[Kroll Agency Services Ltd v Inlustrem Maritime Ltd [2026] EWHC 1453 (KB)]

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Introduction

It is increasingly common for family members to contribute towards the purchase price of residential properties. As these arrangements are often made informally, they can give rise to complex disputes concerning the parties' respective beneficial interests. In the parent-child context, these disputes frequently engage the long-established Presumption of Advancement, under which certain transfers are presumed to have been intended as gifts. However, the strength of that presumption has been the subject of increasing judicial scrutiny. The recent High Court decision in Kroll provides clarity by demonstrating the presumption has much less force in modern times and may be easily rebutted with the right evidence. It also proves the significant implications this has for judgment creditors seeking to enforce debts through charging orders over a debtor's beneficial interest in the property.

Factual Background

The Parties

The claim was brought by four Claimants against eight Defendants, and Master Dagnall directed 3 additional parties be joined to the proceedings so that all those who claimed beneficial interests (or similar) in the property would be bound by the Court's eventual determination.

The issues before the Court arose from the family arrangements surrounding Flat 8, 5 Ennismore Gardens. London SW7 1NL ("the Flat"). The son, Sam Tariverdi, was registered as proprietor of the long lease of the Flat.

The principal Defendants relevant to the dispute were:

(1) Mr Hassan Tariverdy ("the Father")

(2) Mr Sam Tariverdi ("the Son")

(3) Dr Farimah Ghezelaiagh ('the Mother')

(4) Mr Panagiotis Postantzi (a family friend and business acquaintance)

The Charging Order

In February 2023, the Son, was subject to a consent order with Judgement Debts in the sum of £24 million in favour of the Claimants.

In May 2023, an Interim Charging Order was made over the Flat to secure the Judgment Debts, and this was later made into a Final Charging Order ("FCO") in June 2023.

The proceedings concerned the enforcement of the FCO against the Flat, which was contested by several of the Defendants on the basis of their alleged beneficial interest in the Flat.

Parties' Positions

The Claimants argued the claims brought by the Father, the Mother and Mr Postantzi were designed to defeat the Claimant's enforcement claim. They argued that the Son was the sole beneficial owner of the Flat, consistent with the legal title, thereby permitting the FCO to be enforced. The Claimants further submitted that any funds provided by the Father gave rise to the Presumption of Advancement.

The Father claimed he held the entire beneficial interest in the Flat and that the FCO should be discharged, as the Son had no beneficial interest in it. This was on the basis that all the relevant monies, being in particular the initial purchase price and the premium for the long lease were provided by him, and he had also provided the monies for paying the mortgage and other bills and expenditure relating to the Flat. He stated that in Iranian culture it was customary for the parents (in particular, fathers) to own all of the significant family assets. The reason provided for why the Flat was registered in his Son's name, was so that it would assist him obtaining an extended visa to remain in the UK during his studies and early business career.

The Son remained neutral, making no contentions regarding the beneficial ownership, albeit he acted as a witness for the Father.

In the alternative, the Mother claimed a beneficial interest in the Flat based on her funding expenditure on and in relation to it and, alternatively, argued that she at least had a right to occupy it.

Mr Postantzi, a family friend and owner of various companies that transferred the family's monies, advanced he had a beneficial interest in the Flat should it be held that the monies which derived from or through him were not to be treated as belonging to the Father.

Issues & Judicial Findings

(1) Whether all or any of the monies provided by the Father were loans?

The Court observed that, as a matter of objective analysis, if a transaction is a loan, it cannot also be a gift. Having considered the evidence and submissions, the Court ruled the monies were not provided by reason of a loan agreement (whether express, implied or to be inferred from the writing between the parties and/or the words said and/or their conduct). This was apparent from the Father refusing to sign a document that had been prepared by the Son which purported to be a Deed, but in reality, fell short of the requirements of Section 1 of the Law of Property (Miscellaneous Provisions) Act 1989. Having not been signed by the Father, it also fell short of constituting a valid contract to grant a charge (legal or equitable) to the Father pursuant to Section 2 of the 1989 Act. In any event, the unsigned document stated that the Son, as a "borrower", promised to pay the "lender", the Father, the sums used to fund the purchase of the Flat, and that he granted the lender a security interest in the Flat. Moreover, the Court accepted that investigations made in 2015 by a surveyor from a bridging loan company, found the Mother living in the Flat had asserted the true owner was the Father and not the Son, which supported the monies provided by the Father were not simply a loan.

