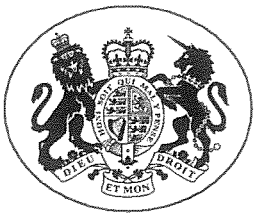


[2019] UKFTT 0112 (PC)

REFS/2018/0150/0151/0152

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF REFERENCES FROM HM LAND REGISTRY

BETWEEN

MOHAMMED REZA GHADAMI

APPLICANT

and

(1) LYNN PROPERTIES LIMITED
(2) VITALA INVESTMENT HOLDINGS LIMITED
(3) MERIX INTERNATIONAL VENTURES LIMITED

RESPONDENTS

Property Addresses: 42 Reeves Mews, London W1K 2EH and 42/41 Upper Grosvenor Street, London W1K 2NH

Title Numbers: NGL887864, NGL887867 & NGL763060

Before: Judge Martin Dray

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 14 January 2019

ORDER

UPON the Applicant's further application for an adjournment of the strike-out hearing listed for 14 January 2019 (such application having been submitted to the Tribunal under cover of an email dated 13 January 2019 timed 11:55)

AND UPON the Applicant's applications (made by email to the Tribunal Manager dated 11 January 2019 timed 16:20):

(a) To set aside the Order of 11 January 2019; and

(b) For permission to appeal that Order.

AND FURTHER UPON the Respondent's application to strike-out the Applicant's statement of case under Rule 9 of the Tribunal's Rules and for an Order under Rule 40(3)

AND YET FURTHER UPON hearing Counsel for the Respondents, the Applicant not attending the hearing

IT IS ORDERED THAT:

1. The Applicant's further application for an adjournment is refused.

2. The Applicant's application to set aside the Order of 11 January 2019 is dismissed.

3. The Applicant's application for permission to appeal the Order of 11 January 2019 is dismissed because: (a) such application has no realistic prospect of success; (b) the decision not to adjourn entailed the exercise of the Tribunal's case management powers, was made with regard to the material circumstances and evidence, and was reached in accordance with the overriding objective; (c) despite the decision of 11 January 2019, the Applicant's renewed application for an adjournment was itself considered afresh at the hearing on 14 January 2019, thus rendering the previous refusal essentially academic in any event.

4. The Applicant's statement of case in these proceedings is struck out pursuant to Rules 9(3)(d) and 9(3)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

5. The Chief Land Registrar is directed to cancel the referred applications for the entry of unilateral notices.

6. Pursuant to Rule 40(3) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Chief Land Registrar is directed to reject unconditionally any future

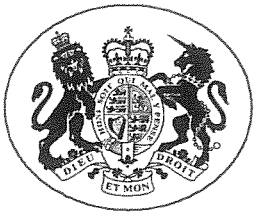
application for the entry of a unilateral notice against any or all of title numbers NGL887864, NGL887867 and NGL763060 (or any titles derived therefrom or replacing the same) which application is made by or on behalf of the Applicant herein, Mohammed Reza Ghadami.

7. Any application for costs (which must be accompanied by a costs schedule in form N260 or similar) must be filed and served by 4pm on 30 January 2019.

Judge Martin Dray

Dated this 16th January 2019

BY ORDER OF THE TRIBUNAL



[2019] UKFTT 0112 (PC)

REF/2018/0150/0151/0152

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF REFERENCES FROM HM LAND REGISTRY

BETWEEN

MOHAMMED REZA GHADAMI

APPLICANT

and

(1) LYNN PROPERTIES LIMITED
(2) VITALA INVESTMENT HOLDINGS LIMITED
(3) MERIX INTERNATIONAL VENTURES LIMITED

RESPONDENTS

Property Addresses: 42 Reeves Mews, London W1K 2EH and 42/41 Upper Grosvenor Street, London W1K 2NH

Title Numbers: NGL887864, NGL887867 & NGL763060

Before: Judge Martin Dray

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 14 January 2019

DECISION

Numbers in square brackets refer to the corresponding pages in the hearing bundle produced by the Respondents

Introduction

1. The Respondents applied in their statement of case dated 21/6/18 [13-24B] to strike out the Applicant's statement of case (served in May 2018) under rules 9(3)(d) and (e) of The

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is my decision on that strike-out application.

2. The application was heard by me on 14/1/19. The Applicant, Mr Ghadami, did not attend the hearing (which had been listed for hearing back in September 2018). The Respondents were represented by Mr Rosenthal of counsel.

3. In December 2018 I refused an application by Mr Ghadami to adjourn the hearing on medical grounds. On 11/1/18 I refused a further such application.

4. At the start of the hearing I considered: a further application (on paper) by Mr Ghadami to adjourn, made again on (predominantly) medical grounds; an application to set aside my earlier Order(s); an application for permission to appeal the same. I refused all those applications for the reasons I gave orally at the hearing.

