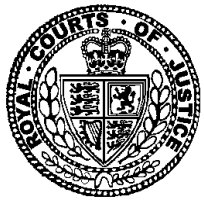

Neutral Citation Number: [2017] EWCA Civ 268

Case No: A2/2015/1979

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
J. Klein (sitting as a Deputy High Court Judge)
CH/2014/0623

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 April 2017

Before :

LORD JUSTICE VOS
Chancellor of the High Court
LORD JUSTICE DAVID RICHARDS
and
THE RT. HONOURABLE SIR PATRICK ELIAS

- -

Between :

Armstrong (As Trustee in Bankruptcy of Andrew Obinna Kalu Onyearu)	**Appellant**
- and -	
Onyearu and Another	**Respondent**

- -
- -

Simon Passfield (instructed by **Howman & Co**) for the **Appellant**
Jack Parker (instructed by **direct access**) for the **Respondents**

Hearing dates : 20 October 2016

- -

Approved Judgment

Lord Justice David Richards:

Introduction

1. Where property jointly owned by A and B is charged to secure the debts of B only, A is or may be entitled to a charge over B's share of the property to the extent that B's debts are paid out of A's share. This is known as the equity of exoneration. Although this label, and its origins in the protection given by equity to married women's property rights before the Married Women's Property Act 1882, lends an obscure, even archaic, air, it is best understood as part of the relief more generally given to sureties against the principal debtor. It is as much a feature of contemporary law as it was of equity in the 18th and 19th centuries.

2. The most common example of jointly-owned property is a house or flat owned by a co-habiting couple, married or unmarried. For this reason, the cases in which the courts usually encounter the equity of exoneration are those in which, first, an unmarried couple separate and their interests in the property must be determined; second, a co-habitee, whether married or unmarried, becomes bankrupt and the trustee in bankruptcy seeks to realise the bankrupt's share of the property; and, third, a judgment creditor of one co-habitee, married or unmarried, seeks to enforce the judgment against the property. But the equity is not confined to co-habiting couples and may arise in the case of any joint owners of property: see, for example, *Gee v Liddell* [1913] 2 Ch 62 and *Re a debtor (No 24 of 1971); Ex parte Marley v Trustee of the Property of the Debtor* [1976] 1 WLR 952.

3. This appeal concerns the circumstances in which the equity will or will not be available to the co-owner, and in particular the part that benefit to the co-owner from the secured indebtedness plays. The authorities establish that the availability of the equity is a matter of the actual or presumed intention of the parties. If the actual intention is that the equity is to apply or, conversely, is not to apply, this determines the issue. In many cases, however, there is no evidence of actual intention, and the law will arrive at the parties' presumed intention from an examination of all the relevant circumstances. Without confining that enquiry, the common touchstone is to determine whether the co-owner was intended to receive benefits from the debts secured on the property. It is the nature of those benefits that lies at the heart of this appeal, and in particular the effect of indirect, as opposed to direct, benefits. As counsel for the appellant observed, this is the first occasion on which any issue on the equity of exoneration has arisen for decision by the Court of Appeal since *Paget v Paget* [1898] 1 Ch 470.

4. In the present case, the respondents Mr and Mrs Onyearu are a married couple. Mr Onyearu was declared bankrupt in 2011 and the appellant is his trustee in bankruptcy (the trustee). Mr Onyearu was the sole registered proprietor of the matrimonial home at 58 South Park Crescent, Catford, London SE6 but he and his wife maintained that they beneficially owned the property in equal shares and a declaration to that effect was made by Chief Registrar Baister in an application brought by the trustee for the sale of the property. Following the filing of evidence by Mr and Mrs Onyearu, the trustee did not oppose the making of the declaration.

5. The application was adjourned for further orders and directions, and came before Deputy Registrar Middleton who, by an order dated 18 November 2014, dismissed the

application. He did so on the grounds that Mrs Onyearu was entitled to a charge on her husband's half share in the property by way of an equity of exoneration in respect of a loan facility granted to Mr Onyearu by Bank of Scotland plc (the bank) in 2005, and the charge exhausted Mr Onyearu's beneficial half interest.

6. The facility was to provide funds to meet liabilities of the solicitor's practice carried on by Mr Onyearu as a sole practitioner (until he took on a salaried partner in 2005). It was secured by the all monies charge in favour of the bank originally granted to secure the loan taken out to purchase the property. It was contended by the trustee that the equity of exoneration did not arise in this case because, although the loan facility was directly for the benefit of Mr Onyearu only, by way of discharging his personal business debts, Mrs Onyearu had obtained an indirect benefit as it enabled Mr Onyearu to continue in practice and apply drawings from the practice in meeting monthly interest payments on the original mortgage loan from the bank.

7. Permission to appeal was given by the deputy registrar. The appeal was heard by Mr Jonathan Klein, sitting as a Deputy Judge of the Chancery Division, and by an order dated 3 June 2015 he dismissed the appeal.

8. In applying for permission to appeal to this court, counsel for the trustee submitted that the case raised an important and novel point as to the application of the equity of exoneration where the joint owner has received an indirect, as opposed to a direct, benefit. There was no English authority directly on this point. Lewison LJ granted permission for a second appeal because the question raised an important point of principle.

The facts

9. The property was purchased in 2000 for £165,000 in the sole name of Mr Onyearu as the matrimonial home for Mr and Mrs Onyearu and their children. There were five children at the date of purchase and their sixth child was born the following year. The purchase was funded by a 100% interest-only loan in the sole name of Mr Onyearu, secured by a first legal charge on the property. Mr and Mrs Onyearu spent about £18,000 on improvements to the property, the cost of which was shared equally between them. In addition, they jointly borrowed £7,000 for kitchen improvements on a joint account with Nationwide Building Society. They jointly borrowed a further £3,000 from GE Money Home Lending for a loft conversion, which was repaid in instalments by Mrs Onyearu.

10. Mr Onyearu carried on his solicitor's practice and Mrs Onyearu was a business development lecturer. Bank statements exhibited by Mrs Onyearu disclose regular income from a firm of solicitors in the City and from the London Borough of Lewisham. They had separate bank accounts, into which their respective incomes were paid and from which they each made payments. Both contributed to their joint living expenses. Until 2010, Mr Onyearu met the monthly interest payments on the original mortgage loan. Mrs Onyearu paid the utility bills, council tax and all other household expenses. After Mr Onyearu got into financial difficulties in about 2009, Mrs Onyearu took over responsibility for the monthly interest payments, with some assistance from their children.

