



[2017] UKTFF 0232 (PC)

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

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

**LAND REGISTRATION ACT 2002**

**REF NOs: 2015/0636 and 2015/0637**

**BETWEEN**

**Mohammed Arif**

**Applicant**

**and**

**Naureen Tabbasam (1) (0636)**

**Ziara Kausar (2) (0637)**

**Respondents**

**Property addresses:**

**20 Townley Street, Briarfield, Nelson BB9 5JD (0636)**

**19 Albert Street, Briarfield, Nelson BB9 5JF (0637)**

**Title numbers:**

**LA548657 (0636)**

**LA863402 (0637)**

**Before: Judge John Hewitt**

---

**DECISION**

---

**Representation**

**Applicant: None**

**Respondents: Mrs D Hayden-Pawson Solicitor**

*KEYWORDS : Restrictions – beneficial interests – non-appearance by applicant*

## **Cases referred to**

### **Decision**

1. The Decisions of the Tribunal are that:
  - 1.1 The Chief Land Registrar shall cancel the application made by the applicant on 27 February 2015 to enter restrictions on the register of title number LA486657 in respect of 20 Townley Street;
  - 1.2 The Chief Land Registrar shall cancel the application made by the applicant on 27 February 2015 to enter restrictions in the register of title number LA863402 in respect of 19 Albert Street;
  - 1.3 The Chief Land Registrar shall be directed to reject any future applications made by the applicant to enter notices or restrictions on the register of either of the title numbers LA486657 and LA863402
  - 1.4 Any applications for costs shall be made in accordance with the directions set out in paragraph 44 below.
2. The reasons for these making these decisions are set out below.

### **Procedural background**

1. The applicant (Mr Arif) is the father of each of the respondents, who are sisters.
2. The first respondent (Ms Tabbasam) was registered as proprietor of 20 Townley Street on 28 January 2010.
3. The second respondent (Mrs Kausar) was registered as proprietor of 19 Albert Street on 10 April 2000.
4. On 27 February 2015 Land Registry received from the applicant applications dated 6 February 2015 to enter a restriction in Form A and a restriction in Form II on the register of each title claiming to have a beneficial interest in each of the properties.
5. Both Ms Tabbasam and Mrs Kausar objected to the applications and on 21 September 2015 the Chief Land Registrar referred both of them to the tribunal.
6. Directions were duly given but Mr Arif has not complied with them fully.
7. By an order dated 30 August 2016 the two references were consolidated to be heard at the same time and the reference of the consolidated proceedings was to be REF/2015/0636.

8. By letters dated 18 November 2016 each of the parties (or their respective representatives) were notified that the hearing of the references would take place on 9 -10 February 2017 at Liverpool Family & Civil Courts.
9. Mr Arif (represented by Intelegal Solicitors) did not deliver to the tribunal the hearing bundle or provide a list of issues, a chronology or a skeleton argument as required by a directions order which accompanied the letter notifying the time, date and venue of the hearing.
10. On 7 February 2017 the tribunal received an email from Intelegal Solicitors stating that they no longer act for Mr Arif. They stated that despite repeated requests Mr Arif did not cooperate and they had not been paid. They attached a letter they had received that day from Mr Arif. Evidently the possibility of an application for a postponement of the hearing on medical grounds had been discussed because they say they had advised Mr Arif to provide medical evidence to support such a request but none had been provided.

The gist of the letter referred to is that Mr Arif had sustained an injury to his right knee, has a heart condition for which he takes medication and that he is depressed. He also says he has no money and no one to help him. He apologised for failing to pay outstanding fees. He acknowledged that he was advised to get a sick note from his doctor but he says he was unable to do so. He says he is unable to attend court and apologises for any inconvenience caused.

The letter was not addressed to the tribunal and it does not contain an explicit request for a postponement of the hearing.

11. By email dated 8 February 2017 Intelegal was informed that the hearing would go ahead as planned and that any application for an adjournment that might be made at the hearing should be supported by medical evidence.
12. The references came on for hearing at 10:30 Thursday 9 February 2017.

Mr Arif was neither present nor represented.

Ms Tabbasam and Mrs Kaursar were both represented by Mrs Hayden-Pawson, a solicitor.

13. I had regard to rule 34 and I considered whether to proceed with the hearing in the absence of Mr Arif.

I was satisfied that Mr Arif had been notified of the hearing because that is clearly demonstrated by the correspondence referred to in paragraph 10 above.

Mrs Hayden-Pawson submitted that the respondents were suffering financial hardship due to the applications as they cannot deal with their properties. The applications were made two years ago and the issue needs to be settled.

I accept that submission and find that it is in the interests of justice to proceed with the hearing in the absence of Mr Arif.

