



[2019] UKFTT 0100 (PC)

REF/2017/0110/0118

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

BETWEEN

PAULINE EDOLE

APPLICANT

and

HUGHES DONALD ALBERTY

RESPONDENT

Property Address: 78 Meanley Road, London E12 6AT

Title Number: NGL162762

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 22nd January 2019

Applicant representation: Mr Winston Jacob of Counsel instructed by
Edwards Duthie Solicitors

Respondent representation: Ms Ann-Marie Sealy

DECISION

The references

1. The Applicant is the daughter of Marie Alberty (“Mrs Alberty”), who died on the 1st July 2016. The Respondent and Mrs Alberty were husband and wife, but the Applicant is not the Respondent’s daughter. Mrs Alberty made a Will on 20th March 2006 (“the Will”), in which she appointed the Applicant and her sister Geonora Willis as her executrixes, and devised to them her one-half share in the

property known as 78 Meanley Road, Manor Park, London E12 6AT (“the Property”), registered under title number NGL162762. On 5th October 2016 the Applicant obtained a Grant of Probate to the Will. On 24th February 2017, the Applicant applied to the Land Registry to enter a Form N restriction against the title to the Property, to protect her interest as personal representative. A Form N restriction was entered on the same day. On 2nd May 2017 the Respondent applied in Form AP1 to cancel the Form N restriction. On 26th May 2017 the Applicant made a further application to the Land Registry in Form RX1 to enter a Form A restriction on the register. Each party objected to the other’s application, and on 28th November 2017 the Land Registry referred both disputes to the Tribunal. Both references were consolidated by Order dated 11th December 2017, and the matter came before me for hearing on 22nd January 2019. Mr Jacob of Counsel appeared for the Applicant, and Ms Ann-Marie Sealy, a relative of the Respondent, who is legally qualified but was appearing in a personal capacity, represented her uncle. I heard evidence from the Applicant, the Respondent and Mr Denys Baptiste on his behalf.

The background.

2. The background facts are agreed. On 22nd April 1971, the Respondent and Mrs Alberty were registered as joint proprietors of the Property. It is common ground that at the time they held the title as joint tenants both in law and in equity. In or around October 1986 it appears that Mrs Alberty instructed solicitors, H.C.L.Hanne & Co (“Hanne”) to effect a severance of the joint tenancy. On 24th October 1986 Mrs Alberty signed a notice of severance (“the Notice”) and on the same day Hanne sent the Notice to the Respondent at the Property by recorded delivery. The Post Office delivered the Notice to the Property on 27th October 1986, as appears from the AR form provided by the Post Office to Hanne. On 19th January 1987 Hanne applied to the Land Registry requesting that a Form 62 restriction should be entered against the title to the Property on the basis that the joint tenancy had been severed. On 22nd January 1987 the Land Registry entered a Form 62 restriction. A Form 62 restriction is essentially the same as the current Form A restriction under the Land Registration Rules 2003.

3. On 9th August 2016 the Respondent applied to the Land Registry in Form RX3 to cancel the Form 62 restriction, and also in Form DJP to remove Mrs Alberty's name from the proprietorship register on the grounds that she had died. On 13th September 2016, in response to certain requisitions raised by the Land Registry, the Respondent filed a form ST5 statement of truth in support of the application. This included the following statement: "*My late wife did not leave a will. Therefore, the beneficial interest protected by the restriction has not passed to any other persons or beneficiaries. In these circumstances my late wife's share /beneficial interest has passed to me as the sole surviving proprietor of 78 Meanley Road.*" On or around 23rd September 2016 the application was completed and the Form 62 restriction was removed from the register.
4. The Applicant's applications are designed to replicate the effect of the Form 62 restriction removed on the Respondent's application in August 2016. The Applicant is only entitled to the new restriction if she can establish that the Respondent holds the Property on trust for himself and Mrs Alberty's estate, of which she is the personal representative. That, in turn, is entirely dependent on whether the Notice was effective to sever the joint tenancy that existed between the Respondent and Mrs Alberty when the Property was first registered. Accordingly, the sole issue in this case – as both parties agree – is whether the joint tenancy was severed. If it was, Mrs Alberty's 50% beneficial interest survived her death and is now vested in the Applicant. If it was not, and the joint tenancy remained in being at her death, her undivided share vested in the Respondent as the surviving owner.

