REF/2016/0004

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Isaac Sholanke Oshodi

APPLICANT

and

(1) Yasmin Bolarinwa (2) Bank of Scotland plc t/a Birmingham Midshires (3) London Borough of Lambeth Living Ltd

RESPONDENTS

Property Address: Flat 5 Bishops House 200 South Lambeth Road London SW8 1UT
Title Number: TGL220349

Decision

Introduction

1. In April 2003 the Applicant Mr Isaac Oshodi bought his leasehold flat, Flat 5 Bishops House London SW8, under the right to buy legislation and with the assistance of a mortgage from IGroup Services Limited (now GEMoney). In June 2004 he went to Nigeria, returning for two months in 2009 and again in March 2013. On 30 May 2006 the leasehold title was transferred to the Applicant's friend Mr Wahab Adebisi Bolarinwa. The Applicant says that this was done without his consent and that he knew nothing of it until after his return to the UK in 2013. On 8 July 2015 he applied

to HM Land Registry (on Form AP1 dated 22 June 2015) to have the register altered so as to restore his name as registered proprietor. The First and Second Respondents have objected to that application and so the matter has been referred to this tribunal under s 73 of the Land Registration Act 2002.

2. The reference was heard before me in Alfred Place on 24 April 2017. The Applicant was represented by Mr Hope of counsel, the First Respondent by her solicitor Peter Thomson and the Second Respondent by Mr Fowler of counsel; I am grateful to all three advocates for their assistance. The Third Respondent did not attend and was not represented.

3. The Respondents to the application are three. The First Respondent is Mr Bolarinwa's daughter, Yasmin Bolarinwa; Mr Bolarinwa died on 10 May 2014 in a road traffic accident and she is his administratrix following a grant of Letters of Administration dated 14 April 2016. She is 27, so in 2006 she was 16; her evidence is that she knew nothing of the transfer of the flat in 2006, and has not been able to find any records of it among her father's belongings. She puts the Applicant to proof of his claim to have been the victim of fraud.

4. The Second Respondent is Mr Bolarinwa's mortgagee, and like the First Respondent it requires the Applicant to prove his case. Should he do so, its position is that if the Applicant's name is restored to the register then by subrogation it should take over the rights of the lenders to the Applicant whose debts were paid on Mr Bolarinwa's purchase. Subrogation is the process whereby if X pays Y's debt to Z, in circumstances where no gift is intended, X is entitled to Z's rights against Y.

5. The Third Respondent is the landlord, whose interest is only in the unpaid service charges.

6. In the paragraphs that follow I first summarise the evidence relating to the alleged fraud, and then explain my decision to direct the Chief Land registrar to cancel the Applicant's application for alteration of the register. Finally I comment on the Second Respondent's claim to subrogation, on which no decision is required since the Second Respondent's position is unchanged as a result of my decision.

The evidence about the alleged fraud

7. The Applicant has the burden of proof. There is no-one else able to give evidence about the transfer of the flat in 2006, but some information can be gleaned from the conveyancing file of Howards, who acted for the vendor – purportedly the Applicant – in 2006. There is also some limited evidence about Mr Bolarinwa himself.

The Applicant's evidence

8. The Applicant made a statutory declaration on 7 January 2014, which was sent to the Serious Organised Crime Agency and the police with letters from his solicitor asking for an investigation of the fraud; he made a witness statement in these proceedings on 20 January 2017. The witness statement and the statutory declaration cover different ground and were both treated at the hearing as his evidence in chief. In the course of cross-examination the Applicant added further information which had not been mentioned in his written evidence.
9. The Applicant's evidence is that until he went to Nigeria in 2004 he worked as a mini-cab driver. He says he went to Nigeria for an emergency visit on 26 June 2004 because his mother was very ill. When he left he asked his friend Mr Bolarinwa – who drove him to the airport – to look after the flat for him. He was planning only a short visit, but he asked Mr Bolarinwa to get in a tenant if he was not able to return when he planned, so as to cover the mortgage payments, and to keep any excess for himself as payment for looking after the flat; he gave Mr Bolarinwa some paying slips so that he could make the mortgage payments. He bought a return ticket, planning to come back on 27 July 2004; but in the event he stayed because of his mother's continued ill-health, and Mr Bolarinwa found a lodger as instructed; they stayed in touch by telephone.
10. The Applicant says that his mother died in November 2004. His evidence is that there is no compulsory registration of death in Nigeria and that he did not register the death. His witness statement goes on to say that while he was caring for his mother he became unwell and was diagnosed as suffering from typhoid fever. His witness statement and statutory declaration both say that the medical condition "lingered for a couple of years" and made him unfit to fly, so that he was unable to get back to the UK before May 2009.
11. On 31 May 2009 the Applicant arrived at Heathrow and went to Mr Bolarinwa's home (in Fentiman Road, SW8) where he stayed until his return to Nigeria on 8 July 2009. Mr Bolarinwa's wife was very ill in hospital, so they visited her. Mr Bolarinwa told him that there was a lodger in the flat who was doing fine with the rent. They visited the flat twice, and saw the lodger's belongings there; Mr Bolarinwa assured the Applicant that his own belongings (left in the flat when he went away in 2004) were in a friend's garage apart from the fridge and washing machine which were still in the kitchen.

