



[2017] UKFTT 0365 (PC)

REF/ 2015/0281

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

SHIRLEY BEATRICE WHITWORTH

APPLICANT

and

(1) STUART WHITWORTH

(2) THE ROYAL BANK OF SCOTLAND

RESPONDENTS

Property Address: Little Incott Farm, Sampford Courtenay, Devon EX20 2SW

Title Number: DN312436 and DN312427

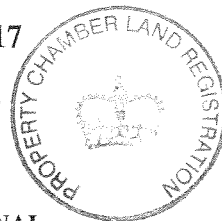
ORDER

The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant, Shirley Beatrice Whitworth to alter the registers of Title Numbers DN312436 and DN312437 to replace the First Respondent, Stuart Whitworth with the Applicant as registered proprietor and to cancel the charge registered in favour of the Second Respondent, Royal Bank of Scotland.

Dated this 10th April 2017

Michael Mitchell

BY ORDER OF THE TRIBUNAL





[2017] UKFTT 0365 (PC)

REF 2015 0281

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

SHIRLEY BEATRICE WHITWORTH

APPLICANT

and

(1) STUART WHITWORTH

(2) THE ROYAL BANK OF SCOTLAND

RESPONDENTS

**Property Address: Little Incott Farm, Sampford Courtenay, Devon EX20 2SW
Title Number: DN312436 and DN312437**

Before: Judge Michell

Sitting at: Exeter Magistrates Court

On: 6th and 7th February 2017

Applicant Representation: Mr Seward, lay representative

First Respondent Representation: Mr Howard, lay representative on 6th February and thereafter in person

Second Respondent Representation: Mr Allcock, counsel, instructed by DMH Stallard

DECISION

Cases referred to

Saunders v. Anglia Building Society [1971] AC 1004

1. Mrs Whitworth applied to HM Land Registry for alteration of two titles to land together called “Little Incott Farm”. The alteration Mrs Whitworth seeks is the substitution of her name for that of Mr Whitworth as registered proprietor of both titles and the removal from both titles of the charge in favour of Royal Bank of Scotland (“RBS”). Mr Whitworth and RBS have objected to the applications.

2. The parties were married until 1990. The divorce was amicable and they remained friends afterwards. In August 1992 Mrs Whitworth and her new partner, Mr Graham Storer together purchased Little Incott Farm, Sampford Courtenay. Little Incott Farm is a 4 bedroom bungalow with 15 acres of land and stabling for 15 horses. The Property is comprised of the land in two registered titles, DN312436 and DN312437. The purchase price paid for the property was £147,500 and the purchase was financed in part with a joint mortgage of £80,000. Mrs Whitworth and Mr Storer separated in July 2006 and the Property was then transferred into Mrs Whitworth’s sole name. The amount then outstanding on the mortgage was £48,000.

3. The Property was expensive for Mrs Whitworth to run and maintain. Mrs Whitworth had been receiving some income from charging for keeping horses at livery at the Property but after her accident in 2006, she lost that source of income. Her only regular source of income was Disability Living Allowance. Prior to the transfer, Mrs Whitworth had been helped to pay the bills by an inheritance she received but by 2008 she had spent all the money she had inherited. Mrs Whitworth looked at other properties but did not like anywhere she saw. As at May 2008 she was overdrawn on her bank account and was living on her overdraft. Her biggest monthly bill was the mortgage. In March 2008 Mrs Whitworth was notified that the interest only payments would go up in April 2008 to £285.40 per month.

4. Mr Whitworth said that it was at about this time that Mrs Whitworth began to consider ways in which she could continue to live at the Property. He said that she discussed with him the possibility of an equity release scheme. Mr Whitworth said that a commercial equity release scheme would not work and it would not have been possible for Mrs Whitworth to

have remortgaged. Mr Whitworth said that he had the idea of creating an “equity release situation”. He wanted to raise a pot of money to use to earn money with which he could provide an income for Mrs Whitworth and try to provide something for Mrs Whitworth and for their daughters later and set up a trust for them. He said that one day while out walking with Mrs Whitworth he spoke to her about his taking over the property, give her an income and try to provide something with what she had for herself and for the children later and set up a trust for them. He was thinking of raising money on the Property in order to buy properties to let and so earn an income for Mrs Whitworth. He did not mention the idea of borrowing to raise money to buy other properties because Mrs Whitworth would not have understood. Mrs Whitworth asked him if they could take out a joint mortgage on the Property but Mr Whitworth said this would not have been possible because of Mrs Whitworth’s credit rating. He said that they agreed that he would take control of the Property, re-mortgage, pay her £1,000 a month and ensure that their daughters were looked after if anything happened to him or to Mrs Whitworth and also ensure that Mrs Whitworth could stay living at the Property if anything happened to him.

5. Mrs Whitworth accepted in her oral evidence that the arrangements she discussed with Mr Whitworth prior to her signing the transfers included her receiving £1,000 a month and Mr Whitworth paying off her debts. These were £8,000 overdraft and £3,000 credit card debt. Mr Whitworth’s evidence was that Mrs Whitworth also owed £20,000 loaned to her by Loyds TSB. Mrs Whitworth said she did not know how Mr Whitworth was going to fund these payments. She said she did not know he was going to mortgage the Property. However, in cross-examination, Mrs Whitworth agreed that it was possible she knew at the time that the Property was going to be transferred to Mr Whitworth and that she had subsequently forgotten.

6. Mr Whitworth had started the process of applying for the credit facility in February 2008. A note on RBS’s file dated 8th February 2008 states
“Please do not instruct the solicitors until the broker/client advises us they are ready. The client is purchasing this house from his ex wife cash and then wants to capital raise with this mortgage when the deeds are in his name (about four weeks) therefore if solicitors start the searches they will struggle as the house is not yet in the clients name”.

On 13th February 2008 RBS telephoned Mr Whitworth's broker to say that they would be obtaining a valuation of the Property and that the broker needed to contact RBS as soon as the Property was registered in Mr Wentworth's name so that RBS could instruct solicitors. There is a note on RBS's file dated 10th April 2008 noting that the broker had called to say that Mr Whitworth had "almost finished all legal work" so wanted RBS to instruct solicitors to do the preliminary work for the mortgage. Mr Whitworth telephoned RBS on 24th and 25th April chasing the credit facility offer. A note on the RBS file for 25th April 2008 states

"Mr Whitworth called:

Chasing offer as he would like to complete as soon as possible. asked for exact time scale for offer as he needs to plan what he is doing with the money".

7. On 20th March 2008 Mr Whitworth borrowed £50,000 for Mr Peter Cole, a friend of both himself and of Mrs Whitworth and the money was paid into Mr Whitworth's First Direct bank account. On 26th March 2008 C&G wrote to Mrs Whitworth at the Property setting out the amount required to repay the mortgage on the Property as at 10th April 2008, being £47,778.56. Mr Whitworth's First Direct bank account was debited with £47,778.56 on 1st April 2008.

8. In 7th April 2008 Mrs Whitworth spoke to the Legal Services Commission (2LSC) about obtaining the release of a Legal Aid charge on the Property. The monies secured by the charge had been paid off in 2005 but the charge had remained on the register. The LSC wrote to her on 7th April 2008 apologising that the charge had not been removed and informing her that Land Registry had been asked to forward notice of discharge to her address. On 16th April 2008 Land Registry wrote to Mrs Whitworth telling her that LSC's application had been completed. Mrs Whitworth said she could not recall why she took steps to obtain the removal of the charge at this time.

9. On 16th April 2008 Lark Insurance Brokers wrote to Mr and Mrs Whitworth jointly at the Property notifying them that further to their recent instructions, Mr Whitworth had been added to the policy of insurance for the Property as a joint insured. Mrs Whitworth could not remember receiving this letter.

10. On 18th April 2008 Mrs Whitworth signed a transfer in form TR1 for each of the two titles, the effect of which was to transfer her titles to Mr Whitworth. The form TR1 comprises

a single sheet of paper with printed words on both sides. On the front there appears in bold lettering the title, "Transfer of whole of registered title". Box 8 on the front of the page states in bold letters "The Transferor transfers the Property to the Transferee". In box 9, an "x" was placed alongside the words "The transfer is not for money or anything which has a [monetary value]". On the rear of the form, the words "The Transferor transfers ..." appears at the top of page in box 10. The word "Transferee" appears three times in box 11. Box 13 is the box towards the bottom of the second page of the form and it contains the execution details. The wording in the box begins with "The Transferor must execute this transfer..." and the words "transferor", "transferee" and "transferee" then appear in the following text.

11. Mrs Whitworth said that she did not read the transfer documents before she signed them. She said that Mr Whitworth told her there was no need for her to read the small print. The document was presented to her on a clip board and she only saw the second page. She said that all she could recall about what was said in relation to the transfers was that the words "Trust Fund" were used. In cross-examination, Mrs Whitworth accepted it was possible that Mr Whitworth may have said words to the effect, "This is a transfer to set up the trust fund". When Mrs Whitworth was shown the words in box 13 of the form, she said that she thought the document was a transfer of the Property to set up a trust fund and that Mr Whitworth was going to be the trustee.

12. Mrs Whitworth's signature to the transfer was witnessed by her friend, Jane Parish. There was evidence as to the details of the execution of the transfer. Mr Whitworth telephoned Mrs Whitworth and arranged to visit her to have a document executed. Mrs Whitworth arranged for Jane Parish to be at her house when Mr Whitworth arrived. Mr Whitworth arrived at the Property. Mr and Mrs Whitworth and Jane Parish went into the kitchen. Mrs Whitworth sat at the kitchen table with Mrs Parish sitting beside her. Mrs Whitworth said that she asked Mr Whitworth if she needed to read the small print of the document and that he told her there was no need to do so. Jane Parish did not read the document. Jane Parish said that Mrs Whitworth called her and asked if she would mind witnessing Mrs Whitworth's signature because Mr Whitworth wanted to set up a trust fund for Mrs Whitworth's daughters.

13. Mr Whitworth sent the TR1s to Land Registry for registration on 18th April 2008. The application fee of £100 was paid by a cheque draw on the private account of Mrs Paula

Felton, a solicitor then with the practice of Neves Solicitors in Milton Keynes. On 21st April 2008 Land Registry wrote to Mr Whitworth returning the TR1s and stating that the application for registration could not be accepted because Mr Whitworth had not provided evidence of identity. Land Registry stated that Mr Whitworth had to provide evidence of identity for himself and for Mrs Whitworth in form. ID1. Mr Whitworth sent the TR1 back to Land Registry with the ID1 forms signed by Paula Felton. The ID1 forms are dated 22nd April 2008. The form relating to Mrs Whitworth includes a certificate by Paula Felton that Mrs Whitworth had produced to her original evidence of identity being a cheque guarantee card and a utility bill less than 3 months old. The form also included a photograph of someone being or closely resembling Mrs Whitworth signed on the back by Paula Felton below the words "I confirm that this photograph is a true likeness of the person who provided the evidence set out in panel 3 above which I have inspected". Mrs Whitworth did not recall meeting Mrs Felton. She was certain that she did not. Mrs Felton is a solicitor who was at that time based in Milton Keynes. Mr Whitworth accepted that Mrs Whitworth did not travel to Milton Keynes to see Mrs Felton and that Mrs Felton did not travel to Sampford Courtenay to meet Mrs Whitworth. Mrs Felton was a person Mr Whitworth knew and did business with. On the evidence, it is difficult to see how Mrs Felton could properly have signed the ID1s. However, since it is accepted that Mrs Whitworth did in fact sign those forms, the concern about whether the ID1s were properly signed is not relevant to my decision.