5. Reference may be made to the recording of my ruling for its full terms but, in summary, I refused the application for an adjournment because: (a) although the veracity of the medical evidence in support is not impugned, for the reasons set out in my decision of 11 January its sufficiency (to justify an adjournment) is – and this is a matter for the Tribunal's decision; (b) in that regard, nothing had changed (there had been no material additional medical evidence submitted) since the previous application to adjourn; (c) Mr Ghadami's situation is in no way comparable to that of a litigant who is hit by a bus *en route* to a hearing (the example given in *Khudados v Hayden* [2007] EWCA Civ 1317, cited by Mr Ghadami); (d) Mr Ghadami has a history of making repeated applications (this being part of the overall context, although itself merely a contributory, not a determinative, factor in my decision, which decision I reached on a fresh evaluation of all the relevant circumstances); (e) Mr Ghadami, who has filed a statement of case, *has* had the opportunity to participate in the proceedings and had the chance (not taken by him – see paragraph 7 below) to file written submissions in opposition to the strike-out application (the nature of which he has long been aware); (f) it appeared to me, provisionally, that (having regard to the past extensive High Court litigation, as to which see below) this is a case in which the Respondents' case is strong, if not compelling, such that an adjournment would be postponing the inevitable; (g) the fact that Mr Ghadami has apparently applied to the ECHR

has no impact on the outcome of those court proceedings in which the parties have been involved.

6. Accordingly, the hearing of the Respondents' strike-out application proceeded in the absence of Mr Ghadami.

7. Mr Rosenthal had submitted a skeleton argument and he augmented this with oral submissions. Mr Ghadami had not filed a skeleton argument despite the Tribunal's direction to that effect made on 2/8/18. [223-224]

Background: the various applications

8. The proceedings before the Tribunal stem from Mr Ghadami's applications to enter unilateral notices against the above-mentioned titles to the above-mentioned subject properties, of which properties the Respondents are (between them) the registered proprietors. The applications (in identical form, *mutatis mutandis*) were made on 13/10/17. The UN1 forms are at [104, 109 & 114]. Copies of the registered titles appear at [133A et seq].

9. The basis of the applications is set out in panel 12 of the UN1. [107] That reads:

> *"The Applicant has an interest in the above properties as set out in his successful UN1 application which resulted in his notices being registered on the above properties on 13 May 2015".*

10. On the continuation sheet [108] is the following text:

> *"Applicant again seeks ... unilateral notice in respect of equity by estoppel arising from a promise of joint/transfer of ownership of the registered estate".*

11. The cross-reference to a previous application reflects the fact that there is a history of repeated applications for unilateral notices (against the titles to 42 Upper Grosvenor Street and 42 Reeves Mews (together "Number 42"), albeit not (to the same extent) against 41 Upper Grosvenor Street and 41 Reeves Mews ("together Number 41")) by Mr Ghadami.

A game of cat and mouse between the parties has ensued. A summary of the history follows:

(1) The first application (made against the title to Number 42 which title was then vested in Larios Properties Ltd, which had been registered as the proprietor on 7/10/02 [41]) was made by a form UN1 dated 13/3/07. [25] Panel 12 thereof [27] asserted that Mr Ghadami was interested in the property by reason of an equity by estoppel. There followed reference to: a 2005 joint venture agreement entered by Mr Ghadami with, amongst others, one Paul Bloomfield; a 2005 management summary agreement also made with Mr Bloomfield; "*a promise of ownership by transferring the ownership of the said promise by [Mr] Bloomfield to [Mr Ghadami]*"; a 2008 deed of promissory note agreement also with Mr Bloomfield; an allegation that Mr Bloomfield "*is now acting in a way that is detrimental on the basis of that promise*". No further particulars were given. The application was completed and a unilateral notice entered on 19/3/07. [29] The entry in the register (then title no.NGL760756) [32] read:

> *"(19.03.2007)* ***UNILATERAL NOTICE*** *in respect of equity by estoppel arising from a promise of joint ownership of the property made by Paul Bloomfield acting as agent for Larios Properties Limited."*

(2) After cancellation of the first application (by consent) [33], a further application was made by Mr Ghadami on 14/6/07. [34] This gave the same reasons; it did so by reference to the previously UN1. [36] A unilateral notice was entered by HMLR on 18/6/07. [38] The Respondents, Lynn Properties Ltd and Vitala Investment Holdings Ltd, acquired their respective ownerships in Number 42 (occasioning the splitting of the title) at a time in 2007 when that unilateral notice was on the register of title. The notice was later removed on the application (dated 30/10/07) of one Mr Saunders, a solicitor acting for the vendor. [43] It is questionable whether Mr Saunders had the authority of Mr Ghadami to do this, something recorded in paragraph 75 of the 2016 judgment of Norris J (as to which see below). [172]

(3) In any event, further applications were made by Mr Ghadami on 28/11/08. [44A & 44E] Again, the supporting narrative (panel 11) refers to the alleged promise of ownership said to have been made by Mr Bloomfield and the earlier unilateral notice. [44C & 44G]

It did not add any material extra information. Pursuant to the applications, unilateral notices were entered against the split titles, NGL887864 and NGL887867. These unilateral notices were removed in June 2009. [45/47] In this context HMLR determined Mr Ghadami's objection to the application for cancellation to be groundless. [62]

