

[2018] UKFTT 426 (PC)

REF/2017/0724

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Marilyn Martin and Duncan Richard Lofts

APPLICANT(S)

and

Edward Howard

RESPONDENT

**Property Address: Land and buildings situate at and known as Archway Piggeries,
Playford, Ipswich
Title Number: SK 371316**

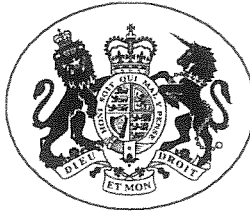
ORDER

1. The registrar is directed to give effect to the Applicants' application dated 4th August 2016 as if the Respondent's objection had not been made.
2. The Respondent shall pay the Applicants' costs on the standard basis, such costs to be subject to a detailed assessment if not agreed.

Dated this 16th July 2018.

N THOMAS
By order of the Tribunal





[2018] UKFTT 0426 (PC)

REF/2017/0724

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

**(1) MARILYN MARTIN
(2) DUNCAN RICHARD LOFTS
APPLICANT(S)**

and

**EDWARD HOWARD
RESPONDENT**

**Land and buildings situate at and known as
Property Address: Archway Piggeries, Playford, Ipswich
Title Number: SK371316**

**Before Judge NIGEL THOMAS
Sitting at: 10 Alfred Place London WC1
On: 2 July 2018**

**Applicant Representation: Mr S. Redmayne instructed by Watkins Steward and Ross
Respondent Representation: Mr Howard in person assisted by Mr R Scott**

DECISION

1. The Applicants are the executors of Charles Duncan Lofts (“Mr Lofts”) who died on 27 January 2017 probate to whose estate was issued out of the District Probate Registry at Newcastle Upon Tyne on 14 August 2017.
2. The Applicants applied for First Registration in form FR1 dated 14 August 2016 of the land known as Archway Piggeries, Playford, Suffolk (“the Property”) forming part of the estate of Mr Lofts; the Property together with other land had been conveyed to him by a Conveyance dated 21 March 1972 between (1) Louise Sheppard Hobbs (2) Midland Bank Ltd and (3) Mr Lofts. The total area of the land so conveyed was 11.47 acres of which the Property amounted to about 2.5 acres.
3. The Respondent, Mr E Howard, objected to registration of the Property by Letter of Objection dated 15 December 2016. The Property is depicted on various plans but for identification purposes only its general boundaries and extent are shown at page 5A of the bundle which is the plan annexed to the Applicants’ Statement of Case.
4. The reason for Mr Howard’s objection can be shortly stated namely that he says Mr Lofts orally gave him the Property in or about March 2013.
5. The circumstances of this alleged oral gift were that Mr Howard had occupied the Property (either in whole or in part) since 2011 having previously occupied land belonging to Andrew Knights (who gave evidence for Mr Howard before me). The Property however was nearer to his home and thus more convenient. From 2011 he used the Property to keep chickens belonging to his wife, cut wood and store logs, which he then sold to the public. From 2011 through to the present Mr Howard told

me he has used the Property in this way and the 2013 alleged gift saw no change in user and nor did its appearance alter to any material extent.

6. There was a shed on the Property but it was full of rubbish which both Mr Howard and Ms Pryke a witness for the Applicants, say they gradually cleared. Ms Pryke kept her horses in this shed from the time she occupied in 2011, and Mr Howard said he had given her permission to stable the horses there but which Ms Pryke denies. She told me she dealt with Mr Lofts' agents in this regard and no one else.
7. In or about March 2013 Mr Howard says that he and his wife attended at the Property with Mr Lofts. Between them they marked out the Property with a rope or similar. Mr Howard had said he wanted to buy the land but Mr Lofts replied to this suggestion by saying "it is for you, your wife and your son – you can have it for nothing. All you have to do is get a survey to show how much land there is". However Mr Lofts went on to impose a condition namely that should Mr Howard sell the Property then half the proceeds should be given to Mr Lofts' grandchildren.
8. Mr Howard arranged for his acquaintance Mr Andrew Knights to organise a survey when he together with Mr Knights and Mr Lofts attended at the site. Mrs Howard was also on site. Mr Knights in his witness statement states that this meeting took place in April 2013 but both Mr and Mrs Howard said they were in Thailand at that time. The meeting therefore must have taken place at the end of March or in May 2013. At that meeting it was agreed that a GPS survey would be carried out by a friend of Mr Knights, namely Mr Paul Saunders on 23 May 2013. This survey was duly carried out at which Mr Lofts again attended as he was interested in observing the process.
9. Mr Knights delivered three copies of the survey to Mr Howard who signed, he told me, two copies which he delivered to Mr Lofts. It is unclear what subsequently

