



[2019] UKFTT 0592 (PC)

REF/2018/0638

**PROPERTY CHAMBER, LAND REGISTRATION  
FIRST-TIER TRIBUNAL**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**MR PHILIP STEPHEN SUNMAN**

**APPLICANT**

**and**

**MS RONA CATHERINE CHELLEW  
MR RHYS WILLIAM CHELLEW**

**FIRST RESPONDENTS**

**and**

**MR STEVEN ALLEN HICKS**

**SECOND RESPONDENT**

**Property Address: Willow Bank, Washbank Road, Eynesbury, St Neots PE19 2TF  
Title Number: CB426099**

**Before: Judge N Hawkes  
Sitting at: Alfred Place, London  
On: 25 July 2019**

Applicant Representation: In person

Respondent Representation: Mr Nicholas Broomfield of Counsel instructed by Setfords Solicitors represented the Second Respondent.

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**DECISION**

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## The background

1. On 29 September 1978, Peter John Chellew and Catherine Chellew purchased Willow Bank, Washbank Road, Eynesbury, St Neots PE19 2TF (“the Property”) from Mr Howard Swaap for the sum of £55,000. The Property was purchased by Peter and Catherine Chellew as joint tenants but was not registered at HM Land Registry. The Property remains unregistered.
2. The Property backs on to the River Ouse and the Applicant resides on a houseboat which is moored on the river within the curtilage of the Property. The Applicant has informed the Tribunal that that the Property comprises a detached Victorian dwelling which is set in approximately one and a half acres of land.
3. On 18 January 1991, Peter Chellew served Catherine Chellew with a notice severing the joint tenancy, following which they owned the Property as tenants in common.
4. On 1 February 1991, Peter Chellew made a will under the terms of which: (a) his children, Thomas Mark Chellew, Donna Ellen Chellew and Rona Catherine Chellew were appointed as trustees; (b) the residue of Peter Chellew’s estate (which included the Property) would pass to his three children, Thomas, Donna and Rona, or their children if they predeceased Peter Chellew.
5. On 19 December 1997, Catherine Chellew made a will under the terms of which a partner of Adlams was appointed as her trustee; until her grandchildren (which included Rhys Chellew) attained the age of 25, Peter Chellew was entitled to use and occupy the Property; and the Property would thereafter be sold and the proceeds distributed in accordance with the terms of the will.
6. On 2 April 2007, Catherine Chellew and the Applicant signed a document (“the Disputed Lease”) upon which the Applicant relies in asserting that he is the lessee of part of the Property.
7. Peter Chellew passed away on 9 September 2010. Probate was granted on 9 February 2011 and, in accordance with the terms of Peter Chellew’s will, the Property vested in his trustees, which included Rona Chellew.
8. Catherine Chellew passed away on 14 February 2012. In accordance with her will, Mr Lowther of Adlams was appointed as personal representative of her estate by Grant of Probate dated 25 October 2012. In this capacity, Mr Lowther served the Applicant with notices to quit on 27 February 2013 on the alternative bases that he was (a) a licensee; or (b) a tenant.

