



[2017] UKFTT 0608 (PC)

REF/2016/0536

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

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**Arrow Global Guernsey Limited**

**APPLICANT**

**and**

**1) Hannah Lisa Jacomb (nee Trill) 2) Mrs Sarah Mc Ennerney-Stevens**

**RESPONDENTS**

**Property Address: 22 Salisbury Road, Parkstone, Poole, BH14 0DP  
Title Number: DT311561**

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**ORDER**

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On hearing counsel for the Applicant and the First Respondent in person on 1 June 2017

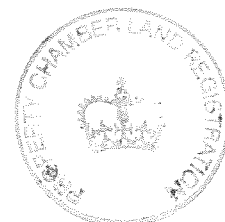
IT IS ORDERED as follows:

1. The Chief Land Registrar is to give effect to the original application dated 7 April 2016 for the entry of a restriction in Form K.
2. The Respondents are to pay the Applicant's costs of this reference, to be summarily assessed if not agreed; but if costs are recovered from the First Respondent the Second Respondent is to indemnify her.

Dated this 6 June 2017

**Elizabeth Cooke**

BY ORDER OF THE TRIBUNAL







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**DECISION**

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1. In 2001 Mrs Jacomb, the Second Respondent, bought a house – 22, Salisbury Road, Poole, “the Property” - with Mrs McEnnerney-Stevens, the First Respondent. Legal title was in their joint names and they held as beneficial tenants in common. They had a mortgage advance, and later a further advance, amounting in total to £229,000 on an interest only basis from the National Westminster Bank, which was protected as a registered charge.
2. In 2011 the two owners parted, and they signed a document headed "Agreement of the Disillusionment of a Shared Mortgage" dated 23 December 2011 (“the 2011 agreement”). Its

terms were that Mrs Jacomb would pay, in instalments, £8,000 to Mrs McEnnerney Stevens, who would be released from the mortgage and would have no further claim on the property.

3. However, the mortgagee was not willing to release Mrs McEnnerney-Stevens from liability; she remains a joint legal owner and jointly liable on the mortgage to this day.

4. Thereafter Mrs Jacomb has made all the mortgage payments, and she lives at the property with her husband and children.

5. Mrs McEnnerney-Stevens is now in debt to the Applicant, and on 1 June 2016 the a final charging order was made, in the Poole County Court, against Mrs McEnnerney-Stevens' interest in the Property. Mrs Jacomb attended the hearing and argued that because of the 2011 agreement Mrs McEnnerney-Stevens has no interest in the Property and that that the charging order therefore should not be made. The District Judge took the view that the 2011 Deed had no effect on Mrs McEnnerney-Stevens' interest in the Property, and made the order.

6. The applicant has now applied to HM Land Registry to protect the order with a restriction on the title to the Property. Mrs Jacomb has objected and the registrar referred the dispute to the Land Registration Division of the First-tier Tribunal under s 73(7) of the Land Registration Act 2002.

7. However, the objection to a final charging order is not sustainable. The tribunal will not go behind the order of the court; the issue between Mrs Jacomb and the applicant has already been the subject of a judicial decision and the only way to challenge that decision is to appeal it. The Applicant's solicitor' attendance note of the hearing on 1 June 2016 indicates that both he and the District Judge told Mrs Jacomb that she might be able to persuade the Tribunal to take a different view. That is not the case. But unfortunately, because Mrs Jacomb was given that information, her Statement of Case was not struck out by the Tribunal at an early stage as would otherwise have been the case.

8. It is important that I make it abundantly clear that even if it were open to this Tribunal to take a different view it would not do so. The District Judge found that the 2011 agreement was not effective to transfer Mrs McEnnerney-Stevens' interest to Mrs Jacomb. I endeavoured at the hearing before me in Southampton on 1 June 2017 – when Mrs Jacomb appeared in person and the Applicant was represented by Mr Matheson of counsel – to explain why that was correct. Mrs Jacomb cited the Court of Appeal's decision in *Merritt v Merritt* [1970] EWCA Civ 6. That was a case where husband and wife made an agreement for the immediate transfer to the wife of the husband's interest, in consideration of her making the mortgage payments in the future. The only issue was whether the couple intended to create legal relations, and the Court of Appeal found that they did. So the agreement was effective. The

2011 agreement did something very different. It was an agreement about three things that were to happen in the future:

a. First, Mrs Jacomb was to pay £8,000 to Mrs McEnnerney-Stevens. No-one disputes that she did so.

b. Second, Mrs McEnnerney-Stevens was to be released from the mortgage. That could not be done because the mortgagee did not agree.

c. Third, Mrs McEnnerney-Stevens will have no claim on the property in the future.

9. So the 2011 deed was frustrated, through no fault of either of the parties. The release from the mortgage could not be achieved; accordingly Mrs McEnnerney-Stevens remains liable on the mortgage and retains her equitable interest.

10. In September 2016 Mrs McEnnerney-Stevens made a statutory declaration stating that she has no interest in the property. Mrs Jacomb is understandably worried that if Mrs McEnnerney-Stevens incurs future debts there might be a further charging order. I said that if there was any question of a further charging order in relation to any further debt then Mrs Jacomb might well have to persuade a court that that declaration was effective, but I gave no view as to whether it was or not.

11. Meanwhile of course the 2016 charging order stands, and I shall direct the registrar to respond to the applicant's application as if the First Respondent's objections had not been made.

12. The Applicant has applied for its costs and I made an order at the hearing that the two Respondents are to pay the Applicant's costs, but that if any costs are recovered from Mrs Jacomb then Mrs McEnnerney-Stevens is to indemnify her. The Applicant is to send its schedule of costs to both Respondents forthwith, and if they have any comments on the amount claimed they are to send their comments to the Tribunal within 14 days of the date of this order.

Dated this 6 June 2017

**Elizabeth Cooke**  
BY ORDER OF THE TRIBUNAL

