SUPPLEMENTARY BENEFIT

Resources—disregard of premises occupied by relative—beneficial ownership—presumption of resulting trust.

The claimant lived in local authority accommodation with his wife and mentally handicapped son aged 23. In 1974 the claimant's mother-in-law furnished a sum of money to purchase the leasehold of a holiday camp chalet. The leasehold interest was taken in the sole name of the claimant. Thereafter the family spent their summer holidays at the chalet, the son in particular remaining there from late March till late October. The claimant's claim for supplementary benefit made on 23 September 1983 was refused on the ground that the claimant was the beneficial owner of the leasehold interest in the chalet and its value exceeded the ceiling in regulation 7 of the Supplementary Benefit (Resources) Regulations (then £2,500). On appeal to the appeal tribunal the claimant advanced two grounds; first that the value of the chalet should be disregarded under regulation 6(1)(a)(iv) of the Resources Regulations and secondly that he was not the beneficial owner of the chalet but held it on trust for his son. By a majority the tribunal rejected both grounds. The claimant appealed to a Social Security Commissioner.

Held that:

1. the disregard allowable under regulation 6(1)(a)(iv) of the Resources Regulations can only apply where the premises in question are the residence of the relative and not merely a holiday home (paragraph 6);

2. the statement that the chalet was bought by the claimant's mother-in-law in the claimant's name was *prime facie* evidence which gave rise to a presumption of a resulting trust in favour of the mother-in-law. Unless that presumption was rebutted the claimant had no beneficial interest, i.e. was not the owner of the chalet (paragraph 9);

3. in this particular case the presumption could be rebutted if evidence established that the money or leasehold had been either (a) a gift to the claimant, (b) a gift to his son or (c) vested in the claimant to hold in trust for his son. Only in case (a) could the claimant be held to be the owner of the chalet.

The tribunal had erred in law by failing to consider any of these possibilities and its decision was set aside by the Commissioner.

1. This is a claimant's appeal, brought by my leave, against a majority decision of the supplementary benefit appeal tribunal dated 22 February 1984, which confirmed a decision of the benefit officer (now the adjudication officer) issued on 16 November 1983.

2. The claimant is a married man now aged about 63. He lives in local authority accommodation with his wife and his mentally handicapped son, Keith. Keith is now aged about 23 years. Some years ago the claimant and his wife encountered increasing difficulty in finding somewhere to take Keith on holiday. Hotels and similar establishments were unwilling to accommodate him. In 1974, however, the claimant's mother-in-law furnished (I intentionally put it no more precisely that that) a sum of money so that there might be purchased the leasehold in a holiday camp chalet on the Isle of Sheppey. The leasehold interest itself cost £750. The whole transaction, inclusive of solicitor's fees, cost £787.24. The papers do not make it clear whether the mother-in-law's contribution covered the latter as well as the former. The leasehold interest was taken in the sole name of the claimant. Thereafter the family spent their summer holidays at the chalet. The claimant is recorded as having told the appeal tribunal that Keith spends "from late March till late October at the chalet". The tribunal, however, does not appear to have made any firm finding as to the length of time in each year that Keith spent or spends at the chalet.

3. The claimant's business ceased trading in August 1983. It would appear that on 23 September 1983 the claimant claimed both unemployment

benefit and supplementary benefit. The claim for supplementary benefit was disallowed. The benefit officer took the view that the claimant was the beneficial owner of the leasehold interest in the chalet. Estimates of the value of that interest ranged from "more than £3,000" to "nearer £5,000". The claimant, accordingly, fell foul of the ceiling on capital resources, which then stood at £2,500 (see regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527]).

4. The claimant appealed to the appeal tribunal. He advanced two grounds:

(a) Regulation 6(1)(a)(iv) of the Resources Regulations provides for the disregard of "any premises of which the whole or part is occupied by an aged or incapacitated relative of any member of the assessment unit". The chalet, argued the claimant, is "occupied" by Keith, who is an incapacitated relative of the claimant.

(b) The claimant is not the beneficial owner of the interest in the chalet. He holds it in trust for Keith.

5. The majority of the appeal tribunal rejected both those grounds. The dissenting member accepted ground (a) and would have allowed the appeal. He is not recorded as having expressed any opinion in respect of ground (b). On the relevant form LT 235 nothing whatever is entered in Box 1 (chairman's note of evidence). The entry in Box 2 (findings on questions of material fact) reads as follows:

> "The appeal is against the decision that there is no entitlement to supplementary allowance from 23.9.83. He is an unemployed man with a wife and mentally handicapped son. He runs a fish stall in Peckham Market on Saturdays. He is the sole legal owner of a holiday chalet used for holidays for his son. [The claimant] refused to have the District Valuer ascertain the precise value of the chalet, but Lewisham Citizens Advice Bureau legal service calculate the value about £5,000. He said his son spends from late March till late October at the chalet. He claimed he held the property in trust for his son but explained this was a verbal understanding in the family and not in writing."
>
> (The two last sentences are not, of course, findings of fact. They are a record of what the claimant said.)