11. In a witness statement dated 3 July 2012 made by Mr Onyearu in support of the claim for equal beneficial interests in the property, he said:

> *"I confirm that since it was my name on the mortgage, it was agreed by us that the mortgage payments would come out of my personal account. This was only for the purpose of good order and for no other reason. The funds that were used to pay the mortgage was part of the family income received into my personal account and apportioned, by our agreement, for this purpose. However, these payments were able to be made because we agreed that my wife would and indeed did make a number of other of the household expenses [sic] including the utility bills, and food. In addition, my wife also continued to contribute substantial sums to the upkeep and maintenance of the property."*

12. In a witness statement made by Mrs Onyearu on the same date, she referred to the monthly interest payments made by her husband and continued that "he was only able to do this because his income was freed up due to my taking responsibility for a number of the other household expenses." Mrs Onyearu exhibited the statements for her own bank account for the period 1 April 2000 to 30 June 2006, which show substantial payments into and out of the account.

13. In 2004, Mr Onyearu's practice started to experience financial difficulties. In 2005. he obtained the loan facility to which I earlier referred from the bank (the business loan), secured by its legal charge on the property. Mr Onyearu informed his wife of the loan and the fact that it was secured on the property. He did not seek her consent, but neither did she object. There was no agreement between them as to whether and, if so, how the liability on the loan facility should be shared between them. Between 2005 and 2007, Mr Onyearu used the facility to pay debts of his practice totalling £131,642. These included a payment of £41,950 in respect of VAT in April 2005.

14. The financial problems facing Mr Onyearu's practice evidently worsened. The firm closed at the end of September 2010. The Solicitors Regulatory Authority intervened in the practice and took possession of its files in December 2011. Mr Onyearu had been declared bankrupt on 3 March 2011.

The judgments below

15. In his judgment, Deputy Registrar Middleton stated that he did not understand there to be any difference between counsel as to the principles to be applied. He was reminded and accepted that "it is necessary in applying these principles to have regard to the facts of the individual case." In concluding that the equity of exoneration applied in favour of Mrs Onyearu, the Deputy Registrar relied principally on the following factors: the business loan was the sole liability of Mr Onyearu and was applied in paying debts of his practice for which he was alone liable (subject to any liability of his salaried partner from 2005); neither Mrs Onyearu nor any other member of the family had any involvement of any kind in Mr Onyearu's practice; Mrs Onyearu had

her own income; Mr and Mrs Onyearu maintained separate accounts and they did not pool their income in a joint account over which they both had control; there was no evidence of a prosperous lifestyle (unlike in some of the authorities to which he was referred). He said that "although this was a family unit it was a family in which family members had their own resources which could be used to support the family." He accepted that it could be said that, in a sense, Mrs Onyearu derived a benefit from the business loan:

> *"I appreciate that the payments to his creditors could, in a sense, be to the benefit of Mrs Onyearu in that they would enable Mr Onyearu to continue to practice which would in turn mean that he would be in a position to pay the mortgage instalments until 2010 as described in paragraph 4 of Mr Onyearu's first witness statement at page 40. However, I consider that this indirect benefit was not what was envisaged in the decision in re Pittortou. "*

16. In his judgment on appeal, Mr Klein recorded the trustee's central challenge to the Deputy Registrar's decision as being that, having found that Mrs Onyearu had enjoyed a benefit from the business loan, he wrongly held that she was entitled to the equity of exoneration. The Judge was prepared to accept that the Deputy Registrar had made a finding to that effect, although it was by no means clear. I proceed on the same basis.

17. The Judge rejected the submission that the presence of any benefit is sufficient to deny application of the equity, which he considered to be inconsistent with the judgments in this court in *Paget v Paget*. Nor did he consider that the Deputy Registrar's description of Mr and Mrs Onyearu operating as a family unit was sufficient for that purpose. No authority supported either of these submissions. Such indirect benefit as Mrs Onyearu derived from the business loan was insufficient to deny the equity of exoneration to her. He held that the case was indistinguishable from *Re Pittortou* [1985] 1 WLR 58 and that the right inference was that the joint intention of Mr and Mrs Onyearu was that the burden of the liability of the business loan should fall, as between themselves, on his share of the property.

The trustee's case on appeal

18. The sole substantive ground of appeal is that, as Mrs Onyearu received a benefit from the loan to pay off her husband's business creditors because she and her husband operated as a family unit and the loan enabled Mr Onyearu to continue in practice and thereby to continue to meet payments under the mortgage loan, the Deputy Registrar erred in law in holding that there was an evidential presumption that the joint intention of Mr and Mrs Onyearu was that the burden should fall primarily on Mr Onyearu's share of the property.

19. Mr Passfield, on behalf of the trustee, submitted that previous authorities had established that if the co-owner does not receive a benefit from the secured indebtedness, the appropriate inference is that the parties intended that it should be discharged out of the principal debtor's share, whereas if the co-owner receives a

direct benefit, no such inference can be drawn. The present case concerned the appropriate inference to be drawn where the co-owner receives an *indirect* benefit, on which there was no English authority.

20. Mr Passfield submitted that the facts of the case were far removed from the circumstances in which the courts had developed the equity, and reflected the modern practice of married couples operating as a family unit, pooling their earnings and administering their financial affairs jointly. It was therefore a situation that was likely to arise frequently in practice. He submitted that the conclusion reached by both courts below that the appropriate inference was that the parties intended Mr Onyearu's liability on the business loan to be thrown primarily on his share, although the loan was incurred "to enable him to continue to contribute to the 'family income'", was "fundamentally inconsistent with the relationship which spouses bear, or ought to bear to one another in their family affairs in current times." It is the appellant's submission that the equity can arise only where the co-owner receives no benefit, direct or indirect, from the secured loan.

21. In support of his submission that an indirect benefit to a spouse was sufficient to displace any inference in favour of the equity of exoneration, or to prevent any such inference from arising, Mr Passfield relied on the decision of the New Zealand Court of Appeal in *Re Berry (a bankrupt)* [1978] 2 NZLR 373, and decisions in Canada and Hong Kong. For the opposite conclusion, Mr Parker relied on the decision of the Federal Court of Australia in *Parsons v McBain* [2011] FCA 376.

