

WILLIAMS v WILLIAMS [2024] EWCA Civ 42, [2024] 4 W.L.R. 10 concerns a beguilingly simple question. When an estate in land is acquired by two or more family members jointly for business purposes, and no express trust has been declared, the parties necessarily hold their joint legal title on trust (ss. 34 and 36, Law of Property Act 1925); but do they presumptively hold this legal title on trust for themselves as beneficial *joint tenants* or as beneficial *tenants in common*? The answer matters when one party dies: if they were previously beneficial joint tenants, the survivor/s enjoy the right of survivorship; if previously tenants in common, the deceased's share devolves to their estate.

The facts in *Williams*, stripped to their core, follow this pattern. A mother, a father and their son operated as a business partnership, farming land in South Wales. They acquired title to a farm as joint legal owners, entirely funding the purchase by a joint mortgage loan. The farm did not form part of their partnership assets (at [15]). Although it was common ground that the parties intended to “be equal co-owners” (at [49]), no express trust was declared. Subsequently, the mother died. If the parties, before her death, had been beneficial joint tenants (as the son argued), the father and son would benefit from the right of survivorship; if they had been beneficial tenants in common (as the mother's estate argued), the mother's interest in the farm would devolve to her estate.

Legal argument in *Williams* appears to have focused on the correct *presumptive starting point* for determining the parties' beneficial interests, in the absence of an express trust or proof of express common intention. Favouring the mother's estate, it was argued that there was a “very longstanding and well established principle that equity will usually assume that co-owners acquiring property for business purposes do not intend survivorship” (at [58]) (see further M. Dixon, J. Bignell and N. Hopkins, *Megarry and Wade: the Law of Real Property* (London 2024), para. 12-129; and *Malayan Credit Ltd. v Jack Chia-MPH Ltd.* [1986] A.C. 549 (P.C.)). On the other hand, favouring the son, it was argued that *Stack v Dowden* [2007] UKHL 17 established that legal joint tenants are presumptively beneficial joint tenants: “equity follows the law” (*Stack*, at [54]; *Williams*, at [41]).

The Court of Appeal decided unanimously that the parties were beneficial *tenants in common in equal shares*, prior to the mother's death; her share therefore devolved to her estate. Nugee L.J., giving the leading judgment, regarded these two lines of authority as compatible (at [62]). *Stack* provides the presumptive starting point: a presumption of a beneficial joint tenancy, but this *joint tenancy* presumption is weak (at [63]) and readily rebuttable, including by proof that the property was acquired for “business purposes”, which itself raises a countervailing

presumption of a beneficial tenancy in common. On the facts, the parties were family members but had purchased the farm for “business purposes”; following the “longstanding and well established principle”, they were therefore assumed to intend to hold as beneficial tenants in common.

The narrow question addressed in *Williams* arises only infrequently. Most co-ownership disputes arise between living co-owners for whom survivorship rights are irrelevant; *Williams* stands out as a rare recent case where the beneficial joint tenancy/tenancy in common dichotomy mattered. However, the significance of Nugee L.J.’s judgment extends beyond the immediate question raised by the case: it prompts wider reflection on the operation of implied trusts in joint purchase cases. Three dimensions merit discussion.

First, one of the most striking aspects of the court’s judgment is easily overlooked: Nugee L.J. confirms that the *Stack* presumption (“equity follows the law”) is a starting point which is *prima facie* applicable in every case where parties acquire legal title jointly, in the absence of an express trust (at [41]–[42], [44]–[45], [63]). That is, it is a *universal starting presumption*, which is not confined to the domestic sphere, as some might previously have thought.

This is a welcome clarification. When resulting or common intention constructive trusts are in issue in joint purchase cases, the court’s task is to respect the parties’ intentions concerning their beneficial entitlements, so far as discernible. Where evidence of the parties’ intentions is absent or partial, courts rely on presumptions/inferences. Crucially, however, these presumptions/inferences typically operate not as abstract rules or mantras (cp. at [51]–[53]), but as equity’s best approximation for/estimate of the parties’ likely intentions. In the unlikely event that the *only* evidence available to a court is that the parties co-own the legal title, the court needs a method for ascertaining beneficial ownership (subject to rebuttal as evidence comes to light). Adopting the *Stack* presumption as a universal starting point seems an appropriate solution.