### **The gist of the case for Mr Arif**

14. Mr Arif had provided to the tribunal:

14.1 A witness statement dated 22 April 2015 which he had originally provided to Land Registry; and

14.2 A statement of case dated 26 November 2015 which contained a statement of truth.

There are a few documents exhibited to those statements, which are mostly duplicated.

15. From the above the applicant claims:

#### **Townley Street**

15.1 In 1997 he made a payment of £11,260 to Eric H Smith Solicitors being the purchase price;

15.2 He has made some contributions to mortgage repayments (no details provided);

15.2 Since the purchase he has contributed towards the furnishing, repairs and upkeep of the property (no details provided); and

15.3 Following a fire he refurbished the property (date unspecified).

There were no documents submitted that I considered supported the above save for an undated letter from a Mr Imran Ashraf of 13 Thirlmere Avenue, Burnley which states that he carried out the refurbishment following the fire and that Mr Arif paid the bills and related payments.

#### **Albert Street**

15.4 A contribution to the purchase price (amount unspecified);

15.5 Payment of the solicitors' bill on the purchase of £412.25;

15.6 Since the purchase he has contributed towards the furnishing, repairs and upkeep of the property (no details provided);

15.7 Some contributions to the mortgage repayments; and

15.8 Receipt of the rental income.

#### **The gist of the case for the respondents**

16. The respondents deny most of the assertions made above and deny that the applicant has any beneficial interest in either property.

#### **Findings of fact**

17. I heard oral evidence on oath from Mrs Kausar and Ms Tabbasam.

Mrs Kausar confirmed that the contents of a letter dated 15 May 2015 which she had sent to Land Registry was true and that her witness statement dated 15 April 2016 was true.

Ms Tabbasam confirmed that the contents of a letter dated 20 May 2015 which she had sent to Land Registry was true and that her witness statement dated 3 June 2016 was true.

Their evidence has been consistent throughout and much of it is corroborated by documents prepared by outside third parties. I considered both of them to be witnesses upon whom I could rely with some confidence.

18. Having regard to the oral and documentary evidence before me I make findings of fact as set out below.
19. Mr Arif and his extended family have lived in and around Albert Street, Briarfield for a number of years. Mr Arif has a sister who was married to Mr Talib Hussain who is the brother of Mr Arif's wife. Both families had a number of children. For most of the material time the Hussains lived in 1 Albert Street and the Arifs lived next door in 3 Albert Street. Over the years, various members of this extended family acquired properties in and around the Burnley area. They often helped one another do so by making loans on an informal family basis, mostly undocumented. They also assisted one another to 'manage' the properties on a day to day basis.
20. In 1997 Mrs Kausar purchased 20 Townley Street for the price of about £11,200. To do so Mrs Kausar borrowed £10,000 from her uncle Talib Hussain on an interest free basis. The loan was not documented. The balance was made up of savings which Mrs Kausar had made. The loan to Talib Hussain was repaid over time. Mrs Kausar never had a mortgage loan on this property. This property has never been registered in the name of Mr Arif and Mr Arif did not contribute to the purchase price. Mr Arif has not made any contributions to mortgage payments because there was no mortgage loan. Mr Arif has not carried out any repairs to the property whilst it was in Mrs Kausar's ownership. There was a time when Mr Arif had obtained the keys to the property and let tenant's in but he did not have the permission of Mrs Kausar to do so and at no time has he ever accounted to Mrs Kausar for the rental income received by him.
21. In January 2000 Mrs Kausar became engaged to Basharat Ali who is now her husband. The engagement took place in Spain. Mr Arif was furious about this because he was in the process of arranging for her to marry one of his cousins in Pakistan. Inevitably the family relationship became strained. Mrs Kausar concluded that she and Mr Ali would never be allowed to live in the family home and she began to look for a property to buy for her and Mr Ali to live in. She wanted to be near to Albert Street because her mother was very ill having lost a son and Mrs Kausar wanted to be nearby in order to care for her.
22. On 10 April 2000 Mrs Kausar purchased 19 Albert Street. The deposit of £3,225 was made up as to £2,000 loan on Mrs Kausar's credit card, cash of £1,100 and £125 from Mrs Kausar's bank account. The balance of the purchase price was a mortgage loan taken out by Mrs Kausar with the Woolwich. That loan has subsequently been redeemed by Mrs Kausar.
23. At the time of this purchase Mrs Kausar was working with Mr Arif in a taxi business operated by them from premises known as the Adelphi Hotel, 31 Adelphi Street Burnley. Mrs Kausar used a firm of solicitors, Steele Ford & Newton, in Burnley who had previously acted for Mr Arif on property matters. Mr Arif accompanied Mrs Kausar to the solicitors when she signed the contract and paid over the deposit, Mrs Kausar accepts that the solicitors' bill was settled by a cheque drawn on Mr Arif's

account but she says, and I accept, that she was busy running the taxi business, working long hours, and she had given cash for the bill to her father so that he could settle it on her behalf. Mrs Kausar wrote out the cheque. Mr Arif signed it and dropped it into the solicitors. Also in the early days Mrs Kausar would sometimes give her father cash for the mortgage repayments and he would effect payment on her behalf. Thus it was that some of the early mortgage payments were drawn on Mr Arif's bank account. In about 2004 Mrs Kausar made arrangements to make the mortgage payments by direct debit and that arrangement continued until the loan was fully paid off. I find that the whole of the deposit and all of the mortgage payments were funded by Mr Kausar and that Mr Arif made no financial contribution at all from his own funds.

