By way of observation, the principle set out in *Bagum-v-Hafiz [2015] EWCA Civ 801* whereby a beneficiary under a trust of land may effectively buy out the others interests appears to be increasingly applied and it has been recently considered in the Court of Appeal case of ***In the matter of the Estate of Roger Kingsley sub nom (1) Karim Sophie Kingsley (2) Aaron Richard Playle (as Executors of the Estate of Roger John Kingsley) v Sally Margaret Kingsley*** *[2020] EWCA Civ 297*. There, the Court of Appeal rejected the appeal that in a farming partnership case the judge had not been entitled to make an order for sale at a court-assessed price rather than ordering a sale on the open market. Unlike a trustee, the court was not required to get the best price for the property. The Court rejected the notion that *Bagum* required some sort of valuation threshold to be overcome. On the contrary, *Bagum* was authority for the proposition that valuation (and the risk that the court-assessed value would not necessarily be the same as the price in an open market sale) was clearly a discretionary matter.

However, the appeal was allowed to the extent that the respondent was liable to pay an occupation rent notwithstanding that no rent had been payable during the deceased's lifetime by the partnership. The trial judge had erred in failing to consider the real question of fact; namely in what right was the respondent occupying the farm. Whilst, *Lie v Mohile [2014] EWHC 3709 (Ch)* was authority for the proposition that an implied licence was available to one co-owner as against another when the former was winding up the affairs of the partnership. The availability of such a licence did not mean that the respondent was inevitably occupying under such a licence and in this case she had not been occupying for the purposes of winding up.

A direction for a sale under *Bagum-v-Hafiz* was also made in ***Lisa Marie Solomon v Patrick Andrew McCarthy*** *(Bristol) (Judge Paul Matthews)* 21/01/2020. As to the (unsuccessful) claim for equitable accounting, the court held that in a successful claim for

an equitable accounting, credit would be given to an improving party for one half of the lesser of the actual expenditure and the increase in the value of the property, *Pavlou (A Bankrupt), Re [1993] 1 W.L.R. 1046*. The claim failed for want of reliable evidence regarding either how much had been spent or the value added to the property. The defendant also sought a declaration that a property was held on trust for his sons, the claimant being his ex-partner: the claimant was claiming that she and the defendant owned the property in equal shares. The court determined that where it was satisfied that the transferee [the claimant] of a property was not intended to take the beneficial interest, but the intended beneficiary [the defendant's sons] was defeated because the intended trust had failed to comply with the formality requirements in the *Law of Property Act 1925 s.53(1)(b)*, the transferee should hold the property on a resulting trust for the transferor [the defendant]. One would observe that a resulting trust also operated in *Princess of Luxembourg-v-Prince of Luxembourg [2018] EWFC 77 Fam Ct* where for a declaration within the TR1 to take effect it needed to comply with *section 53 (1)(b)* above in so far as the transferor was "*able*" to do so for the purposes of that section.

The ability of the First-Tier Tribunal (Property Chamber)'s ability to determine the extent of a beneficial interest has been reviewed in ***Krawcynska-v-Rozuk, ref.2019/0066, 20.1.20*** following *Hallman v Harkins [2019] UKUT 245 (LC)* and *Wolloff v Patel [2019] UKUT 333 (LC)*. Hallman provided that as the issue for the FTT was whether or not in the light of the objection it was necessary or desirable to enter the restriction for the purposes of *section 42(1), Land Registration Act, 2002*: it was unnecessary to determine the extent of any beneficial interest. In *Krawcynska* at [19-20], it was noted that, whilst in some cases it would be unnecessary to determine the extent of the beneficial interest, in other cases the court will make specific findings as to the intention and contribution of the parties. In such a case the question of quantification "necessarily" arises. Where such findings are made, the parties will be bound by them as they were necessary to the result of the proceedings. They are to be classified as ultimate and not evidentiary findings.

One may consider that *Krawcynska* undoes the certainty approach adopted by *Hallman*. It is likely that it will be in all but the most simple and obvious cases necessary to make findings about intention and contributions which then stand as ultimate findings. One feels that this is not the end of the story.

Finally, in ***Pillmoor-v-Miah [2019] EWHC 3696 (Ch)*** one sees no evidence of mellowing of *Lloyds Bank-v-Rosset [1991] 1 AC 107* as supposed in *Stack-v-Dowden*. *Pillmoor* allowed the appeal by the husband's trustee in bankruptcy on the grounds that the trial judge had erred in inferring from the length of a marriage, where the wife's financial contributions were unclear, that there was a common intention for the wife to have an interest in the property which was in her husband's sole name. *Pillmoor* held that it was only in exceptional circumstances that conduct would give rise to a finding of mutual intention to share ownership of a property.

The trial judge had found that the wife had a 50% beneficial interest in the property under a common intention constructive trust. In reaching that conclusion, he had regard to the following factors: (i) the wife understood she would share in the property and the family business; (ii) the cultural context might provide a context for her agreeing to allow the husband to take a financial lead; (iii) the house was acquired as the family home; (iv) it was a long and stable marriage; and (v) although the evidence was unclear as to how the property was financed, there was a financial contribution from the jointly owned business. This was rejected by HHJ Kramer who held that in a sole ownership case the starting point was Lloyds Bank v Rosset which provided that only financial contributions gave rise to the inference necessary for the creation of a constructive trust. The appeal judge considered that the approach had since been modified and subsequent sole name cases had shown that exceptional circumstances were needed before an inference that there was an agreement to share the beneficial interest could be drawn: *Morris v Morris [2008] EWCA Civ 257, James v Thomas [2007] EWCA Civ 1212* and *Thomson v Humphrey [2009] EWHC 3576 (Ch)*. He expressly considered that taking part in the spouse's business or acquiring a property to house the family did not ordinarily give rise to such an inference to support a common intention

trust. The factors considered by the trial judge above were more akin to quantifying a beneficial interest and they could not support its creation.

One feels that this is a harsh decision and one may sympathise with the trial judge's approach. The wife may consider Lord Walker's words in *Stack* to be misplaced optimism:-

"*Whether or not Lord Bridge's observation* [doubting that anything less than a direct financial contribution would do to establish a beneficial interest] *was justified in 1990, in my opinion the law has moved on, and your Lordships should move it a little more in the same direction, while bearing in mind that the Law Commission may soon come forward with proposals which, if enacted by Parliament, may recast the law in this area*."

In fairness to the appeal judge, he expressly quoted the above but recognised that *Stack-v-Dowden* was not about establishing a beneficial interest: rather it was about quantification. One would also observe that *Morris* and *James* were cases regarding pre-relationship owned assets where the unsuccessful claimant had to establish a beneficial interest in assets which had already been acquired. Here, it may be argued that this was a joint marital venture. *Pillmoor* correctly stated the legal principles; but the application of them was restrictive. *Pillmoor* illustrates difficulty to identify how, if at all, the law has moved on since *Lloyds Bank-v-Rosset* in establishing a beneficial interest by way of a common intention constructive trust.

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