

[2017] UKFTT 0803 (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 2016/0207

BETWEEN

Fiaz Akhtar

Applicant

and

Slough Borough Council

Respondent

Property address: 3 Montem Lane, Slough Berkshire SL1 1UA

Title number: BK259653

Before: Judge Wear

ORDER

UPON the matter coming on for trial on 22 June 2017 before the Tribunal sitting in Alfred Place, London WC1E 7LR

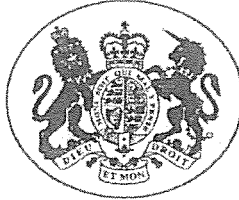
UPON hearing Farzana Yasmin for the Applicant and counsel for the Respondent

IT IS ORDERED that the Registrar shall cancel the Applicant's application for rectification dated 1 May 2015

Michael Wear

Dated this 27 October 2017





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DECISION

Forged Transfer- defective attestation- whether mistake in the register- whether restrictioner entitled to be heard in the application

Cases referred to:

Miller v MHLG (1968) 2 All ER 633

Swift 1st Limited v Chief Land Registrar [2015] EWCA 330

NRAM Ltd v Evans [2017] EWCA Civ 1013

Wells v Pilling Parish Council [2008] EWHC 556

Introduction

1. On the 1st May 2015 the Applicant applied on Form AP1 to the Land Registry to alter the proprietorship register of title number BK259653. That register stated that the

freehold title to 3 Montem Lane (“the Property”) was registered in the name of Qazi Mohammed Qureshi with absolute title.

2. The application was dated 26th April 2015 and signed by the Applicant. It was accompanied by a letter dated 10th March 2015. The letter asks for the deletion of Mr Qureshi as proprietor and the reinstatement of the Applicant. The grounds for this request are that the Transfer dated 3rd September 2007, pursuant to which Mr Qureshi was registered (“the 2007 Transfer”), was not signed by the Applicant and was “a fake and falsified document”.
3. The Land Registry sent notice of the application to Mr Qureshi. There has been no response or objection from Mr Qureshi to this notice and he has taken no part in the present proceedings.
4. The Respondent has the benefit of a restriction in the Proprietorship Register of BK259653. That restriction reads:

30th October 2013 RESTRICTION: *Under a Restraint Order made under Section 41 of the Proceeds of Crime Act 2002 on 21st October 2013 (Court Reference: 193/13) no disposition by the proprietor of the registered estate is to be registered except with the consent of Slough Borough Council of Investigations, 1st Floor, St Martins Place, Slough, Berkshire, SL1 3UF or under a further Order of the Court.*

5. The Respondent was served with notice of the application to alter on the 26th November 2015 and duly objected to it. It is to be noticed that the Applicant does not ask for the removal of the restriction. The Respondent’s objection is that if alteration is ordered then the Applicant will immediately apply to the Crown Court for the Property to be removed from the Restraint Order obliging the Respondent to apply to the Land Registry to have the restriction removed. This would mean the Applicant became the proprietor of the unencumbered freehold in the Property and that it was not available as an asset in the criminal proceedings adverted to in the restriction.
6. Those proceedings took place in Reading Crown Court and it is necessary to give a little more detail because they are an important part of the background and they bear on the evaluation of the evidence given by the Applicant. What follows is taken from a transcript of:
 - the judge’s ruling on 27 July 2012 on an application to discharge the restraint order
 - the judge’s sentencing remarks made on 17 December 2014
 - the judge’s ruling on 15 February 2016 on an application to vary the confiscation order made against Mr Qureshi
 - Witness statement of Mr Chugg dated 25 January 2012

References in this decision to page nos. are to the page nos. in the Trial Bundle prepared by the Respondent.