22. For Mrs Onyearu, Mr Parker submitted that the Deputy Registrar made no error of law and had indeed not applied a presumption. He had analysed the evidence in detail before concluding that the equity of exoneration arose on the facts of the case in favour of Mrs Onyearu. His decision was based on the evidence as a whole; he did not rely on a presumption and find that it had not been rebutted. An appeal court should be slow to interfere with his evaluative judgment based on the facts of the case.

23. More generally, Mr Parker submitted that the equity is a broadly expressed principle applicable on an assessment of all the circumstances, not a process of prescriptive categorisation. It does not assist, and there is no basis in the authorities, for dividing cases into categories of direct benefit, indirect benefit and no benefit. Assuming no evidence of an actual intention, the question is always to identify, in all the circumstances of the case, the presumed intention of the parties. There was no basis for the assertion that, as a matter of law, the combination of "a family unit" and some possible indirect benefit from the secured loan precluded the application of the equity.

The equity of exoneration: the law

24. It is unnecessary to consider the origins of the equity because it is not in doubt that it has survived the radical changes to the property rights of married women, and to the position of women generally, made since 1882. Nor is it in doubt, as I earlier mentioned, that it is not confined to property jointly owned by co-habiting couples, married or unmarried. Again, as I mentioned earlier, its true position, in my view, is as part of the law relating to the rights of sureties.

25. Discussion of the equity can start with the decision of the Court of Appeal in *Paget v Paget.* The court (Lindley MR, Rigby and Vaughan Williams LJJ) gave a single,

reserved judgment. The parties were married in 1877. The plaintiff wife was "a lady of fortune", with the bulk of her property settled on her for life for her separate use without power of anticipation. They "moved in good society and, large as their income was, they lived far beyond it." They were "recklessly extravagant" and within five years were in desperate need of funds to meet the husband's debts incurred in maintaining their lifestyle. In 1882 the wife applied to court for an order under the Conveyancing Act 1881 to enable her to mortgage her life interest to secure a loan of £23,000 to be applied in meeting her husband's debts. In her evidence in support of the application she referred to these debts as "our debts" and said that she had known of the growing financial problems since 1880 at the latest. Another application was made in 1887 to enable the wife to mortgage her life interest for a further loan of £22,000, to be applied in paying further debts incurred by her husband. Once again she referred to these as "our debts".

26. The parties separated in 1893 and the wife brought an action against the husband for a declaration that he was liable to indemnify her against the two mortgages.

27. Importantly, the court noted at page 473 that the wife's rights, if any, against her husband did not arise when they separated in 1893 but in 1882 and 1887 "although she might not care to enforce them whilst she and her husband lived happily together". The issue was the effect in equity of the transactions approved by the court in those years.

28. The discussion which follows in the judgment needs to be read with some care. The court started with a general principle derived from the leading authorities that:

> *"If a married woman charges her property with money for the purpose of paying her husband's debts and the money is so applied, she is prima facie regarded in equity, and as between herself and him, as lending him and not giving him the money raised on her property, and as entitled to have her property exonerated by him from the charge she has created. This doctrine is purely equitable, and the authorities which establish it shew that it is based on an inference to be drawn from the circumstances of each particular case; the prima facie inference being in such a case as that supposed that both parties intended that the wife's assistance should be limited to the necessity of the case and should not go beyond such necessity."*

29. It was argued in the subsequent case of *Hall v Hall* [1911] 1 Ch 487 that the principle set out in that passage had been qualified by what then followed, but Warrington J (rightly in my view) rejected that submission. In general, if one co-habitee joins in granting a charge over the jointly-owned property to secure a loan to the other co-habitee, there is a presumption that the former is entitled to exoneration. As noted by Warrington J, this is an evidential presumption, capable of rebuttal by evidence from which an actual or inferred contrary intention can be drawn. It is "a prima facie inference". In my view, it is no different from the position of any surety. The evidence may show an actual or inferred intention on the part of the surety and principal debtor that the surety would have no, or only limited, rights against the principal debtor. But, in the absence of such evidence, there is a presumption that the parties would intend

the natural result that, as between them, the principal debtor was to bear responsibility for the debt. Mr Passfield accepts that this would be appropriate as between unconnected parties in a commercial context, but he submits that a different approach is required in a domestic context. I will revert later to this submission.

30. The court in *Paget v Paget* continued that even where the wife charges her property to secure a loan to pay her husband's debts incurred without reference to her "there may be circumstances which prevent any inference from arising". In other words, these are circumstances that do not rebut the presumption but prevent the prima facie inference arising at all. The court gave a number of examples: the husband provides consideration to the wife for her agreement to charge her property; her property is charged to secure payment of debts for which her husband was legally liable but for which she had been liable (pre-nuptial debts). It is these examples that led the court then to say:

> *"This shows the importance of ascertaining and not confounding the wife's debts when considering such cases as those to which I am alluding. To say that in all such cases there is a presumption in favour of the wife, and that it is for the husband to rebut it, is, in our opinion, to go too far and to use language calculated to mislead. The circumstances of each case must all be weighed in order to see what inference ought to be drawn; and until an inference in favour of the wife arises there is no presumption for the husband to rebut. If this is forgotten, error may creep in."*

31. Then turning to the facts of the case, the court concluded that the circumstances meant that no prima facie inference could arise in favour of the wife. The particular facts relied on, taken from the wife's own evidence in support of her applications in 1882 and 1887, were that she had her own substantial income; she had contracted her own debts and was "as extravagant and reckless as her husband"; if she had intended to reserve a right against her husband, her own creditors could have enforced it, frustrating their joint object of maintaining their position in society. The court's conclusion at page 477 was:

> *"The question comes back to the proper inference to be drawn from all the facts, including the order themselves. And bearing in mind that the plaintiff's paramount object was to save her and her husband's joint income, and thus, as far as possible, to preserve her and his position in society, and that this object might have been defeated if she reserved a right to be indemnified by him, the proper inference to be drawn is, in our opinion, adverse to the existence of such right. In our opinion, therefore, the appeal fails, and must be dismissed with costs."*

32. In *Hall v Hall*, Warrington J cited the passages from the judgment in *Paget v Paget* referred to in [28] and [30] above, and commented that the Master of the Rolls:

> *"intended the two parts of his judgment to stand together – that if the facts are those which he stated in the early part of his judgment there is a prima facie inference to be drawn from*

> *those facts, but not a legal presumption in the strict sense, in favour of the wife, and, unlike the case of a legal presumption, you are entitled to go into all the facts of the case to see whether there is or is not that prima facie inference."*

33. The leading modern authority is the judgment of Scott J in *Re Pittortou* [1985] 1 WLR 58, which is commonly cited in cases dealing with the property of separated unmarried couples and bankrupt spouses and partners and has generally been treated as stating the law on the subject. Again, the judgment requires careful reading.