The relevant law.

5. The starting point is section 36(2) of the Law of Property Act 1925 ("the LPA 1925"). The proviso reads as follows:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

6. It is therefore open to a beneficial joint tenant to effect a severance simply by giving notice to the other joint tenant or tenants. Severance is a unilateral act which does not require the consent of the other joint tenant – Harris v Goddard [1983] 1 WLR 1203 at 1209B. At common law, a notice is regarded as having been validly served only if it has been received by, or has come to the attention of, the recipient. However, there are special provisions under the LPA 1925 which allow for the deemed service of notices, including a notice of severance. These provisions are contained in section 196, and the relevant provisions (as at 1986) read as follows:

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served.....

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abodeand if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.”

7. Although section 196(4) of the LPA 1925 refers only to registered post, the scope was extended to include recorded delivery letters by virtue of section 1(1) of the Recorded Delivery Services Act 1962. Service is treated as valid even if the intended recipient does not know of the notice and does not actually see it or know of it – see Blunden v Frogmore Investments Limited [2002] EWCA Civ.573. The lead judgment was given by Robert Walker LJ in which he considered the principles underlying deemed service provisions. He considered (see para. 28 of his judgment) that the main purpose of such provisions is (a) to establish “a fair allocation of the risks of any failure of communication”, and (b) “to avoid disputes on issues of fact (especially as to whether a letter went astray in the post or was accidentally lost, destroyed or overlooked after delivery to the premises of the intended recipient) where the true facts are unlikely to be unknown to the person giving the notice, and difficult for the court to ascertain.”

In Re 88 Berkeley Road [1971] Ch.648 a notice of severance was sent by recorded delivery to the other joint tenant at the property address. The sender herself took delivery of the notice while the intended recipient was absent from the house and he never saw it. Service was deemed to have been effected in accordance with section 194(4) of the LPA 1925.

8. Judicial views have been expressed – see in particular Neuberger J in Kinch v Bullard [1999] 1 WLR 423 – to the effect that a deemed service provision may not be relied upon where the person serving the notice deliberately takes steps to prevent the notice coming to the recipient’s attention. However, it would require an extreme case before the court would dilute the deemed service provisions – per Robert Walker LJ in Blunden v Frogmore Investments Limited at paras. 52-3.

The Respondent’s case.

9. His case, as set out in the Statement of Case, is that the Notice was not validly served and, consequently, the beneficial joint tenancy continued until Mrs Alberty’s death. That being the case, he became the sole legal and beneficial proprietor by survivorship, and the Applicant is not entitled to any restrictions in the relation to the Property. As to the purported service of the Notice, he pleads that he was not at home when the Notice was delivered, and therefore he did not receive it. Service of the Notice was therefore invalid. Further, he says that Mrs Alberty never told him that she had severed or intended to sever the joint tenancy and her actions in doing so amount to a “*fraud*”.

The evidence.