Criminal Proceedings

7. The Applicant was prosecuted for breach of an Enforcement Notice served under section 179 Town & Country Planning Act 1990. The notice related to unauthorised development at 20 Wexham Road, Slough. The case was brought in the East Berkshire Magistrates Court in October 2010. The Applicant did not attend any of the appointments fixed for hearing the case until the 12th July 2011 when she surrendered to Slough Magistrates Court and entered a not guilty plea. The trial was due to start on the 4th January 2012 but the Applicant changed her plea to guilty and the Magistrates committed the case to the Crown Court for sentence and possible confiscation proceedings.
8. While this was going on the Respondent had been investigating Council Tax fraud in their area. The Applicant, members of her family and Mr Qureshi were all implicated in that investigation.
9. A Mr Chugg was at that time employed by the Respondent in connection with money laundering and confiscation investigations across all areas of the Council's business. He made a witness statement on the 25th January 2012 in support of a Restraint Order against the Applicant under Section 41 of Proceeds of Crime Act 2002 ("the 2002 Act").
10. A Restraint Order is made by a Crown Court on the application of the Prosecutor (or other authorised official) after a criminal investigation for an offence has started or after proceedings for an offence have been started and where there is reason to think the suspect has benefitted from their alleged criminal conduct. The effect of an Order is to prohibit the named party (in this case the Applicant) from dealing with any realisable property. The Order can be in general terms or it can expressly describe the property restrained.
11. The Crown Court initially refused to make a Restraint Order but the ex-parte application was renewed on the 26th January 2012 and HHJ Grainger made the Order on that day against the Applicant and another suspect on the grounds of possible tax fraud. That suspect was Farzana Yasmin who is the daughter of the Applicant and has appeared as her representative in the current proceedings before the Tribunal.
12. There was a protest made to the Crown Court about the Restraint Orders from a third party called Nadeem Khan, representing Rubinawaz Anwar (one of the Applicant's sons). Nadeem Khan is another of the Applicant's sons whose birth name is Mansoor Khan. As a result the judge of his own motion ordered a hearing of the question whether the Order should be discharged as regards 131 The Crescent, Slough, one of the specifically restrained properties. There was also a letter from Mr Qureshi received by the Crown Court on the 17th February 2012 in which he claimed to be the owner of the Property. The judge decided to treat Mr Qureshi's letter as an application to vary and both applications came on for directions on the 14th May. The Applicant appeared in Court on that occasion, represented by Counsel, but herself made no application to vary or discharge the Restraint Order.
13. Miss Yasmin also appeared in Court on that day and complained that the Restraint Order against her was disproportionate. She did not on that occasion apply to vary or discharge it but on the 6th June 2012 she did make such an application. The Judge heard

the matter substantively on the 27th July 2012 and refused to vary either Restraint Order. As regards the Property, the variation was refused on the ground that it was a complicated issue of title best disposed of at the forthcoming hearing of the confiscation proceedings. The judge noted Mr Qureshi's complaint that the order was interfering with his financial affairs but said that there was little hard evidence of this. The Respondent argued that the transfer to Mr Qureshi was a tainted gift within sections 77 and 83 of the 2002 Act although, contrary to what is stated in Mr Chugg's subsequent witness statement (page 239), the judge did not expressly rule on this point. Mr Qureshi sought permission to appeal the judge's decision but this was refused by Eder J on 13 September 2013

14. The judge was, however, critical of the Respondent for having initially obtained the Restraint Order against the Applicant ex parte and without fully disclosing the position to the court. This seems to have come about because, having obtained the Restraint Order on the basis that the Property was vested in the Applicant, the Respondent subsequently realised that it was not. The Respondent's reaction to this realisation was that it simply did not bother to serve the Order or apply for a restriction.
15. In June 2012 a fraud prosecution against the Applicant and her daughter was started (page 239). The allegations related to dishonest claims for council tax benefit and housing benefit and money laundering. Both defendants produced defence statements in August 2013 and, as result of these, the Respondent decided that there was wider conspiracy involving Mr Qureshi, Mansoor Khan and others. In October 2013 therefore the Respondent sought and obtained a second Restraint Order against the Applicant which referred expressly to the Property. They also obtained a restraint order against Mr Qureshi which also referred to the Property. The orders were made on the 21st October 2013. No copy of the order made against Mr Qureshi is in the bundle but it founded the Respondent's restriction against title no. BK259653 and is the basis for its objection to the Applicant's claim for rectification.
16. At the same time the confiscation proceedings under section 6 of the 2002 Act contemplated by the committal of the Respondent to the Crown Court were making progress. The purpose of these was to ascertain the financial benefit derived by the Applicant from her criminal behaviour and to ascertain the value of all assets held by her. The value of those assets is called the available amount. The Court then orders the guilty party to pay to the prosecution a sum equal to the lesser of the financial benefit or the available amount. That Order is called the Confiscation Order: section 6(5)(b) *ibid*. Generally, payment of the Order is due when the Order is made but there is discretion in the Court making the Order to extend time for payment, such time cannot, in effect, exceed 6 months from the day on which the Order was made (section 11 *ibid*).
17. Confiscation proceedings are only available following the conviction of the defendant. The procedure to be followed where the prosecution asks for an Order is for the Court to direct the Prosecutor to prepare a Statement of Information. The contents of that statement vary according as whether the defendant has what is called a criminal lifestyle or not. Essentially the statement should contain information relevant to the benefit derived by the defendant from the criminal conduct. The statement should also address the interest of any third party in any of the property held by the defendant.

