

Not so happy sailing

Mark Pawlowski on when a promise becomes a declaration of trust



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Words spoken in conversation during parties' intimate relationships can assume an unforeseen legal significance when examined years later by the courts. The facts in *Rowe v Prance* [1999] 2 FLR 787, [1999] All ER (D) 496 serve as a vivid illustration of this.

Sail away

The claimant was a widow who cohabited for 14 years with the defendant, a married man of considerable private means. In 1993, he told the claimant he would divorce his wife and use the proceeds of the sale of the matrimonial home to buy a yacht for them to share and sail around the world. The defendant duly purchased a yacht for £172,000, which was renamed so as to incorporate the parties' respective names.

The yacht was registered in the defendant's sole name, the defendant giving the excuse that a joint registration was not possible because the claimant did not possess an ocean master's certificate. The claimant gave up her rented house and put her furniture in storage in order to base herself on the yacht, although she was mainly there only at weekends, spending the remainder of her time in temporary accommodation. In a letter, the defendant promised the claimant that his absences would shortly cease and the yacht would be theirs to share so they could live together. In numerous conversations both before and after the purchase of the yacht, the defendant referred to it as 'ours' or 'our boat'.

When the claimant eventually lost patience with the defendant, she demanded

a half share of the yacht's value when it was sold on the basis the defendant had expressly constituted himself a trustee of the yacht for himself and the claimant. The defendant, in response, argued the yacht was purchased as a leisure item and his references to 'our boat' and 'living together' were to be understood in a casual sense only and not implying any joint ownership.

In court

The deputy judge, Mr Nicholas Warren QC, applying the earlier case of *Paul v Constance* [1977] 1 WLR 527, [1977] 1 All ER 195, held the defendant's repeated use of the word 'our' when referring to the yacht and his assurances that the claimant's 'security' was her interest in it (coupled with his explanation as to why he alone could be registered as owner) showed he intended the claimant to understand she had a beneficial interest in the yacht. His declaration of trust did not have to be evidenced in writing and could be declared without using technical language such as 'trust'. In *Paul*, for example, the repetition of the words 'the money is as much yours as mine' (referring to winnings from bingo) was held sufficient to create a trust in favour of the claimant. The same reasoning was held to apply in *Rowe* so the defendant had effectively constituted himself an express trustee of the yacht for himself and the claimant in equal shares.

The cases show that, although an isolated loose conversation will not be enough to uphold a valid declaration of trust, the repetition of words by the owner over a period of time, especially in the context of an intimate relationship, indicating the property

in question (for example, cars, jewellery, shares, etc) is to be as much the claimant's as his own will be sufficient. In *Paul*, the property in question took the form of money deposited in a bank account. As in *Rowe*, no formality of writing at all was required and it was immaterial that it was not possible to pinpoint a specific moment of declaration. What is also particularly significant is that, in both cases, the claimant acquired a beneficial share in the property regardless of any contribution (financial or otherwise) towards the acquisition (or subsequent improvement) of the property.

Fair shares?

To what extent is it also possible to claim a share in the house owned by one of the parties relying purely on an informal express declaration of trust? Section 53(1)(b) of the Law of Property Act 1925 provides that a declaration of trust respecting any land (or any interest therein) is unenforceable unless it is manifested and proved by some writing signed by the person who is able to declare such trust. Coincidentally, in *Rowe*, the deputy judge placed much emphasis on the letter written by the defendant to the claimant (in terms that they were going to share and use the boat together) as express recognition that the property was jointly owned. Although written evidence of the declaration was not necessary in that case (the property being personality), it is likely that in most cases (even those involving land) the claimant will be able to produce correspondence (or other documentation) passing between the parties in order to satisfy the requirement of writing in s 53(1)(b): see, for example, *Ong v Ping* [2017] EWCA Civ 2069, [2017] All ER (D) 68 (Dec).

It follows that the requirement of legal formality for trusts of land will not always be an insurmountable obstacle given the declaration of trust need not itself be made in writing so long as it is evidenced by writing containing all the terms of the trust. Significantly also, the writing need not be contemporaneous with the declaration of trust so that a subsequent letter, note, email, etc signed by the person declaring the trust may suffice to render the trust enforceable: see *Hilton v Cosnier* [2018] EWHC 3728 (Ch), [2019] All ER (D) 54 (Jan) (a grandfather's words to his partner were not enough to create a trust in favour of his grandchildren) and *Singha v Heer* [2016] EWCA Civ 424, (letters written between former business partners referring to Mr Singha holding a property 'on trust' for him were not enough to establish a declaration of trust). **NLJ**

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