

[2017] UKFTT 0681 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2016/0329

BETWEEN

**Jenny Gibb
(by her attorney Keith Raymond Walker)**

Applicant

and

Amer Murad Choudrey

Respondent

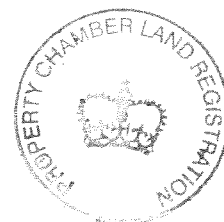
**Property Address: The Chalet, New Hall Lane, Preston PR1 5TB
Title Number: LA772377**

Judge Colin Green

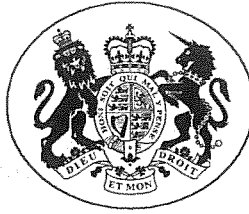
ORDER

It is ordered that the Chief Land Registrar give effect to the Applicant's application as if the Respondent's objection had not been made.

Colin Green



Dated this 23rd day of August 2017



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**Property Address: The Chalet, New Hall Lane, Preston PR1 5TB
Title Number: LA772377**

Judge Colin Green

At: Leyland Family Court Centre

On: 27 April 2017

Applicant Representation: W. E. Hanbury of Counsel

Respondent Representation: Jeremy Dable of counsel

DECISION

Introduction

1. The Applicant, Mrs. Gibb, is the registered proprietor with freehold title absolute of property known as the Chalet, 630 New Hall Lane, Ribbleton, Preston (“the Chalet”).

Keith Raymond Walker was appointed Mrs. Gibb's attorney under a lasting power of attorney dated 13 May 2013, registered with the office of the Public Guardian on 13 May 2015, and has conducted these proceedings on behalf of Mrs. Gibb pursuant to such power.

2. The Respondent, Mr. Choudrey, is the registered proprietor with freehold title absolute of 630 New Hall Lane ("630") which adjoins the Chalet, under title number LA767781. On 3 September 2015, the Respondent registered a unilateral notice against the Chalet claiming an interest by virtue of a lease of a garage on that land ("the Garage") made in or about October 1995 between Mrs. Gibb and her husband of the one part and Mr. Choudrey of the other part for a term of 99 years, which has been lost. On 8 November 2015 Mrs. Gibb applied to cancel the unilateral notice, to which Mr. Choudrey objected on 1 December 2015. The application was referred to the Land Registration Division of the Property Chamber. Notwithstanding that Mrs. Gibb is named Applicant and Mr. Choudrey, Respondent, it was accepted that the burden of proof was on Mr. Choudrey to establish to the satisfaction of the Tribunal that such a lease existed.
3. I heard evidence from Mr. Choudrey, and his parents, Murad Chaudhry and his wife, Rukhsana Kusar, and from Mrs. Gibb and Mr. Walker. The latter was unable to provide any direct evidence concerning the relevant events and was unable to assist in respect of the issue I must decide.
4. I am grateful to both counsel for the meticulous way in which they conducted the hearing, and the detailed written submissions which followed.

History

5. The Chalet and 630 were originally a combined property, with the Chalet being the site of two garages and 630 a dwelling-house. On 16 February 1989, Mrs. Gibb obtained planning permission for the conversion of the Chalet into a self-contained flat with two garages below. Condition 4 of the planning permission was in the following terms:

“That one of the proposed garages on the approved plan shall be for the sole use of the occupiers of the existing property 630 New Hall Lane.”

6. It took about three years or so to convert the Chalet, after which Mrs. Gibb put 630 up for sale, retaining the Chalet in which she and her husband continued to live. This took some time, but eventually 630 was sold to Mr. Choudrey for £48,000.00, completed by a Rule 72 Transfer on 8 August 1994. Only £3,000.00 was paid on completion, with the balance of £45,000.00 being secured by a mortgage back to Mrs. Gibb of £45,000.00, repayable at the rate of £1,000.00 per month. The mortgage was repaid some years ago. Mrs. Gibb had previously had long leasehold title to both properties, but acquired the freehold title on 18 June 1993 and was able to make title as such, so that after the sale there was a first registration in respect of the freehold of both: Mr. Choudrey was registered as the proprietor of 630 on 16 October 1995 and, after some delay, Mrs. Gibb as the proprietor of the Chalet on 22 January 1996. Mr. Gibb had died on 26 June 1995 but Mrs. Gibb continued to live at the Chalet until a few years ago when due to her age, she moved into a care home. Neither Mr. Choudrey nor any member of his family have ever lived at 630, which has been used as an investment property, let to a succession of tenants. It is not disputed that such tenants have made use of the Garage, which is the closest to 630 of the two garages comprised in the Chalet.
7. Mrs. Gibb denies any lease in respect of the Garage. Her case is that after the sale to Mr. Choudrey, his father (whom she believed to be the purchaser) approached her and asked if 630 could use the Garage, and that she agreed to this on an informal basis, with no payment for such use.