24. Although the relationship was strained, Mr Arif remained hopeful that the arranged marriage to his cousin would go ahead and he considered that the 19 Albert Street would make a good home for them and may assist with some immigration issues.
25. Mrs Kausar remained living at home and so 19 Albert Street was rented out and Mrs Kausar received the rental income.
26. In the event Mrs Kausar refused to marry the cousin. In April 2002 Mr Ali visited the family home accompanied by police officers and Mrs Kausar left with them in a rush and was not able to collect together all of her papers, records and possessions. Mrs Kausar duly married Mr Ali and this infuriated Mr Arif. Mrs Kausar claims that in revenge Mr Arif arranged for members of his family to have Mr Ali's father murdered in Pakistan. Whether that is true I cannot say, but I find that Mrs Kausar certainly believes it to be true.
27. Thus in 2002 Mrs Kausar became estranged from Mr Arif, and she and Mr Ali kept well away from Albert Street.
28. Mr Arif managed to obtain the keys to 19 Albert Street and he has rented the property and received the rental income. He did not have consent from Mrs Kausar to do so and he has not accounted to her for sums received by him.
29. In about 2005 Mr Arif commenced proceedings in the High Court, Chancery Division, Claim Number 5MA70434. The defendants were Mr Talib Hussain, Sajida Kausar (a sister of Mrs Kausar), Mrs Kausar herself and Mohammed Akram, a distant uncle. I have not seen the pleadings but I was informed the proceedings concerned several properties held in one or more of the names of the defendants in which Mr Arif claimed a beneficial interest. Those proceedings were compromised by way an order in Tomlin form. I was shown a copy of that order which is dated 31 January 2008. So far as material the schedule to that order provided that the first and second defendants were to allow Mr Arif to continue to occupy that part of the Adelphi Hotel occupied by him for his taxi business, on the terms of a licence which were set out in some detail and paragraph (10) provided:

*"The Claimant [Mr Arif] confirms that he will not enter or attempt to enter 14 Clegg Street, 7 and 15 Albert Street and/or 20 Townley Street."*

I infer from that paragraph that Mr Arif abandoned whatever claims he may have made to those properties and agreed not to enter them.

I might also add that 14 Clegg Street is the property where Ms Tabbasam lives.

30. Mr Arif's sister, Mrs Fakhra Kausar, and her husband, Mr Talib Hussain, divorced. Mrs Fakhra Kausar made an application for financial relief and claimed that Mr Hussain had a beneficial interest in a number of properties held by other members of the extended family. In the event a number of members of the family intervened, including Sajida Kausar, Mohammed Akram, Mrs Kausar, and Ms Tabbasam. Mr Arif was not a party to the proceedings but, I was told, that assisted his sister with the proceedings and some of the property claims. District Judge Conway delivered a detailed judgment concerning a number of properties. It is dated 6 December 2011. As regards 20 Townley Street, it was claimed that because Mr Hussain gave to Mrs Kausar a loan of £10,000 to purchase the property, he had a beneficial interest in it and thus it should be brought into account in the family assets that Mrs Fakhra Kausar had a claim on. DJ Conway was clearly impressed with the evidence given by Mrs Kausar on a number of matters and as regards 20 Townley Street she recorded in her judgment:

*“This property has always been in Ziaras name but the wife says that her husband paid for it. However she adduced no evidence to back up this assertion. It is true however that there was a loan from the husband to the niece and so the wife might well have recalled money passing hands. Ziara paid the deposit herself and took the loan because it was interest free. She paid it back in two £5000 tranches. There is no documentary evidence of this but as I say she is a credible witness and there is no evidence at all presented by the wife to gainsay her account.*

*I therefore find that this property is legally and beneficially owned 100% by Ziara and that the husband has never had an equitable interest in this property.”*

I record this finding because it was plainly and clearly made by the judge and because it has some bearing on the issues before me. It also corroborates Mrs Kausar's evidence to me.

