

## **Aldoukhi v Abdullah [2021] EWHC 3086 (Fam)**

**In a ground-breaking case – the first to consider a Part III MFPA 1984 claim which was founded solely on an interest in a matrimonial home in the jurisdiction – Michael Glaser QC and Gillon Cameron secured a successful result**

Michael Glaser QC and Gillon Cameron of FOURTEEN recently represented a Wife who brought proceedings against her former Husband in the High Court after a divorce in Kuwait. This is a highly significant case since it is the first reported financial provision case where jurisdiction was founded solely on s.15(1)(c) of Part III Matrimonial and Family Proceedings Act 1984 (interest in a matrimonial home in England in Wales). The case was consolidated with a related Trusts of Land and Appointment of Trustees Act 1996 claim.

### **Background**

The case concerned three multi-million pound properties in London which were purchased during the marriage and owned jointly by the parties. Two of the properties were used by the family when they came to stay in London for holidays. There was a dispute as to whether those properties were ‘matrimonial homes’.

Despite the properties being held in joint names, the Husband’s case was that by virtue of Power of Attorney documents executed in his favour by the Wife, she had given the Husband authority to act on her behalf, which included the ability for him to use and transfer her interest in the properties. Specifically, the Husband had sought to use the Power of Attorneys to sign loan agreements between the parties and a Kuwaiti company of which he was the majority shareholder. The court obtained expert evidence as to the extent of the powers which the Powers of Attorney granted, and heard evidence as to whether a Power of Attorney could be revoked by the Wife when it was stated to be ‘irrevocable’.

The Husband also argued that there was a common intention constructive trust in respect of all three properties, based on a common understanding consistent with Kuwaiti cultural values, by which the beneficial interest in them was held for him.

### **Outcome**

#### TOLATA application:

Moor J held it was “absolutely clear” that all three London properties were held on trust for both parties as joint tenants and they were each entitled to equal shares on severance. There was no common intention that the properties were to be held for the Husband and his arguments based on constructive trust and proprietary estoppel therefore failed.

The judge also determined that the Husband’s purported use of the Powers of Attorney exceeded the remit of the authority he had been given. Namely, that while he could use such documents to act in such administrative ways as he considered best, he could not use such documents to deprive the Wife of her financial interests. He considered that the Husband was essentially contracting with himself to encumber the Wife with debt and that she should not be considered liable for that debt.

The court did not accept the Husband’s arguments that an equitable account should be taken of all of the various payments that the Husband had made to the purchase of the property and payment of the mortgage interest – there being no agreement that the parties ever intended to pay those costs equally – but did accept that there should be an equitable account in respect of the Husband paying off the capital on the mortgage.

Orders for sale were made in respect of all three properties with net proceeds to be split equally, subject to the Wife accounting for payment of half of the mortgage capital payment.

### Part III application

Moor J held that two of the three properties were matrimonial homes and that they had been bought primarily for the use of the parties and their children whilst in London. He found that there was jurisdiction pursuant to s.15(c) of Part III for the court to make orders under Matrimonial and Family Proceedings Act 1984.

Whilst the judge considered that the Husband had not provided a sufficiently full picture of his true financial position and that he had attempted to mislead the court by claiming a capital deficit and minimising his income, he nevertheless considered his jurisdiction was limited to adjusting the shares in the two matrimonial homes, and noted that he was not dealing with an application for full financial provision, the parties' connection to the UK being limited.

He noted, however, that the Wife had been awarded virtually no capital from the Kuwaiti court on divorce and her only property was in the property shares she had been awarded in this case, and therefore exercised his Part III discretion to restore to the Wife her share of the property that was to be reduced by way of equitable accounting. The parties therefore received exactly the same sums from the equity of both properties.

Permission to appeal the decision is currently being sought.