34. Mr Pittortou came from a family of restaurateurs. In 1972, it was agreed that he should take over one of the family's restaurants. He and his wife charged their matrimonial home to secure any indebtedness on the bank account that "he proposed to use for – among other things – the purposes of the business of that restaurant." When they moved house, a fresh charge to secure this indebtedness was created over their new home. The account was used by Mr Pittortou not only for the restaurant business but also for the payment of household expenses, including mortgage instalments, utility bills, rates and other expenses. He also later used the account to support what the judge delicately called a "second establishment". Mr and Mrs Pittortou separated in 1981.

35. Scott J started his discussion by stating at page 61:

> *"As a general proposition, if there is found to be a charge on property jointly owned, to secure the debts of one only of the joint owners, the other joint owner, being in the position of a surety, is entitled, as between the two joint owners, to have the secured indebtedness discharged so far as possible out of the equitable interest of the debtor."*

36. Scott J cited from *Halsbury's Laws of England* (4th ed. 1979) (Vol 22 at para 1071) which dealt with the equity of exoneration in terms of married couples. It is to be noted, however, that Scott J expressed the principle more broadly, as applicable to joint owners generally. It will be clear from what I have already said that I think he was right to do so.

37. At page 62 Scott J said:

> *"However, the equity of exoneration is a principle of equity which depends upon the presumed intention of the parties. If the circumstances of a particular case do not justify the inference, or indeed if the circumstances negate the inference, that it was the joint intention of the joint mortgagors that the burden of the secured indebtedness should fall primarily on the share of that one of them who was the debtor, then that consequence will not follow "*

38. He went on to refer to *Paget v Paget* and to *Re Woodstock (A Bankrupt)* (19 Nov 1979, unreported) in which Walton J had commented that, in applying the equity of exoneration, the guide that Victorian cases could provide to the inferences to be drawn from dealings between husbands and wives was often not very valuable and that the courts should take into account "the relationship which husbands and wives bear, or ought to bear, to one another in their family affairs in current times." Scott J agreed.

39. In applying the principle to the facts of the case, Scott J observed first that the family "acted as a family unit in its family and business affairs". Mrs Pittortou worked in the restaurant for long hours and without pay and, in that respect, "her conduct was similar to the conduct of many wives assisting their husbands in the conduct of the business on which the livelihood and support of the family depend". It followed that it was impossible to impute to Mr and Mrs Pittortou the intention that payments out of his account "for the benefit of the family" should fall solely on his share of the property. Scott J held that the equity of exoneration "should be confined to payments out of the account which do not have the character of payments made for the joint benefit of the household". In reaching this conclusion, Scott J was departing from the Victorian norm, exemplified in *Hall v Hall*, that such payments would in the ordinary case be the husband's responsibility. In *Hall v Hall*, Warrington J had expressed the view at p.496 that the inference, in the case of a married couple living together, would be that a loan to the husband secured on the jointly-owned property was to be the husband's responsibility, unless the expenditure was for the *exclusive* benefit of the wife or to pay her *exclusive* debt. This is an example of the equity developing in accordance with changing social attitudes.

40. Importantly, however, Scott J considered that the equity of exoneration should apply to payments out of the account for the purposes of the restaurant business (and, *a fortiori*, for the maintenance of the second establishment). Save for the household payments, he said that "it does not seem to me that the equity of exoneration has any less part to play now than it had in the days when the exoneration doctrine was being formulated".

41. Scott J's conclusion was:

> *"The second charge, securing the debt owing to the National Westminster Bank, secured a debt of the bankrupt; the debt was not a debt of a second respondent. Prima facie, therefore, in my judgment the equity of exoneration applies to entitle the second respondent to require that indebtedness to be met primarily out of that bankrupt's share in the net proceeds of sale. But to the extent that that indebtedness represents payments which can be shown to have been made by the bankrupt for the benefit of the household, the indebtedness should be discharged out of the proceeds of sale before division. There is no doubt that into that category will fall the building society instalments that were paid out of the National Westminster Bank account. Also, in my judgment, into that category would fall payments made for the purposes of the occupation of the property by the bankrupt and the second*

> *respondent and their daughter or otherwise for the benefit of the joint household."*

42. Mr Pittortou's trustee in bankruptcy accepted that the equity should apply in respect of payments for the business or the second establishment. This is recorded by Scott J at page 63, saying that the trustee "in my judgment rightly but in the circumstances with some generosity" did not argue the contrary.

43. The position in English law following *Re Pittortou* can be summarised as follows. First, 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. Second, the circumstances of the case may be such that this presumed intention does not arise at all. Sir Nathaniel Lindley MR gave some examples in *Paget v Paget* and the facts of that case, where the borrowing was incurred by the husband to repay debts incurred to fund the couple's joint lifestyle and where the conclusion on the evidence was that the wife had for her own good reasons deliberately made provision for her husband's debts, provided another example. 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. Third, 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. Fourth, 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. Fifth, 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. Sixth, 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. Seventh, 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: this was agreed between counsel before us, rightly so in the light of what this court said in *Paget v Paget* at p.473. Eighth, the particular facts of each case need careful consideration to determine whether the equity applies.