The reasons of the majority are set out thus:

> "The Tribunal are satisfied that without any legal evidence to the contrary, [the claimant] is the sole legal owner of the chalet and the value must be taken into account as a capital resource. Regulation 5(a) Resources Regulations. They considered 6(1)(a)(iv) of the Resources Regulations but decided it did not apply as the son's home was with his parents, and he did not occupy the chalet other than for the summer months. As [the claimant's] capital exceeds £2,500 he is not entitled to Supplementary Benefit from 23.9.83."

6. It will be convenient if I dispose at once of the claimant's first ground of appeal. In my view, the decision of the majority was correct and the reasoning of the dissenting member was erroneous. The dissenting member considered that the chalet fell under regulation 6(1)(a)(iv) of the Resources Regulations because it was occupied by Keith "for the whole of such period of the year as it is occupiable". That is a sympathetic approach to a hard case—and I should like to have felt able to support it. I fear, however, that it places an erroneous construction on the meaning of "occupied" as used in the said regulation. I accept the submission of the adjudication officer now concerned that the relevant disregard "can only apply where the premises in question are occupied by a qualifying relative in the sense that

the premises are the residence of that relative and not merely premises used as a 'holiday home' ". Manifestly, the thinking behind the provision is that a claimant is not to be penalised because he is providing, out of his own resources, a home for an aged or incapacitated relative of any member of the assessment unit. If "holiday homes" were to be brought within the ambit of the provision, the door would be opened to widespread abuse. This is indeed a hard case—but it must not be allowed to make bad law.

7. The claimant's second ground of appeal to the appeal tribunal cannot be dealt with so succinctly. In fairness to the appeal tribunal it must be pointed out that a measure of uncertainty surrounds the degree to which the claimant relied upon that ground at the hearing. The written submission of the local benefit officer contains the following passage:

> "Although [the claimant] claims in his letter of appeal that he is holding the property in trust for Keith he has since stated that this is not the case. He is the sole legal owner."

On the other hand, shortly before that passage the local benefit officer wrote (in his rehearsal of the facts):

> "In 1974 the claimant's mother-in-law purchased, in [the claimant's] name, chalet number....., Isle of Sheppey in order that Keith could spend his holidays there."

Moreover, (as appears from paragraph 5 above), the claimant is recorded as having claimed before the appeal tribunal that "he held the property in trust for his son", although he immediately added that "this was a verbal understanding in the family and not in writing". It obviously behoved the appeal tribunal, accordingly, to ascertain whether the claimant was or was not the beneficial owner of the interest in the chalet—and, indeed, that is what the majority purported to do. As, however, the adjudication officer now concerned submits, that difficult issue was not examined in sufficient depth. The relevant facts, were inadequately explored. The reasoning is expressed in the single sentence:

> "The Tribunal are satisfied that without any legal evidence to the contrary, [the claimant] is the sole legal owner of the chalet and the value must be taken into account as a capital resource."

8. One cannot but sympathise with appeal tribunals which have, since November 1980, been thrust by the Resources Regulations into difficult, and often abstruse, realms of chancery law. I quote from paragraph 28 of a very recent Decision of a Tribunal of Commissioners:

> "Adjudication officers and members of social security appeal tribunals who lack practical experience of trust law and equity practice are likely to continue to find it virtually impossible to apply these provisions correctly to the facts of individual cases." (Decision on Commissioner's File No. C.S.B. 756/83, to be reported as R(SB) 43/84).

That was directed primarily to the provisions of regulation 4 of the Resources Regulations. It is, however, apt in a wider context. Nevertheless, the Regulations stand until Parliament chooses to alter them. We must all, common lawyers and chancery lawyers alike, do our best to grapple with them.

9. I have already quoted the sentence from the local benefit officer's rehearsal of the facts:

> "In 1974 the claimant's mother-in-law purchased, in [the claimant's] name, chalet number....., Isle of Sheppey in order that Keith could spend his holidays there."

As the adjudication officer now concerned observes, that statement *prima facie* gives rise to the presumption of a resulting trust in favour of the claimant's mother-in-law (see, for example, paragraph 5 of Decision R(SB) 49/83). Unless that presumption is rebutted, the claimant can have no beneficial interest in the chalet. The appeal tribunal, however, made neither enquiry into nor findings in respect of any such rebuttal. That in itself constitutes error of law—although, as I have indicated above, I am not disposed to be over-censorious. The decision of the appeal tribunal must be set aside.