(4) On 10/4/13 Mr Ghadami made yet another application in respect of each title to Number 42. [49 & 53] This was very shortly after he had issued proceedings in the High Court (originally in the Commercial Court, later transferred to the Chancery Division) – proceedings which I outline below. This time round the details of the interest claimed were even more truncated. Panel 11 reads, "*In respect of equity by estoppel arising from a promise of joint ownership of the property made by Paul Bloomfield acting as agent for Larios Properties Ltd/Vitala Investment Holding Ltd*". [51 & 55] That bare statement is all that was said. In February 2014 the relevant Respondents sought to cancel the unilateral notices entered against their titles pursuant to this fourth application. [57] Mr Ghadami objected to the cancellation. [58] In it he referred to and relied on: (a) the alleged promise of joint ownership by Mr Bloomfield; (b) the High Court proceedings. He stated, "*the whole transaction ... is now the subject of an ongoing court claim made by myself against all those concerned ...*" [59], thereby inextricably linking the claimed estoppel to the transaction which was the focus of the High Court claim. However, HMLR again dismissed as groundless Mr Ghadami's objection to the application for cancellation. [61/62] The notices were removed in March 2014.

(5) A fifth application was then made by Mr Ghadami, this time on 22/4/15. [63] This application for the first time extended to all 4 properties (i.e. including Number 41, by then owned by Merix International Ventures Ltd under title no. NGL763060). Panel 11 of the UN1 form appears at [66]. Although lengthier than the text on previous applications, the substance is essentially the same, namely, a claimed equity by estoppel arising from a promise of joint/transfer of ownership. In addition, Mr Ghadami referred to the court proceedings and outlined the case in brief. On 5/5/15 HMLR rejected the application because the proceedings had by then been struck out by Deputy Master Mark (as to which see below). [68]

(6) Undeterred, Mr Ghadami made a fresh application, his sixth, on 11/5/15 against both Numbers 41 and 42. [70] He explained that permission to appeal the Order of the Deputy Master had been granted by Arnold J. (This had happened on 31/7/14). [73] He submitted, "... *the Applicant has proven a strong prima facie case of fraud relating to the properties which he now justly and rightly seeks to secure his interest by way of UNI.*" [73] The application was successful and unilateral notices were placed on the registers of the affected titles in consequence. These were not contested by the Respondents, and so remained in place, until October 2016 [75, 80 & 85] i.e. after the October 2016 judgment of Norris J in the Chancery Division in the Respondents' favour [139] (as to which see below). After that, on 29/11/16 the notices were removed on the successful application of the Respondents. [77, 82 & 87]

(7) However, the Respondents' triumph was not long-lived. On 2/12/16 Mr Ghadami (then acting through Wilson Davies & Co, solicitors) made his seventh application (against all the properties). [90] In it he said [93/94] that the judgment of Norris was a draft judgment. This was wrong. It had been handed down in court. He also said that there was then no court order. This was correct. The making of an order had been delayed because of various applications (e.g. for recusal and a *Barrell* application) which Mr Ghadami had made, as to which see below. Apart from referring to the litigation, he gave no further details of the grounds of the alleged estoppel. Nonetheless, HMLR entered unilateral notices. The Respondents applied in May 2017 to remove the notices [95 & 97], advising that the judgment was approved and handed down, and stating: "*You are directed to Paragraph 75 of the Judgement. There is "simply no ground" for the Applicant to rely on his purported interest of 'equity by estoppel'.* Further, this is not an interest capable of being protected by a unilateral notice. *Even if it were (which we deny), the Judgment makes no finding of equity by estoppel as against Registered Proprietors or in respect of the Properties. In summary, all three of the 2017 Unilateral Notices have no merit whatsoever and are mischievous and must therefore be cancelled forthwith.*" [96] It appears that there was a period of correspondence. Meanwhile Norris J gave a further judgment in August 2017 [187] (as to which see below). On 1/9/17 HMLR wrote to Mr Ghadami's solicitors [100]:

> "***Having considered the terms of the Approved Judgment it seems clear that your client's claim could not be advanced as a proprietary estoppel claim and***

the objection could therefore be regarded as groundless. *However, the terms of 94(r) of the Judgment propose granting an injunction to restrain your client from seeking to register any further unilateral notices against the titles but also making an order that Mr Ghadami be given 14 days' notice of any disposal so that he is able to take whatever action he considers appropriate.*

In the circumstances, it appears to be in the interests of both parties to await a copy of the sealed order before making a decision as to whether the objection should be regarded as groundless. In the absence of the Order, cancellation of the unilateral notices could result in applications in respect of further notices and a repetition of the current process and also there would be no process in place to protect your client, as envisaged by the Judgment."

So HMLR held the matter in abeyance pending receipt of the Court's Order. When that was forthcoming in September 2017 [212] HMLR determined Mr Ghadami's objection to the cancellation application to be groundless and so removed the unilateral notices. [102/3]

(8) At a hearing on 2/8/17 the Respondents obtained from Norris J an interim injunction preventing Mr Ghadami from applying for unilateral notices against their properties. However, this injunction lapsed because the Respondents failed to give undertakings to give 14 days' notice of any intended disposition. See the Order of Norris J dated 13/9/17, paragraphs 25 & 26. [215] Hard on the heels of the cesser of the injunction, Mr Ghadami made the presently referred applications, the eighth such application. [104, 109 & 114] The only difference between the latest, referred, applications and the assorted previous applications lies not in its substance (indeed, Mr Ghadami states, "*There has been no material change in circumstances* since [his previous application]" [107, 112 & 117]) but in its treatment: the most recent UN1 applications by Mr Ghadami did not result in the entry of unilateral notices which then required applications by the Respondents to cancel them. Instead, the Respondents got wind of the UN1 applications, objected thereto (referring to the judgment of Norris J) [119], and HMLR referred the uncompleted UN1 applications to the Tribunal for determination. [123] In so doing, on 9/11/17 HMLR wrote [120]:

