time of acquisition. Such evidence would often enable the court to deduce an agreement or understanding amounting to an intention as to the basis on which the beneficial interests would be held. Such an intention may be express (although not complying with the requisite formalities) or inferred, *and must normally be supported by some detriment, to justify intervention by equity*. It would be in this way that the resulting trust would become rebutted and replaced, or (conceivably) supplemented, by a constructive trust."
>
> (my emphasis).

Lord Neuberger's reference to "detriment" in this passage is consistent with the clear line of authority to which I have already referred, although the qualification "normally" could perhaps be read as implying that it is not always an essential ingredient of a claim under a common intention constructive trust.

33. Any such possible implication, however, was firmly rejected in cases of the present type by the decision of this court in Curran v Collins [2015] EWCA Civ 404, [2016] 1 FLR 505. This was a "sole name" case, where the claimant and her partner (the defendant) had lived together for many years in a series of properties held in the latter's sole name, paid for by him with the assistance of mortgage finance. There was also a dog-breeding business which they both ran from the property. When the relationship broke down in 2010, the claimant claimed a beneficial interest in the property and the business, based upon her financial and non-financial contributions. The claims were dismissed by the trial judge (Her Honour Judge Marshall QC), and her appeal to this court was dismissed. The leading judgment was given by Arden LJ, and a concurring judgment by Lewison LJ; the third member of the court, Davis LJ, agreed with both judgments.

34. For present purposes, it is enough to quote the following passage from the judgment of Lewison LJ. After discussing the evidence upon which the claimant sought to rely in support of her case, he continued:

> "77. Overarching all these points is the lack of detrimental reliance. The need for detrimental reliance on the part of the claimant is an essential feature of this kind of case. Browne-Wilkinson V-C put it clearly in *Grant v Edwards and Another* [1986] Ch 638… at 654
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> [*Lewison LJ then quoted the passage which I have set out at [30] above*]
>
> 78. Although Ms Crowther's skeleton argument suggested that the need for detrimental reliance had been abolished by *Stack v Dowden* and *Jones v Kernott*, she rightly abandoned that argument in the course of her oral address. The judge's finding on that point, at [101], was that Ms Curran did not in any way act to her detriment in reliance on the specious excuse "or at all". That in itself is fatal to Ms Curran's case."

35. It is right to observe that in Curran v Collins it was common ground that Ms Curran not only bore the legal burden of proving that she was entitled to a share in the property on the basis of the parties' common intention, but she also had to show that "she acted to her detriment on the basis of that common intention": see the judgment of Arden LJ at [2]. It is, however, clear from the passage which I have cited from Lewison LJ's judgment, with which Davis LJ agreed, that he considered this to be a correct statement of the law, which he then adopted in explaining why the absence of any detrimental reliance was fatal to Ms Curran's case. The proposition stated by Lewison LJ in [77], namely that "[t]he need for detrimental reliance on the part of the claimant is an essential feature of this kind of case", therefore forms part of the *ratio decidendi* and is binding on us. Nor, for my part, would I wish to question the correctness of the proposition, which seems to me to be firmly based on authority and underlying principles of equity.

36. Because of its central importance in the present case, I have set out the law on detrimental reliance in a "sole name" case at some length. I should record, however, that the need for Ms O'Neill to establish detrimental reliance was not questioned by Mr Charles on her behalf. His argument was, rather, that sufficient findings to establish detrimental reliance by Ms O'Neill could be found in the District Judge's judgment, and Judge Pelling had been wrong to conclude otherwise.

37. In considering those submissions, it is first necessary to consider the position between John O'Neill's purchase of the Property in 1999 and March 2008, when he transferred it to Mr Holland for no consideration. It is then necessary to consider the circumstances in which the 2008 transfer of the Property was made, and whether the necessary detriment to support a common intention constructive trust can be found at that stage, even if no such trust had arisen previously.