10. How, then, should the matter be approached on its rehearing? The presumption of a resulting trust can, in theory, be rebutted in an almost infinite number of possible circumstances. It seems to me, however, that in the instant case practicality requires the examination of only three alternatives:

(a) The claimant's mother-in-law made to the claimant a gift of the money or of the leasehold interest into which that money was converted.

(b) The claimant's mother-in-law made to Keith a gift of the money or of the said interest.

(c) The claimant's mother-in-law expressly (but only orally) vested the money or the said interest in the claimant with the intention that he should hold it in trust for Keith.

I examine in turn the effects of each of those alternatives.

11. *Gift to the claimant*

If this be established by the evidence, the claimant must be held to be the owner of the beneficial interest in the chalet. He may well have intended to hold that interest in trust for Keith. He may even have expressed that intention orally. Section 53(1)(b) of the Law of Property Act 1925, however, provides that—

> "(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;".

Section 53(2) provides that section 53(1) "does not affect the creation or operation of resulting, implied or constructive trusts". But the trust in issue is an express trust. The exception is of no avail.

12. *Gift to Keith*

If the evidence establishes that the money or the leasehold interest represented thereby was a gift from the claimant's mother-in-law to Keith, the claimant cannot be the beneficial owner thereof. Whatever might be the position of a purchaser without notice, as between the claimant and Keith no court of equity would—despite the absence of any writing—allow the claimant to deal with the property as his unencumbered own.

13. *Vesting in the claimant for holding in trust for Keith*

If this is what the evidence establishes, again there can be no question but that the claimant is not the beneficial owner. *Rochefoucauld v Boustead* [1897] 1Ch 196 was a case turning upon, *inter alia,* section 7 of the Statute of Frauds (1677)—one of the sections of that statute which was replaced by section 53 of the Law of Property Act 1925. I quote from the judgment of the Court of Appeal as delivered by Lindley L J:

> "It is further established by a series of cases, the propriety of which cannot now be questioned, that the Statute of Frauds, does not prevent

> proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the statute, in order to keep the land himself." (At page 206).

The case is still good law and is now cited in the context of section 53 of the 1925 Act—see, e.g., Halsbury's Statutes of England, 3rd Edition, Vol 27, page 431. Another way of approaching this alternative might be to regard it as a case in which an intention to put the property into trust was sufficiently expressed or indicated, but the actual trust was not declared (i.e. not declared in manner sufficient in law). There would then be a resulting trust in favour of the claimant's mother-in-law (see, for example, Halsbury's Laws of England, 3rd Edition, Vol 38, page 861).

14. *General Approach*

The foregoing may seem somewhat daunting to the appeal tribunal. That tribunal will, however, bear in mind that it is concerned solely with the issue of whether the claimant was entitled to a supplementary allowance—which, in turn, depends upon whether, at the material time, he was or was not the beneficial owner of the interest in the chalet. If the appeal tribunal should find that he was not the beneficial owner, it is in no way incumbent upon the tribunal to go on to identify such owner. Now it will be seen that it is only in case (a) (of the cases which I have set out in paragraph 10 above) that the beneficial onwership will be found to vest in the claimant. Accordingly, this case, so daunting at first sight, comes down to this: Does the evidence establish that the claimant's mother-in-law made to the claimant a gift of the money or of the leasehold interest into which that money was converted? If the answer is "Yes", the claimant fails. If the answer is "No", he succeeds.

15. I fully appreciate that the foregoing analysis is neither scholarly nor exhaustive. I have, however, sought to lay down guidelines which will be readily intelligible to those who will have to follow them.

16. Before I leave this case I make two comments in respect of Decision R(SB) 53/83, which is referred to in the claimant's application for leave to appeal to the Commissioner:

(a) That case did not concern "any land or any interest therein". Accordingly, section 53(1)(b) of the Law of Property Act 1925 did not come into the picture.

(b) The Commissioner's decision has now been set aside by the Court of Appeal. That was effected by a consent order on the basis, apparently, that the findings of fact did not justify the conclusion reached by the Commissioner. The Court of Appeal, again by consent, remitted the case directly back to the appeal tribunal. So far as I am aware, no comment of any sort was made by the Court of Appeal in respect of the principles of law set out in the Commissioner's decision. I respectfully regard those principles as being sound.

17. My decision is as follows:

(1) The claimant's appeal to the Commissioner is allowed.

(2) The decision of the supplementary benefit appeal tribunal dated 22 February 1984 is erroneous in law and is set aside.

(3) The case is referred to the social security appeal tribunal, which must be constituted differently from the supplementary benefit appeal tribunal which gave the decision which is hereby set aside, for rehearing and determination in accordance with the principles of law set out in this decision.

(Signed) J. Mitchell
Commissioner