



[2019] UKFTT 9443 (PC)

PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2016/0477  
BETWEEN

**BARRY SILKMAN**  
(as Administrator of the Estate of Ally Fuller)

Applicant

and

**GAVIN HUGH ALEX LOVE**

Respondent

Property: 183 Stanley Hill, Amersham HP7 9EY

Title number: BM277598

Before: Judge McAllister  
Alfred Place, London  
29 May 2019

Representation: the Applicant was represented by Mr Siriwardena of Counsel, instructed by Rainer Hughes, Solicitors: the Respondent was represented by Mr Mertens of Counsel instructed by Simon Bennett Solicitors.

### ORDER

1. The Chief Land Registrar is ordered to:

- (a) Cancel the application dated 16 March 2016;
- (b) Pursuant to Rule 40(3)(b)(i) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, to reject any further applications to enter a restriction against the title of the property unconditionally;

2. Rainer Hughes Solicitors of 182 Hutton Road Shenfield CM15 8NR are to show cause in writing by 5<sup>th</sup> July 2019 why they should not pay the Respondent's costs incurred since 25 January 2019;
3. By 5<sup>th</sup> July 2019 the Applicant is to make representations as to why he should not pay the Respondent's costs from the date of the reference, namely 27 June 2016.

## **REASONS**

1. The Applicant, Mr Silkman, is the administrator of the estate of the late Ally Fuller (his ex wife). Ms Fuller died on 4 February 2016, and probate was granted to Mr Silkman on 4 November 2016. By her will dated 21 November 2015 Ms Fuller left her residuary estate to her daughter, Keenia Silkman.
2. By an application dated 16 March 2016 Mr Silkman applied in Form RX1 to enter a restriction in Form A against the property known as 183 Stanley Hill, Amersham ('the Property').
3. The Property was bought by the Respondent, Mr Love, in his sole name on 10 October 2012 for the sum of £545,000.
4. Mr Silkman's case, as set out in the RX1 form, was that Ms Fuller had contributed £60,000 towards the purchase of the Property, and paid the household bills whilst she lived at the Property with Mr Love (for approximately 3 years). It was also said that they had an oral agreement that they would be joint owners, and that the Property was in Mr Love's sole name to make it easier to obtain a mortgage.
5. Mr Love objected to the application, and the matter was referred to the Tribunal on 27 June 2016.
6. On 18 July 2016 the Tribunal wrote to Mr Silkman's then solicitors (Kingsley Napley) asking for a copy of the sealed grant of probate. A chasing letter was written on 25 January 2017. On 15 February 2017 an 'unless order' was made requiring service of Mr Silkman's Statement of Case by no later than 15 March 2017.

7. The Statement of Case was served and filed on the 15 March 2017. Further details of his case were given. It is his case that both Ms Fuller and Mr Love contributed £60,000 each, the remainder being funded by a mortgage. The agreement between the parties was that each would be entitled to 50% of the beneficial interest in the Property, and in consideration of this, Ms Fuller paid the household expenses.
8. Shortly after moving into the Property, Ms Fuller was diagnosed with cancer, and moved out of the Property in March 2015.
9. The Statement of Case also stated that Mr Silkman had had difficulties in obtaining documents to prove the payment of £60,000. Forensic investigators were instructed to examine her lap top who, it was said, concluded that on 1 March 2016 her laptop was accessed remotely and the hard drive wiped. The only person, other than Ms Fuller, who had the relevant password was Mr Love.
10. Finally, it was said that shortly before her death, the parties had reached an agreement that Ms Fuller would be entitled to £75,000. Reliance was also placed on a letter written to Mr Love by Ms Fuller on 29 December 2015.
11. The Respondent's Statement of Case was filed and served on 12 April 2017. Mr Love denied that Ms Fuller had made any contribution to the purchase price or that there was any agreement that she would have a share in the Property. The authenticity of the December 2015 letter was also put in doubt, and it was further denied that Ms Fuller's computer had been wiped by Mr Love.
12. On 9 May 2017 Mr Silkman issued an application in the Chancery Division for pre-action disclosure, asking for details of the mortgage broker, and for disclosure of his file, and for details of the conveyancer who had acted on the purchase of the Property, and for disclosure of the conveyancing file.
13. On 16 May 2017 the Tribunal stayed these proceedings pending the outcome of the application.
14. On 17 May 2017 Mr Love's solicitors provided disclosure in accordance with the Tribunal's earlier directions.