12. While the Applicant was in England Mr Bolarinwa's wife died, but the Applicant's witness statement does not mention this. In July the Applicant went back to Nigeria to continue his homeopathic treatment and to complete the cultural rites in connection with his mother's death.
13. The Applicant brought his passport to the hearing, having disclosed copies in the course of the proceedings; following examination of the stamps in his passport, not all of which can easily be read on the copies, it is accepted by the First and Second Respondents that the stamps match the dates he gives for his travels.
14. In 2012 Mr Bolarinwa stopped answering his phone. The Applicant was by then feeling better and so, being anxious about the flat, came back to England. This time he did not go to Mr Bolarinwa's house. His statutory declaration gives some detail about his visit to the flat. It took him a couple of weeks to get access because he did not have the fobkey for the main door. When he finally got in to the building the tenants in Flat 5 initially would not open the door to him; when he got to speak to the two women living there they told him that Mr Bolarinwa was their landlord. There was a conversation with the tenant of Flat 3 who remembered him and confirmed to the tenants of Flat 5 that the Applicant was their landlord.
15. In cross-examination the Applicant said that after he met the tenants he went round to Mr Bolarinwa's home twice with two friends; the first time Mr Bolarinwa was out. Before the next visit he found out that the property has been transferred to Mr Bolarinwa when a friend looked it up on the internet. He tried again (at the end of March) to visit Mr Bolarinwa at his home, again with his friends, and on that occasion Mr Bolarinwa saw him and shouted "go away, go away, I will call the police", so he left.
16. The Applicant's next move was to write to HM Land Registry on 14 May 2013 to say that the transfer to Mr Bolarinwa had been fraudulent. He copied that letter to his MP, Kate Green, to the Serious Organised Crime Agency, to Boris Johnson as Mayor of London, to the Metropolitan Police Force, and to Mr Bolarinwa not at his home in Fentiman Road but at Flat 5 Bishops House.
17. The Applicant mentioned at the hearing that he had applied for a restriction to be entered on the title to the property, and it is apparent from the papers in the trial bundle that he did so on 25 October 2013; a restriction was entered on 28 October 2013 preventing any disposition of the property. His solicitors wrote to the police in January 2014 as I mentioned above (paragraph 8). They also wrote to the Solicitors

Regulatory Authority and eventually obtained the file of the solicigtors who had purported to act on the sale in 2006, Howards, which had been closed following Law Society intervention.

18. It is apparent from email correspondence in the hearing bundle between the Applicant's solicitors and a DS Boyce that the police investigation was closed when Mr Bolarinwa died. There is reference to a police report in some of the copy correspondence in the bundle but no copy of that report.

19. The only other witness was Ms Deborah Jaffe, a graphologist and Scientific Handwriting Analyst, whose evidence was not challenged and so she did not attend the hearing. She examined eight signatures supposed to be of the Applicant on the transfer of the flat in 2006 and other conveyancing documents and correspondence. She concluded that there was strong evidence that seven of the eight (including the transfer) were written by the same author, and that there was moderate evidence that the eighth was written by the same author again. She compared those eight signatures with samples provided by the Applicant's solicitors of his own signature, on documents such as his passport and driving licence, and concluded that there was very strong evidence that he was not the author of the eight questioned signatures. It is obvious to the untrained eye that the signature that is supposed to be that of the Applicant on the conveyancing documents is quite unlike his sample signatures. Ms Jaffe was not asked to compare he questioned signatures with Mr Bolarinwa's handwriting and so gave no evidence as to whether he might have been the author.