18. Following the prosecution's Statement of Information the defendant may be ordered to say whether he accepts any of the allegations it contains and, if he does not, to give particulars of matters relied on in his opposition. This is sometimes called a section 17 Statement. A failure to oppose may mean that the prosecutor's allegations are treated as conclusive on the point by the Court. In the present case the Applicant made a section 17 Statement on the 3rd August 2012.
19. Independently of the exchange of statements envisaged by sections 16 and 17 there is a power in the Court in section 18 to require a defendant at any time to give information relevant to the proposed confiscation proceedings or to the question of whether they should be brought. In the present case this power was exercised and resulted in a section 18 Statement by the Applicant of her assets and liabilities dated 25th May 2012.
20. When the fraud proceedings against Miss Yasmin and Mr Qureshi and others came on for hearing in July 2014, on the second day, Miss Yasmin and Mr Qureshi pleaded guilty. That plea was accepted by the prosecution on the basis that all charges against the Applicant in the fraud proceedings were dropped. This still left the offence under section 179 to which she had already pleaded guilty. In his sentencing remarks made on the 17th December 2014, the judge said that the time for bringing confiscation proceedings for that offence had long since expired. The Applicant was given a conditional discharge for the section 179 offence and the second Restraint Order made against her was discharged at the same time.
21. The other two defendants were sentenced for their part in the fraud case on the 17th December 2014. Both were given Community Orders.
22. In due course, on the 7th October 2015, a Confiscation Order was made against Mr Qureshi. The sum payable was £300,000.00 on the basis that the Property formed part of his free property: see section 82 of the 2002 Act. At that hearing the Restraint Order made on the 21st October 2013 was varied to permit the sale of the Property by Mr Qureshi. (See the judge's comment at page 302).
23. There was an objection to this from the Applicant, given that she had by now applied to the Land Registry to rectify the register to restore her ownership. This led to a hearing in front of the Judge on the 6th November 2015 for an application to vary the Confiscation Order. There were a series of adjournments and non-attendances by the Applicant but eventually, on the 5th February 2016, Judge Grainger decided not to vary the Order against Mr Qureshi. One of the considerations which influenced him was the existence of the present application for rectification.
24. Confiscation Proceedings against Miss Yasmin were dealt with on the 1st July 2016. The Judge refused to make the Order in the form requested by the Respondent. He accepted that the case for an Order was made out but invited discussion on its terms given that the amount of the benefit, as he found it, had been repaid by Miss Yasmin.
25. Pausing there, it might be helpful to summarise. There is an extant Restraint Order against Mr Qureshi but it does not prevent a sale of the Property by him. The second Restraint Order against the Applicant has been discharged. The first order seems not to have been formally discharged but there would seem to be no answer to an application for discharge under section 42(7) of the 2002 Act. There is an unsatisfied confiscation

order against Mr Qureshi. There is no confiscation order against the Applicant. The Respondent's restriction in the register derives from the Restraint Order against Mr Qureshi. Although their consent to the sale of the Property is required the Respondent cannot refuse it under the terms of the order as varied.

Issues for the Tribunal

26. The case raises the following questions:-

- (a) Was the Transfer of the property dated the 3rd September 2007 signed by the Applicant?
- (b) Was the Transfer defective in any other respect?
- (c) If the answer to (a) or (b) is yes, has the Applicant made her case for rectification of the register within Schedule 4 of the Land Registration Act 2002?
- (d) Do the Respondents have sufficient interest in the matter to oppose the rectification?

27. The hearing of the case started on the 22nd June 2017 with a time estimate of two days. It ran for a further 3 days as follows:

17th July – Half a day
25th July
28th July
15th August – Half a day

28. The Applicant has little or no knowledge of English. It was necessary for an interpreter to attend as the Applicant's main language is Urdu. On the 17th July the interpreter was not available. It was only possible to receive legal submissions on this occasion and the case was adjourned at lunchtime. The interposition of the interpreter made the process of verifying the Applicant's evidence in chief quite time consuming.

29. The Applicant did not have a legal representative but, as stated, her daughter presented her case over the five days. Her command of English was equal to the task and I was assisted by her presence. Both parties handed up further documentary evidence over the course of the hearing. This has all been added to the front of the trial bundle, should the case have to be considered elsewhere at a later date.

30. Mr Stemp of counsel appeared for the Respondent.

The case for the Applicant

31. The Applicant says she never executed the 2007 Transfer and the signature on it is not hers. Secondly, whether or not the signature is hers, the Transfer has not been properly attested. As such the registration was made on the basis of a form which was incorrect in a material particular.

