

WBL Logbook Sheet Template

Competency e.g. 1	Learning Outcome e.g. 1.1	Example Number
3	3.3	2
Evidence provided		
e.g. letter to client dated 01.01.2017, Telephone attendance note dated 01.01.2017		
E-mail to the client dated 1 December 2020		
Explain how the example meets the learning Outcome and how the evidence shows this		
<p>Your advice should include what action you will take to represent your client and outline the available options and next steps:</p> <p>I was instructed by a Trustee in Bankruptcy following an application made by them to register their interest against a property to which the Bankrupt appeared to hold a legal interest. The Trustee received objections to the application and subsequently provided instructions regarding advice as to registering their interest in the property.</p> <p>On 1 December 2020, I provided my client with advice. The property in question was an investment property and joint registered proprietor had filed objections stating that the Bankrupt had not paid for the property and therefore did not hold a beneficial interest.</p> <p>To be success in registering an interest my client had to evidence that the Bankrupt had paid his share of the purchase price. However, no such evidence was held and the joint proprietor provided evidence that he had paid the total purchase price. It therefore became apparent that my client's application to register an interest in the property lacked merit and was likely to be dismissed. As a result I provided advice to withdraw their application, noting that there may be cost consequences. I therefore confirmed that the next steps should be to offer to withdraw the application by consent and on a no order as to costs basis.</p> <p>Provide legal advice to your client on the legal matter in which they instructed you:</p> <p>I clearly set out the legal position to my client confirming that where a property is an investment property, each party would be entitled to the value of their own contributions (Laskar v Laskar).</p> <p>However, since the Trustee had no evidence to suggest the Bankrupt had paid his share of the purchase price, it would likely be found that his beneficial interest would be £0.</p> <p>Further, even if the property was not an investment property (which it was) further case law supports that the joint tenancy presumption can be displaced by evidence that the parties common intention was different than the title suggests (to be deducted from the parties conduct, including any financial contributions).</p> <p>In view of the above, I advised my client that legally and evidentially they did not have sufficient to convince the tribunal that the Bankrupt had a beneficial interest in the property and as such their application was likely to fail.</p>		
3.3 Example 2 - Logsheet		

Reflection and evaluation

Describe what you learnt from the activity you undertook to meet the Learning Outcome. You may want to complete this section at a later date once you have had time to reflect on your practice and experience.

It is important to provide clear and concise advice setting out the merits of your client's case, the options available and the next steps. This is so that the client can make an informed decision and provide instructions accordingly.

**Date work completed:
(i.e. evidence date)**

01/12/20_{rk}

Date

[REDACTED]

From: [REDACTED]

01 December 2020 09:26

To: [REDACTED]

Good afternoon [REDACTED]

It was lovely to speak with you on Friday.

Update

As discussed, we have received a response from [REDACTED] Solicitors, [REDACTED]. Their position being that:

1. The property was purchased for [REDACTED]
2. Their client financed the purchased by way of a payment of [REDACTED] (which was sent via bank transfer from his personal bank account, to the conveyancers). A further [REDACTED] loaned from [REDACTED] brother (who had no involvement in the purchase of the property). Best Solicitors have provided a copy of [REDACTED] bank statement which shows the transfer of £46,000.00 from his personal bank account, to [REDACTED] (who undertook the Conveyance). I have attached a copy of [REDACTED] bank statement for your information.
3. It is admitted that, at the time of purchase, it was agreed that all four brothers [REDACTED] will each pay £12,500.00 for their share in the Property. However, [REDACTED] could not afford to repay [REDACTED] the agreed £12,500.00 and as a result, he is estopped from claiming any beneficial interest in the property.

The Trustee's Position

In view of the above, whilst [REDACTED] accepts that the Bankrupt holds a legal interest in the property, it is denied that he holds any beneficial interest on the basis that he has failed to pay for his share of the Property.

There is a presumption at law that the beneficial interest mirrors the legal interest meaning that each joint tenant would be entitled to an equal share of the beneficial interest. This presumption can however be rebutted with evidence to the contrary. However, where a property is an investment property (as in this case), it is not appropriate to apply the presumption of joint ownership, since it is nothing more than a resulting trust and, as such, each party is would be entitled to the value of their own contributions (*Laskar v Laskar*).

Since it appears the property is an investment property, it is likely that it would be found that his beneficial interest should mirror that of his contribution which, prima facie would be £0.

In any event, even if it could be argued that the property was not an investment property (which it cannot), there is further case law (which has been cited by [REDACTED]) which supports the position that the joint tenancy presumption can be displaced by evidence that the parties common intention was different than the title suggests, either at the time of purchase or later and, that the parties "common intention" is to be objectively deducted from the parties conduct. In deciding what is fair, the conduct of the parties as a whole will be considered and any **financial contributions** (emphasis added) are relevant.

For the reasons set about above, I believe that [REDACTED] has sufficient evidence to prove that the purchase of the property was funding solely by him. This is further supported by the letter from the Bankrupt which confirms that he defaulted on the original agreement to pay his brother [REDACTED] as a result, he does not hold a beneficial interest in the property.

The difficulty we have is that we have no evidence to rebut this position (ie evidence that the Bankrupt did in fact pay for his share of the property) or in some way contributed to the purchase of the property at all. Applying the principles in Laskar v Laskar (set out above), the bankrupt would only be entitled to the value of his own contribution, which is £0. Further, I note that following our discussion on Friday, it is entirely plausible that the Bankrupt did not in fact pay for his share of the property (or made any contribution at all). With this in mind, I therefore believe that the prospect of success at the tribunal will be slim.

Next Steps

For the reasons set out above, I would suggest that we withdraw our application with the Land Registry.

However, as you are aware, [REDACTED] has Solicitors instructed and it is therefore likely that costs would have been incurred in filing the objection to the OR's application to register a restriction. With this in mind, before withdrawing the application, I would suggest that we write to [REDACTED] Solicitors confirming that the Official Receiver would be willing to withdraw its application, strictly on a no order as to costs basis. I would however put you on notice that should [REDACTED] Solicitors not be minded to accept our "drop hands" offer, the Official Receiver could be liable for payment [REDACTED] costs.

Please do not hesitate to contact me should you have any queries. In the alternative, I look forward to receiving your instructions.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]