9. On 26 August 2016, Mr Lowther retired as personal representative of Catherine Chellew's estate and the First Respondents were appointed to replace him. The Property, along with the other assets in Catherine Chellew's estate, was transferred to the First Respondents for the purposes of administering the estate. Mr Lowther executed a TR1 in respect of the Property on 26 August 2016.
10. The Property was subsequently sold by the First Respondents to the Second Respondent on or about 31 July 2017 for the sum of £1,030,000. Following the sale of the Property to the Second Respondent, the Applicant lodged a caution against first registration at HM Land Registry on 2 August 2017.
11. An application was made for first registration of the Property on or about 24 August 2017. The Applicant was informed of the application by letter dated 13 November 2017 and he objected to the application by letter dated 30 November 2017. The Applicant contends that the freehold is subject to the Disputed Lease.
12. The matter was referred to the Tribunal in accordance with section 73(7) of the Land Registration Act 2002. The Applicant filed an application dated 11 October 2018, the First Respondents filed a Response which is undated, and the Second Respondent filed a Response dated 10 November 2018.
13. In their Response, the First Respondents state that they "*wish to enter a neutral statement*". At paragraph 5(a), they state:
  - "a. 1<sup>st</sup> Respondents have contested the validity of the Lease for as long as it was known until the sale of Willow Bank, where 1st Respondents no longer had an interest in the dispute.*
  - b. 1<sup>st</sup> Respondents still doubt the Lease personally, but will not be defending that position as Respondents.*
  - c. 1<sup>st</sup> Respondents have been very clear that they do not accept the validity of the Lease. We did not accept the validity of the Lease for the following reasons:*
  - d. The Lease only had one signature from a homeowner (Catherine Chellew) despite being owned by two people (also, Peter Chellew, who was resident at the time) on a Tenants in Common basis.*
  - e. Catherine Chellew was known to have a drinking problem, a personality disorder, be an emotionally vulnerable person and have a chaotic lifestyle i.e. there are reasonable grounds to believe Catherine Chellew was not compos mentis."*
14. There was some discussion during the course of the hearing concerning who had submitted the application for first registration. At paragraph 2(f) of their Response, the First Respondents state, "*1<sup>st</sup> Respondents sold Willow Bank before registration, making registration the 2<sup>nd</sup> Respondent's responsibility.*"

15. In the HM Land Registry Case Summary, the First Respondents are recorded as being the Applicant and it is stated:

*“The Applicant transferred the Property to Steven Hicks by a Transfer dated 31 July 2017. Steven Hicks was represented by JMW Solicitors in this transaction and they submitted the application for first registration on behalf of Wards Solicitors and the subsequent application to register the transfer of the Property to their client. Steven Hicks is now represented by MPG Legal who have advised the registrar that they intend to make an application directly to the Tribunal to be joined in these proceedings.”*

16. The Applicant claims that he has been a tenant of part of the Property under a lease since 2 April 2007 and that he has, at all material times, been in occupation of the demised land. He asserts that his lease has a term of 2000 years pursuant to the Law of Property (Amendment) Act 1924 (“the 1924 Act”). The reference to the 1924 Act is likely to be an error and it is assumed that the Applicant intends to rely upon the Law of Property Act 1922, section 145 and Schedule 15. The Disputed Lease is said to be perpetually renewable.
17. The Second Respondent contends that upon first registration of the Second Respondent as proprietor of the Property at HM Land Registry, the freehold will not be subject to the Disputed Lease.

### **The hearing**

18. The hearing of this matter took place at 10 Alfred Place, London on 25 July 2019. The Applicant and the First Respondents attended the hearing in person. The Second Respondent also attended and he was represented by Mr Broomfield of Counsel, instructed by Setfords Solicitors.
19. At the commencement of the hearing, the First Respondents confirmed that they wished to adopt a neutral stance in these proceedings and that they did not intend to make any representations at the hearing.
20. I heard oral evidence from the Applicant and from the Second Respondent. The Second Respondent objected to the Applicant giving oral evidence on the grounds that he had not served a witness statement in accordance with the Tribunal’s Directions.
21. Further, an email to the Tribunal dated 28 March 2019, in which the Applicant indicated that he wished to rely upon his Statement of Case instead of a witness statement, had not been copied to the Second Respondent’s solicitors and it was sent to the Tribunal over a month after the time for filing and serving witness statements had expired.