32. Thirdly, when registration of the Transfer came to be made on 14 October 2010 neither the Applicant nor Mr Qureshi, as the assumed party applying for registration, were legally represented. This meant that their identity had to be proved to the satisfaction of the Land Registry by means of Form ID1. The Applicant does not deny that she completed Form ID1 but she says she did so under duress from her son, Mansoor Khan. She says this enabled Mr Qureshi to become the registered proprietor and this also meant that there was a mistake in the register.
33. The Applicant gave evidence at the hearing. She told me that she was born on the 23rd November 1935 in Pakistan. She came to the United Kingdom in 1970 with her son Rubinawaz. Her husband, Mohammed Anwar, had been in the United Kingdom since 1955, living first in Melton then in Woking and then in Epsom. The Applicant joined her husband in Epsom and they both moved to Slough in 1988 where they lived at 131 The Crescent. The Applicant did not live at the Property but two of her sons did.
34. Mohammed Anwar did not want his wife to work, but the Applicant did nevertheless find work for some of the time as a seamstress in Slough. The Applicant has four sons and one daughter. The sons are named:
- Rubinawaz Allie – aged 53
Mohammed Safraz Khan – aged 43
Niwarz Anwar – aged unknown
Mansoor Khan – aged 45
35. The Applicant told me she was living at No. 131 The Crescent in September 2007. Her son, Mansoor, was living at the Property. The Property had been bought in early 1991 and on 12th April 1991 title to it was registered in the name of Mansoor and Mohammed Khan. Mohammed Khan was described as another relative. The Applicant and her husband (now deceased) paid for the Property out of their savings and also borrowed some money from Skipton Building Society who took a first legal charge on the same date.
36. The Applicant said that in 2004, relations between Mansoor and her husband deteriorated. As a result her husband ordered Mansoor to transfer the Property to the Applicant. There is evidence to believe that this happened. A letter from the Land Registry dated 15th September 2004 with an official copy of the register records that the Applicant is now the registered proprietor of the Property (pages 377 and 453 of the Trial Bundle), but there is a conflict of evidence about the motive for the transfer. The Applicant says that the beneficial interest in the Property was hers and her husband's jointly even though the legal title was put in the name of her son. On the other hand, the evidence in Reading Crown Court was that the beneficial interest was in Mansoor Khan. This emerges from the witness statement made by Mr Qureshi when he applied to vary the first restraint order by letter dated 16th April 2012. His statement is not in evidence in these proceedings but there is a summary of it in the Judge's ruling made on 27th July 2012 (page 294).
37. The version of events according to Mr Qureshi is that Mansoor was experiencing marital difficulties and thought it might help if the Property was vested in the Applicant. A Trust Deed was signed by the Applicant but she was unwilling to take a transfer of the

Property with a view to helping her son in his marital plight. Nevertheless, the transfer was made and registered as described. In 2006, according to Mr Qureshi, the Applicant asked to have her name removed from the register, having realised that the transfer had proceeded against her wishes. The solution arrived at was that Mansoor, as beneficial owner, would procure the transfer of the Property to Mr Qureshi because Mansoor was indebted to Mr Qureshi as a result of an unspecified business transaction. The Property was to be in satisfaction of the debt.

38. A copy of the Trust Deed dated 8th July 2004 referred to was in evidence before the Tribunal but the Applicant denied she had signed it.
39. The Applicant has also produced evidence that the 2007 Transfer was not properly attested. The evidence consists of a witness statement by Mr Siminiuc to the effect that, although his name and address appears as the witness to both the transferor and the transferee's signature, he himself did not sign the transfer (as a witness should do) and did not see either party sign the transfer. Mr Siminiuc is a Romanian subject and currently resides there. The statement he has signed is in English but attached to it is a translation into the Romanian language. That translation has a certificate attached to it that it has been translated by a translator accredited by the Romanian Ministry of Justice. The original statement was handed up for inspection at the hearing on 17th July.
40. The Applicant also supplied a certified copy of Mr Siminiuc's current passport bearing a copy of his true signature. The Respondent challenged the content of the statement on the grounds that it did not contain a Statement of Truth and that the maker had not been called as a witness and that it had not been tested by cross examination. I will return to this when making findings of fact.
41. The Applicant accepted that she signed form ID1 on 11th October 2010 but says she did so under pressure from Mansoor who represented that he was taking a transfer of the Property into his name and that her identity needed to be verified for that purpose. The Applicant gave evidence that Mansoor was "fighting with her" from before 2010. In October 2010 she went to live with her daughter at 6 Wellesley Road, Slough. By that time, the Applicant's husband, Mohammed Anwar, had died.
42. On 4th February 2012 the Applicant obtained a non-molestation against Mansoor under Section 42 Family Law Act 1996. The Applicant handed up an extract from the victim and witness's manual dealing with the different forms of elder abuse in general terms. The extract is un-authored.
43. In her closing submissions, Miss Yasmin said that the evidence showed that the Applicant had beneficial ownership of the Property through her, with her husband, having paid the deposit when the Property was bought and repaid the mortgage to Skipton Building Society in 1999. Her beneficial share was unaffected by the registration of Mr Qureshi as proprietor.
44. Leaving aside the question of whether the repayment of money due to the mortgagor will always give the payer a beneficial interest in the Property, the point seemed to me to be peripheral to the issues in this case. The Tribunal is being asked to consider whether the legal title is vested in the wrong party. It is not part of its role to make any finding about the beneficial interest. Further, it is to be noticed that the registration of a forged

instrument does not always mean the beneficial interest has not passed: *Swift 1st Limited v Chief Land Registrar* [2015] EWCA 330