44. We were referred to four English cases since *Re Pittortou* in which the equity has been considered.

45. *Re Chawda (in bankruptcy)* [2014] BPIR 49 is an example of a case where close scrutiny of the facts led to the conclusion that the equity did not apply. Mr Chawda and his wife jointly owned a residential property which they charged to secure a loan, part of which refinanced the original purchase loan. The case concerned the balance of about £78,000. Mr Chawda and his brother carried on business together. The sum of £78,000 had been used to refinance the purchase of a property which had been jointly purchased by Mr Chawda and his brother and in which Mrs Chawda had no interest. The brothers converted it into flats and business premises which they let. They received the rental income. It was re-mortgaged to raise £285,000 which was

used to make payments to businesses run by one or both of the brothers and to make a personal payment to Mr Chawda's brother and his wife. The property was later sold for £690,000, resulting in a very substantial capital profit. After paying off the secured loan, the proceeds were applied in making a variety of payments. £10,000 was paid to a company run by Mr Chawda, of which Mrs Chawda was the sole director. Its business was subsequently sold. A total of some £68,000 out of the proceeds of sale was paid to the joint account of Mr and Mrs Chawda and spent for the benefit of themselves and their family.

46. Chief Registrar Baister held that the circumstances of the case negated any inference that the equity of exoneration should apply in favour of Mrs Chawda. He said that the transactions had to be seen "in the context of the Chawdas functioning as a family unit as many, perhaps even most, modern families do". In her evidence, Mrs Chawda more than once referred to "us" and "we" when discussing their affairs. Other factors also established that they "operated as one": Mrs Chawda worked in her husband's business, initially without pay for seven days a week; they did not have separate bank accounts but operated and had joint control over joint bank accounts, into which they paid all their income from all sources; they both took the benefits of the ups and the burdens of the downs of Mr Chawda's businesses. The benefits included a half-share in a house bought for £925,000, the monies totalling £68,000 received from the sale of a business, and family holidays, leading the Chief Registrar to comment that "the parallels between the circumstances of the Chawda and the Pittortou families are clear".

47. The Chief Registrar concluded at [49] as follows:

> *"It seems to me that in the circumstances in which a husband and wife operate as the Chawdas have, pooling their earnings and profits, administering their financial affairs jointly and enjoying together a prosperous life, if not an extravagance one such as that of the Pagets. It is as unattractive as it is artificial for one of them to take the benefits while at the same time seeking to enforce an individual right in one respect only to the disadvantage of the other spouse (or in this case his creditors)."*

48. He considered that this conclusion was consistent with the approach taken in both *Paget v Paget* and *Re Pittortou*.

49. Although in his judgment in *Re Chawda*, Chief Registrar Baister said that the similarities between the Chawda and Pittortou families were clear, the result of the two cases was significantly different. In respect of the liabilities of the husbands' businesses, the equity of exoneration was applied in *Re Pittortou* but was denied in *Re Chawda*. Since there is no suggestion of a departure from *Re Pittortou* in the Chief Registrar's judgment, and indeed the decision was binding on him, the different outcomes must derive from the close examination of the facts that the authorities require. It is clear that this is so from the recital of facts that led the Chief Registrar to his decision. He found that Mr and Mrs Chawda operated as one and that, like Mrs Paget, Mrs Chawda referred to "our" affairs. It does appear to be the first case in which the equity of exoneration has not been available to a spouse as joint owner of a property charged to secure a loan to the other spouse's business, but it does not mark

a turning point in the law. It does not establish that the equity is not available simply where a spouse or partner can be said to derive an indirect benefit from the other's business. Nor, despite the Chief Registrar's reference to Mr and Mrs Chawda functioning as a family unit, like many or most modern families, does it mean that the equity is not available in the context of most modern married or co-habiting couples.

50. In *Day v Shaw* [2014] EWHC 36 (Ch), Mr and Mrs Shaw granted a second charge over their jointly-owned matrimonial home to secure the personal guarantee given by their daughter and by Mr Shaw in respect of a bank loan to a company (Avon). Their daughter and Mr Shaw were the shareholders and directors of Avon. Mrs Shaw had no involvement in the company, and, while she may have held some shares in it, there was no evidence that it was a substantial shareholding. On the sale of their home, the liability to the bank was discharged out of the proceeds. In proceedings brought by a creditor with a judgment against Mr Shaw to enforce a charging order against the property, the issue arose whether Mrs Shaw was entitled to an equity of exoneration as against Mr Shaw's share of the property.

51. At first instance, the district judge held that Mrs Shaw was entitled to be exonerated out of Mr Shaw's share of the property and rejected the claimant's case that, because Mr and Mrs Shaw's financial position was tied up with the prosperity of Avon, the borrowings for Avon's business were indirectly for their joint benefit, so precluding the equity from arising in Mrs Shaw's favour.

52. On appeal, Morgan J decided the case in Mrs Shaw's favour on the grounds that Mr and Mrs Shaw as mortgagors were sub-sureties for Mr Shaw and their daughter, so that equity required Mr Shaw as the guarantor of the bank debt and as an owner and controller of Avon, the principal debtor, to indemnify Mrs Shaw.

53. Morgan J went on to say that, if that analysis was not justified, he would be inclined to uphold the ground relied on by the district judge (against which there was no appeal) that Avon's debts were not incurred for her benefit, although he was less confident about this, not because of any doubt about the applicable legal principles but because the question of Avon's ownership and control was not sufficiently explored in the evidence. It is therefore clear that if the evidence had established that Mrs Shaw had no significant interest in Avon, Morgan J would confidently have held that she was entitled to the equity of exoneration.

54. In *Cadlock v Dunn* [2015] BPIR 739, Judge Behrens, sitting as a Deputy High Court Judge in the Chancery Division, held on an appeal from the county court that the equity applied to a wife who had charged her beneficial half share of the matrimonial property to secure a loan to her husband to enable him to re-acquire his half share from his trustee in bankruptcy. The wife obtained no financial benefit from the payment and the judge held that it was not a case like *Re Chawda* where moneys were spent on joint expenditure. The benefit to the wife was being able to stay in her house, a benefit incapable of financial valuation. He observed that it was clear from *Re Pittortou* that if any sums are spent on joint or household expenditure or otherwise for the joint benefit of the parties, the equity does not arise in respect of those sums.

55. Most recently, there was limited consideration of the equity by this court in *Graham-York v York* [2015] EWCA Civ 72. The case concerned the interests in a house that had been occupied by an unmarried co-habiting couple for nearly 25 years before the

death of one of them. He was the registered proprietor of the property but his partner (the appellant) claimed a beneficial interest under a common intention constructive trust. The issues were, first, whether she had any such interest and, if so, its size and, secondly, whether any such interest had priority over a registered legal charge granted by the deceased. At first instance, the judge held that the appellant had a 25% beneficial interest over which the charge took priority. On the appeal, the appellant contended that her interest was 50% and that it took priority over the charge but this second issue became in the course of argument a question whether the appellant was entitled to an equity of exoneration in respect of the secured indebtedness.