20. On 20 June 2015 the Applicant made his application to the HM Land Registry for alteration of the register.

Howards' conveyancing file

21. No-one was assisted at the hearing by the state of the bundle. Three large files of papers were produced; neither Mr Hope nor the representatives of the First and Second Respondents had them (from the Applicants' solicitors, Samuel Ross) more than a matter of hours before the hearing. I understand that this was because the Applicant's solicitor has been ill. Papers in the bundles were arranged haphazardly, much of the content should not have been included, and the index was of almost no assistance. As a result none of the advocates at the hearing – through no fault of their own – had been able to become familiar with the bundle or to have a clear sense of what was in it. That is why I am not sure of the provenance of some of its contents.

22. The second volume of the bundle included papers copied from Howards' conveyancing file. I believe that that is the source of papers showing that in July 2005 – before the transfer to Mr Bolarinwa – GE Money (the Applicant's mortgagee) took possession proceedings and obtained an order for possession. A form applying for judgment to be set aside, in January 2006, is on the file, apparently signed by Mr Bolarinwa for the Applicant.
23. Turning to the conveyancing paperwork itself, the solicitor who signed the client care letter was Mr Adetokunbi Oyegoke; no evidence was given as to his whereabouts or as to any attempts made to find him. Instructions to Howards were purportedly given by the Applicant but signed, as noted above, with a signature that is not his.
24. There are at least three copies of the contract for the sale of the property in the bundle. There is a copy of an undated version purportedly signed by the Applicant showing a printed price of £125,000. The version signed by Mr Bolarinwa and dated 30 May 2006 has that price deleted and the figure of £160,000 inserted manually.
25. Correspondence on the conveyancing file shows that the purported Mr Oshodi authorised the repayment of the charges registered against the title to the flat (on which more below) and of an unsecured loan of £41,260.99 to Beulah (UK) Ltd, of which again more below He also authorised a payment of commission to a firm of estate agents, Homa Property Services; the Applicant explained at the hearing that they had closed down and that his solicitor had tried unsuccessfully to contact them, although no copy correspondence was provided to evidence the attempt to contact. Finally the purported Mr Oshodi authorised the payment of the net proceeds of sale to Mr Bolarinwa.

Evidence about Mr Bolarinwa

26. Copy documents provided to the Applicant by HM Land Registry showed that Mr Bolarinwa's solicitors on his purchase in 2006 were Doves of Old Kent Road, London SE1, a firm that is now closed. His solicitor was Mr Seun Ajayi, who was jailed in 2012 for fraud and struck off the Roll of solicitors in 2014.
27. The Second Respondent provided evidence in the form of a witness statement by its solicitor Louise Smith of Walker Morris LLP; she is careful to note that she has had no direct involvement in Mr Bolarinwa's purchase and mortgage so is giving evidence about the documents on the Second Respondent's file. Her evidence was not challenged. Among the papers exhibited to her witness statement is Mr Bolarinwa's

mortgage application, in which he says that he is a civil engineer earning £65,000 per annum. The loan advanced by the Second Respondent was £127,500 plus fees.

28. The First Respondent made a witness statement, albeit a very short one explaining that she knew nothing about the transfer of the flat. At the hearing she was asked by Mr Hope about her father's occupation and she confirmed that he was a mini-cab driver; she was not able to give any information about his income in 2006.

Is the Applicant entitled to alteration of the register?

29. It is clear that the flat was transferred to Mr Bolarinwa in 2006; it is agreed that the signature supposed to be the Applicant's on the conveyancing documents including the transfer is not his; the Applicant says that the transfer was fraudulent and that the first he knew of it was in March 2013.