45. Assuming for the moment that the beneficial title remained with the Applicant, the registration of Mr Qureshi as proprietor would constitute him as bare trustee for the Applicant. It would be his duty to transfer the Property to the Applicant as she directs (see further Megarry & Wade (8th Edition) paragraph 12.008). For the Applicant to succeed on her case for rectification, she has to show a mistake in the register. Simply proving that the legal title is held on bare trust for the party seeking rectification does not, in my judgement, amount to a mistake.
46. The Applicant did not make a convincing witness. Her evidence on the question of the authenticity of her signature on the 2007 Transfer was little more than bare assertion. She was taken to other examples of her signature, notably on the letter to the Land Registry of 8th November 2015 (page 402). Initially, she said that it was not her signature. That letter was written in answer to some questions raised by the Land Registry about her application to rectify the register. When this was explained, the Applicant decided that it was her signature on the letter.
47. The Applicant gave evidence in the statutory declaration that she made on 1st October 2015 that she was in the United Kingdom between 2007 and 2010. In the Tribunal she said that she was not able to spend long periods in the United Kingdom. Her health meant she had to return to Pakistan periodically. I take into account that the Applicant is not literate in English and that all documents have to be read to her in Urdu. Even so, the impression of her evidence was that if something is repeated often enough, it must be accepted as the truth.
48. The Applicant provided a certified extract from her passport for the years 2004 to 2014 but some of the pages were missing. She was asked to provide the original but she said it had been stolen from her in 2013. The original passport belonging to her deceased husband was produced but this could not help with the Applicant's movements. These and other inconsistencies in the Applicant's oral evidence mean that no reliance can be placed on it at all.

The case for the Respondent

49. In his skeleton argument for the Respondent, Mr Stemp challenges the credibility of the evidence supporting the Applicant's claim. He draws attention to what he says are changes in the Applicant's case before the Tribunal and says that the Applicant's case is an attempt to subvert and frustrate the conclusion of criminal proceedings relating to a conspiracy to defraud concerning multiple properties, false identities and forged documents.
50. More particularly, the Respondent says that:
 - (a) the evidence does not support her finding that the signature on the 2007 Transfer is forged;
 - (b) the evidence that the 2007 Transfer was not properly witnessed lacks credibility;

- (c) the claim that form ID1 was signed under duress was only made at a late stage in the proceedings and, as a result, its genuineness is in doubt;
 - (d) the Applicant's evidence in the Tribunal about her interest in the Property is in direct contradiction to her evidence in the confiscation proceeding in the Crown Court and in contradiction to what was said in her application for pension credit on 2nd July 2010.
51. The Respondent called Ms McNab as a witness. She is employed by the Respondent as the officer dealing with the fraud investigation. Mr Chugg left the Council's employment sometime after October 2016 to take up a training contract with a law firm. Ms McNab has now taken on the financial investigation as well. She gave evidence of the history of the evasion of council tax at the Property and at 20 Wexham Road and at 6 Wellesley Road and other properties in Slough. Mr Chugg made two witness statements, dated 25th January 2012 and 18th October 2013, for the purposes of the restraint order proceedings. Mr Chugg also made two statements under Section 16 of the 2002 Act for the purposes of the confiscation proceedings. Mr Chugg did not attend for cross examination and I bear this in mind when assessing the weight of his evidence.
52. Mr Chugg also made a Statement of Case on behalf of the Respondent after the matter was referred to the Tribunal. This is dated 15th October 2016 and Ms McNab expressly adopted it as hers. Ms McNab gave her evidence as a competent professional but she had only limited knowledge of Mr Chugg's work and could not answer questions about the early part of the proceedings under the 2002 Act. Nor could she answer questions about the proceedings against the Applicant for breach of the enforcement notice. I bear in mind these limits to her evidence. The Applicant's case was put to Ms McNab in cross examination but in many points she was unable to offer any comment. Subject to this I accept her evidence.

Findings of Fact

53. It was accepted on all sides that it is for the Applicant to satisfy the Tribunal on the balance of probabilities that she is entitled to rectification of the register. The poor quality of the evidence on both sides makes the task of ascertaining the fact quite a delicate one. The confiscation proceedings are a large part of the dispute between the parties. However, the Tribunal can only look at the case as it is presented under Schedule 4 Land Registration Act 2002.
54. The Tribunal finds the following facts:
- i Freehold Title to the Property was registered in the name of Mansoor Khan and Muhammed Khan on 12th of April 1991 subject to a first legal charge dated the 2nd of April 1991 to Skipton Building Society. I base this on the official copy of the register of title number BK259653 at page 377 of the bundle.
 - ii Mansoor Khan is the son of the Applicant. Mr Chugg's statement to the Crown Court on the 21st of July 2012 (page 231) supports this and it was not denied by the Applicant.