The lease

8. A number of the documents in this matter refer to the lease having been entered into in or about, or shortly before, October 1995, see: the terms of the unilateral notice; paragraph 3 of the Respondent's Statement of Case; and the statutory declarations made by Mr. Choudrey's parents. At the hearing, however, it was Mr. Choudrey's case that the lease had been made at some point before completion of the sale, which was 8 August 1994. He corrected paragraph 11 of his statutory declaration to reflect this prior to confirming its contents. Mr. Hanbury invites me to regard this as a

substantive change in Mr. Choudrey's case, brought about by a realisation that Mr. Gibb cannot have been a party to the lease in October 1995, as he had died in June 1995. I am not prepared to draw adverse inferences from this, however. According to paragraph 5 of Mr. Choudrey's declaration, the lease was drafted by Mr. Gibb and signed by himself and Mr. and Mrs. Gibb shortly before legal completion. Prior to full disclosure of documents this was believed to be in about October 1995, the date of registration, and I see nothing untoward in Mr. Choudrey's recollection not being more accurate concerning the date of an event taking place quite some time ago until it was pointed out that completion in fact took place in August the previous year.

9. An unusual feature of the transaction is that in August 1994, Mr. Choudrey was 16 years old, having been born on 8 May 1978. Both parties were represented by solicitors at the time – a matter to which I shall return below – but it seems extremely doubtful that Mr. Choudrey's solicitor was aware that she was acting for a minor. Nevertheless, the Transfer was into his name and he was registered as proprietor. The explanation provided was that the purchase was a gift made by Mr. Choudrey's father to his son.
10. What is more startling however, is the version of events given by Mr. Choudrey and his parents concerning the alleged lease. It is said that the document was drawn up at either the Chalet or 630 when Mr. Choudrey and his parents visited Mr. and Mrs. Gibb. The document is said to have been drafted by Mr. Gibb, and consisted of one page, which stated, so far as can be remembered, that it was a lease of the Garage for 99 years at no rent and renewable. It is said that the lease was made in return for a bottle of whisky and was signed by Mr. and Mrs. Gibb and Mr. Choudrey. This is all highly implausible. Mr. Gibb was a man having no legal experience and yet apparently, he was prepared to draft what on any view is an important legal document, creating a substantial interest in property to be retained by the seller, and to have it signed by a 16-year-old schoolboy.
11. Mr. Choudrey's father gave evidence that he retained the lease, but it was subsequently lost when he moved to a new house. It is not unusual for documents, even important documents, to be lost in a house move, but what is highly unusual is that no copy of this important document appears to have been made by anyone,

including Mr. and Mrs. Gibb. In my view, had such a document been signed by them and Mr. Choudrey, they would have asked for a copy to be made. There is no suggestion by Mr. Choudrey or his parents that they asked for this be done.

12. At the relevant time, solicitors were acting for both parties: Banks Wilson for Mrs. Gibb and Ramsbottom & Co. for Mr. Choudrey. The file of the former in respect of the sale is in the hearing bundle, but according to Watson Ramsbottom's letter of 13 January 2016, Mr. Choudrey's file has been destroyed.
13. If there was to be a lease of the Garage, one would have expected Mrs. Gibb to refer the matter to her solicitor so that he could deal with it along with the other sale documents, and even if she and Mr. Gibb had signed a lease written out by her husband, as is contended, one would have expected them to inform the solicitor of this, who would no doubt be concerned that his client had signed such an amateurish document, would seek a copy from Mr. Choudrey's solicitor and would advise that a properly drafted lease be prepared in its place. There is no evidence that any of this happened. There is no mention in Banks Wilson's file of the Garage, a lease of the Garage or the issue of off-road parking, which if it had been a concern of Mr. Choudrey and his family during the negotiations for sale, would normally have been raised in solicitor correspondence.
14. A letter to Mrs. Gibb from Banks Wilson of 26 July 1995 includes the following passage:

"I see that in excess of 12 hours time has been spent not only in relation to the sale but also the negotiation of the Lease, drafting of the Lease and constantly chasing Mr. Choudrey's Solicitors who as you were aware were without instructions for some time."

Although there is a reference to a "Lease" in my view this is a mistake for "Charge". There is nothing in the file concerning the negotiation of a lease, and no draft lease, whereas there are various draft versions of the charge back to Mrs. Gibb, amended in manuscript. And of course, Mr. Choudrey's case is not that he and Mr. and Mrs. Gibb signed a lease prepared by a solicitor, but that it was drafted by Mr. Gibb.

15. According to the evidence of Mr. Choudrey's father, he did mention the lease to his son's solicitor. Had this been the case, one would have expected one of a number of things to have happened. First, Mr. Choudrey's solicitor would have wanted a copy and for the reasons mentioned above, would have advised that a properly drafted lease should be prepared, and corresponded with Mrs. Gibb's solicitor about this. There is nothing in Banks Wilson's file to suggest any such correspondence was received from Mr. Choudrey's solicitor. Second, in the unlikely event that the solicitor was happy with the document, in the usual course of events application would have been made to register the lease with the Land Registry, along with the freehold title to 630. The registration of Mr. Choudrey's freehold title appears to have been dealt with by Banks Wilson, but no application was made to register a 99 year lease of the Garage. I do not find it credible that Mr. Choudrey's father told the solicitor about the lease, and she simply did nothing. In my view, no mention of a lease was made to the solicitor, and Mr. Choudrey's father is an unconvincing witness.
16. Mr. Dable submits that the version of events given by Mr. Choudrey is supported by the fact that Mrs. Gibb was anxious to secure a sale, that one of the two garages had to be used in conjunction with 630 because of the above planning condition, and that Mrs. Gibb was not a particularly reliable witness due to her age and confusion over certain matters. The restriction on the use of the Garage is equally consistent with both parties' versions of what happened in 1994 and subsequently, and although Mrs. Gibb, an elderly lady in her nineties, clearly struggled to recall matters and made a number of errors in cross-examination, her case is very simple: she believed that the sale was to Mr. Choudrey's father, with whom all discussions took place, and there was no lease or mention of a lease, only the grant of permission after the sale to use the Garage, which continued through the years she lived in the Chalet. For the reasons set out above, I prefer her version of events to that of Mr. Choudrey and his parents, which is inherently implausible and uncorroborated in ways one would normally expect.
17. In the light of that finding, it is unnecessary for me to consider the legal issues, which only arise on the footing that there was a lease.

Conclusion

18. Accordingly, I will direct that effect be given to the Applicant's application as if the Respondent's objection had not been made.

Costs

19. In this jurisdiction, costs usually follow the event. In principle, it follows that the Applicant is entitled to her costs since the date of the reference. A schedule which includes the costs arising from the post-hearing written submissions has not been provided and therefore I make the following directions.

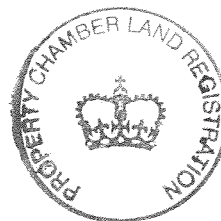
19.1. On or before 11 September 2017, the Applicant's solicitors shall send to the Respondent and the Tribunal a schedule of costs suitable for summary assessment supported by invoices and counsel's fee notes.

19.2. The Respondent should by 25 September 2017, send to the Applicant's solicitors and the Tribunal a response dealing with both the Respondent's liability for costs (should this be contested) and the amount of costs being claimed.

19.3. The Applicant's solicitors may, before 9 October 2017, send to the Respondent and the Tribunal a short reply to such response.

20. After completion of the above, I will consider the application for costs.

Colin Green



Dated this 23rd day of August 2017

