

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM THE LAND REGISTRY
UNDER THE LAND REGISTRATION ACT 2002

REF/2016/0145

BETWEEN

NALINI JANI

Applicant

and

VIRGINIA FRANCES JANI

Respondent

Property Address: 39 Bond Street, London W5 5AS

Title Number NGL127460

Before Judge Beasley

Sitting at Alfred Place, London W1

Hearing On: 14 July 2017

Applicant Representation: Cheryl Jones instructed by the Applicant by direct access

Respondent Representation: Guy Holland instructed by Prince Evans Solicitors LLP

DECISION

KEYWORDS – standard Form A restriction – beneficial interest under a trust of land - limited to part only of the registered estate - Section 43(3) Land Registration Act 2002

Background

1. This matter was referred to the Tribunal on 7 March 2016. It concerns an application made by Ms Nalini Jani in Form RX1 dated 13 May 2015 to HM Land Registry to register a restriction in Form A against 39A Bond Street, Ealing, London W5 5AS (“the Application”). Ms Virginia Frances Jani is the sole registered proprietor of 39 Bond Street, Ealing, London W5 5AS, as registered with title number NGL127460 (“the Property”), and on 15 June 2015 she objected to the Application. The dispute was referred to this Tribunal, where Ms Nalini Jani has been named as the Applicant, and Ms Virginia Frances Jani as the Respondent.
2. The hearing of this reference took place at Alfred Place, London on 14 July 2017. The Applicant was represented by Ms Cheryl Jones of counsel. The Respondent was represented by Mr Guy Holland of counsel.
3. Although I heard no oral witness evidence, the following facts appear from the documents I have seen.
4. The Property consists of a ground floor commercial unit with a residential flat above. The flat is known as 39A Bond Street, London W5 5AS (“the Flat”) and the ground floor commercial unit as 39 Bond Street. However, the Property is registered under the single freehold title number NGL127460, and is described as 39 Bond Street, London in the property register in the Land Registry title. There are no leasehold titles.
5. The Applicant applied for registration of the Form A restriction on the basis that she has a beneficial life interest under a trust of land. It was accepted by both parties that the Applicant had resided in the Flat since 1987, and further, that she has a beneficial interest under a trust to live in the Flat for the rest of her life, and that this interest should be protected by a restriction in Form A. Although the Applicant’s Application referred only to 39A Bond Street, the Application had to be made in respect of the entire registered estate as the Flat is not held under a separate registered title. However, the Respondent seeks to have the Form A restriction limited so that it affects the Flat only, and not the entire Property.

The Issues

6. The issues to be determined are:
 - 6.1. whether the Form A restriction should apply to the Property, being the entire registered estate, or whether the standard form of wording for the Form A restriction should be amended so that it only applies to the Flat; and

- 6.2. whether any amendment to the standard Form A restriction satisfies the provisions of section 43(3) of the Land Registration Act 2002 (“the Act”).
7. Whilst the Applicant accepts that she has the burden of proving that she is entitled to have a restriction in the Form A registered against the title to the Property, it is the Respondent who has the burden of proving that the Form A restriction should be amended so that it only applies to the Flat, and that any such amendment is one which satisfies the requirements of section 43(3) of the Land Registration Act 2002.

The Applicant’s case

8. The Applicant seeks the restriction in the standard Form A in accordance with Form A, Schedule 4 of the Land Registration Rules 2003 namely:

“No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered without an order of the court”.

9. It is the Applicant’s case that the Applicant has an interest in ensuring that there is no disposal of any part, or parts, of the Property which might prejudicially affect the part of the Property in which the Applicant has an interest to be protected by the restriction. The Applicant contends that the amended form of wording to the form A restriction will reduce that protection.
10. It is also the Applicant’s case that the standard Form A restriction would not prevent the Respondent from continuing to utilise the business part of the Property for income purposes, nor that it would fetter the Respondent’s use of the Property beyond that which already exists, namely that the Applicant has a lifetime interest in the Flat.

The Respondent’s case

11. The Respondent is looking to have the wording of the Form A restriction amended to a non-standard form of restriction as follows (emphasis added):

“No disposition of the part of the registered estate known as 39A Bond Street, London W5 5AS, being the first floor flat by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be completed by registration unless authorised by an order of the court”.

12. The Respondent had previously sought an additional amendment which included the Applicant giving her consent to a disposition, other than by lease of the ground floor commercial parts which were edged in blue on a plan. However, at the hearing this additional wording was not pursued, and no plan was produced.

