

Case Study - Family Law

Property Disputes and Unmarried Couples

The bitterest disputes are those which usually could have been avoided easily by taking the right steps at the right time.

This includes disputes about property between people who lived together in a relationship. This often relates to property which they jointly occupied but which, may be registered in the name of only one of them.

An illustration:

Tom and Tina met and quickly fell very much in love. They decided to live together and without much, if any, thought bought a home. Tom was a high earning banker working in the City and Tina made cupcakes and had just set up her own café. Tom easily arranged the mortgage and, without any discussion, the property was purchased and registered in his sole name on completion. Tom paid the deposit on purchase but Tina scraped together what she could and contributed in relation to the Stamp Duty and solicitors' conveyancing costs. He carried her over the threshold. They had a joint account and Tom made the larger monthly contribution to cover the mortgage and other domestic expenditure but Tina, again, paid what she could, sometimes in cash and sometimes not and, generally, not less than £200 per month and sometimes significantly more. Tina redecorated the living room and study and paid for paint and materials. She paid for a new bathroom suite and paid for it to be fitted. Two children were born. Tom was the breadwinner and Tina the homemaker. The café made a profit but not much and Tina worked hard whether at home or in the café.

The relationship lasted 20 years before it broke down and it broke down badly. It was acrimonious. Tom was scathing in relation to Tina and her alleged contribution. Tina was aggrieved and angry that her contribution was not just recognised but laughed at. Tom put the property on the market for sale without consulting Tina who dug in and point blank refused to leave. Not only did she refuse to leave but she had the audacity to claim an interest in the property based on her financial and other contributions, throughout the relationship. She had, she alleged, contributed not less than £50,000, and probably significantly more, in the course of the relationship.

Tom had purchased the house for £500,000 subject to a mortgage of £150,000 but it now marketed at £900,000 and the remaining mortgage amounted to £100,000. The net equity, on that basis, disregarding costs of sale, amounted to £800,000. Tina considered half that hers. Tom didn't.

Tom is now not far from retirement and has made significant financial provision for himself.

Tina too is not far from retirement but has little or no pension or other capital to provide for herself in her old age.

She considers it only right and fair that her contribution is recognised by conferring on her an interest in the property which, remember, is registered in Tom's sole name.

Tom and Tina never specifically discussed the property during the relationship and Tom says he made her no promises. As far as Tom is concerned, he owns the property and that is that.

So far as Tina is concerned she thinks, rightly or wrongly, that due to her contribution, no reasonable court would deny her an interest in it.

Tina has no financial claim by right on Tom on separation but would have done so had they been married.

Forget any notion of common-law husband and wife. It doesn't exist.

Had they been married, the court would have had a very broad discretion to distribute the matrimonial assets fairly between the parties to enable them, as far as possible, to meet their respective income and capital needs, including on retirement.

That does not arise here and Tina's position is precarious. On the face of it, she has nothing and no proper retirement provision. Her claim, if it exists at all, is in relation to the property and is based on property and trust law, not family law, which is worse still for her. The children are now adult and financially independent so they would not be considered relevant by the Court.

So, where does this leave Tina after a 20 year relationship to which she has contributed fully, financially and otherwise?

If Tina intends to pursue a claim, she will have to prove:

- ✓ That there was an **agreement** between she and Tom, either **expressly** or to be **inferred** from conduct, that she would have a beneficial interest in the property, even if there was no specific agreement as to the extent of that interest;
- ✓ If such an agreement was proved but there was no agreement as to the extent of her beneficial interest, the Court may **impute** an intention that she was to have a fair beneficial share and may then assess that share in the light of the whole course of dealings between her and Tom in relation to the property.

Many, many questions then arise, not least what is the difference between inference and imputation, why does it matter, how do you prove it and what is the value of Tina's claim?

These questions are not easily answered and it is incumbent on Tina to prove her case on the evidence.

These types of dispute can take up to over a year to resolve in court and cost a lot.

This horror story began by referring to right steps at the right time.

The issue should properly have been identified and dealt with at the outset either by way of Trust Deed and/or Cohabitation (Living Together) Agreement. Had they done so, Tom and Tina may still have been on talking terms and able to work together for the benefit of their children.

A Trust Deed can also specify what should happen if Tom and Tina bought a house in joint names but contributed unequally. Our family lawyers can help you draw up a Cohabitation Agreement or can advise you about your options if you are separating.

Contact our Family Law Specialists

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