happened to these two copies as after Mr Lofts' death his son Tom told me in evidence he had been through his father's papers but he had not found them.

10. Mr Howard retained his copy and that is to be found at page B.47. Mr Howard was unsure that this was the survey plan but Mr Scott who appeared with Mr Howard at the hearing thought that it was as did the Applicants. I am satisfied that this is the survey plan. Mr Howard told me he had not paid for the survey and I so find accordingly.

Representation and Witnesses

11. The hearing took place on Monday 2 July 2018 at Alfred Place. The Applicants were represented by Mr Redmayne of Counsel and Mr Howard appeared in person assisted by Mr R Scott, his Mackenzie friend.
12. Evidence on behalf of the Applicants was given by Brian Buckles, Tom Lofts (Mr Lofts' son) and Rachel Pryke. Evidence for the Respondent was given by Mr Knights, Mr Watling and Mrs M Howard.

The Law

13. Assuming that Mr Lofts had intended to make a gift of the Property – an issue to which I shall return later – was the alleged gift valid in law? As is well known for a gift (or other disposition) of land to be valid it must be in writing and signed by the donor: see Law of Property Act 1925 s. 53(1). This has been the case since at least the Statute of Frauds 1677. Any conveyance of the legal estate in land must be by deed: s. 52 of the Law of Property Act 1925.

14. No such documents exist in this case. The Respondent suggested that somehow the survey provided equivalent documentation. In my judgment that cannot be right. The survey plan was not signed by Mr Lofts and its existence showing boundaries is equally consistent with a licence agreement between the parties.
15. Therefore to succeed Mr Howard has to show that one of the rare exceptions to the rule with regard to the need for writing, has come into existence namely either a constructive trust or proprietary estoppel. The Respondent in his Statement of Case dated 4 November 2017 raises the estoppel argument. In both proprietary estoppel and constructive trusts cases in circumstances such as these detrimental reliance must be shown in order to rely upon the doctrine: see Megarry & Wade (8th ed) Law of Real Property.
16. However, the first question is to decide whether Mr Lofts had intended to make a gift of the Property putting to one side its lack of formal validity. On this there was a conflict of evidence. Mr Lofts' neighbour and friend Mr Buckles told me that he had become agitated and anxious thinking that he had made a mistake in allowing Mr Howard onto the Property. He told Mr Buckles "He thinks I've given him the land at Archway Piggeries" (which is how it was known). However he was clear he had not given Mr Howard the Property and Tom Lofts gave evidence to similar effect: Nevertheless, Mr Buckles was sufficiently concerned to alert Tom Lofts of Mr Lofts' agitation who then spoke to his father who assured him he had not given the Property to Mr Howard.
17. On the other hand Mr and Mrs Howard were adamant that he had done so and that the survey plan was commissioned accordingly. He did not however have a satisfactory explanation as to why Mr Lofts would want to give him the Property. He knew Mr

Lofts and had had business dealings with him such as cutting down trees on the land, clearing out a cottage and disposing of scrap and splitting the proceeds with Mr Lofts. The claim that Mr Lofts thought the Property was worthless, so he was prepared to make the gift, is not convincing. It must be remembered that Mr Lofts had imposed a condition on Mr Howard's version that if sold half the proceeds of the Property should be returned to his grandchildren.

