

SUPPLEMENTARY BENEFIT

Resources—Property purchased by one person in the name of another.

The claimant owned two houses valued at £5,500 and £6,000 respectively apart from the accommodation occupied by himself. The supplementary benefit officer decided that the claimant's capital resources exceeded the statutory limit and disallowed benefit. Subsequently, the claimant made a statutory declaration that he was really holding the ownership of the first house as a nominee for his son, the real owner, who was in occupation of, and making repayment of the loan on that house. The second house was said to have been transferred to another of his sons. On appeal, the tribunal found that the declaration in respect of the first house confirmed the claimant's ownership of the property and they upheld the supplementary benefit officer's decision under regulations 6(2) and (1) of the Supplementary Benefit (Resources) Regulations 1980. The claimant appealed to a Social Security Commissioner.

Held that:

1. acceptance of the claimant's declaration in respect of the first house would have the effect of establishing that the son and not the claimant was the owner, in accordance with the accepted legal principle that the purchase of land by one person in the name of another gives rise to a resulting trust for the true purchaser. (paragraph 5);
2. the credibility of the claimant's allegation that he is not the true owner of the property registered in his name but is only a nominee (trustee) should be investigated and tested. If there is no trust in writing, no nominee restriction, no registered charge and no notice of intended deposit entered on the register at the date of the alleged loan and no documentary evidence showing that the purchase price was provided by anyone other than the claimant, it may be relatively easy to conclude (in the absence of some thoroughly convincing explanation) that on the balance of probabilities the relevant property was owned by the claimant for his own use and benefit free from any resulting trust and from any loan (paragraph 7);
3. in relation to the second house, when considering whether there has been a transfer of ownership of the property regard should be had to "presumption of advancement" in favour of the son. Where it is found that a claimant has transferred a property to his son the question whether he has deprived himself of the property in order to secure supplementary benefit should be considered under regulation 4(1) of the Resources Regulations (paragraph 9).

The appeal was allowed.

1. This appeal succeeds. My decision is that the decision of the supplementary benefit appeal tribunal dated 13 September 1982 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination in accordance with my directions.

2. By a decision issued on 7 May 1982 a benefit officer decided that the claimant was not entitled to supplementary allowance from 7 May 1982. The claimant appealed against that decision. In his written submission to the supplementary benefit appeal tribunal the benefit officer stated that the claimant was currently unemployed. He had claimed supplementary allowance in July 1980 to meet the requirements of himself, his wife and two dependant children. He had declared that he owned properties at 38 Hanover Square and 80 Boynton Street, both in the same town. The benefit officer had requested the District Valuer to provide an estimated value of these two properties and these were estimated at £6,000 for 38 Hanover Square and £5,500 for 80 Boynton Street. The benefit officer decided that as the capital resources calculated in accordance with the regulations exceeded £2,000, supplementary allowance was not payable.

3. The claimant appealed to a supplementary benefit appeal tribunal. That tribunal had before them a statutory declaration sworn by the claimant on 21 July 1982 in which he declared that he was at the present time the legal owner of the dwelling house 80 Boynton Street, that this property was purchased on behalf of his son Mohammed who was then in occupation thereof along with his wife and family and that at the time of the purchase his son was unable to obtain the necessary loan to enable the purchase to proceed and the property was therefore purchased in his name so that the loan could be obtained. His son was making all the payments required in connection with the said loan and therefore he the claimant was in effect holding the ownership of this property really as nominee for him and same would be transferred into his name in due course. The chairman's signed note of evidence records, under the heading "Presenting Officer":

"Statement from appellant to officer that loans arranged for purchase

on behalf of sons. Valuer puts property at £6,000 & £5,500. Letter from District Land Registry shows ownership of Boynton Street and Hanover Street as [claimant's name] as on April 23, 82."

Under the heading "Appellant's representative" the same note records:

"The houses do not really belong to [appellant] but to his sons. Loans outstanding are £2,500 for 80 Boynton Street and Hanover Square is paid off.

Security for the loans was personal standing of [the claimant], loan was from a private individual. Son is personally repaying this loan at present. No money was paid by [the claimant] or repaid to him.

Son is trying desperately to obtain another loan so as to pay for 80 Boynton Street and take it over from his father."

4. The tribunal's findings of fact were:

"In May 1982 the [appellant] owned 80 Boynton St Ownership confirmed on July 21st 1982 in a statutory declaration. The legal owner of a property can sell it and would be entitled to any sum remaining after the outstanding loan had been repaid. The property was valued at £5,500 and the outstanding loan is £2,500."

Their decision was:

"The decision of the Supplementary Benefits Officer is upheld."

Their reasons were:

"Resources Regulations 6(2) and 6(1) (Capital to be disregarded)."

5. The decision of the tribunal is clearly erroneous in point of law. By finding that the statutory declaration confirmed ownership of 80 Boynton Street by the claimant, the tribunal must have accepted the truth of the facts contained in that declaration. In so doing, they entirely misunderstood its effect. The effect of accepting that the claimant's son had, with money borrowed by the claimant, purchased 80 Boynton Street in the name of the claimant is to raise the presumption that the claimant held that property on a resulting trust for the son. In other words, the facts accepted establish that the son, and not the claimant, is the beneficial owner: see *Snell's Equity 28th Edition* at pages 179 et seq. The principle that purchase of land in the name of another gives rise to a resulting trust for the true purchaser has been settled for centuries: see *Anon* (1683) 2 Ventr. 361 and *Dyer v Dyer* (1788) 2 Cox Eq. 92 at page 93 per Eyre C.B., both cited in *Snell supra*. The tribunal's further "finding of fact" that the legal owner of property can sell it and is entitled to the balance of the proceeds of sale after paying off the outstanding loan shows a complete misunderstanding of the legal position. A legal "owner" of 80 Boynton Street would only be entitled to the proceeds of sale of that property after paying off the loan if he was a *beneficial* owner and this—if the statutory declaration is accepted, as it was by the tribunal—the claimant was not. As for the claimant's power to sell, it is clear that 80 Boynton Street is registered land. If—there is no finding on this point—the claimant was the registered proprietor of a freehold or leasehold interest in 80 Boynton Street, his power to sell is statutory, being contained in the Land Registration Act 1925 and the rules made thereunder. But, on the facts accepted by the tribunal, the claimant was a nominee for his son. The usual nominee restriction, if on the register, would prevent the claimant, although the legal owner, from selling the property without his son's consent. Finally, the finding that the value of the property should be taken as £5,500 (that found by the District Valuer)—less the outstanding loan of £2,500—entirely disregards regulation 5 of the Supplementary Benefit (Resources) Regulation 1980, which is mandatory. There is nothing

