



[2019] UKFTT 0626 (PC)

REF/2017/0628

PROPERTY CHAMBER LAND REGISTRATION  
FIRST-TIER TRIBUNAL  
IN THE MATTER OF A REFERENCE  
UNDER THE LAND REGISTRATION ACT 2002

BETWEEN

MOHAMMED WAHEED NAWABI

APPLICANT

and

KINIZ AKHTAR

RESPONDENT

Property Address: 17 Blackwell Drive, Watford WD19 4HP

Title Number: HD284406

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ORDER

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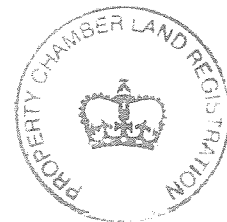
**IT IS ORDERED** that the Chief Land Registrar shall cancel the Applicants' application dated 12<sup>th</sup> May 2017, for a restriction in Form RX1, insofar as that application remains on foot

**AND IT IS ORDERED** pursuant to Rule 40(3)(b) of the Tribunal Rules that the Chief Land Registrar shall reject any future application by the Applicant for a restriction in relation to HD284406.

Dated this 30<sup>th</sup> day of September 2019

*Owen Rhys*

BY ORDER OF THE TRIBUNAL







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Property Address: 17 Blackwell Drive, Watford WD19 4HP

Title Number: HD284406

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place London WC1E 7LR

On: 5<sup>th</sup> September 2019

Applicant representation: In Person (by his brother Mr Mehrab Nawabi)  
Respondent representation: In person

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DECISION

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Introduction

1. By an application in Form RX1 dated 13th March 2017, the Applicant applied to HM Land Registry for a standard form restriction to be entered against the title to 17 Blackwell Drive, Watford WD19 4HP (“the Property”). The Property has been registered in the Respondent’s sole name (under title number HD284406) since 31<sup>st</sup> March 2011. The Applicant and Respondent are former partners and

cohabitees, having entered into an Islamic marriage. They have two children together. However, the relationship has broken down, as can be gauged from the fact that the Respondent has obtained a non-molestation order against the Applicant and he has been excluded from the Property.

2. The Respondent objected to the RX1 application on 27<sup>th</sup> April 2017, and on 30<sup>th</sup> June 2017 the dispute was referred to the Tribunal. The Applicant served a Statement of Case on or about 14<sup>th</sup> August 2017. Under the Tribunal timetable, the Respondent was obliged to file and serve her Statement of Case by 11<sup>th</sup> September 2017. No Statement of Case was filed, and on 18<sup>th</sup> September 2017 the Tribunal made an “unless” order requiring service by 2<sup>nd</sup> October 2019. No Statement of Case was served by that date, and by Order dated 6<sup>th</sup> October 2017 the Tribunal directed the Chief Land Registrar to give effect to the Applicant’s original application by way of sanction for breach of the unless order. By letter dated 10<sup>th</sup> October 2017, HM Land Registry informed the Tribunal that the Order had been given effect to, and from that date the Applicant’s restriction has been entered on the register.
3. However, the Order dated 6<sup>th</sup> October 2017 was made in error. The Respondent had instructed representatives, who had on 12<sup>th</sup> and 29<sup>th</sup> September 2017 written to the Tribunal asking for further time to file a Statement of Case, given their recent instruction. Had those communications been seen by the Judge who made the orders of 18<sup>th</sup> September 2017 and 6<sup>th</sup> October 2017, those orders would not have been made. Accordingly, on 20<sup>th</sup> October 2017 the Tribunal set aside the Order dated 6<sup>th</sup> October 2017 and extended the time for service of the Respondent’s Statement of Case to 14<sup>th</sup> November 2017. Unfortunately, this Order was not drawn to the attention of HM Land Registry, and the restriction remained on the register, even though the Order that had given rise to the registration had been set aside.
4. However, the proceedings in this reference have continued regardless. The Respondent’s Statement of Case was served around 14<sup>th</sup> November 2017. The Tribunal was then notified that the parties wished to mediate. A mediation was arranged for 9<sup>th</sup> October 2018 – it is not clear to me why there was such a delay but a whole year seems to have gone by. It appears that the Applicant did not