**The position between the acquisition of the Property by John O'Neill in 1999 and its transfer to Mr Holland in 2008**.

38. I can deal with the position during this period briefly, because Mr Charles soon made it clear in his oral submissions that he was not pursuing any contention that Ms O'Neill had acquired a beneficial interest in the Property as a result of its purchase by her father in his sole name in 1999 or her subsequent occupation of it with Mr Holland as their family home.

39. I have already referred to the District Judge's key finding that "53 Worsley Road was purchased by John O'Neill by using money from identified and unidentified sources to be a family home for his daughter and her family". Since the Property was transferred into his sole name, and since (on the District Judge's findings) he provided the whole of the purchase price, there was on the face of it nothing to rebut the presumption that the beneficial interest in the Property would reflect the legal title. As Baroness Hale of Richmond said in Stack v Dowden, at [56]:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, 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. So in sole ownership cases it is upon the non-owner to show that he has any interest at all."

40. In my judgment, the mere fact that Mr O'Neill, having purchased the Property, intended it to be a family home for his daughter and her family cannot, by itself, have given rise to a constructive trust in her favour. The District Judge nowhere found that John O'Neill and Ms O'Neill shared a common intention that she was to take an immediate beneficial interest in the Property, as opposed to occupying it rent-free as her family home, and even if John O'Neill had so intended, Ms O'Neill cannot point to any detrimental reliance by her on the strength of such a common intention. For all practical purposes, she was fully protected while the Property remained vested in her father's sole name and she had continuing permission to occupy it. There may well have been a general intention shared between father and daughter that he would at some future date transfer the Property to her, or to her and Mr Holland jointly, either by lifetime gift or by will upon his death; but a generalised future intention of that nature cannot begin to ground an immediate beneficial entitlement under a constructive trust. Nor can I find anything in the wider circumstances of the case which would even arguably rebut the Stack v Dowden presumption during this initial period.

41. In the absence of any shared intention that Ms O'Neill should acquire an immediate beneficial interest in the Property during this period, the further question of detrimental reliance does not strictly arise. And even if it did, I have difficulty in seeing how the fact that John O'Neill had provided the funds for the purchase of the Property could possibly have amounted to a detriment upon which Ms O'Neill could rely. When Lewison LJ identified this as "an important point of principle" (see [23] above), he must, I think, have had in mind a situation where Ms O'Neill might wish to rely upon that fact in the context of the subsequent transfer of the legal title to Mr Holland in 2008. In other words, the question would be whether the provision of the purchase price by her father, in 1999, could be relied upon by Ms O'Neill, in 2008, as a detrimental reliance by her when seeking to rebut the presumption that Mr Holland was intended to

be sole beneficial owner. There would be obvious difficulties with any such analysis, not least the fact that the purchase price was provided by John O'Neill some nine years before his transfer of the Property to Mr Holland, but at least Ms O'Neill would then be seeking to rely upon the payment of the purchase price by her father against the legal owner, Mr Holland. It would make no sense for Ms O'Neill to rely upon the payment by her father of the purchase price as evidence showing that *he* was not intended to be the sole beneficial owner of the Property when it was acquired in his name.

42. For these short reasons, I consider that Mr Charles was right not to press any argument that Ms O'Neill might have acquired a beneficial interest in the Property before the events of 2008, to which I now turn.

## The transfer of the Property to Mr Holland in 2008

*Pleadings*

43. Ms O'Neill's pleaded case in relation to the 2008 transfer of 53 Worsley Road is contained in paragraphs 12 to 15 of the particulars of claim, as follows:

> "12. By 2008 the parties [*i.e. Ms O'Neill and Mr Holland*] wished to expand the Property Business and hence they informally discussed how this might be achieved upon a number of different occasions. [*Ms O'Neill*] avers that the said discussions took place between [*her, Mr Holland and John O'Neill*] although for the sake of clarity it is averred that the discussions took place on an "ad hoc" basis and did not, on every occasion, involve each of the persons named above. During the said discussions [*Mr Holland*] suggested as follows:
>
> (a) That rather than transfer 53 Worsley Road to [*Ms O'Neill*] it would make more sense if [*John O'Neill*] transferred 53 Worsley Road to his sole name given that he stated that only he had the ability to obtain a mortgage.
>
> (b) Building upon the above [*Mr Holland*] stated that if 53 Worsley Road was transferred into his sole name then he could mortgage it to obtain funds which would be invested into the Property Business… .
>
> (c) [*Mr Holland*] stated/promised that if 53 Worsley Road was transferred into his name then he would hold it on trust for himself and [*Ms O'Neill*] in equal shares and would, when it was practical to do so, transfer the legal title into the joint names of himself and [*Ms O'Neill*].
>
> …
>
> 15. In the circumstances and both induced by and in reliance upon [*Mr Holland's*] representations that:

> (a) He would mortgage 53 Worsley Road in order to raise fund[s] which would [be] invested into the Property Business in accordance with the terms of the Agreement; and,
>
> (b) He would hold 53 Worsley Road on trust for himself and [*Ms O'Neill*] in equal shares and would, when appropriate/convenient to do so, transfer the legal title of the Property into the joint names of himself and [*Ms O'Neill*],
>
> [*John O'Neill*] transferred 53 Worsley Road to [*Mr Holland*] on 14 March 2008 for nil consideration."

44. Paragraphs 13 and 14 of the particulars of claim referred to alleged discussions which had taken place between Ms O'Neill, Mr Holland, and both her parents when they were all travelling together in the same car to a funeral on 6 February 2008. It was said that, during these discussions, a phone call took place with a solicitor on loud speaker who cautioned John O'Neill about transferring the Property into Mr Holland's sole name, but John O'Neill ignored this warning because he trusted Mr Holland. It is unnecessary to make further reference to this alleged episode, because the District Judge made no findings about it.

45. In his defence, Mr Holland denied the conversations alleged in paragraph 12 of the particulars of claim had ever taken place. He alleged that 53 Worsley Road was transferred to him because it had been his house from the date of its acquisition (when, it will be remembered, Mr Holland's case was that he had provided the entirety of the purchase money). Mr Holland admitted that he did want to have the Property transferred to him, because he intended to mortgage it to invest money in other properties. He said that he never considered transferring any of the properties into joint names, and never discussed such an idea with Ms O'Neill or her father. He then set out his case about the conversation in the car on the way to the funeral, and denied paragraph 15 of the particulars of claim. He maintained that there had never been any intention to hold the Property on trust, other than, originally, by John O'Neill for himself; and that the reason why John O'Neill transferred the Property into his sole name was "because he recognised that [*Mr Holland*] was the sole beneficial owner thereof".

*The findings of the District Judge*

46. The relevant findings of the District Judge are contained in paragraphs 154 to 161 of her judgment. With respect to her, they could sometimes have been more clearly expressed and are not always entirely easy to follow. They also need to be read in conjunction with the contemporary conveyancing files of Butcher & Barlow, the firm of solicitors who acted on both sides of the transaction. Mr John Batty of the firm's Tyldesley office acted for Mr Holland and Ms O'Neill, while the Leigh office acted for John O'Neill.

47. It appears that Mr Batty was instructed by Mr Holland on or shortly before 14 February 2008. In a file note of that date, Mr Batty recorded that Mr Holland was remortgaging 53 Worsley Road where he lived with his partner Ms O'Neill. The file note continued:

> "The property is in the name of Natalie's father John O'Neill and was purchased at auction about 4 years ago for £20,000, Shaun

> and Natalie provided the money. In effect Mr O'Neill has been holding the property on trust for them although nothing was drawn up at the time."

This note must have been based on information supplied to Mr Batty by his client, but on the basis of the District Judge's findings about the initial purchase of the Property the information provided by Mr Holland was inaccurate in several respects. The initial purchase had been about 9, not 4, years previously, and the price was £28,000, not £20,000; nor had Mr Holland and Ms O'Neill "provided the money". Also of interest is the fact that Mr Holland evidently told Mr Batty that John O'Neill had been holding the Property on trust for Mr Holland and Ms O'Neill, although nothing was drawn up at the time. This was, of course, wholly incompatible with Mr Holland's pleaded case that he was the sole beneficial owner of the Property, and John O'Neill held it on trust for him alone.