56. The court dismissed the appeal on the first issue. As regards the second issue, Tomlinson LJ (with whom Moore-Bick and King LJJ agreed) noted at [29] that he could take it shortly because by the end of the argument it had all but disappeared. The sole issue at trial had been whether the appellant's interest took priority over the charge, and reliance on an equity of exoneration as against the deceased's estate had never been pleaded. It was raised only after judgment and it was by then too late because the judge had not made findings as to the use or destination of the loan proceeds. If it had been pleaded, Tomlinson LJ said that it would have raised the issue "whether all or some of the debt secured by the mortgage charge represented lending which was not incurred for the benefit of the joint household but solely for the benefit of the deceased Norton York and/or his business interests". If that was the case, there would have been the possibility, but not the inevitability, that she would be entitled to the equity. Whether the equity arises "depends upon the presumed intention of the parties and is highly fact-sensitive."

57. As regards the possibility of the equity arising in that case, Tomlinson LJ said at [34]:

> *"However for what it is worth the inference from such evidence as there was seems to me to point away from, rather than towards, the conclusion that the borrowing was for the benefit of Norton York alone. It was the judge's implicit finding that Norton York was responsible for generating almost all of the income, and thus the assets, which the family unit enjoyed. It is apparent therefore that Miss Graham-York shared the benefit of the deceased's business ventures and it would be unconscionable that she should do so without sharing the burden of the mortgage. As noted in paragraph 18 above, it was in fact her evidence that Norton York's business ventures "provided us with the wherewithal to live on". The point was well made by Miss Haren that the question whether it was intended by the parties that the beneficial interest of one of them should be exonerated from the burden of the mortgage debt, is dependent upon the same factors as come into the equation when considering the whole course of dealing between the parties in relation to the property, for the purpose either of deducing their intention or of determining what is fair in relation to their respective shares of the beneficial entitlement. The judge having concluded that Miss Graham-York's entitlement was 25%, it would be artificial and illogical not to acknowledge that that must in the circumstances be a*

> *25% interest subject to the mortgage indebtedness from which both she and Norton York had derived benefit."*

58. The factors that would have led the court in that case to hold that the equity was not applicable were that the family was wholly dependent on Norton York's business ventures for their income and assets, as Mrs Graham-York acknowledged.

59. I do not read the comments of Tomlinson LJ that the issue of exoneration between the parties in that case was dependent on the same factors as those relevant to determining the existence of a common intention constructive trust as amounting to a general proposition that an entitlement to exoneration is to be approached in the same way, and by reference to the same factors, as the determination of the existence of, and interests under, a constructive trust. It was a reference to the particular circumstances of that case, where both issues arose. A claim to a beneficial interest in property is a quite separate question from the rights of a surety against the principal debtor or his property. The common element is that both questions require examination of the particular facts of the case in hand to determine the presumed intentions of the parties.

60. None of these more recent cases provides support for the view that the existence of some indirect benefit, or the prospect of some indirect benefit, to the co-owner who is not the debtor will necessarily prevent the equity arising in his or her favour. Although reliance was placed on statements made in *Re Chawda* and *Graham-York v York*, Mr Passfield accepted that none of the English authorities goes this far.

61. I earlier mentioned that both parties cited overseas authorities, principally *Re Berry (a bankrupt)* [1978] 2 NZLR 373, a decision of the New Zealand Court of Appeal on which Mr Passfield relied, and *Parsons v McBain* [2001] FCA 376, a decision of the Federal Court of Australia (Black CJ, Kiefel and Finkelstein JJ) on which Mr Parker relied.

62. In *Re Berry*, a married couple opened a joint bank account. A year later, the husband's business fell into financial difficulties and overdraft facilities were arranged, secured by a mortgage over their jointly-owned house. The account was used both for the husband's business and for household purposes. The overdraft appears to have resulted purely from business drawings and the account in due course became used largely for business purposes only. The husband became bankrupt and it was held that the wife was not entitled to exoneration out of the husband's share of the house.

63. The critical point in *Re Berry* was that the account was a joint account and the wife as well as the husband was liable to the bank as a primary debtor. The headnote accurately encapsulates the decision when it states that "there was no evidence of any agreement between them that the husband should be the principal debtor, and they were at all times co-debtors of the bank". If A and B are jointly liable as principal debtors, A can have no entitlement to exoneration against B in the absence of agreement between them to that effect, nor can there be any evidential presumption of such entitlement.

64. This is the *ratio* of the decision. In giving the first judgment, Richardson J said at pages 377-378:

> *"I can state my conclusions in this case quite shortly. Here, husband and wife were at all times co-debtors to the bank and later to the nominee company. There is nothing in that relationship of co-debtor to warrant the implication that as between themselves, one is principal debtor and the other is secondary debtor. It is not a case where a wife charged her property or pledged her credit and the husband received the loan moneys. They entered into the transactions jointly. They were jointly liable and they incurred liability in consideration of advances made an accommodation given to them jointly. And there is no evidence of any agreement between husband and wife that one should be principal debtor. In my opinion the mortgage transactions, whether taken on their own or in conjunction with the operation of the joint account, did not give rise to any obligations by the husband to the wife. In these circumstances I consider there is no room for the application of the principle of exoneration."*

65. Richardson J analysed, correctly in my view, the equity of exoneration as applicable to sureties and referred to *Paget v Paget* and *Hall v Hall*, as well as *Halsbury's Laws of England* (3rd ed.). By contrast, in the case before him, the husband and wife mortgaged jointly-owned property to secure "advances or accommodations made or given to them jointly and received by them jointly". They were two-way transactions involving the lender and borrowers and they "did not involve three distinct parties (the lender, the principal debtor, and the surety) which is the essence of the surety situation."