in the tribunal decision to show that they considered this regulation (which provides, amongst other matters, for a 10% deduction for the costs of sale) at all. Thus the tribunal decision contains, on its face, a series of false propositions of law. Nor does it find the necessary facts; and it reaches a conclusion which no reasonable tribunal, properly instructed as to the law (including in this expression equity) could, on the facts that they did find, have reached.

6. It is quite impossible to give the decision that the tribunal should have given, for none of the basic facts have been established. The case must accordingly go back to a fresh tribunal, which should hear evidence and make findings on the question of the beneficial ownership of both 80 Boynton Street and also 38 Hanover Square. They should:

- (1) call for an up-to-date office copy of the entries on the register of each of these properties;
- (2) ascertain from such copy the name of the registered proprietor, whether a nominee restriction has been entered, whether there are any, and if so what, registered charges and the proprietors of each of them, whether there is a subsisting notice of intended deposit of land certificate, and inspect the other entries on the register;
- (3) ask for a certified copy of the transfer (or other assurance) transferring the properties in to the name of the claimant or other registered proprietor and of any registered charge;
- (4) find as facts the dates when the purchases were completed, and the dates when they were registered, stating who paid the purchase price for each of the said properties, who made the alleged loans, how they were secured and who was making the monthly repayment of the interest and loan on 80 Boynton Street;
- (5) establish when 38 Hanover Square was transferred by the claimant into the name of his other son; and
- (6) ask whether there is any document declaring a trust in respect of either of the properties and, if so, consider its terms.

7. A resulting trust is not required by law to be evidenced in writing: see section 53(2) of the Law of Property Act 1925. In the absence of such evidence the credibility of the claimant's allegation that he is not the true owner of property registered in his name (80 Boynton Street in the present case) but is a nominee should be tested, first, by seeing whether the usual nominee restriction has been entered on the register. Such a restriction protects the true owner against the registered proprietor selling the property, unknown to the true owner, and pocketing the proceeds. Then it is said that 80 Boynton Street had to be in the father's name in order that the son could obtain the loan. What is the explanation of this story? A lender's primary security is the property, where land is mortgaged to him and this cannot be affected by whether the borrower is father or son. There is no suggestion that the son was under age. The father could guarantee such loan perfectly well. He did not need to be the registered proprietor. Where a loan really has been made on the security of registered land, a registered charge should be executed and the charge registered together with the name of the lender as the registered proprietor of the charge; unless the loan is purely temporary, in which case the land certificate should be deposited and notice of intended deposit entered on the register to protect the lender. If there is no trust in writing, no nominee restriction (the register is private, so that reasons of secrecy are no answer to this point), no registered charge and no notice of intended deposit entered on the register at the date of the alleged loan, and no documentary evidence showing that the

purchase price was provided by anyone other than the claimant, it may be relatively easy to conclude (in the absence of some thoroughly convincing explanation) that on the balance of probabilities the true purchaser (especially if the purchase price is stated in the transfer to have been paid by him) was the claimant, that there was no purchase by the son in the father's name, no loan to the son and that the relevant property (in this case 80 Boynton Street) was owned by the claimant for his own use and benefit free from any resulting trust and from any loan.

8. The findings of the fresh tribunal and their reasons should be expressed in sufficient detail to show, as regards 80 Boynton Street:—

- (1) who the real owner of 80 Boynton Street was at the date of claim;
- (2) if this was the claimant, what its value was for supplementary benefit purposes. It is not simply £5,500. The property's value must be ascertained in the way provided by regulation 5 of the Supplementary Benefit (Resources) Regulations 1980, as at the date of claim, allowing the deductions provided for in these regulations; and
- (3) whether 80 Boynton Street falls within any relevant exclusion provision: see in particular regulation 6(1) of the above-mentioned regulations.

9. There are no findings by the tribunal relating to 38 Hanover Square. I agree with the submission of the benefit officer now concerned, dated 14 April 1983, that if the tribunal find that the claimant transferred the legal and beneficial ownership of this property to his son Mohammed on 24 June 1982, as he says he did, consideration should be given to the provisions of regulation 4(1) of the Resources Regulations in order to determine whether the claimant had deprived himself of that property in order to secure supplementary benefit. In considering whether there has been a transfer of beneficial ownership, regard should be had to the "presumption of advancement" in favour of a son, which is fully explained in all the usual textbooks: see, for example, *Snell's Equity*, to which I have already referred. A copy of the above-mentioned submission, with which I am in general agreement, as well as of my decision, should be before the fresh tribunal to whom this case is now referred. That tribunal should be entirely differently constituted. If it does not include a member with practical experience of registered land conveyancing and of trust and mortgage law the tribunal should ask for expert assistance by someone who can give evidence on these matters.

10. My decision is set out in paragraph 1.

(Signed) V.G.H. Hallett
Commissioner