48. On 20 February 2008, Mr Batty wrote to the Leigh office of his firm, informing them that they were to be instructed by John O'Neill. This is the letter with which the District Judge began her analysis of the facts, in paragraph 154 of her judgment. In the body of the letter, Mr Batty again referred to the instructions he must have received from Mr Holland:

> "My Client Shaun Holland and his girl friend Natalie O'Neill (who is the daughter of your Client John O'Neill) purchased 53 Worsley Road Farnworth at auction some years ago but the property was put into the name of John Paul O'Neill although my Clients provided the purchase money of £20,000 and have lived there ever since. I am not sure why they dealt with the property in that way but it would appear that Mr O'Neill was always holding the property on trust for them and is now required to transfer it to them."

49. Having quoted this passage from Mr Batty's letter, the District Judge continued:

> "155. The explanation that [*Mr Holland*] sought to give as to why the letter was couched in those terms as a joint transfer [*i.e. a transfer to Mr Holland and Ms O'Neill jointly*] was that his solicitor had misunderstood his instructions and he then went on to give a large amount of detail as to what he had in fact said to his solicitor, something which was surprising when, he had not [*been*] able to recall the detail on other matters as set out above. When he was "forced", after repeated questions, to confirm what he had said to his solicitor which had created the misunderstanding he said:
>
> "*I said me and my girlfriend purchased the property at auction and he took Natalie's details*."
>
> 156. He went on to say that he had been in [*the*] USA at the time and could not recall whether he had received the letter. However, prior to that, he had confirmed that he dealt with the solicitors and any instructions given would be his instructions. The court's

> view is that, even if he had been out of the country, there would have been ample time for him to correct those instructions. His evidence was that he never told the solicitors to put the property in joint names and they must have presumed (incorrectly) when he said what he did above. This explanation was another example of the Defendant's giving evidence that beggared belief."

50. Two things emerge with clarity from these paragraphs. First, the District Judge explicitly found that the information given in Mr Batty's letter of 20 February 2008 reflected the instructions given to him by Mr Holland. Secondly, she disbelieved his evidence that he never told the solicitors to put the Property in the joint names of himself and Ms O'Neill.

51. It appears from the conveyancing files that John O'Neill's retainer of the Leigh office of Butcher & Barlow was in place by 25 February 2008, when Mrs Susan Appleton of that office wrote to him in the terms suggested by Mr Batty. She asked him to telephone the Leigh office on receipt of the letter to confirm his instructions. On the same day, she made a file note of a telephone conversation with him, in which he said that he needed the transfer dealing with as soon as possible, because it was connected to another transaction in which Mr Holland (whom he described as his son in law) needed to put down a 10% deposit on 27 February, with completion on 12 March.

52. On 29 February 2008, Mr Batty wrote to Mr Holland, saying that John O'Neill's solicitors had received the deeds and he (Mr Batty) was "now in a position to proceed to prepare the transfer document and to complete." At that stage, it was evidently envisaged that the transfer would show a purchase price of £110,000, on the basis that this was the amount of the mortgage advance that Mr Holland was to receive from Cheltenham & Gloucester and John O'Neill would be making a gift to him of the difference between that amount and the actual value of the Property, which was £140,000. In other words, as I understand it, John O'Neill would in effect be making a gift of £30,000 to Mr Holland. The letter continued:

> "You told me at the outset that this property was to be purchased in the joint names of yourself and Natalie O'Neill but your mortgage offer is just in your own name and Natalie is not shown on it. It will not be possible to have the property in joint names if the mortgage is only in one name and the only way of this property being vested in the two names is for you to get the mortgage offer amended. Will you please contact as a matter of urgency to discuss this."