22. I determined that it was fair and just, in accordance with the Tribunal's overriding objective pursuant to rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), to direct that the Applicant could give oral evidence confirming the truth of the facts contained in his Statement of Case.
23. Rule 3 of the 2013 Rules provides that dealing with a case fairly and justly includes "avoiding unnecessary formality and seeking flexibility in the proceedings" and "ensuring, so far as practicable, that the parties are able to participate fully in the proceedings".
24. On 7 January 2019, the Tribunal gave directions which included provision for a party to rely upon their Statement of Case as evidence. Paragraph 3 of the Directions provides:
- "If any party intends to rely on their Statement of Case as evidence, that party must (unless they have already done so) submit a verification, signed by that party, of their Statement of Case in the following terms 'I believe that the facts and matters contained in this Statement of Case are true.'"*
25. The Applicant's Statement of Case concludes with a signed statement of truth in substantially similar terms and there was no significant prejudice to the Second Respondent in allowing the Applicant to rely upon his Statement of Case as his witness evidence because the Second Respondent had been aware of the contents of the Applicant's Statement of Case since around October 2018.
26. Mr Broomfield had no cross-examination for the Applicant and the only questions which the Applicant asked Mr Hicks concerned Catherine Chellew's medical records, which the Second Respondent did not in fact seek to rely upon in these proceedings. Accordingly, there was no material dispute between the parties concerning the facts relevant to this determination.
27. With a view to ensuring that the Applicant was able to participate as fully as possible in the proceedings, the parties were invited to make submissions on an issue by issue basis and the Applicant was invited to inform the Tribunal if there was any legal term which required explanation.
28. The Second Respondent's primary case is that any interest in the Property which was held by the Applicant pursuant to the Disputed Lease is void/unenforceable and/or does not affect the Second Respondent's interest in the Property:
- a. The Disputed Lease is void for want of registration under the Land Registration Act 2002;

- b. The Applicant's estate contract arising under section 7 of the Land Registration Act 2002 is void/unenforceable and/or does not take priority over the Second Respondent's interest in the Property.

29. The Second Respondent's representations are as follows.

**Whether the Disputed Lease is void for want of registration under the Land Registration Act 2002**

30. The Land Registration Act 2002 ("the 2002 Act") sets out the circumstances in which a leasehold title must be registered:

*4. When title must be registered*

*(1) the requirement of registration applies on the occurrence of any of the following events –*

*(a) ...*

*(aa) ...*

*(b) ...*

*(c) the grant out of a qualifying estate of an estate in land –*

*(i) for a term of years absolute of more than seven years from the date of grant, and*

*(ii) for valuable consideration, by way of gift or in pursuance of an order of any court.*

31. The Disputed Lease is a qualifying estate of an estate in land for the purposes of section 4(1)(c) of the 2002 Act. The duty to apply for first registration of title lies with the "responsible estate owner", which in this case is the Applicant.

32. Section 6 of the 2002 Act provides:

*6. Duty to apply for registration of title*

*(1) If the requirement of registration applies, the responsible estate owner, or his successor in title, must, before the end of the period of registration, apply to the registrar to be registered as the proprietor of the registerable estate.*

*(2) ...*

*(3) ...*

*(4) The period for registration is 2 months beginning with the date on which the relevant event occurs, or such longer period as the registrar may provide under subsection (5).*

*(5) If on the application of any interested person the registrar is satisfied that there is good reason for doing so, he may by order provide that the period for registration ends on such later date as he may specify in the order.*

33. The Applicant failed to register the Disputed Lease at HM Land Registry within the first registration period specified in section 6(4) of the 2002 Act (i.e. within 2 months of the date upon which the Disputed Lease was granted). The Applicant's failure incurred the sanction in section 7 of the 2002 Act which provides that:

*7. Effect of non-compliance with section 6*

*(1) If the requirement of registration is not complied with, the transfer, grant or creation becomes void as regards the transfer, grant or creation of a legal estate.*

*(2) On the application of subsection (1) –*

*(a) ...*

*(aa) ...*

*(b) in a case falling within section 4(1)(c) to (g), the grant or creation has effect as an estate contract made for valuable consideration to grant or create the legal estate concerned.*

34. Applying the sanction in section 7 of the 2002 Act, the Disputed Lease is void for want of registration and takes effect as *“an estate contract made for valuable consideration to grant or create the legal estate concerned.”*

**Whether the Applicant's estate contract arising under section 7 Land Registration Act 2002 is void and/or does not affect the Second Respondent's interest in the Property**

35. The effect of an unregistered estate contract on a purchase of unregistered land is dealt with under the Land Charges Act 1972 (“the 1972 Act”).