66. Richardson J went on to consider at page 378 "the rights of husband and wife *in relation to a joint bank account*" (emphasis added), identifying the circumstances in which as a matter of law one of them will, as between themselves, have primary responsibility for any liability on the joint account and whether such circumstances existed in the case before the court. He said that the concern is "to ascertain the intentions of the parties in their particular circumstances and in relation to the events that have arisen." He identified as the starting point "what inferences may properly be drawn as to common intention of *this* husband and *this* wife in relation to the opening and operation of the *joint* account" (emphasis added). He proceeded to consider the facts of the particular case and concluded from them that the family home was a joint asset and the joint account and mortgage were "joint responsibilities". In this context, he referred to English cases concerned with joint accounts, such as *Jones v Maynard* [1951] Ch 572, *Gage v King* [1961] 1 QB 188, *Re Bishop* [1965] Ch 450.

67. Somers J delivered a concurring judgment to similar effect. He too started with the proposition that the "equity of exoneration is an incident of the relation between surety and principal" (page 382). He referred in some detail to the speech of Lord Selborne LC in *Duncan, Fox & Co v North and South Wales Bank* (1880) 6 App Cas 1, where he identified the three classes of case "in which the relations *between co-debtors* may be such as to entitle one to cast the liability, as between them, on the other or others" (emphasis added). Mr Passfield placed particular reliance on the following passage at pages 384-385:

> *"The statements of principle contained in those cases and the suggestions as to the proper inferences to be drawn reflect both the position of a wife in relation to property before the Married Women's Property Act 1882 and a social climate wholly different from the present. While as between strangers the simple question, who got the money, may afford a ready and just solution, its potency as a solvent in the case of a joint account of a housewife and mother in New Zealand in the 1970's is not so apparent. It necessarily involves the proposition that husband and wife intended to enter into legal relations, such intent being an actual intention or – denied by Paget v Paget [1898] 1 Ch 470 – a presumed intent."*

68. Somers J continued at page 385 that where there was no expressed intention by the parties and no facts warranting any other inference, the starting point was that adopted by Diplock J in *Gage v King* that "arrangements *involving a joint account between husband and wife* are not meant to be attended by legal consequences during the subsistence of the marriage" (emphasis added). In the same context, in another passage on which Mr Passfield relied, Somers J said at page 385:

> *"The same type of consideration is involved in a determination, if such be necessary, of whether the withdrawals were for the sole benefit of the husband. On that point, however, there is evidence. The account appears to me to have been opened as a matter of convenience to both parties each of whom, for a time, paid in moneys and made withdrawals. It then became for practical purposes an account into which the husband paid the profits of his business and withdrew moneys to support it. The evidence does not suggest it was a general business account. It became in fact an account concerned with a vital feature of the family life – the earnings of the husband – and a buttress of that business from which such earnings were derived. To assert that the wife had no benefit from the withdrawals is to take too narrow a view."*

69. In my judgment, the appellant in this case cannot derive support from *Re Berry*. As is clear from both reasoned judgments, the analysis was concerned only with the position as regards a joint account on which both spouses were primary debtors. The legal relationship between the parties was fundamentally different from that of primary debtor and surety, as the judgments expressly acknowledged. This is how the Federal Court of Australia viewed *Re Berry* in *Parsons v McBain*, where the Court said at [20]:

> *"The equity of exoneration is an incident of the relationship between surety and principal debtor. It usually arises where a person has mortgaged his property to secure the debt of another, whether or not that other has covenanted to pay the debt. However, it will also arise in a case where, although not an actual suretyship, the relationship is treated as one of suretyship."*

70. By contrast, *Parsons v McBain* is directly in point. The appellant wives were held to be entitled to the equity of exoneration as against the half shares of their husbands in their respective matrimonial homes. The husbands, who were brothers, worked with their parents in the family transport business. It needed funds to stay afloat and each of the brothers took out loans to finance contributions to the business, secured in each case, with the consent of their wives, on their respective matrimonial homes. The loans were used to pay existing creditors of the business, including rental payments on truck leases and the bank overdraft. Notwithstanding this support, the business failed and the brothers were made bankrupt.

71. In deciding that the wives were entitled to the equity of exoneration, the Court said:

> *"22. The trial judge denied to each appellant the right of exoneration because she had received "a tangible benefit" from the 1992 mortgage. The benefit, which might more accurately be described as an expected benefit, was that, by putting money into the partnership business, the business might survive and, as put by counsel for the trustee, that would bring "home money to put food on the table and clothe the children".*
>
> *23. If a surety receives a benefit from the loan, the equity of exoneration may be defeated. So, if the borrowed funds are applied to discharge the surety's debts, the surety could not claim exoneration, at least in respect of the benefit received. But the benefit must be from the loan itself. The question suggested by the Lord Chancellor of Ireland is: "Who got the money": see In re Kiely (1857) Ir Ch Rep 394, 405. In Paget v Paget [1898] 1 Ch 470 both the husband and the wife "got the money" and this prevented the wife claiming exoneration.*
>
> *24. The "tangible benefit" referred to by the trial judge will not defeat the equity. It is too remote. In any event, the exoneration to which a surety is entitled could hardly be defeated by a benefit which is incapable of valuation, and even if it were so capable, the value is unlikely to bear any relationship to the amount received by the principal debtor."*

72. Mr Passfield submitted that the decision in *Parsons v McBain* was flawed because it failed to recognise that the equity reflects the presumed intentions of the parties and depends on inferences to be drawn in the circumstances of the case and because the enquiry "Who got the money?" is too narrow an approach, as shown by Scott J's judgment in *Re Pittortou*.

73. I do not accept these criticisms. The reference to *Paget v Paget* shows that the Court was not asking, literally, "Who got the money?" but was focussing on whether the wives obtained the benefit of the loan or, at least, a benefit from the loan. The only benefit identified was indirect and too remote and was, in any event, incapable of calculation. This was an insufficient basis for concluding that the presumed intention of the parties was to share the burden of the loans equally.

74. Mr Passfield also relied on two other overseas decisions. In *Siu v Malahon Credit Co Ltd* (4 Nov 1987, unreported), the Court of Appeal of Hong Kong held that Madam Siu was not entitled to the equity as against the half-share of her co-habitee in the flat they jointly owned. The flat was mortgaged by them to secure general banking facilities, the mortgages reciting that "the Mortgagors have applied to the Bank to grant to the Mortgagors General Banking Facilities in connection with the Mortgagors' business." Madam Siu's case was that, notwithstanding this recital to the mortgages, the loans were used exclusively by her partner. The Court of Appeal rejected her case, holding that there was insufficient evidence to rebut the recitals. It is therefore a case that turns entirely on its own facts and is no assistance on this appeal.