53. The passage which I have just quoted provides further confirmation of the District Judge's finding about the initial instructions provided by Mr Holland to his solicitor, namely that the transfer was to be into the joint names of Mr Holland and Ms O'Neill. This gave rise to a problem, because the mortgage offer (from Cheltenham & Gloucester) was in Mr Holland's sole name, but Mr Batty's advice was that the original intention could still be fulfilled if the mortgage offer were suitably amended. On 3 March 2008, Mr Holland sent an email to Mr Batty, saying that he was currently in the USA and would be returning to the UK on 13 March. He authorised Mr Batty to sign the mortgage documents, exchange contracts and complete the purchase of one of the

investment properties on his behalf. He added: "I am giving you full authorization to act [*as*] my agent in this matter."

54. On the same day, an attendance note of Butcher & Barlow, initialled "SP", records that:

> "Natalie telephoned on behalf of Shaun Holland she said that Shaun is in America at the present time and she is dealing with matters on his behalf. She confirmed that the property can just be in Shaun's name.
>
> Her mobile number is […]
>
> She is also bringing in the deposit cheque [*for the investment property*]".

The natural inference to draw from this attendance note is that Mr Holland had discussed the conveyancing problem with Ms O'Neill, and secured her agreement to the transfer of the Property into his sole name, thereby enabling the mortgage to be taken in his sole name as well and the linked purchase of the investment property to proceed without further delay. Consistently with such an inference, Mr Batty wrote to the Leigh office on 3 March saying:

> "We enclose a Transfer which we are now proceeding by way of Deed of Gift as we understand there is no money to be paid to your client. Our client is then re-mortgaging the property and raising funds for the purchase of other property.
>
> The transaction is to be in the sole name of Shaun Derek Holland. We are going to try and complete the transaction on 14 March."

55. Matters then proceeded on that basis, and completion took place on 14 March 2008. The transfer form TR1 for 53 Worsley Road named John O'Neill as the transferor, Mr Holland as the transferee, and stated that the transfer was "not for money or anything which has a monetary value."

56. The documents to which I have referred in Butcher & Barlow's conveyancing files were not referred to expressly in the District Judge's judgment, apart from the letter of 20 February 2008, but they formed part of the documentary evidence before her, and they help to place in context the critical findings which she went on to make in paragraph 157:

> "On the facts of this case, the finding the court has made is that 53 Worsley Road was a property that was bought by John O'Neill with his funds. The intention was that [*Ms O'Neill*] would have a beneficial interest in it notwithstanding it was held in [*Mr Holland's*] sole name. The court accepts [*Ms O'Neill's*] evidence that the reason it was not put into joint names at the time was because [*Mr Holland*] had told her (wrongly) that she would not get a mortgage."

The findings in this paragraph are at first sight a little confusing, because the first sentence refers to the original purchase of the Property by John O'Neill in 1999,

whereas the intention referred to in the second sentence must have been the intention in 2008 when the Property was put into Mr Holland's sole name. The third sentence confirms that the District Judge was here focusing on the position in 2008, and contains the important finding that the reason why the Property was not put into joint names was because Mr Holland had wrongly told Ms O'Neill "that she would not get a mortgage."

57. The following three paragraphs are again at times difficult to follow, because the focus appears to switch from 1999 to 2008, but paragraph 158 contains the further significant finding that "the original intention" of all three parties had been:

> "that the property was to be in the joint names of [*Ms O'Neill*] and [*Mr Holland*] and transferred from John O'Neill at a time when he was ready to transfer the property over, hence the instructions given by [*Mr Holland*] to Butcher & Barlow in the first instance… That is why [*Mr Holland*] gave the instruction he did to his solicitor that the purchase was to be in joint names. There was no misunderstanding."

58. In paragraph 159, the District Judge recorded that counsel then appearing for Mr Holland had "urged caution in relation to cherry picking parts of that correspondence", and had referred to the inaccuracies in the letter of 20 February 2008. The District Judge was unimpressed by this submission:

> "Given the court's findings about [*Mr Holland's*] propensity for lying, that figure could well be a figure he provided or a figure that was a mistake. It does not alter the court's findings about the instructions that were provided about joint ownership."

