IN THE COURT OF APPEAL FOR GIBRALTAR

Neutral Citation Number 2025/GCA/006

2024/CACIV/008

BETWEEN:

(1) LARS HAUT

(2) BERIT HAUT

(3) LARS AND BERIT HAUT

(as Administrators of the Estate of the Late Inger Haut)

Appellants

-and-

(1) MARIE LOUISE VINAMATA HOLM (as Administrators of the Estate of the Late Poul Holm)

(2) MARAHOUSE LIMITED

(3) CANIS NOMINEES LIMITED

(4) MARIE LOUISE VINAMATA HOLM

(5) SIMONNE MARIA ADRIANA VINAMATA HOLM

Respondents

Mr Keith Azopardi KC and **Ms Emma Dudley (**instructed by **TSN)** for the **Appellants**

Mr Stuart Benzie and **Ms Michelle Ullger (**instructed by **Ullger Law)** for the **Respondent**

Judgment date: 25 April 2025

JUDGMENT

SIR MAURICE KAY, P:

1. The background of this case was set out by Yeats J in the following uncontroversial terms:

> *"The late Inger Haut and the late Poul Holm were both Danish nationals domiciled in Spain. They had been in a long-standing relationship which began in the late 1970's. They married in Gibraltar on 19 June 1990, but divorced on 20 August 2008. Inger Haut died shortly thereafter on 16 October 2008. Poul Holm died on 16 January 2016.*
>
> *Berit Haut and Lars Haut are the daughter and son of Inger Haut of a previous relationship. They are the beneficiaries of her estate…*
>
> *Marie Holm and Simonne Holm are Poul Holm's daughters, also of a previous relationship. They are the beneficiaries of his estate… Marahouse Limited… was a Gibraltar company through which Inger Haut and Poul Holm held interests. It was dissolved on 9 March 2022… Canis Nominees Limited… owned the shares in Marahouse…*
>
> *Poul Holm and Inger Haut held joint assets in Spain via three Spanish companies…*
>
> *The Gibraltar connection is Marahouse. Marahouse held 96.24% of the shares in (one of the companies). The remaining shares in that Spanish company were held by Inger Haut and Poul Holm personally, each holding a 1.88% share."*

2. The question at the heart of this litigation is whether the shares held by Canis in Marahouse were held on trust for Inger Haut and Poul Holm as beneficial joint tenants or tenants in common. If there was a beneficial joint tenancy at the date of Inger Haut's death, the shares passed to Poul Holm by survivorship and, and on his death, they were inherited by his children to the exclusion of Inger Haut's children. If, on the other hand, Inger Haut and Poul Holm were beneficial tenants in common of the shares at the date of Inger Haut's death, her shares became part of her estate and were inherited by her children. I shall refer to Inger Haut as "Inger" and to Poul Holm as "Poul".

3. Before Yeats J, the case for the Haut children was either that Canis had held the shares for Inger and Poul as tenants in common from the inception of

the Trusts in 2005, or alternatively, if a beneficial joint tenancy had been established in 2005, it was severed as a result of the divorce in August 2008, some two months before Inger's death.

The judgment of Yeats J

4. Although there were gaps in the surviving documentation from 2005, the Judge basing his decision to a large extent on the evidence of Mr Soren Valbro, a director of Canis, held that on the balance of probabilities, on contrary to the submission on behalf of the Haut children, from 2005 Inger and Poul held the beneficial interests in the shares as joint tenants. The alternative submission on behalf of the Haut children was that even if Ingar and Poul were beneficial joint tenants from 2005, that changed on their divorce in 2008. Their contention was that the divorce under surrounding circumstances created a severance of the joint tenancy with the consequence that thereafter, the beneficiaries became tenants in common in equal shares. As to this, the Judge held that the express declaration of interests which he had found to have existed in 2005, remained conclusive *"unless it has been varied by (express) agreement or by an order of the court".* He added (at paragraph 75):

> "*Here there is no evidence of any agreement to vary the Deeds of 2005 nor was there any order made on the parties' divorced. It may be that sadly, Inger Haut did not have sufficient time to deal with her affairs following the divorce, or that she failed to appreciate that the divorce did not automatically disturb the arrangement in so far as the Marahouse shares were concerned.*
>
> *I therefore hold that the shares in Marahouse were held by Poul Holm and Inger Haut as joint tenants. The result is that when Ms Haut died in October 2008, the entire beneficial interest in Marahouse passed to Mr Holm".*

The appeal

5. Formally, there are numerous grounds of appeal. But for practical purposes, they amount to submission that

(1) The Judge was wrong to find an express declaration of Trust on the basis of a beneficial joint tenancy; alternatively

(2) If such a beneficial joint tenancy arose in 2005, it was severed as a result of events culminating in the divorce in 2018; or

(3) The beneficial interests underwent some kind of redefinition as a result of a common intention.