"... we are not going to reject Mr Ghadami's application. We cannot be certain that he has no interest capable of being the subject of notice (the 2016 judgment being on the basis of the facts pleaded). In any event, a person who claims to be entitled to the benefit of an interest affecting a registered estate may apply for the entry of a notice, provided the interest is not excluded by section 33 ... the interest the applicant claims is not excluded. The registrar does not have to be satisfied as to the validity of the applicant's claim where the application is for a unilateral notice. ..." (emphasis in the original)

Background: the court proceedings

12. I mention above the High Court proceedings. As issued, they were claim no. 2013 Folio 509. Ultimately, post-transfer, they bore the claim no. HC 2014 000819. I take the reader to be familiar with the principal judgments of Norris J which are reported at [2016] EWHC 2521 (Ch) (14/10/16) and [2017] EWHC 2020 (Ch) (2/8/17). [139 & 187] For a full understanding of the history of this case, there is no substitute for reading them in full.

13. What follows is a brief overview of that litigation:

(1) Mr Ghadami sued 19 Defendants. The present Respondents were defendants 16 to 18.

(2) Mr Ghadami's Particulars of Claim [234] ran to 45 pages, accompanied by some 400+ pages of annexed material.

(3) Mr Ghadami complained of various matters, including: (a) a failure to transfer 42 Upper Grosvenor Street and 42 Reeves Mews to him (paragraph 1(vii) on [235]); (b) economic torts e.g. of conspiracy (paragraph 1(viii) on [236]).

(4) Mr Ghadami alleged that:

a. He had a right to those properties: paragraph 9. [241]
b. Mr Bloomfield had orally promised him that he would transfer ownership of the 4 properties which are the subject of the present Tribunal proceedings (42 Upper Grosvenor Street, 42 Reeves Mews, 41 Upper Grosvenor Street and 41 Reeves Mews) to Mr Ghadami: paragraph 34. [255]
c. All the property transactions were shams: paragraph 91. [261]

d. The present Respondents were liable (with others) for economic torts: paragraph 91 [261] & paragraph 114 to 116 [275/6].

(5) In the proceedings Mr Ghadami referred to (amongst other things):

a. The entry of the 2007 unilateral notice: paragraph 53 of his pleading. [260]

b. The transfer of the properties from Larios Properties Ltd, the erstwhile registered proprietor, to the Respondents: paragraphs 79-81 & 90. [265 & 267]

(6) Following a hearing in February 2014 made on an application by the present Respondents, Deputy Master Mark struck out the claims against (amongst others) the present Respondents and recorded the court's then present view that the claims were totally without merit: see his Order dated 28/3/14, paragraph 5. [135/6]

(7) Mr Ghadami sought to persuade the Master to withdraw his judgment, citing *Re Barrell*. The Master declined: see paragraph 30 on [152].

(8) Mr Ghadami then:

a. Applied to set-aside the Master's decision: paragraph 31 on [152].

b. Applied for the Master to recuse himself from all further dealings: paragraph 33 on [153].

c. Filed an appeal against the Master's Order: paragraph 33 on [153].

(9) Mr Ghadami later applied for the appeal judge, Norris J, to recuse himself. This was refused on 17/6/16 after a hearing on 7/4/16: [2016] EWHC 1448 (Ch).

(10) Norris J heard the application to set aside the Master's ruling, together with the appeal against the Master's Order, over 7 days in December 2015 and April 2016. He handed down his judgment, the neutral citation of which is [2016] EWHC 2521 (Ch), on 14/10/16. [139]

(11) In his judgment Norris J recited the background extensively. In the process he:

a. Referred to the allegation of an oral promise by Mr Bloomfield: paragraphs 6 & 14. [143 & 146]

b. Alluded to the 2007 UN1 form, noting that in the court proceedings Mr Ghadami based his claim in contract, not upon estoppel: paragraph 13. [145/6]

c. Outlined the Respondents' acquisition of their properties: paragraphs 21 & 22. [148]

d. Summarized the claims brought by Mr Ghadami: paragraphs 25 & 26. [149/150] These included the economic tort claims against the Respondents, framed in the following terms: "all the property transactions … were sham transactions … the effect of the said transactions was to deprive the claimant of the ownership of [Number 42] …": ibid.

