

[2018] UKFTT 0609 (PC)

REF/2017/0208

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Edward Thomas & Ann Nilsson as joint Trustees in Bankruptcy

APPLICANTS

and

**(1) David Ben Boulter (2) Kathleen Ann Boulter (3) Kathryn Ann Kofoed as trustee of
the David Benn Boulter and Kathleen Ann Boulter Family Trusts**

RESPONDENTS

**Property Address: 76 Stour Road, Astley, Tyldesley, Manchester, M29 7HH
Title Number: GM132473**

ORDER

IT IS ORDERED as follows:

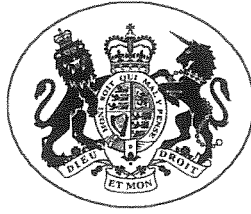
The Chief Land Registrar is to give effect to the original application dated 28 October 2016 to for the entry of a restriction as if the objections of the First and Second Respondents had not been made.

Dated this 5 September 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL





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1. The Trustees in Bankruptcy of the Second Respondent, Mrs Kathleen Boulter, have applied to HM Land Registry for the entry of a restriction on the register of title to leasehold property of which Mrs Boulter is the registered proprietor. She and her husband, the First Respondent and the joint registered proprietor of the property, have objected to the entry of the restriction and the dispute has been referred to the Land Registration Division of the First-tier Tribunal pursuant to section 73(7) of the Land Registration Act 2002.

2. The reference was heard at the Southampton County Court on 4th September 2018. The Applicants were represented by Mr Gill, a trainee solicitor from Paris Smith; the First and Second Respondents attended and were unrepresented. I am grateful to them for their assistance. The Third Respondent was not present and was not represented.
3. I have directed the registrar to give effect to the application as if the First and Second Respondents' objection had not been made. In the paragraphs that follow I explain my decision.

The factual background and the issue between the parties

4. The First and Second Respondents, Mr and Mrs Boulter, are the joint registered proprietors of a house in Manchester, 76 Stour Road, Tyldesey, although they live in rented property in Southampton.
5. On 5 April 2016 Mrs Boulter was made bankrupt. Her trustees in bankruptcy, in accordance with normal practice, wish to have the usual bankruptcy restriction entered on the title to the Manchester property. Mr and Mrs Boulter have objected. They say that by a declaration of trust dated 21 May 2013 they placed the property in trust and that Mrs Boulter has no interest in it.
6. The date of the trust deed is not in dispute. Mr and Mrs Boulter say that they made it following the tragic death of their son-in-law because they wanted to secure the property for their daughter and grandchildren.
7. The deed is very brief; it simply says that the property is held for "The Trustees", as defined in it, and the Trustees are defined as the trustees of two separate trusts, the David Boulter Family Trust and the Kathleen Boulter Family Trust. The Trustees are Mr and Mrs Boulter and their daughter Kathryn, who has been joined as Third Respondent but has taken no part in these proceedings.
8. There are then the trust deeds establishing those two separate trusts. The terms of the "David Trust", dated 21 May 2013, are that the income of the property is to be paid to Mr Boulter for his life, then to Mrs Boulter for her life, and subject to that for any of the beneficiaries as the trustees think fit. The beneficiaries are Mr and Mrs Boulter, their children and remoter issue, and any person or any charity notified in writing to the Trustees by Mr Boulter.
9. The "Kathleen Trust", of the same date, mirrors the "David Trust", so that Mrs Boulter has the first life interest and the right to nominate beneficiaries.
10. What is the effect of the three deeds dated 21 May 2013 I do not know and do not have to decide. The house appears to be put into two contradictory trusts, one paying

the income to Mrs Boulter and one to Mr Boulter. It may be that the idea was that they get half each, but that is not the effect of the deeds as they stand.

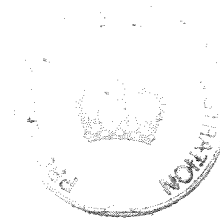
The application for a restriction

11. The trustees are entitled to have a restriction entered on the title to the property if Mrs Boulter has an interest in it. They say the declaration of trust of the property, which divests Mrs Boulter of her share in the beneficial title to the property, in 2013 three years before the bankruptcy, is liable to be set aside unless Mrs Boulter can prove her solvency, and that is certainly correct as a matter of law. Section 339 of the Insolvency Act 1989 enables the trustees to have set aside a transaction at an undervalue entered into at a relevant time, and the provisions of section 441 of the Insolvency Act 1989 have the effect that because this was a transfer of property to a family member (an “associate” in the terms of the Act) Mrs Boulter is presumed to have been insolvent unless she can show otherwise.
12. The Applicants say that this tribunal is not the correct forum for the determination of whether the 2013 trust deed is liable to be set aside, and that I should simply direct the registrar to enter a restriction and then leave the substantive issue to be determined in the insolvency proceedings.
13. The Respondents say that this tribunal is not the correct forum for the determination of whether the 2013 trust deed is liable to be set aside and that therefore I should direct the registrar to cancel the application.
14. I do not need to comment on that issue of jurisdiction, and it would not have been practicable in any event for me to make a decision about solvency since neither party wished to argue it before me. There is no need for me to go into that because in any event I find that Mrs Boulter has an interest in the Manchester property so that a restriction should be entered.
15. Mrs Boulter says that she has a “flexible life interest”, of which the trustees may divest her at any time, but I do not see any such power in any of the three deeds I have referred to above. Nor could Mr and Mrs Boulter point to such a provision. Accordingly she has, at the very least, on the terms of the deeds on which she relies, a vested life interest. Therefore even putting her case at its highest, she has a beneficial interest in the property to which the restriction must attach.
16. I have therefore directed the registrar to respond to the trustees’ application as if the Respondents’ objection had not been made.

17. I was asked at the hearing to make an order for costs and I have done so; I make it against the First and Second Respondents only since the Third Respondent has taken no part in these proceedings. The Applicants are within 28 days to send their bill of costs to Mr and Mrs Boulter, who have 28 days to respond if they wish to argue that the costs are unfair or inappropriate. I will then make a summary assessment.

Dated this 5 September 2018

Elizabeth Cooke



BY ORDER OF THE TRIBUNAL