

S.2 of the 1989 Act takes a further hit

The Message: Oral contracts for the sale of land are normally of no effect but they can be enforceable in certain circumstances.

The Case: The Court of Appeal has opened the door even further to litigation between property owners by upholding a decision of the Swindon County Court that a contract for the sale of an interest in land does not always have to be in writing (Oates-v-Stimson (reported 23/11/2006)).

Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 was intended to introduce much greater certainty into property dealings by requiring any enforceable contract relating to land to be in writing and signed by the parties. However, this Section does not affect the creation of resulting, implied or constructive trusts and this has left an opening for any party that has relied to its cost upon an oral agreement.

Mr Oates and Mr Stimson bought a house together in Farnborough, Hampshire in 1995 for £54,250. The mortgage was £56,983 and they both made equal mortgage payments until 1997 when Mr Oates had some financial difficulties and moved out and never returned. Mr Stimson claimed that he had orally agreed to buy out Mr Oates' interest for £2,500 when he could afford to do so and he had then paid the mortgage by himself and spent considerable sums on the property.

By 2000, Mr Stimson was able to pay Mr Oates the sum of £2500 and was prepared to do so but the property had increased in value by then and Mr Oates claimed there had been no such agreement and that, even if there was, it was unenforceable as it was not in writing. By the time of the trial, he was claiming that his share was worth over £50,000.

The Judge accepted Mr Stimson's evidence that an oral agreement had been reached and that, in reliance on this agreement, he had acted to his detriment by taking over the endowment mortgage and paying for improvements and repairs to the property. Accordingly, the Judge held that this reliance gave rise to a constructive trust in favour of Mr Stimson and that, subject to paying the agreed sum of £2,500, he was entitled to the full value of the property.

In the light of the conduct of the parties, the Court of Appeal firmly agreed with the Judge. The Court relied on the case of Yaxley –v- Gotts (2000) in which it had first been held in relation to construing Section 2 that reliance by a party on an oral agreement or understanding could give rise to a constructive trust. In this context, a constructive trust is pretty much indistinguishable from the doctrine of proprietary estoppel which prevents a party resiling on an agreement or representation that another party has relied upon.

At the time the agreement was reached, Mr Oates had been relieved to be freed from the mortgage obligations and there was nothing unfair in holding him to the bargain that he would then have thought was enforceable. On the contrary, the Court said it would be unfair to Mr Stimson to require him to pay the sum Mr Oates was now claiming.

No doubt, many other co-owners of properties are also unaware of the requirement for any agreement for any transfer between them to be in writing and this case, whilst providing greater uncertainty and thereby somewhat frustrating the policy behind Section 2, will considerably assist those who have relied on informal agreements to enforce them.