(12) Norris J went on to hold that:

a. There was (is) no enforceable contract for the transfer by Mr Bloomfield or 42 Upper Grosvenor Street and 42 Reeves Mews to Mr Ghadami: paragraph 41. [156] (See also paragraph 49. [159/160])

b. That is why Mr Ghadami had relied on estoppel, not contract, when seeking the unilateral notice in 2007: ibid.

c. Because any promise by Mr Bloomfield was not enforceable, it did not matter what interest Mr Bloomfield had had in Number 42 or in what capacity he had acted when making the alleged promise: paragraph 51. [160]

d. However, the registered proprietor of Number 42 had been Larios Properties Ltd and, moreover, it was (is) unreal to suggest that Mr Bloomfield had ever had any proprietary interest therein: paragraphs 52 & 62. [160 & 164] Thus, Mr Ghadami's attempt to establish that Mr Bloomfield had some interest in Number 42 capable of supporting the promise (even if enforceable) went nowhere: paragraph 64. [165]

e. Moreover, any arguments that Mr Bloomfield was the agent of others in relation to his dealings relating to all 4 properties were fanciful and went nowhere: paragraphs 65 to 69. [165-168]

f. Although Mr Saunders might perhaps have acted unlawfully in removing the unilateral notice in 2008, this did not avail Mr Ghadami. As Norris J put it at paragraph 75 [172]:

"But the fundamental difficulty with such a claim is that <u>nothing in the pleaded case suggests that there was any proper ground for that notice. There</u>

was no enforceable contract for the transfer of Number 42 to Mr Ghadami. Even if the UN1 had relied not on contract but on equitable estoppel there was (on the facts pleaded in the Particulars of Claim) simply no ground for it. A bare promise does not create an estoppel."

g. The sale of 41 Upper Grosvenor Street was not a sham, Mr Ghadami's case in that regard being fanciful: paragraph 88 & 89. [178/9]

h. The only real analysis was (is) that the Respondents genuinely acquired the properties for their own purposes and not with the intention of defeating some lawful claim of Mr Ghadami. The economic tort case had no merit. See paragraphs 94 & 95. [181/2]

(13) So Norris J dismissed both the set-aside application and the appeal.

(14) Mr Ghadami then immediately made an application to reopen the decision. This, his first *Barrell* application in relation to decisions of Norris J, was dismissed as totally without merit on 26/5/17: paragraph 10 on [190/1].

(15) On 1/6/17 Mr Ghadami made a further *Barrell* application.

(16) This application, and other consequential applications (e.g. for costs and the above-mentioned injunction) were heard by Norris J over 2 days in June 2017 and led to his decision of 2/8/17 and Order dated 2/8/17. [212]

(17) In his judgment [2017] EWHC 2020 (Ch), Norris J:

a. Recited the history again.

b. Remarked at paragraph 7 [190]:

"If the facts pleaded in paragraph 34 of the Particulars of Claim (if proved) would not create a liability to transfer the 4 properties to Mr Ghadami then neither the actual promisor nor those whom he is alleged to have bound can be liable to Mr Ghadami, and there can be no secondary liability on the part of the economic tortfeasors."

c. Observed that (as appears from the earlier judgment) Mr Ghadami's case was that, whilst 41 Upper Grosvenor Street was not his main target, nonetheless dealings with it were said by him to be relevant to dealings with Number 42: paragraph 13. [191]

d. Concluded (having reviewed 13 points raised by Mr Ghadami) that there was no reason to revoke or vary the earlier judgment, and held the second *Barrell* application to be totally without merit and an abuse: paragraph 39. [198]

(18) Norris J also stayed a third Barrell application made by Mr Ghadami, stating, "*Mr Ghadami does not like my judgment and has declared that he is 'fed up with this Court'. His remedy is to seek to appeal.*" Paragraph 40. [198]

(19) Further, Norris J dismissed an application by Mr Ghadami to amend his Particulars of Claim. He did so on various grounds: see paragraph 45 [199], including: (a) the case against (amongst others) the Respondents had been struck out and so there was nothing to amend; (b) moreover:

> ***"The only hint that Mr Ghadami has given as to what is proposed is that on the basis of advice (said to have been received from one or more QCs) he wants to plead proprietary estoppel or unjust enrichment. But the original decision to plead an oral contract and not to rely on some form of estoppel was a quite conscious one made in a pleading signed by Counsel; and I cannot see how (in relation to events occurring between 2005 and 2007) a claim in unjust enrichment could overcome the hurdle presented by CPR 17.4(2)."***

(20) At paragraph 49 [200] Norris J said:

> *"The position is simply that Mr Ghadami will not accept 'no' for an answer from me; and does not appeal .... The time has come to move forward."*

(21) Paragraph 88 of the 2017 judgment of Norris J [208] reads:

> ***"On 2 December 2016 Mr Ghadami applied yet again to register fresh unilateral notices (even though I had held that he had no arguable claim to***

specific performance of an obligation to transfer 42 Upper Grosvenor Street or 42 Reeves Mews, noted that he was not claiming transfer of 41 Upper Grosvenor Street or 41 Reeves Mews, and held that his claim could not be advanced as a proprietary estoppel claim.) *Mr Ghadami submitted to the Land Registry that my main judgment was simply "an approved draft judgment which is still being considered" and that "an order may be given thereafter" but that "there is ... a further application to be determined ...." .... He asserted an unspecified "interest in the properties. There is a pending application to remove these unilateral notices.* ***But even if that application succeeds Mr Ghadami is likely (as the history I have recounted demonstrates) simply to invoke the administrative procedure of registration, and then await the implementation of the cancellation process."***

(22) The foregoing is reflected in the Order of Norris J sealed on 13/9/17. [212]

(23) By his Order (paragraph 11) Norris J also made an extended civil restraint order against Mr Ghadami restraining him until 2/8/19 from issuing claims or making applications in the court concerning any matter involving or touching upon or leading to the matters alleged or the relief sought in the proceedings without the permission of a nominated High Court Judge. [214]

(24) By an Order sealed on 6/7/18 Patten LJ refused Mr Ghadami's application for permission to appeal against the 2016 and 2017 decisions of Norris J. [220] This was thus the end of the domestic proceedings (although Mr Ghadami was not minded to accept that and engaged in further correspondence with the Civil Appeals Office in a quest to alter the decision). I understand that Mr Ghadami may since have taken his grievances to the ECHR.