30. The First and Second Respondents point out that other explanations are at least as consistent with the known facts. The sale took place just six weeks after it became possible to sell without loss of the right to buy discount; and also at a time when had sale not taken place the property would have been re-possessed. The First Respondent has observed that the sale might well have taken place on the Applicant's instructions, he being impersonated with his knowledge; the involvement of an estate agent, inexplicable if this was simply a fraudulent transfer, might well indicate that a market price was first ascertained so that both the Applicant and Mr Bolarinwa were comfortable with the deal.

31. The evidence given by the Applicant is so unsatisfactory that I am not able to accept his account, and am not persuaded that he was not aware of and content with the sale in 2006. I reach that conclusion because of three aspects of his evidence, namely his account of his own activities from 2004 to 2013, his behaviour after March 2013, and his evidence about his own liabilities in 2004. I now discuss those areas of evidence in turn.

The Applicant's evidence about his own life from 2004 to 2013

32. First, the Applicant's account of his life from 2004 to 2013 is scanty. It is not known what he did for nine years in Nigeria, nor why he stayed so long without apparently giving any attention to his property. When asked about this at the hearing he said that he was ill, intermittently, throughout his time in Nigeria; that he consulted traditional doctors; that his family advised him not to work; and that he was supported throughout the nine years by his elder brother. This explanation contradicts both his witness statement and his statutory declaration, in both of which he said that he was ill for two

years, and I do not believe it. He has not produced any medical evidence to support either what he said in his witness statement or the account he gave at the hearing of a much longer illness.

33. The Applicant's explanation for his return in 2009, to complete the traditional rites for his mother's death, does not ring true given that she had died four and a half years previously.

34. It was put to the Applicant by Mr Thomson that his departure and long-term absence were planned. He took out two loans shortly before he left (see paragraphs 43 and 44 below). It was suggested that he planned to start a business in Nigeria, and that he made arrangements to have the flat sold once the discount could be preserved because he was not intending to return. The Applicant rejected that suggestion. However, I take the view that on the balance of probabilities his account of his absence is not true; it is implausible, and the contradiction with what he said about his illness in his written evidence reinforces my disbelief. I do not have to speculate as to what he was actually doing in Nigeria for nine years but it is clear to me that there is much that the Applicant has not disclosed and I think it likely that he left in 2004 to set up in business in Nigeria.

The Applicant's behaviour after March 2013

35. The Applicant returned to England and, he says, discovered that he no longer owned the flat in March 2013. Mr Bolarinwa died in 2014. It was put to him by the First Respondent that there he did not communicate with Mr Bolarinwa on his return and that there is no evidence that Mr Bolarinwa ever knew that the Applicant alleged fraud against him.

36. The Applicant said in his witness statement, at paragraph 24, "I maintain that Mr Bolarinwa was aware of my objection to his transfer before his death" and, at paragraph 16, "I can confirm that I was in touch with Mr Bolarinwa before his death; through a letter dated 14 May 2013 to the Land Registry where I copied him". But as we have seen (paragraph 16 above) the letter to Land Registry was not sent to Mr Bolarinwa's home address. It was sent to the flat where Mr Bolarinwa was not living. At the hearing the Applicant said that he was told by a friend to use that address; and that he thought the tenants would pass the letter on to Mr Bolarinwa. When he wrote that witness statement the Applicant was responding to what the First Respondent had said in her statement of case, to the effect that he made no complaint about the transaction until Mr Bolarinwa was dead. It is evident from the letter written to Land

Registry in May 2013 that that is not the case; but the Applicant was saying that Mr Bolarinwa was aware of his objection yet he made no mention of the two visits to Mr Bolarinwa's property that he described in cross-examination. I do not understand why he would not have mentioned those visits in his witness statement if they indeed took place; I do not believe that they did. There is no other evidence of communication between the two men after the Applicant's return to England in March 2013. The Applicant said that Land Registry told him that they had given Mr Bolarinwa notice of his application for a restriction in October 2013; but of course Land Registry did not have Mr Bolarinwa's home address. They had only his address for service on the register of title for the flat, which was the flat itself, and the Applicant had not told Land Registry of Mr Bolarinwa's home address.

37. I find that Mr Bolarinwa and the Applicant were never in contact after the latter's return to England. It appears that the Applicant took pains to ensure that he did not find out. That is not necessarily inconsistent with the Applicant's account being true; he may have been afraid to confront Mr Bolarinwa, or have avoided him for some other reason. On the other hand he may have avoided Mr Bolarinwa so as to prevent anyone hearing Mr Bolarinwa's side of the story for as long as possible. This is another factor that makes me doubt his credibility.