36. Sections 2 and 4 of the 1972 Act provide that:

*2. Restrictions on constructive notice*

*(1) If a charge on or obligation affecting land falls into one of the classes described in this section, it may be registered in the register of land charges as a land charge of that class.*

*(2) ...*

*(3) ...*

*(4) A Class C land charge is any of the following (not being a local land charge), namely:*

*(i) ...*

*(ii) ...*

*(iii) ...*

*(iv) an estate contract*

*And for this purpose:-*

*(i) ...*

*(ii) ...*

*(iii) ...*

- (iv) *An estate contract is a contract made by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption or any other like right.*

4. *Effect of land charges and protection of purchasers*

(1) ...

(2) ...

(3) ...

(4) ...

(5) *A land charge of Class B and a land charge of Class C (other than an estate contract) created or arising on or after 1<sup>st</sup> January 1926 shall be void as against a purchaser of the land charged with it, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase.*

(6) *An estate contract and a land charge of Class D created or entered into on or after 1<sup>st</sup> January 1926 will be void as against a purchaser for money or money's worth (or, in the case of an Inland Revenue Charge, a purchaser within the meaning of the Capital Transfer Tax Act 1984) of a legal estate in the land charged with it, unless the land charge is registered in the appropriate register before the completion of the purchase.*

37. The Second Respondent submitted that the combined effect of sections 2 and 4 of the 1972 Act is that: (a) an estate contract should be registered as a land charge in the register of land charges; and (b) an estate contract not registered in accordance with section 2 is void against any purchaser of the property for money or money's worth to which the estate contract relates. The Tribunal was referred to Halsbury's Laws of England at paragraph 593 of Volume 95 (2017):

*"An uncompleted contract for the purchase of a legal estate in unregistered land will be void and unenforceable against a subsequent purchaser for money or money's worth of a legal estate in the land, unless registered in the register of land charges kept under the Land Charges Act 1972 before completion of the subsequent purchase. Conversely, registration of a contract in the register of land charges or any local land charges register is deemed to constitute actual notice to all persons and for all purposes connected with the land affected. The Land Charges Act 1972 does not apply to estate contracts affecting land registered under the Land Registration Act 2002."*

38. The Second Respondent submitted that the doctrine of notice is irrelevant under the scheme of the 1972 Act and referred to Megarry & Wade, *The Law of Real Property* (8<sup>th</sup> edition) at paragraph 8-094:

*"(d) Exclusion of the doctrine of notice. It should be noted that with the comparatively unimportant exception of (iv) above [any other pending land action is void against a purchaser for value of any interest in the land, unless he has express notice of it], the*



*equitable doctrine of notice is wholly excluded. Under the Land Charges Act 1972 the purchaser is not required to act in good faith, except under (iii) above [bankruptcy petitions]; the unregistered interest is simply void against him. He does not need to rely upon the provision (seemingly redundant) of the Law of Property Act 1925 that he is not prejudiced by notice of any interest which is void against him under the Land Charges Acts, which in any case is narrower in scope since under the Act good faith is necessary. In the result, therefore, it is immaterial that the purchaser was not diligent in investigating title, or had actual knowledge of the interest, or deliberately intended to defeat it, or that the owner of the interest was in possession of the land ...” [The Tribunal has also had regard to paragraph 5-092 of the 9<sup>th</sup> edition of Megarry & Wade]*