15. On 8 August 2017 an order was made in the Chancery Division in favour of Mr Silkman, but for various reasons (apparently connected with costs) the order was not finally made until 28 February 2018. This order was amended, and the sealed amended order was made on 10 April 2018. In due course the order was fully complied with.
16. Directions in these proceedings were sent to the parties on 3 December 2018. Mr Love complied with the requirement to give disclosure.
17. On 25 January 2019 the Tribunal was notified that the Applicant had instructed new solicitors, Rainer Hughes. The person dealing with the matter was Chirag Chopra.
18. On 8 February 2019 the Tribunal notified the parties that the case would be heard on 29 May 2019, and enclosed further directions regarding trial bundles, skeleton arguments, list of issues and chronology.
19. On 22 May 2019 the Tribunal received an email from the Respondent's solicitors saying that they had received no communication from the Applicant since the order of 3 December 2018.
20. At the hearing the parties' respective positions were as follows. Mr Siri, for the Applicant, asked for an adjournment on the grounds that the Applicant was not in a position to go ahead due to the fact that evidence which might have been available (in particular, in relation to the allegations regarding Ms Fuller's computer, and emails which, it was said, were on the computer which would help her case) was not available at trial. It was his case, as I understand it, that such evidence might yet be available.
21. He was not in a position to give any explanation as to why no steps had been taken to ensure that the case was ready for trial, nor as to why no application for an adjournment had been made prior to the date of the trial, save to say that the file handler dealing with the case had left the firm acting for the Applicant.
22. Mr Mertens, for the Respondent, applied to strike out the case on the ground that the Applicant had failed to comply with the directions given by the Tribunal in that no disclosure had been given, no witness statements served or filed, and no bundle prepared. Mr Mertens also pointed out that his solicitors had received a notice of

change of solicitors on 21 January 2019, and that they had repeatedly chased the solicitors in order to get the case ready for trial. The same person had acted throughout at Rainer Hughes, and continued to represent the Applicant.

23. Having heard the submissions, I took the view that the appropriate course of action was to refuse an adjournment and to invite the Applicant to proceed with his case. The Applicant refused to do so, and repeated his request for an adjournment.
24. In all the circumstances, I agreed with the Applicant's Counsel that the only possible outcome is to strike out the Applicant's case. In my judgment, no good or any reason was given for the failure to comply with the various directions given. It is not enough for a party to appear at a hearing, having taken no steps to prepare himself for trial, and ask for an adjournment without putting forward any acceptable explanation. Even if there were difficulties in obtaining evidence regarding Ms Fuller's computer, I cannot understand why it was not possible to obtain copies of Ms Fuller's bank statements which would, on her case, have established that she paid £60,000 towards the purchase of the Property, or why it was that an extension of time to provide disclosure was not sought. In simple terms, the Applicant has done nothing to progress his case, and has allowed the case to progress to trial in circumstances where he was not in a position to proceed.
25. It also seems to me appropriate to order the Applicant's solicitors to show cause as to why they should not pay the wasted costs from the date of the notice of acting. The solicitors will be given 21 days to make written submissions as to why they should not pay the costs in the amount sought by the Respondent or at all. The costs sought by the Respondent are £4,627.75.
26. In the event that the solicitors are not liable to pay these costs, then subject to any representations or objections which may be made and accepted, the costs of the reference will be paid by the Applicant.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 13<sup>th</sup> day of June 2019.**