The Tribunal proceedings

14. Against the above background I turn to the present proceedings before the Tribunal. As noted above, these arise (directly) from the most recent applications for unilateral notices against the titles to the subject properties.

15. Mr Ghadami was given two extensions of time to file his statement of case. [216 & 218]

16. Mr Ghadami's statement of case itself runs to some 12 pages. It is accompanied by some 676 pages of assorted documentation.

17. Paragraphs 4-6 [2] set out the factual background said to support the referred applications for unilateral notices. However, beyond reciting (a) an alleged oral agreement with Mr Bloomfield and (b) the existence of, and events in, the High Court proceedings (in relation to which the Court of Appeal then had yet to rule), nothing of substance appears. Only the first 3 lines in paragraph 5 possibly bear on the claimed underlying interest in the properties. These plead merely a wholly unparticularised alleged promise (which in the circumstances is to be inferred to be the promise which was the subject of paragraph 34 of the Particulars of Claim in the High Court proceedings [255] and which featured Norris J's 2016 judgment) in the following terms:

> *"In and before December 2005 and early 2006 the Applicant made an agreement with a Mr Paul Bloomfield, in respect of the subject properties, with a further verbal agreement made between them on or about April 2009, in respect of the same properties."*

That is all that is said in relation to any claimed estoppel.

18. Paragraphs 7-49 [3-7] are a narrative account of the accompanying documentation and what it is said to comprise or show. These paragraphs are unilluminating. They do not shed any light on the estoppel claim which is the subject of the referred UN1 applications. No explanation is given how or why the voluminous documents support the claim.

19. Further, most of the documents post-date 2007 when (as set out in the first UN1) the estoppel claim was said to have arisen. Many concern the various historical dealings with HMLR outlined above. Several relate to the court proceedings. I am told by the Respondents that all the documents were before the High Court and, having regard to the descriptions given by Mr Ghadami, I have no reason to think otherwise. None appears obviously to bear out an estoppel claim.

20. Thereafter there follows a list/index of the accompanying documentation. Again, this does not advance matters.

21. The Respondents' statement of case [13] sets out (at paragraphs 16 onwards) why it is said that Mr Ghadami's statement of case should be struck out. [18 et seq]

22. The application to strike-out is founded on Rules 9(3)(d) & (e). I take these in turn.

Rule 9(3)(d)

23. This rule is engaged where the Tribunal considers the proceedings, or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal.

24. Since the court proceedings did not formally advance a claim in estoppel, the Respondents do not rely on cause of action estoppel. However, the Respondents maintain that Mr Ghadami's attempt to (re-)litigate the issue of estoppel in these proceedings is, in view of the High Court litigation and the rulings of Norris J, abusive. It is contended that: (a) Mr Ghadami is prevented by issue estoppel from so doing; (b) alternatively, that the principle in *Henderson v Henderson* (1843) 3 Hare 100 precludes him from so doing.

25. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46 Lord Sumption set out the general principles in relation to *res judicata*. These include @ [17]:

> *"... there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties ....*
>
> *... there is the principle first formulated ... in Henderson v Henderson ... which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones."*

26. In paragraph 22 Lord Sumption stated:

"Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised."

27. Lord Sumption, in paragraph 24, cited the remarks of Lord Bingham in *Johnson v Gore-Wood & Co* to the effect that whether it is an abuse to raise a case which could have been but was not previously pursued entails a broad, merits-based judgment which takes account of all the facts of the case, the crucial question being whether in all the circumstances a party is misusing or abusing the court process by seeking to raise an issue which could have been raised before.

28. I bear the above principles and guidance in mind. I also note that the onus of proving an abuse or other ground for strike-out lies on the Respondents.

29. In my judgment, the present proceedings are a plain instance of frivolous and vexatious litigation which is an abuse of the Tribunal's process. My reasons are:

    (1) Although Mr Ghadami did not expressly pursue an estoppel claim in the High Court claim, nonetheless his claim to ownership of the properties (with the associated allegations of conspiracy and other economic torts advanced against the Respondents) was very much at the heart of those proceedings (as the text in his own UN1s and statement of case recognises). Given that the issue was whether the court proceedings should be struck-out, in reaching his decision Norris J had to, and did, consider whether there was any reason to allow the claim brought by Mr Ghadami to go to trial. In that regard Norris J clearly considered and dealt with (amongst other things): (a) Mr Ghadami's contention that Mr Bloomfield had promised to transfer the properties to him; (b) the legal repercussions of such alleged promise; (c) in particular, the (absence of any) basis for the UN1 applications made by Mr Ghadami (something which most clearly appears from paragraph 75 of the 2016 judgment [172] and paragraph 88 of the 2017 judgment [208]).