39. The Second Respondent states that, applying sections 2 and 4 of the 1972 Act to the Applicant’s estate contract, the Applicant’s failure to register a land charge in the register of charges prior to the sale of the Property by the First Respondents to the Second Respondent means that it is void/unenforceable against the Second Respondent. The result is that the Second Respondent is the freeholder of the Property unencumbered by the Disputed Lease and the Second Respondent submits that the Tribunal should therefore dismiss the Applicant’s application.
40. In the alternative, the Second Respondent submits that, even if the Applicant held an equitable interest in the Property (which the Applicant has to prove), it was overreached upon the sale of the Property by the First Respondents to the Second Respondent and the Second Respondent makes a number of additional points. However, it is agreed that, if the Tribunal accepts the Second Respondent’s primary case, there is nothing further which requires consideration.

### **The Applicant’s submissions**

41. The Applicant initially sought to focus upon the position of the First Respondents and that fact that they have not opposed his application. He submitted that:

*“The Chellews were responsible for first registration. The Second Respondent has nothing to do with first registration; his transfer is a subsequent transfer which is subject to the first registration.”*

42. The Applicant sought, in particular, to rely upon rule 38(1) of the Land Registration Rules 2003 (“the 2003 Rules”) which provides:

*“If, while a person is subject to a duty under section 6 of the Act to make an application to be registered as proprietor of a legal estate, there is a dealing with that estate, then the Act applies to that dealing as if the dealing had taken place after the date of first registration of that estate.”*

43. However, the Applicant did not specify the nature of any dealing which is said to have taken place after the transfer of the Property to the First Respondents.
44. In the alternative, the Applicant submitted that the First Respondents had elected to apply for first registration, that they are estopped from denying the existence of the Disputed Lease, and that the First Respondents' interest is therefore subject to the Disputed Lease.
45. The Second Respondent noted that the transfer of the Property to the First Respondents for the purposes of administering the estate was not for valuable consideration and submitted that section 4 of the 2002 Act did not apply to this transfer. Accordingly, the First Respondents were not subject to a duty to under section 6 of the 2002 Act and rule 38(1) does not apply.
46. Further, the application for registration which was made in August 2017 must be for the registration of the Second Respondent's interest because, by a transfer which had already taken place on 31 July 2017, the Second Respondent had become the freehold owner of the unregistered land. The relevant question is therefore whether the Second Respondent's freehold interest is subject to the Disputed Lease.
47. In response, the Applicant stated that he did not dispute the Second Respondent's legal analysis but that he wished to rely upon the doctrine of estoppel which turns on the facts rather than the law.
48. The Applicant referred the Tribunal to injunction orders which were made against the Second Respondent, in his absence, on 11 September 2017 and on 27 September 2017 in connection with the Applicant's occupation of part of the Property.
49. The order of 27 September 2017 makes express reference to the Disputed Lease at paragraph 1 which provides:
- “The defendant shall forthwith and in any event within 24 hours of service of this order upon him restore or cause to be restored at no cost to the claimant the supply of water and electricity to the premises demised to the claimant under the Lease dated 2<sup>nd</sup> April 2007 between Catherine Chellew and the claimant.”*
50. Both orders include provision for the Second Respondent to apply to the Court at any time, on 2 clear days' notice to the Claimant, to vary the orders or to set them aside. The Tribunal was informed that these orders currently remain in force.
51. The Applicant also relied upon a letter from the First Respondents' solicitors to the Applicant dated 8 August 2017 which states:

*“PROPERTY: Willowbank Wash Bank Road ...*

*LEASE: the lease dated 2<sup>nd</sup> April 2007 and made between (1) Catherine Chellew and (2) Philip Sunman*  
*FORMER LANDLORD: Rona Catherine Chellew and Rhys William Chellew*  
*NEW LANDLORD: Steven Allen Hicks.*

*We act on behalf of your Former Landlord under the Lease.*

*Your Former Landlord transferred its interest in the Property to the New Landlord on the 31<sup>st</sup> July 2017.*