18. I find however that Mr Howard did genuinely believe he had been given the Property but I do not find that Mr Lofts intended to gift the Property to him. By this stage of his life was Mr Lofts 87 years of age and his health was about to deteriorate significantly from early 2014 onwards. Mr Lofts was also worried that he might have done something he might regret by "giving" away the Property. There was certainly some confusion as to what had happened.
19. However in my judgment based upon the evidence of Mr Buckles and Tom Lofts I find that Mr Lofts did not intend to make, and had not made, a gift of the Property. I am sure there was a degree of confusion as to what was meant by the conversation but I am not convinced that Mr Lofts ever intended to or did give the Property to Mr Howard. The most he was prepared to grant was a licence to him during Mr Lofts' lifetime, and it was simply a case of Mr Howard misunderstanding the position. I also consider that there was an element of wishful thinking on Mr Howard's part and had he sat back and thought about matters objectively he would not have considered a gift had been made. The fact he gave no or no convincing explanation for the gift supports this conclusion.
20. I reject any suggestion that the imposition of the condition that half the proceeds of sale be handed back if Mr Howard sold the Property tends to prove a gift had been

made. Once again I think it was simply a case of a misunderstanding: Mr Buckles mentioned that Mr Lofts thought the Property may have been held in trust inter alia for his grandchildren and so the confusion may have had its roots in this.

21. Moreover Mr Howard candidly admitted in evidence that his reading and writing was not good and that he led a relatively simple lifestyle. Mrs Howard is Thai and she gave her evidence through an interpreter. All this in my judgment contributed to the parties misunderstanding their respective positions.
22. The plotting out of the boundaries and the generation of the survey plan is as a step in negotiations equally explicable as the basis for the grant of a licence to occupy the Property.
23. Finally I would refer to the evidence of Ms Pryke, which I accept, that she has been in occupation of part of the Property since before Mr Howard and she never regarded him as her landlord and indeed always paid her rent to Mr Lofts. If Mr Lofts had intended to give the Property then he would have told Ms Pryke to pay all or a proportion of her rent to Mr Howard. She had no relationship with Mr Howard so far as her occupation was concerned.
24. Even if I am wrong about these discussions between the parties and Mr Lofts had intended to make a gift then in my judgment it still fails by reason of lack of writing as required by s. 53(1) of the Law of Property Act 1925. Mr Howard cannot rely upon the exceptions to this requirement namely a constructive trust or proprietary estoppel because he suffered no detriment as a result of any representation made by Mr Lofts. Mr Howard specifically told me that nothing changed in how he used the Property after March 2013. He continued to use it as before and he made no alterations to the

- Property. The most he did was to clear the shed, together with Ms Pryke, but that was for his benefit.
25. Indeed his occupation of the Property rent free was for his benefit and I hold he suffered no detriment of a quality which would support a claim in proprietary estoppel or constructive trust.
26. One oddity arose during the hearing and that was as to Mr Howard's name. Both Mr Buckles and Tom Lofts told me that they knew him as Mr Whelan. They were in my judgment patently honest witnesses and I accept their evidence. They said that they were told by Mr Lofts, his housekeeper and gardener that Mr Howard's name was Mr Whelan. Mr Howard denies that he has ever gone by that name. Be that as it may Mr Lofts in my judgment thought his name was Whelan and whilst I do not consider that this fact is crucial to my decision I nevertheless bear it in mind.
27. I therefore dismiss the Objection and direct that the Chief Land Registrar enter the Applicants as the First Registered Proprietor of the Property under title number SK371316.
28. I have received by e mail on 15th July 2018 submissions from Mr Howard as to why he should not pay the Applicants' costs however I see no reason why the normal costs' order should not be made that costs follow the event and I order that the Respondent shall pay the Applicants' costs on the standard basis to be subject to a full assessment if not agreed.

Judge Nigel Thomas

Dated this 16th July 2018

N THOMAS

By order of the Tribunal