14. At the time of the transfer, the Property was worth about £675,000. The transfer was registered on 24th April 2008 and since that date Mr Whitworth has been the sole registered proprietor.

15. Mr Whitworth charged the Property to RBS by a mortgage dated 2nd May 2008 to secure a credit facility of £440,000. He then repaid £50,000 to Mr Peter Cole. Mr Whitworth on the same day made repayments of his credit card and loan debts of £51,505.52.

16. On 23rd May 2008 Mr Whitworth paid £28,831.07 from his account with RBS into Mrs Whitworth's account. Mrs Whitworth's account was then overdrawn to the amount of £7,983.81. After the payment into Mrs Whitworth's account, £20,847.26 was paid out to pay "LTSB personal loan" and the balance cleared the overdraft.

17. From about 28th March 2008 Mr Whitworth sent regular sums of money to Mrs Whitworth, who remained living in the property. The amounts were of the order of £1000 a month increasing to £1,500. The payments stopped in June 2013. Mr Whitworth sent Mrs Whitworth a total of about £93,265 over the period March 2008 to May 2013.

18. Mr Whitworth said that within a few months of the transfer, there was a collapse in the property market which stopped any prospect of his getting a further mortgage to get buy to let properties. He does not seem to have used any of the £440,000 credit facility from RBS to buy a property. It appears Mr Whitworth invested some monies in an investment vehicle called "Purple Cloud Investments" (some £168,000 being paid by him to Purple Cloud between September 2008 and May 2009). He also loaned some monies to a Mrs Jo Beech. However, a full explanation of what happened to the money did not appear from the evidence.

19. Mr Whitworth stayed within the limit of £440,000 on his credit facility with RBS until July 2013 when the limit was exceeded for the first time. In June 2013 Mr Whitworth called Mrs Whitworth to tell her that he could no longer make the monthly payments. By this date Mr Whitworth had paid Mrs Whitworth a total of £94,765 by monthly instalments.

20. Mrs Whitworth says that she only discovered the Property had been registered in the name of Mr Whitworth in 2010 when her new partner, Mr Seward carried out a search of the register. Mrs Whitworth wrote to HM Land Registry on 20th November 2010 asking if Land Registry could advise her if there were any "transfer agreements" signed by her "authorizing sole ownership" in Mr Whitworth's name. In the letter, Mrs Whitworth wrote

"Following a permanent disabling accident in 2006, my ex-husband volunteered to take over the existing mortgage of £48,000. However, to my knowledge, I never agreed to transfer ownership to him as sole owner".

Having learned in 2010 that Mr Whitworth was registered as the sole proprietor, Mrs Whitworth did not inform Mr Whitworth or RBS until 2013 that it was her case that the Property was not validly transferred to Mr Whitworth or should not have been so transferred.

21. Mrs Whitworth said that the only words she could recall from when she signed the TR1 were "Trust Fund". She accepted in cross-examination that Mr Whitworth might have said "This is the transfer to set up the trust fund". When Mrs Whitworth in cross-examination was shown the TR1 and the words "The Transferor transfers...", she accepted

that she thought the document was a transfer to a trust fund and that Mr Whitworth was going to be trustee.

22. Mr Whitworth's case is that Mrs Whitworth knew that by signing the TR1 she was allowing Mr Whitworth to take over the Property in order to re-mortgage it and to allow Mrs Whitworth to live there for her life and that after his death, it would go to their daughters. Mr Whitworth did make a will providing for the Property to pass to the daughters after his death.

23. Mrs Whitworth relies on the plea of non est factum and says that as that doctrine applies to the transfer, the transfer is void.