attend the mediation on the day appointed. On 11<sup>th</sup> October 2018 the Tribunal issued directions for disclosure and witness statements, and a listing questionnaire. On 19<sup>th</sup> October 2018 the Applicant's solicitors informed the Tribunal that they were no longer instructed. The Applicant failed to communicate with the Tribunal for a long period, and did not respond to the listing questionnaire, as a result of which the Tribunal notified the parties that it intended to strike out the Applicant's case. At this point his brother, Mehrab Nawabi, contacted the Tribunal, to explain that the Applicant was undergoing drug rehabilitation therapy in Pakistan and was unable to attend, but had appointed him as his representative. There was some delay in obtaining dates to avoid, and on 27<sup>th</sup> March 2019 the parties were notified of a hearing to take place on 3<sup>rd</sup> July 2019.

5. The hearing came on before me as listed. The Applicant was not present. His brother, Mr Mehrab Nawabi, represented him. The position appeared to me to be highly unsatisfactory. The Applicant's original application, to enter a restriction, had been successful, as a result of the Land Registry's compliance with the Tribunal's order dated 6<sup>th</sup> October 2017, an order that had been made in error and had subsequently been set aside. It would be open to the Tribunal to direct the Chief Land Registrar to remove the restriction and re-instate the application. Equally, it would be open to the Respondent to make a new application in form RX3 to cancel the existing restriction. The essential dispute between the parties is the same, whether it is triggered by the Applicant's RX1 or the Respondent's RX3 – namely, does the Applicant have a beneficial interest in the Property?
6. In the event, the hearing did not proceed. The Tribunal issued the following directions: (a) that the Respondent should issue an application in form RX3 to cancel the restriction (erroneously) registered by the Land Registry; (b) the hearing was adjourned to 5<sup>th</sup> September 2019; (c) the matter would be determined on the basis of the Statements of Case and evidence produced in this reference. This last direction anticipated that the Respondent's RX3 application would be objected to by the Applicant, and that dispute would have been referred to the Tribunal by the date of the resumed hearing.

7. The Respondent did, as instructed, issue an application in form RX3 to cancel the restriction. The Land Registry did not have a current address for the Applicant, but the Tribunal informed it that the Applicant's brother, Mehran Nawabi, was representing him in these proceedings, and eventually it gave notice of the RX3 application to him in late August 2019.
8. The resumed hearing took place on 5<sup>th</sup> September 2019. Mehran Nawabi continued to represent his brother, who did attend on this occasion. The Respondent had made an application to cancel the restriction, but the time for objection had not yet expired and no objection had yet been received by the Land Registry. Accordingly, there was no other reference before the Tribunal. The Applicant (through his brother) had applied to the Tribunal to adduce further evidence in the form of video recordings. He had also prepared an entirely new Statement of Case which had not been verified by the Applicant. Some additional witness statements had also been added. I gave permission for the additional evidence to be adduced, but not the amended Statement of Case.
9. The Applicant verified his (original) Statement of Case on oath and was questioned by the Respondent. He was the only witness, since the makers of the new witness statements did not attend the hearing. On her side, the Respondent verified her Statement of Case and was questioned on it by Mehran Nawabi.