(2) As noted above, the conclusion of Norris J was that the promise was not an enforceable contract and neither – in the absence of any averment of detrimental reliance and unconscionability – was there any ground for an estoppel (which was why estoppel plea had deliberately not been advanced by or on behalf of Mr Ghadami despite the fact that it had featured as far back as the 2007 UN1 and although Mr Ghadami was obviously aware of the nature of proprietary estoppel: see paragraph 41 on [156] and paragraph 45 on [199]).

(3) In the circumstances I believe that central issues common to both sets of proceedings (the High Court claim and the instant Tribunal proceedings) were decided on the earlier occasion and are binding on the parties. To my mind, the decision of Norris J gives rise to an issue estoppel which precludes Mr Ghadami from now launching what is, in effect, a collateral attack on that decision and which bars him from pursuing an estoppel claim based on his alleged dealings with (and the alleged promise by) Mr Bloomfield.

(4) As I see, Mr Ghadami is fairly and squarely attempting to have a second (or later) bite at the cherry and to run again a point which he previously advanced and on which he resoundingly failed. The manifest overlap between the past and present cases is also clearly shown by the fact that the most recent UN1 forms refer to the previous applications (each application effectively refers to a predecessor), which applications were the subject of the court proceedings, and by the fact that panel 5 of the UN1 lists court documents in support of the applications.

(5) The issue estoppel does not only apply in relation to the conclusion of Norris J that there was no basis for a proprietary estoppel (in terms of a want of detrimental reliance). It also applies in relation to his decisions that Mr Bloomfield did not own the subject properties at any relevant time and did not act as agent for any relevant others. It is axiomatic, as pointed out by Norris J, that unless such hurdles are overcome by Mr Ghadami, any promises by Mr Bloomfield cannot possibly be of any legal consequence vis-à-vis the other defendants such as the present Respondents.

(6) Further, even if and insofar as an issue estoppel does not technically arise in relation to any material aspects of the present claim (such that one is concerned with the *Henderson v Henderson* argument), it is undoubtedly the case that the estoppel claim

could have been advanced in the High Court litigation. Moreover, without hesitation I go farther. I believe that not only *could* an estoppel claim have been pursued but, what is more, it undoubtedly *should* have been. To hold the same back deliberately, despite it being founded on the very same factual context which was live in the Chancery proceedings (namely, the alleged promise by Mr Bloomfield) and which had been put in the arena by Mr Ghadami as long ago as 2007 (when the first UN1 application was made), is, I consider, wholly unjustifiable. It is a stark instance of unjust harassment of the Respondents. Mr Ghadami had ample opportunity to put an estoppel claim forward in the High Court proceedings; he eschewed so doing (at least so far as advancing a formal pleaded claim was concerned), despite litigating extensively about the very circumstances which would be the foundation for any such claim (e.g. the alleged promise). It is unconscionable for him now to seek to advance a claim which he choose not to present in the earlier proceedings. In reaching this view I have adopted a broad, merits-based approach which entails consideration of all the circumstances of the case.

(7) The present proceedings are a vivid example of what Norris J described as Mr Ghadami's refusal to accept decisions; he will not take 'no' for an answer. He declines to recognise the finality of litigation (even though the Chancery proceedings are now at an end).

(8) The bottom line is that, in the light of the previous proceedings and rulings therein, it is not open to Mr Ghadami in good conscience, and fairly to the Respondents, now to put forward what is, to all practical intents and purposes, a repetitious claim. His behaviour in so doing is readily to be categorized as vexatious and unjustifiable. Mr Ghadami's conduct is manifestly oppressive; he seeks to subject to the Respondents unnecessarily and improperly to successive actions.

(9) It is relevant to note that Mr Ghadami is barred by the civil restraint order from issuing fresh court proceedings in relation to the properties. However, he has sought to sidestep that restriction by instead making repeated applications (of which the referred applications are but the latest in a long time) to HMLR for entry of unilateral notices. In my view, each such application unduly vexes the Respondents.

(10) I discern no special circumstances or exceptions which can possibly justify Mr Ghadami now pursuing the (previously rejected) estoppel claim by the means of lodging an application for the entry of unilateral notices and then seeing the inevitable resultant dispute referred to the Tribunal (in which proceedings he seeks to advance the estoppel claim). The course taken by Mr Ghadami is a back door attempt to circumvent the front door route closed by Norris J. In my judgment, there is no injustice caused to Mr Ghadami by striking out the Tribunal proceedings. Indeed, the merits are all the other way; manifold injustice would be caused to the Respondents if they were required to face the present proceedings.

(11) I also regard the proceedings as abusive because Mr Ghadami's statement of case fails to plead any proper basis for a plea of proprietary estoppel: see paragraph 33 below.

30. It is time, as Norris J said, to bring this to an end and to move forward.

Rule 9(3)(e)

31. This rule applies where the Tribunal considers that there is no reasonable prospect of the proceedings succeeding.

32. I am equally satisfied that this ground of the application is established.

33. My reasons are:

(1) Norris J has clearly explained why the estoppel claim has no legs. I respectfully agree with him and adopt his reasoning. That alone is sufficient to uphold this limb of the application.

(2) Moreover, there is in Mr Ghadami's statement of case no pleaded case of any detrimental reliance and unconscionability, still less any particulars thereof.