The Applicant's evidence about his indebtedness in 2004.

38. Finally there is the matter of the lending secured against the property.

39. Before the transfer to Mr Bolarinwa the following entries were shown on the charges register for the flat:

    a. A legal charge dated 15 April 2003 in favour of IGroup Mortgages Limited.
    b. A legal charge dated 30 April 2004 in favour of IGroup Mortgages Limited.
    c. An interim charging order dated 6 July 2004, and then an equitable charge further to a Final Charging Order dated 1 September 2004 in favour of TBI Financial Services Ltd.

40. The first item is the loan that financed the Applicant's purchase. The second was registered some two months before the Applicant left for Nigeria. The interim charging order, which was later made final, was entered some ten days after the Applicant left for Nigeria.

41. Howards' conveyancing file shows that the following debts were discharged on completion:

    a. The first charge in favour of IGroup Mortgages Ltd £76,117.12

b. The second charge to IGroup Mortgages Ltd £9,913.28

c. The TBI charge £3,921.58

d. To Beulah (UK) Ltd £41,260.99

e. To Lambeth Housing for ground rent and charges £1,462.63

42. Accordingly two secured loans, a charging order, and two unsecured debts were discharged. In his statement of case the Applicant said that items c and d were not his debts.

43. In cross-examination the Applicant persisted in his position that the TBI charge was not his, even though it was put to him by Mr Fowler, for the Second Respondent, that the timing was such that it would be simply impossible for Mr Bolarinwa to have made arrangements for one of his own debts to be charged to the Applicant's property in this way, and that notices of the hearing for the charging order would have had to have arrived at the flat at a time when the Applicant was still living in it.

44. The Applicant also said at the hearing, and in contradiction to what he said in his statement of case and his witness statement, that item b – the second charge to IGroup (now GEMoney) - was not a loan he had taken out. He maintained that position despite its being pointed out to him that the second charge was registered before he left the country and before the first point at which he said that Mr Bolarinwa had control over the property.

45. In closing Mr Hope confirmed that the Applicant now agreed that items b and c above were his own liabilities. Items a and e have not been contested and Mr Hope confirmed that if the register was altered in the Applicant's favour it was agreed that the Second Defendant was entitled to subrogation in respect of those four debts, but not the debt to Beulah (UK) Ltd which has never been linked to the Applicant. I say more about that below, but for now I am focusing on the way the Applicant has presented his case. He is evidently very keen to regain his property free of mortgage despite his indebtedness when he left the country. In his statement of case he maintained that the Second Respondent would not be entitled to subrogation on the basis that it would be entitled to an indemnity from HM Land Registry. That extraordinary position was abandoned at the hearing but not before the Second Respondent had understandably put together detailed written argument, in the witness statement of Louise Smith and in Mr Fowler's skeleton argument, setting out the law relating to subrogation in order to establish a point that should have been beyond dispute.

46. What stands out is the Applicant's wish to regain his property free of debt. It may be that his initial position in his statement of case arose from legal advice given before Mr Hope was instructed. But his insistence at the hearing that he should regain the property free from the second charge to GEMoney and the debt to TBI, in the face of commonsense reasoning about the dates of those debts, give me no confidence in the Applicant's credibility.

47. Nevertheless I find as a fact that the debt to Beulah (UK) Ltd was not a debt of the Applicant's. One of the directors of Beulah (UK) Ltd at the relevant date was Seun Ajayi, the solicitor at Doves who acted for Mr Bolarinwa and was jailed for fraud in 2012. There is no evidence to link the Applicant with this loan, and because of the links with Doves there is reason to suppose that it was indeed a loan to Mr Bolarinwa, which was then redeemed on completion with or without the Applicant's knowledge. In the light of the figures it is possible, although I make no finding of fact to this effect because it is not relevant to what I have to decide, that the loan from Beulah (UK) Ltd may have been a short-term borrowing that enabled Mr Bolarinwa to bridge the gap between the price of £160,000 and the loan he was able to obtain from the Second Respondent; the Beulah loan was then immediately paid back on completion, the whole manoeuvre being a device to enable Mr Bolarinwa to obtain a 100% mortgage on a flat valued at £125,000. That is speculation, but it is a plausible explanation of the facts.