### **The Applicant's case**

10. The burden of proof is on the Applicant to establish that the beneficial ownership of the Property differs from the legal ownership. Where property is vested in the name of one person – in this case, the Respondent – there is a presumption that she is also the sole owner of the beneficial interest – see Snell's Equity (33<sup>rd</sup> ed.) at 24-049 and 24-050. In the present case, it is alleged that the Applicant has a beneficial interest in the Property arising by way of a “common intention” constructive trust or a resulting trust. It is pleaded that “*The common intention was formed by way of discussions between the parties prior to the purchase of the Property.*” In other words, it is alleged that there was an express agreement that the Applicant would have a share in the beneficial ownership of the Property. The nature of such a claim is explained in Snell at 24-052:

“To found an express agreement between the parties, there must have been some actual discussion between the parties about their beneficial entitlements to the property. Their discussions need not directly refer to the claimant having a beneficial interest in the property provided that they indicate the parties’ shared understanding that the claimant was to have an interest. It may be inferred, for example, from a stated reason or excuse for not making the claimant a registered proprietor. An explicit understanding that the property was to be the parties’ shared home for themselves and their family is not enough to establish an agreement that the claimant was to have a proprietary interest in it. It may, however, be relevant to the inference of that agreement from their subsequent conduct.”

11. The Property was purchased at a price of £249,000, of which £186,000 was borrowed by the Respondent and secured by a mortgage on the Property. She was first registered on 31<sup>st</sup> March 2011. The Applicant states that the balance of the purchase price - £63,000 – was funded as follows:

- (1) From the Respondent, approximately £12,000;
- (2) From the Respondent’s brother, £15,000 (to be repaid with an additional £2,000);
- (3) The balance from the Applicant, of which £25,000 was received from his father.

12. In support of these claims, the Applicant has produced limited financial information. He has been able to demonstrate that his parents, Mr Saaed Nawabi and Mrs Shamin, withdrew £25,000 from their mortgage reserve account in December 2010. He says that this money was paid to him, and then given to the Respondent in cash as his contribution to the purchase price. He also says that he carried out extensive renovation works to the Property, and paid for other work of the same description, consistent with his having a beneficial interest in the Property.

### **The Respondent’s case**

13. Her case, as set out in her Statement of Case, is simple. She denies that it was ever intended that the Applicant should have an interest in the Property. She says that he already owned two houses, and this house was to be hers. She says that the cash element of the purchase price was paid by her, although part of the sum (£15,000) was borrowed from her brother. She says that she had saved money

over the years, and this was the money she used for the deposit. She has produced a Client Ledger Card relating to the purchase of the Property. This shows that on 25<sup>th</sup> March 2011 her client account was credited with a sum of £63,172 from her, by Telegraphic Transfer, and on the same day the sum of £186,000 was received under the description “Halifax Advance”. There is no evidence in this, or any other document, that any sums were received from third parties.

14. There has been extensive correspondence between the parties’ respective solicitors at an early stage in these proceedings. There have also been proceedings between the parties in Watford County Court, culminating in the non-molestation order. In the course of that correspondence the Respondent’s solicitors provided a detailed account of her funding of the purchase in 2011. They point to the fact that she was in receipt of a regular income of approximately £2,500 per month. They also provide documentary evidence that she made payments of in excess of £25,000 from bank accounts in her name. They refer to the fact that she borrowed monies from her brother. However, she does accept that she received the sum of £20,000 from the Applicant’s father by way of a loan. In her evidence to the Tribunal she said that this had been repaid shortly after the original purchase. In her solicitor’s letter it is said that she had borrowed from family members to make the repayment. She denied, however, that the sums received from her father-in-law were intended as a contribution to the purchase price on behalf of the Applicant. She was adamant that there was no intention, and no discussion or discussions, relating to a beneficial interest in the Property for the Applicant. The Property was bought by her and the sole legal ownership reflected the sole beneficial ownership.