59. I have already quoted the District Judge's concluding paragraph 161, in which she found that Ms O'Neill's interest in the Property was to be a half share: see [10] above. I have also set out the key passages in the judgment of Judge Pelling where he explained why, in his view, the District Judge's findings could not support her conclusion, because the essential ingredient of detrimental reliance by Mr O'Neill was not made out: see [17] to [19] above.

*Discussion*

60. In my respectful opinion, Judge Pelling adopted too narrow a view of the District Judge's findings of fact, and he was also wrong to take the view that detrimental reliance had not been pleaded sufficiently or at all by Ms O'Neill.

61. To take the pleading point first, it is true that the District Judge did not uphold Ms O'Neill's case in relation to the 2008 transfer of the Property in the precise way in which she had pleaded it. Her pleaded case relied on informal discussions between herself, Mr Holland and her father in the terms set out in paragraph 12 of the particulars of claim, which included, at paragraph 12(a), an alleged suggestion by Mr Holland that, rather than transfer the Property to Ms O'Neill, it would make more sense if her father transferred it into his sole name because only he had the ability to obtain a mortgage, and, at paragraph 12(c), an alleged statement or promise by Mr Holland that, if the Property was transferred into his name, he would then hold it on trust for himself and Ms O'Neill in equal shares. It is implicit in these allegations that, but for the pleaded

representations made by Mr Holland, John O'Neill would have transferred the Property, of which he was the sole beneficial owner, into his daughter's sole name, or at least into the joint names of his daughter and Mr Holland, and that one particular reason for not doing so was that only Mr Holland had the ability to obtain a mortgage on the Property, thereby enabling him to expand the buy-to-let property business. Paragraph 15 of the particulars of claim then pleads that in the circumstances, and both induced by and in reliance upon Mr Holland's representations, John O'Neill transferred the Property to Mr Holland on 14 March 2008 for nil consideration.

62. Had this pleaded case been accepted in full by the District Judge, it seems to me that there would have been a clear detriment to Ms O'Neill when the transfer was made into the sole name of Mr Holland, instead of into her sole name (or joint names) as had originally been intended. Viewed objectively, Ms O'Neill would have exchanged a situation where the Property was in the sole beneficial ownership of her father, and she was able to occupy it rent-free as her family home for the foreseeable future, for a situation where the beneficial interest was presumptively vested in Mr Holland alone, as the sole legal owner, and she would have to assert and establish an interest under a common intention constructive trust if she wished to share in the value of the Property or have any say in its future use. On those assumed facts, the court would in my judgment have had no difficulty in concluding that sufficient detrimental reliance by Ms O'Neill was made out, if the necessary common intention were first established. "Detriment" in this context is a description, or characterisation, of an objective state of affairs which leaves the claimant in a substantially worse position than she would have been in but for the transfer into the sole name of the defendant. Although the facts which constitute the detriment need to be pleaded, their characterisation is ultimately a matter for the court, in the light of all the evidence adduced at trial.

63. Accordingly, I do not consider that Ms O'Neill's pleading was inherently defective. To put the point another way, her claim to a beneficial interest in 53 Worsley Road could not have been struck out for failure to plead a sufficient detrimental reliance. She had pleaded sufficient facts to support her claim, and the case would have had to go to trial in order to see whether her claim succeeded.

64. In the event, the District Judge did not accept the pleaded case of either party in relation to 53 Worsley Road. But the findings which she made, particularly when viewed in the context of the contemporary conveyancing files of Butcher & Barlow, did not differ very much from the case which Ms O'Neill had originally pleaded. Instead of a transfer into her sole name, the original plan (as found by the District Judge) was that the Property would be transferred into the joint names of herself and Mr Holland. This was then reflected in the instructions which Mr Holland himself gave to the solicitors acting for him and Ms O'Neill, and that is what would have happened but for the problem caused by the fact that the mortgage offer which he had obtained was in his sole name. When this was drawn to his attention by Mr Batty, Mr Holland chose not to try to obtain an amended mortgage offer in joint names, but instead procured Ms O'Neill's agreement to the transfer proceeding into his name alone. The end result was therefore that she had no legal interest in the Property when the transfer took place, instead of the situation originally envisaged when she would have been a legal co-owner presumptively entitled to share the beneficial ownership jointly with Mr Holland. Viewed objectively, that was again a position of clear detriment incurred by Ms O'Neill

in reliance on Mr Holland's misrepresentation that she would be unable to obtain a mortgage: see the judgment at paragraph 157.

