

EQUITY OF EXONERATION REVISITED: ARMSTRONG V ONYEARU [2017] EWCA CIV 268



In a recent [Property & Estate article](#), [Daisy Brown](#) carefully analysed the development of the equity of exoneration ("*a judge-made principle of some antiquity*") and concluded that it was "*crying out for the higher courts to take a fresh look at how it should be applied*".

In *Armstrong v Onyearu* [2017] EWCA Civ 268, the principle has been considered by the Court of Appeal for the first time in more than a century. A transcript of the judgment is available [here](#). [Simon Passfield](#) acted for the appellant.

The case concerned an application by a trustee in bankruptcy for an order for sale of a property which was registered in the sole name of the bankrupt but which had been held beneficially by the bankrupt and his wife in equal shares. The bankrupt, who had been solely responsible for paying the mortgage, took out a loan to pay his business debts which was secured against the property. The Court proceeded on the basis that his wife had received an indirect benefit from the loan, in that it enabled her husband to continue to pay the mortgage. Nevertheless, she argued that she was entitled to rely on the equity of exoneration in respect of the loan, with the result that the bankrupt's beneficial interest in the property was extinguished.

The Court of Appeal agreed. In the leading judgment (with which Elias and Vos LJ agreed), having carefully analysed the relevant jurisprudence from both England and the Commonwealth, David Richards LJ held that there was an evidential presumption that the parties intended that, as between them, the bankrupt was to bear responsibility for the repayment of the loan (see paras [29] and [78]) and that the indirect benefit received by the wife from the loan was too remote to displace this presumption; in general, it will be necessary to demonstrate that the co-owner received benefits which are "capable of carrying a financial value" (see paras [81] to [83]).

The Court was not persuaded that the law should be changed to accommodate what was said to be the relationship between co-habiting couples in their family affairs in current times, concluding that the law should continue to treat couples separately where one stands surety for the debt of the other, unless the circumstances or the evidence show otherwise and that (see paras [79] to [80]).

In reaching his conclusion, David Richards LJ cited with approval the decisions of Chief Registrar Baister in *Re Chawda (in bankruptcy)* [2014] BPIR 49 (in which [Chris Brockman](#) acted for the applicant trustee) and *Day v Shaw* [2014] EWHC 36 (Ch) (in which [Michael Selway](#) acted for the appellant and [Daisy Brown](#) acted for the respondent).

Paragraph [43] of the judgment contains the following helpful summary of the relevant principles:

1. Where jointly-owned property is charged to secure the indebtedness of one of the joint owners, there is an evidential presumption that the parties intended that, as between themselves, the liability should fall on the debtor's share of the property.
2. The circumstances of the case may be such that this presumed intention does not arise at all. These are cases where the debts to be paid, although in law the debts of one co-owner (A), are in substance the debts of the other co-owner (B) or of A and B jointly.
3. The presumed intention arising under the first proposition above, which follows from the nature of the transaction and the position generally of a surety, may be rebutted by evidence of a different intention.
4. In the absence of evidence of an actual contrary intention, evidence that the debt is incurred for the direct benefit of B will rebut the presumed intention.
5. While it used to be the case that household expenses were ordinarily the responsibility of the husband, the same is no longer the case, as shown by *Re Pittortou* where the burden of borrowings by one joint owner to fund the ordinary living expenses of both co-owners is assumed to be shared equally between them.
6. The equity applies to borrowings by one co-owner to fund his or her business, even though the other co-owner may derive some indirect benefit from the business, by way of contributions to joint living expenses from the business owner's income.
7. The intention of the parties is to be determined as at the time the charge is given, although subsequent events may be considered for the light they shed on what the intention was.
8. The particular facts of each case need careful consideration to determine whether the equity applies.

In light of this decision, it is clear that the equity of exoneration remains alive and kicking in the 21st century, although its application will depend on the particular circumstances of any given case.

