



[2017] UKFTT 0675 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO: 2016/0854

BETWEEN

**Samir Safarov (1)
Rena Safarova (2)**

Applicants

and

Nana Akua Amponsah

Respondent

Property address: 29A York Road, Waltham Cross EN8 7HJ

Title number: HD429200

Before: Judge John Hewitt

Hearing: 26 June 2017

At: Alfred Place, London WC1E 1LR

DECISION

Representation:

Applicant: Ms Miriam Seitler Counsel

Respondent: None

Decision

1. The decision of the tribunal is that:
 - 1.1 The Chief Land Registrar shall give effect to the application dated 1 March 2016 to register a transfer in form TR1 dated 23 February 2016 in favour of the applicants as if the objection of the respondent had not been made; and
 - 1.2 The application for costs shall be dealt with in accordance with the directions set out in paragraph 20 below.

NB Reference below to a number in square brackets ([]) is a reference to the page number of the trial bundle provided for my use at the hearing.

Background

2. On 15 April 2004, the respondent was registered at Land Registry as the proprietor of the property [23].
3. The applicants assert that they completed the purchase of the property on 23 February 2016 and, on 1 March 2016 lodged a form TR1 at Land Registry in their favour executed by the respondent. They made an application to be registered as proprietors. The respondent objected to the application and asserted that she did not execute the form TR1.
4. On 13 October 2016, the Chief Land Registrar referred the disputed application to this tribunal. Directions were given. The respondent was represented by Lady G Tetteh of counsel throughout but on 8 May 2017 the tribunal received a letter from Lady Tetteh to the effect that she was no longer instructed.
5. By letter dated 7 March 2017 the tribunal notified the parties' representatives that the hearing of the reference would take place in London on 26 and 27 June 2017.
6. By letter dated 7 June 2017 the applicants' solicitors filed the trial bundle (in excess of 1,000 pages) with the tribunal and sent a copy to the respondent to address in Accra, Ghana which the respondent had notified to them.
7. At 13:11 on 22 June 2017 the tribunal received by email a letter dated 21 June 2017 from a firm of legal practitioners in Accra, Ghana namely, Paintsil, Paintsil & Co. The burden of the letter was to state that they had been instructed by the respondent, had been handed the trial bundle but they would need time to consider the issues and sought a postponement of the hearing. That email had been copied to the applicants' solicitors.

On 22 June 2017 at 14:30 the tribunal received an email from the applicants' solicitors opposing the application for a postponement for the several reasons therein set out.

The hearing

8. The reference came on for hearing before me on 26 June 2017. The applicants were represented by Ms Miriam Seitler of counsel. The respondent was neither present nor represented. I waited until about 10:40 to commence the hearing in case the respondent had been delayed on her way to the hearing.

9. First, I considered the application for a postponement of the hearing and took account of the fact that the respondent was not present.

Ms Seitler opposed the application for a postponement for the reasons set out in the applicants' solicitors' email dated 22 June 2017 and emphasised that the respondent had been given the opportunity to submit dates to avoid, the parties had been notified of the hearing date in early March 2017, the application for a postponement was made very late in the day, no explanation as to why the respondent was unable to attend the hearing was given, the applicants had struggled to find the resources to pursue the proceedings, were in court with a witness, counsel had been briefed and they were ready to proceed. A postponement would cost them more expense and there were limited prospects of them being able to recover costs from the respondent, especially if she was now resident in Accra, Ghana.

10. Rule 34 permits me to proceed with a hearing in the absence of a party if satisfied that the party has been notified of the hearing and that it is in the interests of justice to do so.

I am satisfied that the respondent has been notified of the hearing. Notice was sent to her then legal representative, Lady Tetteh, and correspondence had ensued. The receipt by the respondent of the trial bundle and the email from Paintsil, Paintsil & Co dated 22 June 2017 is further evidence that the respondent was aware of the hearing.

I am also satisfied that it is interests of justice to proceed with the hearing. The applicants have incurred costs time and effort to be ready for the hearing today. There was no offer from the respondent to reimburse the costs which would be thrown away and wasted if a postponement was granted. There is good reason to believe that the applicants would have difficulty in recovering any costs wasted by a postponement.

For reasons which will become apparent shortly there are oddities about the respondent's case which cast serious doubts on its merits.

In these circumstances, I refused the application for an adjournment and I proceeded with the hearing in the absence of the respondent.