48. However, the remaining debts discharged on completion were the Applicant's and his attempts to escape them do him no credit.

Conclusion about the Applicant's claim

49. I do not believe that the property was fraudulently transferred as the Applicant alleges. Even though his signature was not on the transfer deed or the other conveyancing documents, I am not persuaded that it is more likely than not that he was defrauded. I think it far more likely that he intended to move permanently to Nigeria and agreed that Mr Bolarinwa would make arrangements for the transfer of the flat in 2006 once it could be sold without repayment of the right to buy discount. He may have arranged an impersonation to avoid the difficulties that would arise from his being in Nigeria, where it would be difficult for him to satisfy the "know your client" checks that Howards would have to carry out – I appreciate that such checks can be arranged for overseas clients, but the Applicant may have taken the view, or been advised, that it would be easier to have someone else impersonate him. As things turned out, the

possession proceedings meant that there was some urgency about the sale. Whether the impersonation was with or without the knowledge of the solicitor at Howards, and whether the latter carried out any identity checks, cannot be known.

50. It may well be that the Applicant decided to go back on the deal when he realised that the property had gone up in value on his return. There are too many unknowns and too little evidence for me to make any positive finding of fact as to what happened and there is no need for me to do so. The Applicant has the burden of proof of fraud and he has not discharged it.
51. Accordingly I have directed the registrar to cancel his application for alteration of the register.
52. I do not know whether the restriction dated 28 October 2013 remains on the register but if it does it should be removed, and I have directed the registrar to that effect.
53. It remains to say a few words about subrogation.

Subrogation

54. The Second Respondent's position as a secured lender remains unchanged because of my decision on the Applicant's claim and the need for subrogation does not arise.
55. Had I directed the registrar to respond to the Applicant's application as if the objections had not been made, I would also have directed it to register the Second Respondent as proprietor of the two IGroup charges (listed as such on the register although IGroup is now GE Money) registered against the title before the sale in 2006, because there is now no dispute about the Second Respondent's right to subrogation in respect of those charges. There is also no dispute about the Second Respondent's entitlement in respect of the debts to TBI Finance and to Lambeth Housing. I have found as a fact that the Beulah loan was not a loan to the Applicant.
56. Had I given a direction to the registrar in respect of the registered charges I would also have stated the amount of the debt to which the Second Respondent's would have been subrogated. That would have been the principal loaned and interest at a rate no greater than that which would have been payable under the original loan (it is pointed out that Mr Bolarinwa did not keep up repayments on his own mortgage and so this would not be a case of double recovery for the Second Respondent). The Second Respondent helpfully provided a draft order setting out the figures, which I believe were not in dispute.
57. The one issue that was not agreed was whether the Second Respondent could have secured its costs under the terms of the GE Money loan; in other words, did the terms

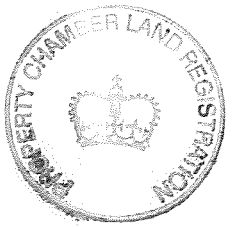
of that loan entitle the Second Respondent to have included its costs in this litigation as part of the debt secured under the registered charge. I note that a similar question was considered in *Kali & Burlay v Chawla and others* [2007] EWHC 2357 (Ch) by HH Judge Hodge QC sitting as a Deputy High Court Judge. Judge Hodge did not allow the costs to be included in the secured loan in that case but he noted that subrogation is a "flexible restitutionary remedy" (paragraph 43) and I take the view that the answer will therefore turn on the facts of an individual case as well as on the terms of the loan agreement. The issue is only going to arise in the event of a successful appeal by the Applicant, and if that occurs then further costs will have been incurred and the matter would need to be looked at afresh at that stage. So I make no decision as to what I would have ordered in respect of this point if the Applicant had been successful in these proceedings.

Costs

58. The Respondents are in principle entitled to their costs of this action; if costs cannot be agreed then applications may be made in writing within 28 days of the parties' receipt of this decision.

8 May 2017

Elizabeth Cooke



BY ORDER OF THE TRIBUNAL

Elizabeth Cooke