24. The essence of the doctrine of non est factum is that the person signing believed that the document he or she signed had one character or one effect whereas in fact its character or effect were different. It only applies where the effect of the document is different in substance from the effect the person signing it thought it would have. There must be a "radical" or "fundamental" or "serious" or "very substantial" difference – see *Saunders v. Anglia Building Society* [1971] A.C. 1004 at p.1017 per Lord Pearson, p. 1021B per Viscount Dilhorne, p. 1026 per Lord Wilberforce. The plea of non est factum cannot be relied upon where the person signing the document has been careless – see *Saunders v. Anglia Building Society* at p/ 1019E per Lord Hodson, p. 1023A per Viscount Dilhorne, p.1027B per Lord Wilberforce, and p. 1034D-E per Lord Pearson.

25. I find that the transfer is not void under the doctrine of non est factum for the following reasons.

26. Firstly, I find that Mrs Whitworth knew that she was signing a transfer of the Property to Mr Whitworth. I do so for a number of reasons:-

(i) The fact that Mrs Whitworth applied to remove the Legal Services Commission charge from the register is a clear sign that she knew the Property was going to be transferred and re-mortgaged. There was no reason for her to have applied otherwise. Mrs Whitworth then received documents confirming that the charge had been removed.

(ii) The transfer document itself could not be clearer in stating that it was a transfer by Mrs Whitworth to Mr Whitworth.

(iii) It is not inherently improbable that Mrs Whitworth agreed to the arrangement under which she was to transfer the Property to Mr Whitworth to enable him to raise finance with which to generate an income to pay to Mrs Whitworth, while permitting her to continue to live there during her lifetime and passing it on to their daughters after his death. Mrs Whitworth trusted Mr Whitworth with whom she had been on good terms since the divorce. Mrs Whitworth was exposing herself to the risk that the property might be repossessed if Mr Whitworth could not keep the terms on which the finance was provided but Mrs Whitworth herself risked the Property being repossessed if she could not obtain an income to pay her own mortgage.

(iv) Finally, Mrs Whitworth's own evidence is consistent with her having known at the time that there was to be a transfer of the Property to Mr Whitworth. She accepted that Mr Whitworth may have said to her that it was a transfer, albeit one intended to set up a trust fund. In my judgment, Mrs Whitworth did know that she was signing a transfer of the Property to Mr Whitworth, albeit that she may have thought she was doing so in order to create some form of trust. The fact that Mrs Whitworth thought that the transfer was a step in creating a trust does not mean that the documents she signed were different in substance from the effect she thought they had. Mrs Whitworth signed the transfers knowing that they were transfers of the Property to Mr Whitworth.

27. Secondly, the evidence does not establish that Mr Whitworth fraudulently misrepresented to Mrs Whitworth that the transfer was something other than a transfer. Mrs Whitworth said that all she knew was that the words "trust fund" were used but she accepted that Mr Whitworth may have told her it was a transfer in order to set up a trust fund.

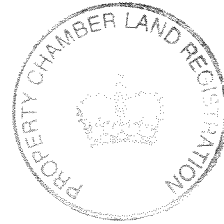
28. Thirdly, Mrs Whitworth cannot rely on non est factum because she did not take care to find out what the document was. She could have read it (if she did not). The document was on the table in front of her. It is a document in which the word "transfer" appears several times in different places. There is no evidence that Mr Whitworth did anything to prevent Mrs Whitworth from reading the document.

29. As Mrs Whitworth's case is based on non est factum and she has not established that she may rely on this doctrine, her application fails. Accordingly, I shall direct the Chief Land Registrar to cancel the application.

30. Mrs Whitworth's application has failed. My preliminary view is that Mrs Whitworth must pay the costs of both Mr Whitworth and RBS. The usual rule is that costs follow the event or in other words that the losing party pays the costs of the winning party. I am aware of no reason why the ordinary rule ought not to apply in this case. Any party who wishes to submit that I should make some different order as to costs should serve written submissions on the Tribunal and on the other parties by 5pm on 24th April 2017.

DATED this 10th April 2017

Michael Mitchell



BY ORDER OF THE TRIBUNAL