- iii On the 17th of September 1996 Mansoor Khan changed his name to Naseem Hamed by a change of name deed (pages 41 – 42).
- iv On the 13th of August 2004 the Applicant was registered as proprietor of the Property, the legal charge to Skipton Building Society having been repaid on or about the 3rd of February 2000 (page 437). The Tribunal makes no finding about the beneficial interest in the Property.
- v A Transfer in form TR1 bearing the date of 3rd of September 2007 to which the parties are (1) The Applicant, (2) Qazi Mohammed Qureshi came into existence at some point prior to the 14th of October 2010. On that date the Land Registry gave effect to the Transfer by registering Mr Qureshi as proprietor.
- vi The Applicant has not satisfied the Tribunal on the balance of probabilities that the signature on the 2007 Transfer is not hers for the following reasons:
 - a. First, even if the Applicant could be regarded as a credible witness, it seems to me that something more than the ipse dixit of the named transferor some seven or more years after the event is needed to prove a forgery.
 - b. Secondly, there is no expert evidence that the handwriting is not hers. An application to adduce such evidence was made on the 9th August 2017, the last day of the hearing. The application was refused on the grounds that it was far too late. Reliance was placed on the Tribunal's Order dated the 2nd of June 2017 refusing a similar application and indicating that the Trial Judge could deal with a renewed application to file expert evidence. The Applicant has said that the report was delayed because it was impossible to obtain the original 2007 Transfer from the Land Registry. But that has been the position since this case was referred to the Tribunal
 - c. The Applicant's section 18 statement denies that she has any interest in the Property. That statement was prepared by a Mr Bokhari, a solicitor working for QB Aliyan who were acting for the Applicant. The Applicant disagreed with the content of this statement. She said she had given a different account of the position to Mr Bokhari. She said Mr Bokhari had been pressured by her son, Mansoor, to state that the Applicant had no interest in the Property. At the end of the statement, it is recorded that it was read to the Applicant in Urdu in full by Miss Yasmin. The Applicant denied that she had signed the statement. She alleged that Mansoor had met Mr Bokhari in a restaurant and made him change what was in the statement. Yet if the Applicant's solicitor committed such a serious breach of duty it was strange that she did not file corrective evidence or take the matter up with his professional body. I reject the Applicant's evidence on this point.
 - d. The evidence regarding the Applicant's whereabouts in the years preceding the 11th of October 2017 (being the date on which the form ID

I was signed by the Applicant in front of a solicitor) is equivocal. There is a stamp in the incomplete copy of the passport that the Applicant entered Pakistan through Islamabad Airport on the 3rd of July 2007 and again on the 28th of February 2010. Neither of these says anything about what happened thereafter and, in any case, the 2007 Transfer could have been signed at any point prior to the October 2010. I do not consider that the Applicant's presence in or absence from the UK has any bearing on the question of her signature

- vii On the balance of probabilities I find that the 2007 Transfer was not witnessed by Marian Siminuic. The Transfer bears his name and address but not his signature. I base this on the witness statement laid on the 7th of July 2017 by Mr Siminuic and on a comparison of the signature on the Transfer with that on his Romanian passport.
- viii The Respondent submitted that the statement did not bear the correct statement of truth and that Mr Siminuic was not available for cross-examination. The original sworn statement was brought to Court. The translated copy was signed in the presence of a notary public. The statement is headed with the words "Statement of Truth". It is plain from the statement, and from the email dated 11th of July 2017 from Mr Siminuic, which had the statement attached to it, that the maker was aware of the duty to be truthful and that it was being drawn up for the purposes of legal proceedings. Applying the approach set out in *Miller v MHLG* (1968) 2 All ER 633, the Tribunal is entitled to look at any material which has a probative value. Further, the signature on Mr Siminuic's passport is to the untrained eye quite different from that on the Transfer. I do not accept Mr Stemp's slightly formalistic submission that this evidence carries no weight.
- ix On the 11th of October 2010 the Applicant signed Land Registry form ID1 in front of a solicitor in Reading. There is evidence from the Non-Molestation Order made on 14 February 2012 against Mansoor that he was troublesome to the Applicant, but the only evidence that he pressured the Applicant to visit a solicitor to sign the form comes from the Applicant in her oral evidence to the Tribunal. That evidence is in direct conflict with her defence filed in the fraud proceedings in August 2013 by her then Counsel, Mr R Sones. On page 73 at paragraph (e) the Applicant says that she insisted to her son Mansoor that he remove her name as proprietor of the Property when she learned it had been put into her name as a device to defeat a claim by Mansoor's wife. She goes on to say that Mr Qureshi made himself known to her in 2007 and signed papers at his request "which would release her from being registered as owner". I cannot accept the submission made by Miss Yasmin in her closing speech that there was no intention to give the Property to Mr Qureshi at any time. These inconsistencies in the Applicant's recall of events, and her otherwise poor credibility as a witness, make it impossible to accept that on the balance of probabilities the Applicant signed form ID1 under duress. Even had she done so, it is far from clear it would have meant there was an error in the Register.

- x On the 7th of July 2017, after the hearing had begun, the Applicant applied to strike out the Respondent's case under Rule 9 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. The Applicant relied on a plea of non est factum with reference to the 2007 Transfer. I accept from my observation of the Applicant at the hearing that she has limited understanding of English and needs documents to be interpreted for her. However, the only evidence that she was deceived by the transaction is the Applicant's oral assertion in evidence and her statutory declaration of the 1st of October 2015. As has already been stated, the Applicant's credibility means that I do not accept that on the balance of probabilities she did not understand the transaction which the 2007 Transfer was effecting.

Legal Issues: mistake in the register

55. It is first necessary to consider the legal consequences of the deficiency in the attestation of the 2007 Transfer. Miss Yasmin drew attention to section 1 Law of Property (Miscellaneous Provisions) Act 1989. She said that an instrument could not be a Deed unless it met the requirements of that section. Section 1(3) reads:

1- Deeds and their execution.