65. I therefore conclude that, although the District Judge did not accept in full the case pleaded by Ms O'Neill, the facts which she found were nevertheless sufficient to establish a broadly similar case which led to the same conclusion as that for which she had always contended, namely that Mr Holland held the beneficial interest in 53 Worsley Road on trust for himself and Ms O'Neill in equal shares.

66. I would add, however, that if it were not possible to establish detrimental reliance by Ms O'Neill from the findings of the District Judge which I have discussed, I do not think that the finding of unconscionability which she added on 31 July 2018 could save the day for Ms O'Neill. Mr Charles submitted that such a finding implicitly entails a finding of detrimental reliance, because it is that factor which makes it unconscionable for the legal owner to deny the claim to a beneficial share. That may often be so, but in the circumstances of the present case I am unable to accept the submission. There is much force in Judge Pelling's conclusion that the District Judge failed to direct herself correctly on the law relating to detrimental reliance, and nowhere identified the need to find that Ms O'Neill had acted to her detriment in reliance upon the relevant common intention: see paragraphs 22 and 23 of his judgment, set out at [18] above. Furthermore, the District Judge nowhere discussed the question of detriment explicitly, nor did she identify the matters which in her view satisfied the requirement. In those circumstances, a bare finding of unconscionability, without further explanation, cannot repair the deficiency.

67. I find further support for this conclusion in paragraph 39 of the District Judge's judgment, where she wrongly accepted the submission then made by Mr Charles that the authorities "hardly place detriment at the heart of the gateway to relief", and agreed with him "that the test is whether it would be unconscionable to rely on the fact that the properties were in the name of the Defendant and to deny the Claimant that which (on her case) had been promised." This indicates to me that the District Judge did not regard the requirement of unconscionability as entailing, or being based upon, a finding of detriment, but rather as a separate test which made a finding of detriment unnecessary.

68. In his helpful oral submissions, Mr Blohm accepted that detrimental reliance is a matter for the court to assess on the basis of all the evidence, but he submitted that the necessary reliance must be asserted and proved, making clear what it is that the claimant either did or would have done differently on the strength of the common understanding. He rightly warned us against the dangers of hindsight, and of jumping to the conclusion that, because something now appears obvious, the parties must have considered it at the time.

69. I have that warning well in mind, but the question of detriment must nevertheless be determined objectively, not by reference to the subjective perceptions of the parties at the time. I therefore think it is legitimately open to us to examine the District Judge's findings of fact, and the documentary evidence relevant to the 2008 transaction, in order to form a view on whether, objectively, Ms O'Neill relied to her detriment on the assurances of Mr Holland and her father that she was to have a beneficial interest in the Property. As I have attempted to explain, the detrimental reliance lay in her agreement to the Property being transferred into the sole name of Mr Holland, when the previous intention had been for a transfer into joint names, and the primary factor which caused

Ms O'Neill to give her consent was Mr Holland's false representation that (in effect) he would otherwise be unable to obtain a mortgage.

