Sign Here (Sort Of): What Hudson v Hathway Really Settled for Constructive Trusts - and What It Didn't

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Summary

The recent decision of Reid-Roberts v Mei-Lin [2026] EWHC 49 (Ch) provides a helpful gloss on the Court of Appeal case of *Hudson v Hathway* [2022] EWCA Civ 1648. *Hathaway* provided important clarity in the world of constructive trusts as it sets out what is required in form and substance between parties who are seeking to make a post-acquisition agreement as to their beneficial interest.

Hathway elucidates two clear principles:

(1) The meaning of "disposition" in the Law of Property Act 1925 s.53 was wide enough to encompass one party's release of proprietary interest to another, and this could be achieved via emails as (i) they were in writing, and (ii) deliberately subscribing one's name to an email was capable of amounting to a signature.

(2) Detrimental reliance remained a key component in establishing a common intention constructive trust, whether express or not.

Over three years later, this article analyses the lessons learned from *Hathway* in the subsequent cases which considered the above principles and probes: (i) what other forms of electronic messaging may also give rise to a "disposition" to establish the form of a constructive trust; and (ii) what exactly may constitute the substance of detrimental reliance where one cohabitee seeks to rely on an oral or written agreement so as to give rise to a constructive trust.

Hathway: The Facts

- The Claimant (Lee Hudson) and the Defendant (Jayne Hathway) were in an unmarried relationship and jointly purchased a property ("Picnic House") in 2007 where they cohabited until they separated in 2011.
- In July 2013, the parties exchanged emails discussing the division of their assets. In one email, the Claimant wrote to the Defendant: *“Which leaves the house, a bad asset which is preventing all of us [from] … moving on with our lives … You know what, I want none of the proceeds of that either. Take it. Buy yourself somewhere you can afford to live …”* The email was subscribed *“Lee”*.
- The parties continued to correspond and on 9 September 2013, the Claimant wrote: “*Yes, that's right … Under this arrangement, I’ve no interest whatsoever in the house, so whilst I will continue to contribute, I won’t do so forever.”* This email was subscribed *“Lee”*.
- At trial on 29 January 2021, Judge Ralton sitting in the County Court at Bristol concluded that: (i) the parties had clearly reached an agreement which included the Defendant having a 100% beneficial ownership of Picnic House; (ii) in order to enforce that agreement it was necessary for the Defendant to show that she had changed her position or otherwise relied on the agreement to her detriment; (iii) that the Defendant had in fact shown such detriment; and (iv) the Defendant was entitled to the whole of the beneficial interest in Picnic House.
- The Claimant appealed to the High Court and on 21 March 2022, Kerr J dismissed the appeal, concluding that, contrary to the view of Judge Ralton, there was no requirement to show that the Defendant had changed her position or acted to her detriment. Further, or alternatively, the quality of the asserted change of position or detriment was a matter of evaluative judgment for the trial judge, such that Judge Ralton was entitled to come to the conclusion that he had.
- The Claimant further received permission to appeal to the Court of Appeal.

Hathway: Court of Appeal

- The issues before the Court of Appeal were whether: (a) a constructive trust could arise simply as a matter of common intention without the need to show any detrimental reliance on that intention and (b) the formalities for the disposition of an interest in land or equitable interest contained in section 53(1) of the Law of Property Act 1925 had been satisfied.
- Lewison LJ, providing the lead judgment, gave clarity on two key points relating to constructive trusts:
    1. A release of an equitable interest in property by one joint tenant to the other joint tenant was capable of being a "disposition" of an interest in land or an equitable interest within the meaning of section 53(1)(a) or (c) of the 1925 Act, provided it complied with the formal requirements of section 53(1)(a) and (c).
        a. Such formal requirements were that the disposition was in writing and "signed" by the relevant person;
        b. The touchstone for determining what was a signature was an intention to authenticate the document;
        c. There was a substantial body of authority to the effect that deliberately subscribing one's name to an email amounted to a signature, given that so much correspondence took place nowadays by email rather than by letters with a "wet ink" signature;
        d. An email that was deliberately subscribed with the sender's name amounted to a signature for the purposes of section 53(1)(a) and (c);
        e. The claimant's emails were sufficient in point of form to amount to a release of his equitable interest in Picnic House, since they evinced a clear intention to divest himself of that interest immediately, rather than a promise to do so in the future;
        f. Furthermore, those emails, having been subscribed with the Claimant's first name, had amounted to a signed disposition in writing within the meaning of section 53(1) of the 1925 Act; and that, accordingly, by those emails the Claimant had released his equitable interest in Picnic House to the Defendant.

    2. That, in the absence of signed writing, detrimental reliance was a key component in establishing a common intention constructive trust and for any

party claiming a post-acquisition changed common intention was required to show detrimental reliance on such intention.

a. It was the detrimental reliance which made an otherwise unenforceable agreement or promise enforceable in equity. Otherwise, to hold that an oral agreement, disposition or declaration of trust in relation to land was binding without more would directly contradict section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and section 53(1) of the 1925 Ac.
b. There is no significant difference between the kind of detriment required in the case of proprietary estoppel, and that required in the context of a common intention constructive trust.
c. The High Court judge in the present case had erred in concluding that it was not necessary for the Defendant to demonstrate detrimental reliance; that, however, he had been right to go on to conclude that the question whether detrimental reliance in the context of an express agreement was sufficiently substantial was an evaluative decision for the trial judge.
d. In the present case, the trial judge had rejected the fact that the Defendant had assumed responsibility for the whole of the mortgage payments either because they did not amount to detrimental reliance at all; or because they were insubstantial. However, he did find that the Defendant desisting from making claims against the Claimant's pension share-save schemes and personal savings assets was sufficient detrimental reliance.
e. Such a desisting amounted to a lost opportunity to pursue alternative courses available which offered a real prospect of benefit, notwithstanding that the prospect was contingent and uncertain which amounted to detrimental reliance
f. The appellate court expressed a view that the trial judge may have analysed the suggested elements of detriment in over-granular detail, picking them off one by one instead of standing back and looking at them in the round. Further, Lewison J suggests that the trial judge might have viewed with more favour the Defendant's mortgage payments after January 2015, as this was an important element of detrimental reliance in both *Jones v Kernott [2012] 1 AC 776* and *Barnes v Phillips [2016] 2 FLR 1292*).

- As such the appeal was dismissed on both grounds.

- On 13 April 2023, the Supreme Court (Lord Lloyd-Jones, Lord Stephens and Lord Richards JJSC) dismissed an application by the claimant for permission to appeal.

Analysis

I. Formalities

On formalities, following *Hathway,* it was inevitable that the door would be open to discussion on other forms of electronic messaging as a means of satisfying the formalities amounting to a disposition which are required by section 53(1). Lewison LJ's focus on Parliament's intentions to encompass new technologies essentially signposted further arguments for other messaging services such as WhatsApp, as practitioners will all too often be aware of the various mediums in which their clients 'informally' discuss and seek to 'agree' on very important assets.

Update has very recently been received on this in the form of a High Court Appeal *Reid-Roberts v Mei-Lin* [2026] EWHC 49 (Ch). This case involved possession proceedings by a Trustee for a former matrimonial home against a bankrupt and his wife. During proceedings, the wife alleged that WhatsApp and email communications between the couple concerning the financial settlement and other aspects of the divorce, had led to a transfer to her of her bankrupt ex-husband's beneficial interest in the property prior to his bankruptcy.

However, the appeal was dismissed with this argument failing on two aspects:

a) In analysing the language used in the WhatsApp messages and emails, it pointed more towards the bankrupt agreeing to divest his interest in the property as part of an overall divorce settlement; it was not indicative of an intention to unequivocally and immediately relinquish his beneficial interest in the property in favour of his wife. (This point was similarly considered and followed in *Begum v Miah* [2024] EWHC 697 (Ch) where the court found that it was implausible to interpret the words *"in due course*", as relating solely to administrative matters nor that the appellant would relinquish her interest immediately without the debts being settled).
b) A WhatsApp message could be sufficient "writing" and properly be regarded as signed for the purposes of section 53 if the name of the sender appeared in the actual message, in a similar way to a signature in an email. However, the header within a WhatsApp "chat" identifying the sender was analogous to the email address that the relevant service provider added to the top of an email: it was not part of the

actual message itself; it merely provided a mechanism for identifying the sender of the email or WhatsApp message. Therefore, it should be regarded as incidental to the message itself, rather than forming part of it.

As such clear guidance has been provided as to the key components of "authenticating" the intention, to ensure a signature has been provided, namely a message has to directly include the sender's name, as opposed to simply relying on the 'header'. For anyone unfamiliar with the use of WhatsApp, the header relates only to the saved contact name within the recipient's phone – a name that can be edited and relabelled at any time by the receiving party. To determine that this in itself gives rise to a signature would likely give rise to many cases of forgery and is considered a sound approach by the court. Instead, they make clear the sender's name has to be included within the body of the message.

Interestingly, Cawson J, in applying *Hathway*, distinguished the use of WhatsApp messaging from email, as a "relatively informal medium" which *"pointed against an intention to effect such a significant transaction as the transfer of a beneficial interest in such a relatively high-value property".*

With the increasing use of these previously considered 'informal mediums' now being used for more serious affairs, such as agreeing commercial contracts, practitioners should watch out for whether messages sent by other mediums (e.g. Instagram messenger or indeed TikTok) may in future give rise to forming a disposition, if the formalities of section 53(1) can be met.

II. Substance

Detrimental reliance?

Whilst it is clear *Hathway* goes to some lengths, after reviewing an array of previous cases, to establish that detrimental reliance is indeed an essential component for any constructive trust claim. We are still not much further in determining exactly what actions will constitute this and the incremental case-by-case approach leaves practitioners with a huge degree of uncertainty when advising clients.

Hathway itself is contradictory on this point, with the trial judge outright rejecting the Defendant's sole mortgage payments post-agreement as any indication of detrimental reliance, with the the appellate court expressing caution on this approach.

Further, whilst Lewison LJ makes clear that there is no real delineation between detrimental reliance in a proprietary estoppel context as opposed to a constructive trust, this again does not always assist as the former line of caselaw is almost always easier to determine such reliance, as it often involves direct improvements/ contributions to the property itself. Constructive trusts, often found within the messy domestic context of a relationship, reveal other sacrifices or actions taken or desisted as a cumulative whole – rather than specifically related to the property in question.

Rather than giving clear principled guidance and examples as to what exactly will be deemed "detrimental reliance", the courts give the following vague framework:

- It will be for the trial judge to determine on a case-by-case basis as to what will be considered detrimental reliance;
- One must resist an over-granular approach of determining each action taking but view this conduct in the round;
- Ultimately, one ought to be guided by the concept of unconscionability and whether reneging on such an agreement would be unconscionable given the steps one party has taken in relying on the agreement.

It therefore seems doubtful that a party could successfully argue that they had given up an opportunity to work or have a career, and relied upon the salary of their partner, on the reliance of an agreement that they would have equity in the property – as one would question the unconscionability suffered. However, it will all be dependent on the facts of the case. It is hoped further clarity will be provided in subsequent cases on this point over the coming years.

Conclusion

To conclude, three years on from *Hathway*, there has been welcomed clarity as to what *form* a disposition will take, when using informal mediums of communication, with heavy emphasis placed on careful wording of what exactly is being agreed and when, as well as a need for the sender's authentication in signing off on any such agreement.

However, on *substance*, practitioners are still largely left in the dark. Practitioners might be able to advise clients that they need to show detrimental reliance to bring a constructive trust claim, there is still no clear cut assistance as to what substance such reliance will compose of. When taken together with the Supreme Court's decision in *Guest v Guest*, there is still no easy formula that practitioners can use to determine the outcome of cases for their clients.

The best *Hathway* can offer, is to remind the court on their discretionary exercise, is to take a step back and view all actions in the round, against the backdrop of unconscionability.

Things for practitioners to look out for

(1) Has your client signed any emails/text messages/WhatsApp messages disposing of his/her beneficial interest?
(2) If you are acting for a defendant, can your client overcome the formalities requirements by asserting that: (i) the method of communication is not sufficiently formal; or (ii) the purported agreement was not sufficient to demonstrate an intention to divest a party of their beneficial interest?
(3) In a post-acquisition common intention constructive trust claim, has there been any detriment suffered by the person asserting a constructive trust?
(4) When looking in the round, has that detriment been established?

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