6. Although the divorce was in evidence at the hearing before the Judge, it was referred to as a bear fact. Since the judgment below, the Appellants have obtained a file of documents relating to it which Mr Keith Azopardi KC seeks to place before us as additional evidence. Mr Stuart Benzie for the Respondents has taken the helpful position that he is content for us to receive and have regard to this material, rather than take up court time in arguing about its admissibility.

An express declaration of trust?

7. As I have related, the Judge held that on the balance of probabilities as from 2005, Inger and Poul held the beneficial interest in the Marahouse shares as joint tenants. He did so essentially on the basis of the evidence of Mr Valbro of Canis who he found to be an honest and reliable witness. The family witnesses were unable to give any evidence as to whether deeds of declaration had been executed in 2005 or how they had been worded.

8. The first witness statement of Mr Valbro stated that the shares "*were in 2005 held by (Canis)… in Trust for Inger… and Poul… as joint tenants with right of survivorship".* He could not produce the original copy Trust documents from 2005 because they would only have been kept for 7 years after the last relevant date (which had been in 2008 following Inger's death). What he did produce was a template which Canis used at the material time. In its blank form it plainly provided for the beneficiaries to be "*joint tenants with rights of survivorship".* In his oral evidence, Mr Valbro said that the reason for the beneficial joint tenancy was that Inger and Poul wanted whoever survived

to have control of their wealth during their lifetime. Although the formal documentation has not survived, Mr Valbro was able to produce a copy of a letter written by Ms Mercedes Santos of his office to Poul dated 11 August 2005, it began "*Please be advised having appointed (Inger) as a beneficial owner jointly we have to urgently notify the Gibraltar finance centre…"*

9. Mr Valbro testified that it would have been Ms Santos who filled in the blanks in the template.

10. In the absence of evidence to the contrary, this was compelling evidence which unsurprisingly led the Judge to find that Inger and Poul had become beneficial joint tenants of the shares. Mr Azopardi has made a number of points which underlay his perfectly proper cross examination of Mr Valbro, and he has sought to reset them in the context of the timeline now established by the recently acquired divorce file (to which I shall return). However, in my judgment he has failed to cast doubt on the validity of the findings of the judge on this issue. The Judge was well aware and referred to the fact that Mr Valbro's evidence included acceptance that the common intention of Inger and Poul had been that the survivor of the two "*would inherit the parties' wealth and that upon their deaths this would then pass to their children*" (judgment paragraph 67). However, that was not inconsistent with the beneficial joint tenant analysis. It simply meant that these two people who had already been separated for 5 years were content to leave the survivor to act in accordance with their common intention without formalising that in terms of legal obligation. Unfortunately, that is a scenario which sometimes leads to frustration and disappointment. What it means in the present case is that the beneficial joint tenancy subsisted unless it was brought to an end by severance or some other legal contrivance.

Severance

11. The principal submission on behalf of the Appellants is that the beneficial joint tenancy was effectively severed by the divorce, although Mr Azopardi

seeks to set the divorce as the final and conclusive act in a process that began with parties' separation in 2000. He further submits that the evidence of severance is strengthened when one considers the documents from the divorce file that have become available since the judgment of Yeats J. At trial evidence about the divorce did not go beyond the mere fact of it having taken place in 2008. The new evidence established that the parties had separated in 2000; that Poul had moved to Gibraltar in 2006; that he remained domiciled in Gibraltar when the divorce petition was issued in 2007; that the petition was served on Inger in Spain; that the pleaded ground of divorce was that the parties had been living apart since 2000; that Inger had entered an appearance stating that she did not intend to defend the petition; that the decree nisi was granted on 9 July 2008; and that the decree absolute was granted on 16 August 2008 2 months before Inger's death.

12. It is common ground that there are 3 ways in which a beneficial joint tenancy may be severed. In *Williams v Hensman* [1861] 1 J & H 862, Page Wood VC said at page 867:

> "*A joint tenancy may be severed in 3 ways; in the first place an act of any one of the persons interested operating upon his own share may create a severance as to that share… each one is at liberty to dispose of his own interests in such manner as to sever it from the joint fund – losing of course at the same time his own right of survivorship. Secondly a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interest of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance it will not suffice to rely on an intention with respect to the particular share declare only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected…".*

The first category does not arise in this case and while Mr Azopardi never formally abandoned reliance on the second category, he seems to accept that only the third category might avail the Appellants. Evidence of mutual agreement is non-existent.

