

CASE REPORT

Co-ownership Disputes

Quantum of compensation for co-owners excluded from trust property under TLATA 1996

Rowland v Blades [2021] EWHC 2928 (Ch)

<https://www.bailii.org/ew/cases/EWHC/Ch/2021/2928.html>

On appeal, the High Court increased the quantum of compensation paid to a joint co-owner of a 'grand holiday home', which he had been effectively and unreasonably excluded from for a period of 6 years by his former partner. The Deputy Master's award had assessed compensation as if the claimant had lost the use of an occasional weekend holiday let; this failed to take into account the character and quality of the property.

Facts

R and B began a relationship in 2006. They both already had their own homes. In early 2009, they purchased Tadmerton House, a 'grand country home', in joint names, intending to use it mainly at weekends and during holidays. Later that year, their relationship ended when R began a relationship with another person. B told R that she did not want him to take his new partner to the property; he agreed not to do so. That new relationship ended in 2015, during which time R had no use of the property at all (or indeed at any point until 2018).

In May 2019, R issued a claim seeking (1) a declaration that he was the sole beneficial owner of the property, having supplied the purchase monies of c. £1.5m; and (2) an occupation rent for his exclusion from the property between 2009 and 2018. B contended that the parties had intended to create a beneficial joint tenancy, and that there were no grounds for the imposition of an occupation rent.

Issues

At the trial, it was agreed that the two for the Deputy Master to decide were (1) what were the parties' respective beneficial interests in Tadmerton House, and (2) whether B should pay an occupation rent, and if so how much?

First instance

At first instance, Deputy Master Hansen found for B on the issue of beneficial ownership, holding that the parties had from the beginning intended the property to be beneficially owned in equal shares. On the second issue, he found that R had constructively and unreasonably been excluded by B's demand that he could not bring his new partner to the property; but that this exclusion ceased when the relationship ended in 2015. Accordingly, R would be ordered to pay an occupation rent for the 6-year period from 2009-2015.

As to the quantum of occupation rent, the parties had adduced a report from a jointly instructed expert surveyor, who had been asked to provide valuations on three different bases, namely:

- (1) The annual rental value;
- (2) The rental that would have been paid for the occasional weekend and holiday use at any time of choice based on daily rent by day of the week; and
- (3) The rental payable for 'occasional weekend and short usage'.

The Deputy Master considered the third basis of valuation to be the most appropriate, and assessed the occupation rent at a total of £59,958.

The full judgment can be found at <https://www.bailii.org/ew/cases/EWHC/Ch/2021/426.html>.

Decision on appeal

R appealed against the Deputy Master's finding on quantum of occupation rent. HHJ Jarman QC (sitting as a Judge of the High Court) allowed the appeal, increasing the amount awarded to R to £120,000. In reaching this conclusion, the Judge reasoned as follows:

1. *The starting point was the application of ss.12-15 TLATA 1996, which replaced the old doctrine of equitable accounting (though the result would often be the same).*
2. *Where an award is due, s.13(6)(a) requires the Court to assess 'payments by way of compensation', which means that the excluded beneficiary should be put in the position s/he would have been in but for the exclusion, so far as may be achieved by a monetary award.*
3. *Where the beneficiary has suffered financial loss (e.g. the cost of alternative accommodation) the exercise will be relatively straightforward.*
4. *Where there is no financial loss, the Court must instead put a monetary value on the loss of amenity, which in this case was 'the special amenity of using Tadmarton House at weekends and holidays as his own home in his free time'. This was different from renting someone else's property for a weekend break.*
5. *The facts of the case did not therefore fit neatly into any of the expert's three bases of valuation. R's loss was less than the annual rental value, because the property was never intended to be*

a full-time home. But it was greater than an occasional weekend rental. The appropriate description was that he had lost the use of a weekend holiday home.

6. *On the basis that R's loss was the loss of a grand weekend and holiday home, rather than a holiday let, the proper figure for his loss fell somewhere between the lowest valuation basis and the highest. The Judge assessed the quantum at £120,000.*

Comment

The result of the appeal in *Rowland v Blades* is of general interest for two reasons.

First, it is a useful reminder and illustration of the proper approach to expert evidence on questions of loss. Here, the Court had to assess R's loss of amenity. It had the benefit of detailed expert evidence on that point. But as HHJ Jarman stressed, the exercise was evaluative, not arithmetical: the Court had to properly assess the nature of R's loss, and then use the expert evidence available to reach a fair and objective assessment of how that loss of amenity should be translated into monetary terms. Property litigators should take care (as was done here) to obtain sufficiently wide-ranging expert evidence, but should also be prepared to remind the Court that the evidence is a guide and not a straight-jacket.

Second, property litigators acting in co-ownership disputes should give careful consideration to whether an occupation rent can be claimed, and its quantum. In most cases, only one of the parties will be in occupation, and the house will have been purchased as a joint home. It does not follow that an occupation rent is payable—e.g. in *Stack v Dowden*, none was payable because the house retained its use as a home for the parties' children. But if an occupation rent can be claimed, and where the period of exclusion is significant and ongoing, the excluded claimant can add a potentially substantial monetary claim to the principal claim for a declaration as to beneficial ownership.