75. In the other case on which Mr Passfield relied, *Canada Inc v Doctor* (12 Dec 1997, unreported), Ferrier J sitting in the Ontario Court of Justice held that the equity did not apply in circumstances where the husband had used loans secured on the jointly-owned matrimonial home to make investments which, by reason of certain tax advantages enabled him to repay quickly the mortgage loan taken out by the husband and wife jointly to finance the purchase of the matrimonial home. The judge said that the wife benefitted directly from the loan because, although she had no interest in the investments, her equity in the property was increased significantly and directly. As it seems to me, this was a case where on the facts there was a clear and direct link between the loans secured on their joint property and the benefit received by the wife.

76. In my judgment, none of these overseas authorities calls into question the approach that has been adopted over a long period up to the present day by the English courts, and indeed the decision in *Parsons v McBain* is a recent affirmation of it.

Should the law be changed?

77. The central submission of Mr Passfield on behalf of the appellant trustee is that, in the absence of evidence of an actual contrary intention, the equity of exoneration does not apply to co-habiting couples where they operate as a family unit and the surety cohabitee receives an indirect benefit from the indebtedness of the other co-habitee. If the indebtedness has been incurred to pay the creditors of the business of one co-habitee, thereby (it is hoped) saving the business from insolvency and, in consequence, creating the opportunity for that co-habitee to earn an income which will at least in part be applied for their joint benefit, it is wrong to infer an intention that the equity is to apply. To do so in the present case, submitted Mr Passfield, is "fundamentally inconsistent with the relationship which spouses bear, or ought to bear, to one another in their family affairs in current times". This formulation adopts Walton J's comment in *Re Woodstock,* cited by Scott J in *Re Pittortou*.

78. I start from the position that the equity of exoneration is part of the law relating to sureties, entitling the surety to relief as against the principal debtor, unless the evidence establishes a contrary intention or the circumstances of the case lead to an inference that the equity is not to apply. This has applied as much to co-habiting couples, married or unmarried, as much as it has applied to other co-owners.

79. I am not persuaded that the law in this area should be changed to accommodate what is said to be the relationship between co-habiting couples in their family affairs in current times, still less what that relationship ought to be. Couples arrange their financial and family affairs in an infinite variety of ways. There is no standard

template, nor is it any business of the courts to suggest that there is a particular way in which couples ought to arrange these matters. Some couples completely share their income and other financial resources, while others keep them rigidly apart, and there are many variations between those ends of the spectrum. Nor do I find the concept of operating as "one family unit" a helpful, or even usable, test. Most families operate, in some senses, as a unit but that says nothing about their financial affairs or arrangements. Some families, as in *Re Chawda*, no doubt pool all their resources and liabilities, but that finding is based on an examination of the evidence in the particular case. It does not proceed from an assumption as to how families operate or ought to operate.

80. The clear trend in the law has been to provide financial emancipation to women and to enable couples to keep their property and financial affairs separate to such extent as they desire. The reforms started by the Married Women's Property Acts 1870 and 1882 took many years to complete. For example, it was only in 1973 that a wife could elect to have her earned income taxed separately from that of her husband and it was not until 1990 that completely separate taxation was introduced for wives and husbands. It is consistent with this trend 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.

81. The question whether an indirect benefit is sufficient to displace the right to exoneration is applicable as between all debtors and sureties, although in practice, of course, the issue of indirect benefit is most likely to arise in the case of co-habiting couples.

82. It is clear from the cases that English law has not regarded an indirect benefit to be itself sufficient to deny a right of exoneration to the surety. Mr Passfield rightly did not submit that *Re Chawda* went that far: there was very much more than indirect benefits in that case. The benefit must be direct or closely connected to the secured indebtedness. I regard the judgment of Morgan J in *Day v Shaw* as consistent with this, and there is nothing inconsistent in *Graham-York v York*. This is the approach adopted by the Federal Court of Australia as recently as 2001.

83. An indirect benefit of the type relied on in this case is far from certain to accrue. In the present case, any benefit was subject to a double contingency: first, that the firm would survive and, secondly, that it would be profitable. Further, the intention as regards the equity is to be inferred as at the date of the transaction. As at that date, the prospect of benefit was wholly uncertain and incapable of any valuation. As the court said in *Parsons v McBain* at [24], "the exoneration to which the surety is entitled could hardly be defeated by a benefit which is incapable of valuation, and even if it were so capable, the value is unlikely to bear any relationship to the amount received by the principal debtor." In general, the benefits must be capable of carrying a financial value: in my judgment, *Cadlock v Dunn* was correctly decided, and Mr Passfield did not submit otherwise.

84. I should add that I do not accept the open-textured approach advocated by Mr Parker. While each case requires a careful examination of the facts, I do not consider that the court should simply looks at all the circumstances of the case and decide the appropriate inference to draw, without the guidance of principles to ensure consistency of approach.

Disposal of the present case

85. Coming back to the facts of the present case, it follows from what I have said that I consider that the decisions of the Deputy Registrar and of the Deputy Judge on appeal were correct. The purpose of the bank loan secured by the charge on the matrimonial home was to pay the creditors of Mr Onyearu's practice. The creditors, and Mr Onyearu, were the people directly benefitted by the loan. Any benefit that might have been anticipated for Mrs Onyearu was subject to a double contingency: first, that Mr Onyearu's practice would survive and, secondly, that it would make profits from which he could make drawings. Any benefit to Mrs Onyearu was too remote to provide a basis for inferring or presuming that her intention was to bear the burden of the loan equally with her husband. Further, as at the date of the secured loan, any anticipated benefit was, as in *Parsons v McBain*, incapable of valuation and unlikely to bear any relation to the amount of the loan.

86. Mr and Mrs Onyearu did not operate as a single unit financially. They kept their finances separate, as many couples do. They each had their own income and their own bank accounts. They shared the family expenses, Mr Onyearu paying the mortgage instalments and Mrs Onyearu paying all the other household expenses. By denying her an equity of exoneration, she would be paying not only her share of the expenses but also his, a result that does not strike me as according with notions of equity.

87. I would therefore dismiss the appeal.

Lord Justice Elias:

88. I agree

Lord Justice Vos:

89. I also agree