(2) If not, the presumption of resulting trust would apply but for the Presumption of Advancement. i.e. what is the strength of the Presumption & is post-transaction conduct and cultural factors admissible in this assessment?

In the circumstances where there was no loan, the Presumption of Advancement would arise. The question is whether the Presumption could be rebutted by the Father showing his subjective intention at the relevant times was to retain beneficial ownership of the Flat, rather than merely gifting monies to the Son.

The Court found the Father had successfully rebutted the Presumption of Advancement and took into consideration post-transactional conduct. It was found he not only provided the purchase monies for the acquisition of the Flat but also the new lease premium.

The old authorities for the Presumption of Advancement were examined, including Chettiar v Chettiar [1962] AC 294 which cited Shephard v Cartwright [1955] AC 431 and held that the rebuttal of the presumption must be proven clearly and distinctly, by evidence properly admissible for the purpose, and not left to be inferred from slight circumstances. These were viewed against Lavelle v Lavelle [2004] EWCA 223 which cited Pettitt v Pettitt [1970] AC 777 and found such cases have lost much force in modern times. This position was subsequently reaffirmed in Close Invoice v Abaowa [2010] EWHC 1920.

In assessing the subjective intention of the Father, the Court accepted Iranian cultural norms in that the father was to hold the assets of the family and not transferring ownership of them to their adult children, even if they were using those assets to provide help or assistance to the children.

Therefore, it was found that a full resulting trust was imposed in the Father's favour giving him the full beneficial interest in the Flat.

(3) Alternatively, whether the Mother or Mr Postantzi have a beneficial interest in or an equitable right to occupy the Flat?

The Mother's claim for occupancy was not pursued given the outcome, and similarly, Mr Postantzi's conditional claim was dismissed.

Albeit the Court gave some words of warning for charging orders generally. Where there is an oral agreement for a person (in the case, the Mother) to reside in the property, this may be a compelling reason for a Court to refuse to allow a charging order to be enforced against that occupant whilst they choose to remain living there.

(4) Does the parent's beneficial interests take priority over the judgment creditor's charging order?

If such interest and rights of the Father and the Mother exist, the Court had to consider the implications of this and whether they have priority over the charging order which the claimant judgment creditors have obtained against the beneficial interest of the Son in the Flat. The Court found charging orders can only exist over a beneficial interest and thus it set aside the FCO pursuant to section 3(5) of the Charging Orders Act 1979.

Decision

Master Dagnall ruled in favour of the Father, holding that he retained the sole beneficial interest in the Flat, meaning the creditors' FCO could not stand and was consequently set aside.

Conclusion

In summary, the judgment is significant for the following reasons:

(1) Firstly, it confirms the Presumption of Advancement applicable to parental transfers is not a strong presumption in modern times and can be rebutted by evidence of the provider's subjective intention. In doing so, the Court can consider post-transactional conduct as well as cultural evidence. In this case, the Court favoured a resulting trust analysis. However, practitioners should also consider whether a common intention resulting trust might give rise to an alternative argument.

(2) Secondly, it acts as a stark reminder that a third party's (such as a parent's) contribution towards the acquisition of a property may give rise to a beneficial interest under a resulting trust. Such an interest can take priority over a judgment creditor's interest secured by a charging order. Consequently, where the registered proprietor holds no beneficial interest in the Property, any attempts to enforce the charging order may be set aside.

(3) Thirdly, any documents (i.e. promissory notes) purporting to create a loan or secure an interest in the property must comply with formal requirements under the Law of Property (Miscellaneous Provisions) Act 1989. A failure to satisfy these requirements may have significant consequences for determining the existence and extent of the beneficial interest in a property.

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