### The evidence

15. The Applicant verified his Statement of Case and the Respondent questioned him on it. Among other things, he relied on extracts from some WhatsApp text conversations with the Respondent, a number of invoices relating to building supplies, and videos of him and his brother carrying out work to the Property. The WhatsApp extracts are of course just selections from an ongoing dialogue. Some of these extracts appear to support the Applicant’s case. In particular, on 18<sup>th</sup> September 2016, there is a screen shot of a conversation in which “K” (who



must, in my view, be the Respondent Kiniz) writes as follows: *“I don’t need the house u keep it. Let’s see what u manage to do with it. Let’s see if u are able to live happy with it. Let’s see if u are able to digest the proceeds of the house that ur wife bought with u for the kids.”* There are transcripts of other conversations. On 1<sup>st</sup> July 2016 she writes: *“I gave up my job for u. I slaved in ur dad’s house. I slaved for u. I had ur kids I looked after u. I helped u buy ur house. I look after the bills the mortgage.”* This exchange takes place on 24<sup>th</sup> September 2016: *“Kiniz: The Birmingham house is not urs. I have given the Watford one not that one. That one is only mine. Waheed: You haven’t given me shit, everything is in ur name, and I am no begger, because all I want is my wife kiniz. Kiniz: Well u can transfer it in ur name I don’t give a shit. It’s not my fault ur name was not good enough when we bought it. Kiniz: And ur the one keeping the rent aren’t u.”* There are further conversations in September and October 2016 in which the Respondent is demanding that the Applicant should pay her money so that she can make the mortgage repayments.

16. The Respondent says that these extracts are taken out of context, and give a false picture. She says that the Applicant had effectively shut her out of the Property by this stage of their relationship, had rented it out and was keeping the rent for himself. She was unable to afford the mortgage repayments and asked him for the money. She also says that the conversations demonstrate that although the Applicant was carrying out work at the Property, he was charging her at the rate of £300 per day. She produced an audio recording in which the Applicant is demanding money from her. She says that by the date of these conversations their relationship had broken down and she was trying to extricate herself from an abusive situation. With regard to the invoices for building materials, she says that many of these relate to work on another house carried out by the Applicant’s brother and, in any event, the work which the Applicant did was charged for.

## **Conclusion**

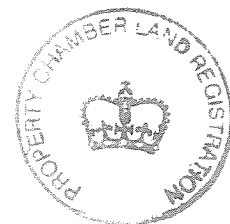
17. The burden of establishing the common intention constructive trust rests with the Applicant. On the evidence provided, I am not satisfied that there was such a common intention. There was a conflict of evidence between the Applicant and the Respondent as to whether not there had been discussions between them as to

the alleged beneficial interest. The Applicant's evidence was characterised by a disturbing level of animus towards his former partner. It was admittedly a difficult situation, in which he was being cross-examined by her on his evidence, but frequently his dislike spilled over into quite unpleasant personal abuse. He obviously felt extremely bitter and angry at the breakdown of the relationship. I think it would be imprudent to rely on his uncorroborated evidence given his obvious motivation to say anything which would harm the Respondent. There is no unambiguous corroborative evidence. The WhatsApp extracts relate to conversation that took place some five years after the initial purchase, at a time when the relationship had broken down and there were attempts at reconciliation. It would be dangerous, in my view, to take these statements out of context and seek to relate them back to the parties' agreed intentions on 2011. The video films of the Applicant (and his brother) carrying out work are not inconsistent with the Respondent's evidence that the Applicant was charging for his time. She also accepted that he had carried out some other work on the Property but nowhere near to the extent that he claimed. The invoices produced by him cannot be specifically linked to the Property, and the Applicant and her brother owned other properties. In summary, the Applicant's evidence is insufficient to displace the presumption that the Respondent is the sole beneficial owner of the Property, as well as the legal owner.

18. I shall therefore direct the Chief Land Registrar to cancel the Applicants' application dated 12<sup>th</sup> May 2017, insofar as it remains on foot. In this context, it may be noted that the Applicant did not object to the Respondent's RX3 application to cancel the Applicant's (erroneously registered) restriction. It therefore appears that the restriction is no longer on the register, and to that extent these proceedings (and my Order) may prove to be otiose. Be that as it may, having heard the evidence, I have made these findings and shall make the order described above.

Dated this 30<sup>th</sup> day of September 2019

*Owen Rhys*



**BY ORDER OF THE TRIBUNAL**