13. It is the Respondent's case that the Chief Land Registrar will only impose a restriction to the extent that it is both necessary and desirable. The Respondent contends that section 43 of the Land Registration Act 2002 permits the Chief Land Registrar to consider restrictions with non-standard wording provided that they are reasonable, straightforward and do not place an unreasonable burden on him. The standard Form A restriction, by affecting the whole of the Property, and not merely the Flat, will thereby restrict the Respondent's ability to deal with the commercial part of the Property, and this is neither necessary nor desirable.
14. The Respondent points out that the Applicant has limited her Application to the Flat only, because in her Form RX1 she specifically states that she only seeks a restriction in respect of 39A Bond Street (i.e. the Flat).
15. The Respondent contends that her proposed wording would be necessary and desirable for the protection of the Applicant's interest in the Flat, but would not unnecessarily restrict the Respondent's ability to deal with the commercial ground floor part of the Property. Conversely, the Respondent says that she is concerned that the standard form wording would prejudicially affect her ability to deal with the commercial part of the Property because the grant of a lease of more than seven years would have to be registered at Land Registry and would be subject to the restriction.
16. In summary, it is the Respondent's case that the wording which she has proposed of the limited form of the restriction passes the test set out in section 43(3) of the Land Registration Act 2002 because the amended form of restriction is reasonable, straightforward and would not place any unreasonable burden upon the Chief Land Registrar.

Discussion

17. Applications for restrictions are governed by the relevant provisions of the Land Registration Act 2002 and the Land Registration Rules 2003. Section 42(1) of the 2002 Act provides:

- 42(1) The registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so for the purpose of—
 - (a) preventing invalidity or unlawfulness in relation to dispositions of a registered estate or charge,
 - (b) securing that interests which are capable of being overreached on a disposition of a registered estate or charge are overreached, or
 - (c) protecting a right or claim in relation to a registered estate or charge.

18. S. 43(1) of the Act provides:

43(1) A person may apply to the registrar for the entry of a restriction under section 42(1) if—

- (a) he is the relevant registered proprietor, or a person entitled to be registered as such proprietor,
- (b) the relevant registered proprietor, or a person entitled to be registered as such proprietor, consents to the application, or
- (c) he otherwise has a sufficient interest in the making of the entry.

43(2) Rules may-

- (a) require the making of an application under subsection (1) in such circumstances, and by such person, as the rules may provide; ...
- ...
- (d) specify standard forms of restriction.

43(3) If an application under subsection (1) is made for the entry of a restriction which is not in a form specified under subsection (2)(d), the registrar may only approve the application if it appears to him-

- (a) that the terms of the proposed restriction are reasonable, and
 - (i) be straightforward, and
 - (ii) not place an unreasonable burden on him.

19. Rule 91 of the Land Registration Rules 2003 provides:

91.- Standard forms of restriction

(1) The forms of the restriction set out in Schedule 4 [(varied, where appropriate, as permitted by rule 91A)] are standard forms of restriction prescribed under section 43(2)(d) of the Act.

91A.- Completion of standard forms of restriction

- (1) Subject to paragraphs (2) and (3), [if] a standard form of restriction is to affect part only of the registered estate, then, where it refers to a disposition, or to a disposition of a specified type, to which it applies, that reference may be followed by the words “of the part of the registered estate” together with a sufficient description, by reference to a plan or otherwise, to identify clearly the part so affected.
- (2) The words incorporated [under] paragraph (1) shall be in place of the words “of the registered estate” where those latter words appear in a standard form of restriction and are referring to a disposition, or to a disposition of a specified type, to which the restriction applies.
- (3) The registrar may alter the words of any restriction affecting part of the registered estate [...] that he intends to enter in the register so that such part is described by reference to the relevant title plan or in another appropriate way.

20. The Land Registry Practice Guide (19) states that the standard form restrictions are worded in a clear manner so that a party inspecting the register will be able to

determine whether a given application will be caught by its terms and if so, what action needs to be taken to allow the application to proceed. The Land Registry Practice Guide also provides that an application for a restriction that is not in a standard form should only be made if none of the standard form restrictions is appropriate. In addition, where the restriction is only to apply to part of the registered estate, then the restriction must contain sufficient description, by reference to a plan or otherwise, to clearly identify the part which is to be affected.

21. The Respondent's proposed amendment to the wording of the standard Form A restriction is in line with the permitted amendments set out in Rule 91A of the Land Registration Rules 2003. This means that, in accordance with Rule 91 of the Land Registration Rules 2003, the amended restriction in my view nevertheless remains a standard form of restriction (with a permitted variation), and the issue is whether the proposed limitation to the restriction is in fact appropriate. If this is not the case, then the test set out in section 43(3) of the Land Registration Act 2002 is to be applied, and if so, all three limbs of that test must be satisfied in order for the test to be passed.
22. Ruoff & Roper [at paragraph 44.006, page citation 44/14/1] states (with emphasis added):

"It is possible to apply for a restriction that will affect part of a registered estate... Care should be taken not only in deciding how to describe adequately the affected part, but whether the form of the restriction is suitable in the first place. Some forms of standard (and non-standard) restriction are generally inappropriate for entry in the register when they affect part only of a title (for example, where a Form A restriction is requested in respect of part of a registered estate). Although theoretically possible (where, for example, the proprietors of the registered estate hold parts in different capacities), the registrar may find it preferable to split the title".