70. An unusual, and complicating, factor of the present case is the role of John O'Neill, who (on the District Judge's findings) was the sole legal and beneficial owner of the Property at the time of the 2008 transfer. He was of course under no obligation to give the Property away during his lifetime, and it was for him alone to choose what to do with it. Unfortunately, his death in 2009 means that his intentions in 2008 have to be collected, as far as it is possible to do so, from second-hand evidence and surviving contemporary documents. In principle, however, there is much to be said for the view that the primary focus should have been on his intentions when making what was, at least ostensibly, a gift of the Property to Mr Holland, and asking whether *he* had acted to his detriment by transferring the Property into Mr Holland's sole name when it was always his intention that his daughter should have at least a 50% beneficial interest in it. Since the case was not pleaded or argued in that way, I do not think it would be open to us to decide the appeal on that basis. But I record my provisional view, for what it is worth, that such an analysis would have led to the same result. The only reasonable inference to draw from the available evidence, and the primary findings of fact made by the District Judge, is that John O'Neill would never have agreed to transfer the Property into Mr Holland's sole name without a clear understanding, shared by all three of them, that his daughter was to have a beneficial interest in the Property. After all, he had initially bought the Property in 1999 in order to provide a family home for his daughter and her family. The purpose of the 2008 transfer must have been to promote that objective, and not to jeopardise it by transferring sole beneficial as well as legal ownership to Mr Holland. On this analysis, the necessary detriment to John O'Neill would then be found in the making of the transfer itself, because he then put it out of his power to deal with the Property as he chose in the future.

71. In the event, however, for the reasons which I have given, I consider that the appeal can and should be determined in favour of Ms O'Neill by application of well-established principles and case law, and although the District Judge misdirected herself in relation to the requirement of detrimental reliance, it is sufficiently clear from her findings and the contemporary documents that the requirement was in fact satisfied. I would therefore allow her appeal on that basis.

## Other matters

72. This conclusion makes it unnecessary to consider ground 3, and since anything we said about it would be obiter, and the legal issues which it raises are far from straightforward, I propose to say no more about it. I would, however, grant permission to appeal in relation to ground 3, because we heard sufficient argument to persuade me that the issues raised by ground 3 are properly arguable, and it is not self-evident that the trial before the District Judge would have taken a different course if these issues had been raised at the time.

73. There are two further matters which I should briefly mention.

74. The first is that on 6 March 2020 Mr Holland made an application for permission to amend his respondent's notice and to adduce fresh evidence on the hearing of the appeal. The application to amend was refused by Newey LJ on 19 March 2020, but he adjourned the application for permission to adduce fresh evidence to the hearing of the

appeal. We heard argument on the application at the start of the hearing, and informed the parties that the application would be refused, for reasons which we would give in our judgments.

75. The application related to the alleged involvement of Mr David Martin, the solicitor who had acted for John O'Neill in the original purchase of the Property in 1999, in the context of the 2008 transfer. Ms O'Neill's evidence was to the effect that she thought the solicitor to whom her father spoke in the car on the way to the funeral, and who warned her father about transferring the Property into Mr Holland's sole name, was Mr Martin. The fresh evidence that Mr Holland now wished to adduce sought to establish that this could not have happened, because Mr Martin had ceased trading in September 2007, and he had assured Mr Holland in telephone conversations (after Mr Holland had succeeded in tracing him) that he was quite sure that he would not have given advice to anyone about any proposed transaction in February 2008. However, Mr Holland was unable to procure a witness statement from Mr Martin, and in an email dated 21 February 2020 Mr Martin had said to Mr Holland: "I do not promise to sign anything".

76. Our main reasons for refusing Mr Holland's application to rely on this evidence were (a) that it could have been obtained with reasonable diligence for use at the original trial in 2017 (Mr Martin was a solicitor, who could easily be traced, as Mr Holland eventually discovered, through the Law Society) and (b) that the evidence anyway related to an episode (the alleged telephone conversation in the car) upon which the District Judge had made no findings of fact, and which therefore played no part in her conclusions. It followed that the fresh evidence, if admitted, could not "have an important influence on the result of the case", to quote from the second of the familiar conditions in Ladd v Marshall [1954] 1 WLR 1489 (CA) at 1491.

77. The second matter concerns the grounds of appeal relating to equitable accounting which Mr Holland was given permission to pursue in the County Court, and which Judge Pelling did not deal with because it was unnecessary for him to do so having allowed Mr Holland's appeal on grounds 1 and 3. Unless those matters can now be settled by agreement, the case will now have to be remitted to Judge Pelling for those matters to be determined.

**Lord Justice Nugee:**

78. I agree.

**Lord Justice David Richards:**

79. I also agree.