10. The sole issue in the case is whether the Notice was validly served, some 32 years ago. The Respondent gave evidence, but the other joint tenant, Mrs Alberty, is no longer alive. The Applicant, Mrs Alberty’s daughter, has no recollection of the relevant events. This dispute must therefore be resolved on the basis of Mr Alberty’s evidence, and the contemporaneous documents. These documents are held by the Land Registry, which has supplied copies. These consist of the following:

- (1) The Notice itself. This is dated 24th October 1986, is addressed to Mr Alberty at the Property, is signed by Mrs Alberty, and gives notice of her desire to sever the joint tenancy “*as from this day*”.
 - (2) The AR receipt. This records that a Recorded Delivery item addressed to the Respondent at the Property was delivered on 27th October 1986. There is no signature from the recipient but the form makes clear that this is not required in the case of a Recorded as opposed to Registered item.
 - (3) Letter from Hanne to the Land Registry dated 19th January 1987. This contains two applications by Mrs Alberty. First, to change her name as recorded on the register since she had married Mr Alberty. Secondly, an application for a restriction in Form 62 on the grounds that she had severed the joint tenancy. The letter reads: “*The Notice of Severance was forwarded to Mr Alberty by Recorded Delivery and we enclose a copy of the Notice together with the returned AR Form received from the Post Office which shows the notice was delivered on the 27th October 1986 and Mr. Alberty was the only person in the home on that day and received the notice.*”
11. The only oral evidence given with regard to the service of the Notice is that of the Respondent himself. He verified his Statement of Case on oath, and was cross-examined on it. The main potentially relevant evidence was that, according to him, he was not at the Property on the day the notice was served, because he was at work, and he never saw it. He also said that he was never told by Mrs Alberty that she had severed the joint tenancy, and that he was unaware that she had made a will when he applied to the Land Registry to remove the Form 62 restriction and Mrs Alberty’s name from the register.
12. He was cross-examined on his statement. He was asked about the statement of truth (ST5) dated 13th September 2016, which was sent to the Land Registry in support of his application to cancel the Form 62 notice – i.e to remove the protection given to Mrs Alberty’s estate. I have quoted part of that statement in paragraph 3 of this Decision. He stated unequivocally that his late wife did not leave a will and that her beneficial interest had passed to him as the sole survivor. It was put to him that this was a deliberate falsehood, since he had received a

letter from the Applicant's solicitors on 8th August 2016 stating in terms that she had left a will and that her half share had passed to the Applicant and her sister. He denied that he had received the letter before he had made the ST5 and denied that he knew of the will. When he was asked about his movements on 27th October 1986 – the date on which the Notice was delivered to the Property – he said that he could not remember. It was put to him that his statement of case (which he had verified) states that he was at work on that day. He said that this was wrong, he could not say definitely that he was. However, he refused to accept the suggestion that he might therefore have been at the Property when the Notice was delivered. He also refused to accept that he might simply not have read the Notice, although he accepted that he had difficulty in reading documents.

13. Neither the Applicant nor Mr Baptiste, both of whom verified their statements but were not cross-examined, could say anything about the events of 1986. Their evidence adds nothing to the principal issue in the case.

Conclusions on the evidence.

14. If the documents produced by the Land Registry are taken at face value, there can be no doubt but that the Notice was validly served. These documents were sent to the Land Registry, by solicitors, within three months of the delivery of the Notice to the Property, and there is nothing to suggest that they are not genuine. The AR notice bears a Post Office stamp and must be taken to be genuine. There is a statement in Hanne's letter to the Land Registry that the Respondent was alone at the Property when the Notice was delivered. This cannot be verified, of course, and was doubtless based on instructions from Mrs Alberty. However, the fact of the delivery of the Notice to the Property appears from the AR notice itself.
15. The Respondent's evidence that he did not receive the Notice is not, strictly speaking, relevant, given the deemed service provisions in the LPA 1925 to which I have referred. However, it is central to Ms Sealy's argument that the Notice was not validly served which I deal with in due course. I did not find the Respondent to be a reliable witness of truth. To be fair to him, I think that he had considerable difficulty in reading and fully understanding his own Statement of Case. He told me that he had not written it himself, but he had answered questions put to him by Ms Sealy and she had then incorporated it into the