31. Mrs Kausar has a recollection that after she had fled the family home Mr Arif made an application to Land Registry to enter a restriction on the register of 19 Albert Street. Because Mrs Kausar was not then living at the family home she did not receive correspondence from Land Registry and she did not object to the application with the result that a restriction was entered on the register. Mrs Kausar tells me, and I accept, that she made an application to cancel the entry on the register and that her application was successful.
32. Mr Arif made a further application to enter a restriction on the register in 2007. That application was objected to and it was referred to The Adjudicator to Her Majesty's Land Registry – REF/2007/0892. Land Registry has provided to the tribunal a copy of an order made 1 February 2008 which says:

*“The Adjudicator to HM Land Registry orders the Chief Land Registrar as follows:*

*To cancel the original application dated 29 January 2007 to enter restrictions.”*

33. In 2007 Mrs Kausar tried to obtain physical possession of the property and changed the locks but Mr Arif simply broke back in and changed the locks back again.
34. At some time, Mrs Kausar, was not sure exactly when, Mr Arif was able to enter restrictions on the register. In November 2014 Mrs Kausar made an application to cancel them. Mr Arif did not respond to correspondence from Land Registry and on 14 January 2015 the restrictions were cancelled.
35. Mrs Kausar decided to sell the property and placed it on the market with Petty's in Nelson. Mrs Kausar again had the locks on the property changed but Mr Arif again broke back in and installed his nephew, Mudassar Hussein, in the property. Mr Arif contacted Petty's to say he would not allow any sale to go through. In February 2015 Mr Arif made a further application to Land Registry to enter restrictions and in the circumstances Mrs Kausar felt she ought to take the property off the market until the application got sorted out.
36. As regards 20 Townley Street, Mrs Kausar gifted the property to her younger sister, Ms Tabbasam on the occasion of her engagement in 2010. Since then Ms Tabbasam has maintained the property, but she has not lived in it. The property remained empty from 2010 until about September 2016 when Mr Arif acquired the keys to the property. Since then he has let it out, but not with the consent or permission of Ms Tabbasam. He has not accounted to Ms Tabbasam for the rental income received by him.
37. Ms Tabbasam confirmed that there was a small fire in the property in 2012. Ms Tabbasam believes that Mr Arif caused the fire when he learned that Ms Tabbasam had put the property on the market for sale. Ms Tabbasam said the damage was superficial, mostly to internal paintwork and decorations, which she made good herself. Ms Tabbasam told me that Imran Ashraf was a close friend of Mr Arif and that it was untrue he had refurbished the property. I accept Ms Tabbasam's evidence on this point and find that Mr Arif did not organise or bear the costs of any refurbishment works following the fire.
38. Ms Tabbasam has not taken out a mortgage loan on the property and thus the question of mortgage repayments does not arise. Thus, I reject Mr Arif's assertions that he contributed to mortgage repayments.

### **Summary**

39. In the light of the evidence presented to me I am well satisfied that Mr Arif has not used any of his own funds to make any contribution to the purchase or improvement of either property. I reject the flimsy evidence he relies upon. Accordingly, I have made orders requiring the Chief Land Registrar to cancel both of his applications to enter restrictions.
40. I am satisfied that in relation to 19 Albert Street Mr Arif has made multiple unmeritorious applications to Land Registry to enter restrictions on the register.



41. I am also satisfied that over the years Mr Arif has made multiple unmeritorious claims to have a beneficial interest in 20 Townley Street.
42. In the light of the history to this matter which I have set out above I have come to the conclusion that I ought to make a direction pursuant to rule 40 in respect of both properties to the effect that the Chief Land Registrar shall reject any future applications by Mr Arif to enter notices or restrictions on the register of either of the title numbers LA486657 and LA863402. I have therefore made a direction to that effect.

### **Costs**

43. In this jurisdiction, as with the civil courts, costs follow the event save in exceptional circumstances. I am therefore minded to make costs orders in favour of the each of the respondents. I will, however, give careful consideration to any applications for costs that may be made.
44. If the parties are unable to reach agreement on costs, any applications for costs shall be made in accordance with the following directions:
  - 44.1 Any application for costs shall be made in writing by **5pm Friday 31 March 2017**. The application shall be accompanied by a schedule of the costs and expenses incurred/claimed supported by invoices/fee-notes where appropriate. A breakdown shall be given of the work carried by solicitors and the charge-out rate and grade of the fee-earner(s). A copy of the application and supporting schedule shall be sent to the opposite party at the same time as it sent to the tribunal.
  - 44.2 The recipient of an application for costs shall by **5pm Friday 21 April 2017** file with the tribunal and serve on the applicant for costs representations on the application and on the amount of the costs claimed and any points of objection he, she or they wish to take.
  - 44.3 The applicant for costs shall by **5pm Friday 28 April 2017** file with the tribunal and serve on the opposite party representations in reply, if so advised.
45. In the absence of any objections I propose to make a determination on any application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 44 above.

**Dated this 10 February 2017**

**By order of the Tribunal**