13. In endeavouring to trace a material course of dealing back to the separation in 2000, Mr Azopardi faces an insuperable difficulty. If as the judge found, and we have confirmed there was an express declaration of Trust on the basis of a beneficial joint tenancy in 2005, when the parties had already been apart for 5 years, it cannot be said that the years 2000 to 2005 contained evidence of the course of dealing actually indicative of a tenancy in common quite the contrary – it tends to show that notwithstanding a prolong period of separation, the parties were content for the beneficial joint tenancy to continue. As the Trust property comprised overwhelmingly business rather than personal assets, this is not surprising.

14. It follows that in this case, severance can only be considered in the context of a course of dealing between 2005 and the divorce in 2008. Again, there is a paucity of evidence. It may well have been intended that ultimately the children of both Inger and Poul would benefit. But that would not necessitate severance. Moreover, such evidence that does exist from the divorce file is entirely consistent with a mutual intention that the existing legal relationship should continue be on the divorce. Neither Poul in his petition nor Inger in her appearance sought to invoke the jurisdiction of the court in relation to property adjustment or other ancillary relief. Nor did either serve a notice of severance of the beneficial joint tenancy. We know that Inger was ill at the time and sadly only lived for a short time thereafter. But there is no evidence for lack of capacity. It seems to me that there is nothing to suggest that after divorce, the parties or either of them intended to change the legal relationship as regards their shareholdings which had been established and confirmed by the Declaration of Trust in 2005, some 5 years after the commencement of their separation. Moreover, *Harris v Godard* [1983] 1 WLR 1203 is clear authority for the proposition that a prayer in a divorce petition for a transfer of property or similar order does not operate as a severance of a beneficial joint tenancy. *A fortiori* a divorce petition or appearance without such a prayer. All this leaves me to the conclusion that the judge was correct to reject the severance claim.

Is there an alternative equitable solution?

15. The Judge took the view that in the absence of severance, the express declaration of trust on the basis of a beneficial joint tenancy could not be impugned and that it was not for him to explore the intentions of the parties when the beneficial interests had been expressly defined. At times, Mr Azopardi seemed to accept that for this appeal to succeed, he needed to establish either the absence of a beneficial joint tenancy *ab initio* or the severance of one by reference to the divorce. At other times he seemed to be suggesting that there was an equitable third way whereby we could intervene in a more creative way to produce a "*fair"* result. That is, one that reflected the common intention of the parties. He relies on authorities such as *Jones v Kernott* [2012] 1 AC 776. In his skeleton argument and in his oral submissions, Mr Stuart Benzie has sought to demonstrate that Mr Azopardi is taking too broad a brush to the jurisprudence.

16. In my judgment, Mr Benzie is correct, *Jones v Kernott* is a case in which the conveyance of a residential property to an unmarried couple did not contain an express declaration of their beneficial interests. The court was therefore concerned with the identification of quantification of beneficial interests where the legal estate was vested in two people. That simply does not arise when, as in the present case, there is an express beneficial joint tenancy. As *Jones v Kernott* demonstrates, there are numerous authorities in which courts have endeavoured to find a "*fair"* allocation of beneficial interest in the absence of express definition, however, the stop short of overriding an express beneficial joint tenancy. Neither in *Jones v Kernott* nor in its progenitor *Stack v Dowden* [2007] AC 432 is issue taken with the position classically restated by Slade LJ in *Goodman v Gallant* [1986] Fam 106 where he stated (at page 117):

> "*…in the absence of any claim for rectification or rescission, the provision in the conveyance declaring that the Plaintiff and the Defendant were to whole the proceeds of sale of the property "upon trust from themselves as joint tenants" concludes the question of the respective beneficial interest of the two parties in so far as that declaration of trust, on its true construction, exclusively declares the beneficial interests."*

17. In the present case, the Judge relied on that passage but also contemplated that an express definition might be varied by subsequent agreement or order of the court. However, he found no evidence of any agreement to vary the 2005 deeds and there had been no court order on the divorce or otherwise. In my judgment his analysis was correct.

Conclusion

18. It follows from what I have said, that I would dismiss the appeal. It is unfortunate that following Inger's death, things developed as they did, but on the legal material before us, the result is as the Judge found it to be.

SIR PATRICK ELIAS, JA:

I agree.

SIR ADRIAN FULFORD, JA:

I also agree.