(3) Further, Mr Ghadami's statement of case contains – a full decade after the alleged promises made to him by Mr Bloomfield – no particulars as to how such promises conceivably bind the Respondents. There is nothing to demonstrate how Mr

Bloomfield, who did not own the properties, was nonetheless somehow able to bind the true owners of the properties including the Respondents. No conceivable case of agency is disclosed.

(4) Mr Ghadami's case at large is that he has been unlawfully deprived of ownership of the properties by the allegedly nefarious activities of others, including the Respondents, is doomed. Not only has Norris J rejected the various allegations (including those of sham and conspiracy), and held against him in several fundamental respects, but also Mr Ghadami just cannot get past first base: he is unable to demonstrate that he ever had an enforceable interest in, and hence ownership of, the subject properties.

(5) Consequently, all in all, there is no foundation for any sustainable estoppel plea (even leaving aside the issue estoppel and abuse issues which arise in the light of the earlier proceedings and decisions of Norris J). Mr Ghadami has, and can advance, no arguable estoppel case. Indeed, I do not believe that he has even a fanciful case (if by that is meant one which is unrealistic). In my judgment, he simply has no case. Although he has previously asserted a prima facie case, I unhesitatingly reject that.

(6) There is absolutely no reason to imagine that any shortcomings or omissions can be made good by Mr Ghadami. The first estoppel averment was in 2007. 11+ years on, the estoppel claim remains as thin and bald as ever it was. If Mr Ghadami had anything of substance and merit to put forward on this front, it is undoubtedly the case that he would (and, as I have noted, should) have done so already.

Strike-out application: disposition

34. If, as I am, the Tribunal is satisfied that there are grounds to strike-out, the Tribunal 'may' (not 'must') proceed to strike out the proceedings. This connotes a discretion vested in the Tribunal.

35. I have considered carefully whether there are any grounds for declining to accede to the Respondents' application. In the circumstances I cannot discern that there are. Indeed, all the factors I have outlined point, in my judgment, firmly in one direction, namely that the only appropriate course, consistent with the overriding objective, is to strike out Mr Ghadami's statement of case and, in turn, these proceedings. This is thus what I shall do.

I shall exercise my discretion to direct the Chief Land Registrar accordingly, namely to cancel the referred applications for unilateral notices.

Rule 40(3) application

36. The Respondents make a further application, consequential on their strike-out application being successful. This application is foreshadowed in their statement of case, paragraph 27 et seq. [21]

37. The further application is for a direction under Rule 40(3) that the Chief Land Registrar do reject any future application for the entry of a unilateral notice made by or on behalf of Mr Ghadami in relation to the subject properties.

38. The Respondents point to the history of this matter and, in particular, to the series of UN1 applications made by Mr Ghadami. They also refer to the existence of the civil restraint order to which I have referred, itself made on the back of multiple totally without merit applications to the court made by Mr Ghadami.

39. I am entirely persuaded that it is just and appropriate to make such a direction in this case. This is an extreme case. It is evident beyond peradventure that Mr Ghadami does not accept defeat graciously or at all. I, like the Respondents and Norris J (see paragraph 88 of his 2017 decision [208]), have no confidence that he will not simply make further UN1 applications following the dismissal of these current proceedings. That will vex the Respondents and potentially stymie future dispositions of their property.

40. I consider that the making of a direction under rule 40(3) is warranted in order to preclude Mr Ghadami from continuing to trouble the Respondents in this unjustifiable fashion. If such a direction is not made, the likelihood is that history will repeat itself. I consider that there is a real risk in this regard. Further, absent a direction, the Respondents are faced with the fact that, despite HMLR having on several previous occasions (rightly, in my view) treated Mr Ghadami's position as groundless and untenable (see e.g. [100]), HMLR's more recent stance has seemingly been that its hands are tied and that a unilateral notice is there for the asking on the application of any person who simply **claims** to be entitled to the benefit of an interest (however fanciful such claim may be): [120]. In my judgment, the

Respondents are fully entitled to be spared the aggravation of having to deal with repeated applications made by Mr Ghadami which are not rejected by HMLR of its own volition.

41. I see no prejudice to Mr Ghadami in making such a direction because: (a) as I have concluded, it is an abuse for him now to seek to advance an estoppel claim against the properties; (b) in any event, there is palpably no foundation for any viable claim in that respect; (c) in the extremely remote scenario (which I cannot presently conceive) that Mr Ghadami were in the future to come forward with a case for an equitable interest in the property which, objectively, had a non-fanciful prospect of success, it would be always open to him to present a court claim seeking appropriate relief – subject, of course, to the fetter imposed by the civil restraint order (as applicable).

42. I shall therefore direct the Chief Land Registrar in appropriate terms.

Costs

43. In this jurisdiction the general rule is that costs follow the event. My provisional view is that Mr Ghadami will have to pay the Respondents' costs, if such costs are sought. However, I will entertain written submissions on the question of costs (both liability and quantum), if costs are pursued. If costs are to be sought, any application in that regard (to be accompanied by a costs schedule in form N260 or similar) must be filed and served in 14 days.

Judge Martin Dray

Dated this 16th January 2019

BY ORDER OF THE TRIBUNAL