document, which he had signed (and verified on oath). However, in cross-examination he “disagreed” with several key elements of his written evidence, and admitted to having difficulty in understanding documents. He was generally evasive when asked difficult questions, and untruthful at times. It was obvious that he must have known about his late wife’s will, and the Applicant’s claim to the Property, when he signed the ST5 which led to the removal of the Form 62 restriction. Indeed, it is probable in my judgment that receipt of the letter of 8th August 2016 – notifying him of the Will – led to the applications dated 9th August 2016 in Forms RX3 and DJP. The proximity of the events seems too coincidental. On any footing, by September 2016 he was clearly aware, and I so find, that the Applicant as Mrs Alberty’s personal representative was asserting an interest in the Property on the basis that there had been a severance. When he assured the Land Registry that there was no will and he was the sole beneficiary, he was deliberately deceiving it.

16. Nothing in the Respondent’s evidence casts any doubt on the effectiveness of the delivery of the Notice to the Property in 1986. Indeed, it may be noted that the Respondent never sought to persuade the Land Registry that the severance had not occurred. When he removed the Form 62 restriction, he did so on the grounds that he had inherited Mrs Alberty’s half share.

Conclusions

17. In my judgment, Mrs Alberty validly and effectively severed the joint tenancy in October 1986. No evidence has been put before me which casts any doubt on the authenticity of the documents, which speak for themselves. No evidence has been put before me to suggest that Mrs Alberty did anything to prevent the Notice from coming to the Respondent’s attention. Even if the Respondent had adduced evidence which raised such doubts, the absence of any corroboration, coupled with the inherent unreliability of the Respondent’s evidence as stated above, would have been powerful reasons for rejecting it – see, in this connection, Lumley v Robinson [2002] EWCA Civ. 94. As it is, however, there is no such evidence.
18. Having regard to the authorities which I have referred to above, the Notice was effectively and validly served. Even if the Respondent did not actually read the

Notice, as to which I make no findings, I do find that it was delivered to his address and the deemed service provisions under section 194 of the LPA 1925 are engaged.

19. Ms Sealy, in her closing arguments, submits that the service of the Notice was conditional upon Mrs Alberty having satisfied three conditions. She says that the second and third conditions – namely, that the Respondent was the only person in the house on 27th October 1986, and that he received the Notice – were not satisfied. This submission arises out of the contents of the letter from Hanne to the Land Registry dated 19th January 1987. For the reasons explained above, delivery of the Notice to the Respondent’s address is sufficient to effect good service, whether or not the Respondent was present on the day, and whether or not he ever read the Notice. Service was effected in accordance with the LPA 1925 and that is the end of the matter. Ms Sealy also submits that section 194 of the LPA 1925 can operate unfairly and ought to be repealed or in some way ameliorated. Even if that were true, it makes no difference. I must apply the law as is it stood in October 1986. In any event, I do not agree that the deemed service provisions operate unfairly either generally, or in this particular case. The rationale is clearly explained in the passage from Robert Walker LJ’s judgment in Blunden v Frogmore Investments Limited cited above. Indeed, the instant case demonstrates precisely why the rules exist. Otherwise it would be open to someone in the Respondent’s position to challenge a notice served some 32 years ago, and acted on by the Land Registry in 1987, when the only other party to the transaction is dead. There are very good reasons why simple proof of delivery is enough to demonstrate good service.

20. I shall therefore direct the Chief Land Registrar to cancel the Respondent’s application in Form AP1 dated 2nd May 2017, and to give effect to the Applicant’s application in Form RX1 dated 26th May 2017. I am also minded to award the Applicant her costs of the proceedings against the Respondent. The Applicant should serve a statement of costs on the Respondent within 7 days of receiving this Decision, and the Respondent may file and serve written submissions both as to the incidence of costs, and also as to the amount. The

Applicant may respond within 7 days thereafter, at which point I shall consider the file and make an order. There will be a summary assessment.

Dated this 30th day of January 2019

Owen Rhys



BY ORDER OF THE TRIBUNAL