23. It is exceptional where there is a trust of land for the Form A restriction to be in a form other than the standard Form A. In fact, section 94 of the Land Registration Act 2002 creates a statutory obligation on a single trustee to register a restriction in Form A:

When an application for a restriction must be made

94.-(1) A proprietor of a registered estate must apply for the restriction in Form A [emphasis added] where-

- (a) the estate becomes subject to a trust of land, other than on a registrable disposition, and the proprietor or the survivor of joint proprietors will not be able to give a valid receipt for capital monies.

24. There is also the difficulty, alerted to by the Applicant, that her interest includes parts of the Property which are physically within the commercial part of the Property, for example, the Applicant's access to the Flat. This issue was not addressed nor adequately dealt with by the Respondent. The purpose of the

Form A restriction is to ensure that any capital monies must be paid to two trustees or a trust fund. It is the mechanism which enables a purchaser to overreach trust interests. Whilst the Respondent can appoint a second trustee for the purpose of receiving the capital monies, a purchaser has to have the protection that all beneficial interests over all parts of the Property which are affected by the trust will be overreached. In the circumstances, I consider that the standard Form A restriction is appropriate, and that the test set out in section 43(3) of the Land Registration Act 2002, to the extent that it does apply, has not been satisfied by the Respondent in the manner in which she has sought to limit the Form A restriction. The limitation in the circumstances is not straightforward, and would in my view place on the Chief Land Registrar the unreasonable burden in ascertaining if the restriction did or did not apply to a disposition of the commercial unit which nevertheless included part(s) of the Flat.

25. The Respondent will be able to grant a rack rent lease of the commercial unit as this will not be caught by the Form A restriction. The grant of a long lease of the commercial unit at a premium would be caught by the Form A restriction, in which case the prospective tenant should be made aware of the Applicant's interest in, for example, the access over the commercial part of the Property and would want to overreach any such interest.

Decision

26. For the reasons which I have sought to explain above, I therefore consider that the Applicant's is entitled to a restriction in Form A which must be registered against the single registered title of the Property. I will make an order that the Chief Land Registrar gives effect to the Applicant's Application and enter the Form A restriction on the title to the Property.

Costs

27. The usual rule in this jurisdiction is that costs follow the event, save in exceptional circumstances. I am therefore minded to make a costs order in favour of the Applicant. Whilst the parties made limited submissions on costs at the hearing, they should be given the opportunity to make further submissions, if so advised, having considered the Decision that has been made.

28. The Tribunal can only consider costs incurred since the date of the reference from the Land Registry. The matter was transferred to the Tribunal on 7 March 2016. The amount of costs to be allowed to a litigant in person for any item of work claimed will be:

- 28.1. Where the litigant in person can prove financial loss, the amount that the litigant can prove to have been lost for the time reasonably spent on doing the work; or
- 28.2. Where the litigant in person cannot prove financial loss, an amount for the time reasonably spent on doing work at £19 per hour.

29. If the parties are unable to reach agreement on costs, any application for costs shall be made in accordance with the following directions:

29.1. Any application for costs shall be made in writing by **5pm 3 October 2017**. The application shall be accompanied by a schedule of costs and expenses incurred or claimed from the date of the reference to this Tribunal, together with any receipts for any disbursements incurred, such as Counsel's fees. A copy of the application and supporting schedule shall be sent to the opposite party at the same time as it is sent to the Tribunal.

29.2. The recipient of an application for costs shall by **5pm on 31 October 2017** file with this Tribunal and serve on the applicant for costs representations on the application and on the amount of costs claimed, and any points of objection that she wishes to take.

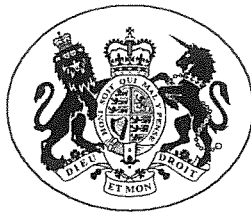
29.3. The applicant for costs shall by **5pm on 28 November 2017** file with the Tribunal and serve on the opposite party representations in reply, if so advised.

30. In the absence of any objections, I propose to make a determination on any application for costs and to assess any costs ordered to be paid, without a hearing, and on the basis of written representations filed and served pursuant to the directions set out in paragraph 29 above.

Dated this Tuesday 5 September 2017

Allis Beasley

BY ORDER OF THE TRIBUNAL



[2017] UKFTT 0758 (PC)

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

ORDER

Case Number: REF/2016/0145
Title Number: NGL127460
Property: 39 Bond Street, London, W5 5AS
Applicant: Nalini Jani
Respondent: Virginia Frances Jani

IT IS ORDERED as follows:

The Chief Land Registrar is directed to give effect to the Applicant's Application in Form RX1 dated 13 May 2015 to enter a From A restriction on the title to the Property.

Dated this Tuesday 5 September 2017

Allis Beasley

BY ORDER OF THE TRIBUNAL