Second, arising from *Williams* is an important and novel point that, properly understood, the *Stack* presumption comprises two distinct “inferences”: that legal joint owners (1) are also the *beneficial owners*; and furthermore (2) hold as beneficial *joint tenants*. Nugee L.J. describes inference (1) as “powerful” and hard to displace (at [63]): “the very fact that the property is acquired in joint names” rather than in the name of one of the parties “is a powerful indication that the parties were each intended to have beneficial interests in it” (at [48]). By contrast, inference (2) is “much weaker” (at [63]): that parties acquire legal title as *joint tenants* says little about their preference for holding as beneficial joint tenants/tenants in common because an estate in land can *only* be co-owned at law as joint tenants (at [63]). On the *Williams* facts,

inference (2) was rebutted by the counter-presumption of a beneficial tenancy in common raised by the business context.

The finding that inference (2) is weak is an eminently sensible clarification of the *Stack* presumption. However, one might go further and question whether inference (2) operates in the right direction. If the role of presumptions is to serve as an approximation of parties' likely intentions, it might be argued that most parties would prefer the certainty of being tenants in common over a joint tenancy with its "tontine 'winner takes all' effect" (*Stack*, at [57]) (see also R. Smith, *Plural Ownership* (Oxford 2005), p. 44). If adopted, this argument would have important implications for the *Stack* presumption. Equity would no longer follow the law in joint purchase cases; instead, legal joint tenants would presumptively hold as beneficial tenants in common in equal shares.

Third, *Williams* prompts further reflection on the relevance of an estate in land being acquired jointly, as it was in *Williams*: for business rather than domestic purposes, and in the absence of an express trust. On one reading, *Stack* and *Jones v Kernott* [2011] UKSC 53 set up a dichotomy. Evidence of *business purposes* would mean that the *Stack* starting point would be displaced by a presumed resulting trust: the parties would be presumptively equitable tenants in common (*Malayan Credit*), with shares quantified according to their relative contributions to the purchase price, unless a contrary intention were found. By contrast, *domestic purposes* would rule out a presumed resulting trust, and the *Stack* starting point could be displaced via a common intention constructive trust based on evidence or inference that the parties actually intended to hold otherwise than as beneficial joint tenants. Since *Stack* and *Jones*, the Privy Council in *Marr v Collie* [2017] UKPC 17 has suggested, uncontroversially, that this domestic-business dichotomy is too crude, and that it is the parties' intentions, rather than stark contextual categorisations, that are key (at [53]–[55]). What light might *Williams* cast on the operation of these rules?

It is perhaps significant that the trust in *Williams* is not explicitly characterised as resulting or constructive. A likely explanation is that the character of the trust was irrelevant to the *Williams* outcome. In joint purchase cases, both resulting trusts and common intention constructive trusts ultimately give effect to the parties' intentions, whether via presumptions/inferences of likely intention, or evidence of actual intention. In *Williams*, it was common ground that the parties' *actual intention* was to share equally beneficially, and so the character of the trust was ultimately unimportant. The only relevant question was whether the parties held equally as joint tenants, or as tenants in common. For this purpose, it was the fact that the property was purchased for *business purposes*, and not the character of the trust as such, that mattered.

Williams thus offers a timely reminder that in joint purchase cases, both constructive and resulting trusts yield to evidence of the parties' *actual* intentions, and are very likely to reach the same outcome in the presence of such evidence. To that extent, *Williams* is consistent with *Marr*: the search is for the parties' intentions, so far as discernible. However, where there are evidential gaps that courts must fill with presumptions/inferences, then the domestic/business dichotomy may still be material.

Williams will not be the last case to test the parameters of the *Stack* presumption. For now, however, it can be celebrated for bringing a well-grounded clarification of its operation.

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