-
- (3) An instrument is validly executed as a deed by an individual if, and only if—*
- (a) it is signed—*
 - (i) by him in the presence of a witness who attests the signature; or*
 - (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and*
 - (b) it is delivered as a deed*
- (4) In subsections (2) and (3) above "sign", in relation to an instrument, includes*
- (a) an individual signing the name of the person or party on whose behalf he executes the instrument; and*
 - (b) making one's mark on the instrument,*
- and "signature" is to be construed accordingly*

56. She further submitted that by section 52 of the Law of Property Act 1925 a Deed was needed to effect a conveyance of the legal title.
57. It is clear from sections 23-24 Land Registration Act 2002 that the proprietor of a registered title is given the same facility to dispose of his land, subject to the general law, just as if he were the proprietor under an unregistered title. This, in my judgement, entails compliance with section 52, as the Applicant submits.
58. There are, in the case of a registered title, at least two other constraints. First, the proprietor may be constrained by the existence of a restriction in the Register: section 26(2)(a) *ibid*. At the time of the registration of the 2007 Transfer there was no restriction. Secondly, the exercise by the proprietor of their powers only has effect if it complies as to form and content with the Rules. Rule 58 provides that a transfer of the registered estate must be in one of the applicable scheduled forms – in this case, Form TR1. Panel 12 of the scheduled form TR1 refers to execution. Rule 206(3) requires execution in such cases in accordance with Schedule 9 of the Rules. The form of execution in Schedule 9 for an individual requires the witness to sign and state their

name and address. There are therefore two, legally independent, requirements that a Transfer should be witnessed and that, if it is not, it is defective. I therefore accept Miss Yasmin's submission that the 2007 Transfer was deficient in the sense that it has been witnessed by someone but that person has incorrectly subscribed their name and address. The question which arises is whether this engages the provisions entitling the Applicant to an alteration of the Register.

59. This case is a reference from the Land Registry of the Applicant's application dated the 26th of April 2015 so paragraph 5 of Schedule 4 is relevant. I do not accept Mr Stemp's submission that the Tribunal is acting under paragraph 2 of Schedule 4. The Tribunal is, in effect, directing the Registrar in the exercise of the power in paragraph 5. Furthermore, the application seeks rectification meaning an alteration which prejudicially affects the title of the registered proprietor. In her written submissions Ms Yasmin made it clear that she relies on sub-paragraph (a) of paragraph 5. It reads:

*The registrar may alter the register for the purpose of—
(a) correcting a mistake,*

60. The meaning of the word 'mistake' was considered by the Court of Appeal in *NRAM Limited v Evans* [2017] EWCA CIV 1013. Kitchin LJ, at paragraph 56, drew a distinction between a Transfer which is void and a Transfer which is voidable. The registration of the former would mean there was a mistake in the Register. Registration of the latter would not entail a mistake in the Register. In the present case, Miss Yasmin submitted that the 2007 Transfer was a nullity. I accept it would be contrary to authority to regard an incorrectly attested Transfer as other than void: see Emmett and Farrand on Title (loose leaf edition), paragraph 20.015, explaining the position after the 31st of July 1990.
61. *NRAM Limited v Evans* also approved the explanation of the word 'mistake' in Ruoff and Roper: The Law and Practice of Registered Conveyancing at paragraph 46.009 and a similar passage at paragraph 7.133 of Megarry and Wade: The Law of Real Property (8th Edition). The test for a mistake in the Register is whether, had the Land Registry known the true facts at the time of the registration of the instrument, they would have done something different. In the loose leaf edition of Ruoff and Roper, issued in 2012, it is stated at paragraph 49.016.01 that "failure to use or to complete properly the correct form is one of the most common defects in applications and, therefore, one of the main reasons for the Land Registry having to raise a requisition".
62. In the present case, the requisition prompted by the inadequate attestation would have been for the party applying for registration to have the Transferor's execution correctly attested. It is far from clear that such a requisition would have produced any sort of protest from the Applicant at that time. I base this finding on:
- i The statement at paragraph (f) of the Applicant's amended defence case statement at page 73 that the Applicant signed papers transferring the title in the Property to Mr Qureshi in 2007.
 - ii The fact that on the hearing of the application by Mr Qureshi on the 27 July 2012 to vary the first Restraint Order, the Applicant was represented in court by Counsel and expressed no view on the evidence given by Mr Qureshi at that

time to the effect that the Property was his, legally and beneficially. It is, in my judgement, fanciful to suppose that the Applicant, in receipt of professional legal advice, did not understand what was happening.

iii The section 18 Statement served by the Applicant on the 25th of May 2012 in which any interest in the Property was disavowed (page 49).

63. On the balance of probabilities I find that the Transfer would have been correctly attested following the requisition and re-submitted to the Land Registry who would have proceeded to register it. It follows that the Land Registry would not have done anything differently in 2010, had the true position been explained to them and the correct procedure followed. I therefore conclude that no mistake was made when the 2007 Transfer was registered.