*You should pay all outstanding and future rent, service charge and any other payments due to the landlord under the Lease to the New Landlord of Bowmans Mill Astwick Stotfold Hitchin Bedfordshire SG5 4BJ”*

52. The Applicant additionally sought to rely upon a letter dated 7 June 2017 from the First Respondents’ estate agent to the First Respondents’ solicitors enclosing a document in which the Applicant was referred as the tenant. However, the Applicant accepted that this correspondence could not constitute a representation which was made to him; he did not see this document until it was disclosed during the course of these proceedings.

## **Discussion**

53. I accept the submissions of the Second Respondent which are set out at paragraphs 28 to 39 above. The Applicant emphasised that he has, at all material times, been in actual occupation of part of the Property. Section 11 of the 2002 Act includes provision that (emphasis supplied):

*“11 Freehold estates*

*(1) This section is concerned with the registration of a person under this Chapter as the proprietor of a freehold estate.*

...

*(4) The estate is vested in the proprietor subject only to the following interests affecting the estate at the time of registration—*

...

*(b) unregistered interests which fall within any of the paragraphs of Schedule 1,”*  
*[which include certain interests of persons in actual occupation]*

54. The Disputed Lease is void for want of registration and it took effect as an estate contract. An estate contract which has not been protected as a Class C(iv) land charge will be rendered void by operation of section 4(6) of the 1972 Act as against the Second Respondent. Accordingly, that the Applicant no longer has any interest affecting the estate which is capable of forming the subject matter of an unregistered interest which overrides first registration.

55. As regards the injunction orders dated 11 September 2017 and 27 September 2017, the Applicant did not seek to rely upon the injunction applications, the evidence in support, or a transcript of the submissions and judgments. I am not satisfied, on the basis of the evidence which has been presented, that the Court has made any determination concerning the validity of the Disputed Lease. Accordingly, the Applicant has not made out his case in respect of issue estoppel.

56. As regards the remainder of the Applicant's case concerning estoppel, the representations which the Applicant seeks to rely upon were not made by the Second Respondent. The Applicant states at paragraph 6.1 of his Statement of Case:

*“Contrary to the clear and unequivocal assertion made by solicitors for the 1st Respondents that the 2nd Respondent is the Applicant's ‘New Landlord’ .... Upon the subsequent transfer being made it soon became very clear that the 2nd Respondent regarded the Applicant not as a tenant but rather as a trespasser albeit that the 2nd Respondent was, prior to the transfer, fully aware of the Applicant's residential occupation at Willowbank pursuant to the provisions of the Lease.”*

57. Accordingly, it is clear that the Second Respondent did not represent to the Applicant that he had any form of interest in the Property. Further, the Applicant has adduced no evidence that he relied upon on any of the statements which he puts forward as representations giving rise to an estoppel and he has adduced no evidence of detriment. Accordingly, I am not satisfied that the Applicant has made out his case. Further, as pointed out by the Second Respondent, estoppel has not in any event been pleaded in the Applicant's Statement of Case.

## **Conclusion**

58. For the reasons set out above, I find that the Second Respondent's freehold interest in the Property is not subject to the Disputed Lease and the Chief Land Registrar is directed to give effect to the original application, that is the application for first registration of Willow Bank, Washbank Road, Eynesbury, St Neots PE19 2TF, as if the Applicant's objection to that original application had not been made.

59. My preliminary view is that the Applicant should be ordered to pay the costs of the Second Respondent to be assessed (if not agreed) on the standard basis. The normal practice in proceedings before the Land Registration Division is to order the unsuccessful party to pay the costs of the successful party. I am not aware of any reason why the normal practice ought not to be followed in this case. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 4 pm on 10 September 2019.

BY ORDER OF THE TRIBUNAL

*Naomi Hawkes*

Dated 22<sup>nd</sup> August 2019



