



[2017] UKFTT 0808 (PC)

REF/2016/0901

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

BETWEEN

THOMAS SMITH

APPLICANT

And

PATRICK SMITH

RESPONDENT

Property Address: Plot 3, Cherry Trees, Greendale Lane, Clyst St Mary,
Exeter EX5 1AW

Title Number: DN667249

Before: Judge Owen Rhys

Sitting at: Exeter Magistrates Court

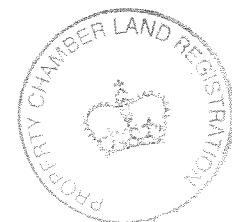
On: 11th October 2017

ORDER

IT IS ORDERED THAT the Chief Land Registrar shall give effect to the Applicant's application in Form AP1 dated 5th February 2016.

Dated this 25th day of October 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL



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Applicant representation: In person

Respondent representation: In person

DECISION

1. 5th February 2016 the Applicant applied to the Land Registry in Form AP1 to register a transfer into his name of part of the registered title DN447306 (“the Property”). The Property is registered in the Respondent’s name, and the transfer was effected by a TP1 purportedly executed on 16th January 2016 (“the Transfer”). The Applicant and the Respondent are brothers. On 18th May 2016

the Respondent objected to the application, on the grounds that he had not signed the Transfer – his signature had been forged. The dispute could not be resolved by agreement and was referred to the Tribunal on 31st October 2016. The land comprised in the Transfer is a plot which forms the most northerly part of the Property – approximately one-third of the total. It has been allocated the provisional title number DN667249. The Property was first registered in the name of the Respondent on 6th June 2001.

2. The Applicant contends that although the Property was registered in the sole name of the Respondent, it was purchased as a joint investment by himself, the Respondent and their brother Stephen. He says that they paid equally for the purchase price, and it was always intended that the title would be split three ways. He says that he has lived on the land since September 2004. Initially planning permission was refused, but eventually in September 2010 he was able to obtain planning permission for change of use to allow him to occupy his “plot” for residential purposes. He is from the Gypsy (so he describes himself) community and lives in a mobile home on the land. The decision to grant planning permission reflected the absence of any suitable alternative provision for him and his family in the area. He has subsequently obtained additional permission to allow his children to reside on site in their own caravans. He says that his brothers ceased to reside on site when planning permission was initially refused in 2005. Indeed, the Respondent gives an address in London as his service address.
3. The Respondent simply denies having signed the Transfer, and states that his signature has been forged. As it happens, neither party is able to read or write, but it is not alleged that the Respondent is unable to sign his name. Although of course the ordinary civil standard – proof on the balance of probabilities – applies, a court or tribunal must bear in mind the guidance given in such cases as Re H and others (Minors) [1995] UKHL 16 (see particularly Lord Nicholls at paras 72-75). Forgery is a serious allegation to make and must be appropriately proved.
4. Directions were issued by the Tribunal on 20th March 2017. These included a direction for the appointment of a single forensic handwriting expert to give an opinion on the genuineness of the signature on the Transfer. No such expert has

been appointed. The Applicant states that the Respondent has failed to co-operate by providing specimen signatures for use by the expert and therefore no such expert evidence could be obtained. It is a fact that, apart from the Respondent's Statement of Case, signed by him but prepared by his son, no disclosure has been given nor any witness statement relied on.

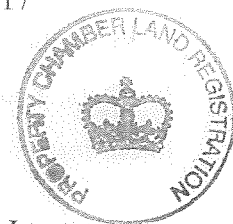
5. I heard oral evidence from both parties. The Applicant also gave extensive disclosure. It is accepted by the Respondent that the Property was jointly purchased by the three brothers. He agreed with this in his evidence before me, and that was specifically confirmed by him in the context of a planning inquiry conducted in 2005. At paragraph 6 of the Appeal Decision (page 42 of the Bundle) it is stated that: *"Although the land is registered in Patrick's name, the evidence for the appellant was that they (Patrick, Tom and Stephen – "the brothers") each paid equal shares (thirds) to purchase the land and consider it to be jointly owned."* The Respondent suggested that certain things were said in relation to planning issues which may not have been true, but also accepted orally that the brothers were joint owners. Indeed, he stated that he would have been perfectly prepared to sign over part of the Property to the Applicant, but still insisted that the signature on the Transfer was forged. There is further corroboration of the joint ownership in a letter from WMB Solicitors, dated 9th August 2005, produced by the Applicant. This was addressed to the Respondent, and records the registration of the Property in his name. The letter continues: *"The way is now clear for the Transfer document in favour of you and your two brothers, Thomas and Stephen, to be registered but before doing so they will need to call into the office to sign the documents that I mentioned to you."*
6. The Applicant's evidence was that he (or his wife who is literate) printed off the Transfer document from the Land Registry website, and the document was executed by both parties at the site. The signatures are witnessed, but the attesting witness – J Lee – was not called to give evidence. He denies that the Respondent's signature was forged, and claims that he was present when the Transfer was signed.
7. That, essentially, is the extent of the evidence upon which I am obliged to decide this case. I have concluded that the Transfer was validly executed by the

Respondent and is not a forgery. I reach this conclusion for a number of reasons, which include the following:

- a. Given the underlying fact that the parties are joint beneficial owners of the Property, a transfer of a one-third plot to the Applicant is entirely consistent with that joint ownership.
 - b. The solicitor's letter in 2005 demonstrates an intention on the part of the Respondent to effect a transfer into the Applicant's name.
 - c. It is therefore inherently probable that the Transfer was executed by the Respondent.
 - d. The Respondent has not taken the opportunity afforded by the Tribunal's directions to support his allegation of forgery by co-operating with a forensic handwriting expert.
 - e. Although the attesting witness was not called to give evidence, the Transfer is validly executed on its face and I am entitled to treat it as validly executed in the absence of any cogent contrary evidence.
8. I shall therefore direct the Chief Land Registrar to give effect to the Applicant's application dated 5th February 2016.

Dated this 25th day of October 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL