

## Can one email change the interest you have in your property?

Re: Hudson v Hathaway [2022] EWCA Civ 1648

The excitement of purchasing a property with your partner, the culmination of months, if not years, of planning and saving, is a special event for us all. The last issue on your mind is if both parties have the same financial protection if the relationship should sour and the property is to be sold.

### The Facts

The case of Hudson v Hathaway centres upon a common issue, namely Mr Hudson and Ms Hathaway who were in a relationship and had two children but did not marry. The couple purchased a property, The Picnic House, in 2007 with a mortgage in joint names, however a declaration was not entered into confirming the agreed split in ownership.

In 2009 the parties separated, and Mr Hudson left The Picnic House whilst Ms Hathaway continued to reside at the property with their children.

In 2011 the property was damaged due to an oil spill from an adjacent tank, making it difficult to sell the property. Thereafter, the parties entered into a series of emails in reference to their financial arrangements in which Mr Hudson confirmed the following was correct: *"your suggestion, as I understand it, is you get sole ownership of your shares and pension, I get the equity from the house.... Is that right? If so, then I will accept this..."* In January 2015, Mr Hudson stopped contributing to the mortgage.

Mr Hudson issued Court Proceedings in October 2019 seeking an order for The Picnic House to be sold with the proceeds being split equally. It was agreed that the property should be sold however, Ms Hathaway argued she was entitled to the entire proceeds due to the aforementioned agreement which she had relied on to her detriment.

### The Legal Position

The legal starting point is that if you are not married or within a civil partnership, you do not have the same financial protection when dealing with any property. During the process of purchasing a property you will be required to confirm if you are completing the purchase as joint tenants, namely each party owns the property equally, or tenants in common, namely the parties are treated as having distinct shares in the property.

In this instance Mr Hudson and Ms Hathaway agreed to purchase The Picnic House in joint names with equal shares. The key question for the Court to decide was: 1) did the email correspondence from Mr Hudson transfer the shares into tenants in common and altered the beneficial shares by creating a constructive trust, and 2) was Ms Hathaway required to evidence detrimental reliance upon the statements made?

The claim advanced to the Court of Appeal who confirmed that a party in the position of Ms Hathaway must evidence detrimental reliance on the change from joint tenants to tenants in common in order to obtain an increase in the equitable proceed of the sale of a property. It was

confirmed that Ms Hathaway had relied upon the statement and this was sufficient to establish a constructive trust: therefore, Ms Hathaway was entitled to the full extent of the proceeds of sale.

### The Practical Impact

The decision confirms that if you are entering into correspondence in reference to property rights you must consider carefully what is being communicated. In this instance, by adding his name “*Lee*” to the bottom of the emails Mr Hudson had sufficiently confirmed the transfer of his equitable interest in The Picnic House to Ms Hathaway. In addition, the case has cemented the current understanding that detrimental reliance is a key requirement for a constructive trust to arise between the parties.

For more information on how we can help you, please contact Andrew Dickinson in our litigation department (0113 225 8811 or [AndrewDickinson@chadlaw.co.uk](mailto:AndrewDickinson@chadlaw.co.uk)) or Rebecca Payne in our family department (01924 234208 or [RebeccaPayne@chadlaw.co.uk](mailto:RebeccaPayne@chadlaw.co.uk))