Respondent's standing

64. When the Respondent was told of the application to rectify on 26 November 2015 it objected notwithstanding that the Applicant was not contesting the entry of its restriction. The question which arises is whether the Respondent has standing in the Applicant's claim for rectification.

65. The Respondent said that if the Applicant were registered as proprietor there would likely be an application to have the Restraint Order made against Mr Qureshi varied to exclude from its terms the Property. If that happened, the Respondent would be bound to withdraw their restriction by application to the Land Registry. The Property would no longer form part of the available amount for Mr Qureshi.

66. In her written closing statement Miss Yasmin stated that the Respondent has no proprietary interest in the Property; that the Respondent's interest relates to the assets of Mr Qureshi and that the Respondent is not well disposed towards the Applicant. In this connection she draws attention to remarks made by Judge Grainger when he ruled on the confiscation proceedings involving Miss Yasmin.

67. When the Land Registry received the Applicant's application they exercised their power in Rule 17 of Land Registration Rules 2003 to serve a notice on the Respondent. There is no limit in that rule on the categories of person on whom a notice may be served. Furthermore, even if they had not served a notice, the Respondent would have been entitled to object to the application (if they had found out about it in time) by relying on Section 73 Land Registration Act 2002.

68. The point at issue is whether a person objecting to an application may only do so if they have a conflicting property right or interest. This was considered in *Wells v Pilling Parish Council* [2008] EWHC 556. In that case the Parish Council wished to rectify the registration of Mr Wells as proprietor of some foreshore with possessory title. The Council did not seek to have themselves registered: they simply said that Mr Wells had not satisfied the factual requirements for a possessory title. Lewison J cancelled the Council's application saying that the Council had not shown any private law of right to support its claim.

69. In my judgement matters are different when it comes to a restriction in Form EE as has happened here. Section 47 of the 2002 Act states that the Land Registration Act shall apply to a Restraint Order as it applies in relation to orders which affect land and are made for the purposes of enforcing judgements or recognisances. This takes the reader to Section 87 Land Registration Act 2002 which provides that someone with such an Order is to be regarded for the purposes of that Act as having an interest affecting the estate or charge in question, with the gloss provided by Section 47(3) of the 2002 Act that such an interest cannot be the subject of a notice in the register.
70. By this means the Prosecutor who has obtained a Restraint Order is driven, in the case of a registered title, to apply for a restriction if the Order is to have an effect as a matter of practical conveyancing. Rule 93(1) Land Registration Rules 2003 provides that someone with a Restraint Order has a sufficient interest to mean that they can apply for a restriction without the consent of the registered proprietor of the estate affected.
71. It is to be noticed that section 29 of the Land Registration Act, when dealing with the priority of interests against a registered estate, accords no significance to a restriction. In my judgement the legislative scheme is that a restriction operates according to its terms and not otherwise. As is stated in Ruoff and Roper *op.cit* at paragraph 44.001:
- “Whereas a notice confers priority, the protection afforded by a restriction is indirect. A restriction is an entry in the register regulating the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register. The existence of a restriction may therefore prevent the completion by registration of a disposition of a registered estate or charge. It may prevent a disposition of a registered estate or charge from taking priority over an interest that is not already protected.”
72. The commentary and section 29 make clear that a restriction achieves its purpose solely by the application of its terms and not in any other way. In the case of a Restraint Order, the purpose is to prevent the dissipation of realisable property by an alleged offender at the time of the criminal investigation. The Prosecutor or other public official (see section 42(2)) does not have to apply for a restriction but the restriction is available to assist or support that purpose.
73. The long title of the 2002 Act includes the words “An Act...to provide for Confiscation Orders in relation to persons who benefit from criminal conduct and for Restraint Orders to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct...”. I infer that Parliament considered there was a public interest in the recovery of the proceeds of crime and the restriction in Form EE is to be regarded as part of that process. In my judgement this means that on an application for rectification to remove the registered proprietor, public law considerations can be taken into account in determining whether a restrictioner has a sufficient interest to be heard on that application. The present dispute is not analogous to the dispute in *Pilling* and I do not think that case has any application.
74. On 7 July 2017 the Applicant asked the Tribunal to strike out the Respondent’s case under rule 9(3) (d) and (e) of the Tribunal’s procedural rules. That application was considered on the third day of the hearing and refused. In the course of this decision all of the points raised have been dealt with. I would mention one other aspect. The

application to register Mr Qureshi as proprietor in October 2010 was accompanied by a letter dated 13 October 2010 in which Mr Qureshi stated he was the Applicant's son and other inaccurate matters. This letter does not help with the question of whether the Applicant signed the 2007 Transfer or whether there was a mistake in the register.

Decision

75. There will an Order directing the Registrar to cancel the Applicant's application dated 1 May 2015. I would ask for submissions to the Tribunal on the question of costs no later than 24 November 2017.

Michael Wear



Dated this 27 October 2017