Findings of fact

11. I heard oral evidence from both of the applicants and from Mr Joel Kobina Forson (Mr Forson). They confirmed their respective witness statements were true and they answered a series of questions put to them. All three witnesses impressed me as being honest and genuine and I find that I can rely upon their evidence with confidence.
12. I was also provided with a report by Margaret D White MBIG(dip)IGS, a consultant graphologist [147] and a witness statement from the applicants' conveyancing solicitor.
13. The gist of the respondent's case is that after she had instructed solicitors, Frederick Rine, to act on her behalf on the sale of the property she had been informed the sale was not to proceed, she did not sign the form TR1 or related documents and that whilst charges had been redeemed, and the net proceeds of sale had been paid into her

account with Barclays Bank, those net proceeds were later withdrawn from her Barclays Bank account without her authority as a result, she alleges, of a fraudulent conspiracy between Frederick Rine and Mr Joel Forson.

14. Against that background I find as a fact that:
 - 14.1 The respondent was introduced to Mr Forson by a mutual friend from Ghana. Mr Forson has training in accountancy and has experience in business and property matters and he regularly travels between London and Accra. The respondent sought Mr Forson's assistance with the sale of the property because she was moving back to Ghana.
 - 14.2 Mr Forson introduced the respondent to the selling agents, Kings Group, who took instructions direct from the respondent. Pages [26 and 29] provide examples of Kings Group having direct contact with the respondent.
 - 14.3 Mr Forson introduced the respondent to Mr Frederick Rine, a solicitor with a practice in London who was an old school friend of his from Ghana. Mr Forson accompanied the Respondent on a visit to Mr Rine when she gave him instructions to act for her on the sale. Mr Forson was present when the respondent signed the authority form at [148]. Subsequently the respondent completed and returned direct to Mr Rine several documents concerning the sale, samples are at [1018,1024, and 1032]. The respondent informed Mr Rine that Mr Forson would assist her with the sale and Mr Rine was authorised to contact Mr Forson when required.
 - 14.4 In October/November 2015 the applicants, who are brother and sister, learned the property was on the market for sale, they viewed it on an open day, they made an offer, but it was not accepted initially because they were told a better offer had been made, but when that fell through their offer was accepted through the selling agents, Kings Group. Solicitors were instructed and the transaction progressed and contracts were exchanged for the sale of the property by the respondent to the applicants for the price of £235,000.
 - 14.5 The applicants viewed the property again during the course of the transaction. On both of their viewings, they had noted the property was occupied by a family who was not the vendor. The transaction was to complete on the basis of vacant possession being given on completion.
 - 14.6 Prior to the proposed sale, the property had been let by the respondent to a Mr & Mrs Abass Bundu. In order to be able to give vacant possession, the respondent authorised Mr Forson to negotiate with Mr & Mrs Bundu for them to move out at fairly short notice. Mr Forson did so. Terms were agreed, Mr Forson paid into the Bundu's bank account £2,000, Mr Forson rented a van and assisted the Bundus to move some of their possessions into storage with Big Yellow.
 - 14.7 In January 2016 Mr Forson travelled to Accra, Ghana. He took with him a letter written by Mr Rine, a copy is at [612]. Enclosed with that letter was the form TR1 duly prepared for signature by the vendor plus the authority letters at [149 and 150] concerning the disposal of the net proceeds of sale. Mr Forson made arrangements to visit the respondent in her home in a suburb of Accra, he met with her, her mother and

her child and he handed to the respondent the letter from Mr Rine, the TR1 and letters of authority, she signed all three documents in his presence and he completed the witness section in box 12 of the TR1. Shortly thereafter Mr Forson returned to London and handed the above documents to Mr Rine.

- 14.8 The transaction completed on 23 February 2016, the registered charges were redeemed, Mr Forson was paid £5,000 which reimbursed him the £2,000 he had paid to the Bundus and left him the balance of £3,000 to cover expenses he had incurred on the respondent's behalf and his fee for assisting the respondent, and the net proceeds of sale amounting to £106,133.71 were paid into the respondent's account with Barclay's bank all in conformity with the authority letters signed by the respondent in Mr Forson's presence.
- 14.9 Following completion Kings Group made the keys and fobs to the property available to the applicants who took possession of the property and who have subsequently let it, receiving a rental income.
- 14.10 I have seen a very poor-quality copy of a bank statement issued by Barclays Bank to the respondent. It shows a receipt of £106,133.71 which is the net proceeds of sale. There follow several debits. I cannot read them clearly. There is no evidence before me as to the circumstances of those debits, save that Mr Forson denied they were anything to do with him and I accept his evidence on this point.
- 14.11 On 1 March 2016 the applicants made an application to Land Registry to register the transfer. Land Registry notified the respondent of the application by writing to her at a London address she had notified [269]. The respondent objected to it. The respondent accepts that the proceeds of sale were, on 23 February 2016, paid into her account with Barclays Bank, she asserts that the money has since been removed from the account without her authority and she does not know of its whereabouts. The respondent became aware of these matters in early March 2016.
- 14.12 The respondent alleges fraud and a conspiracy on the part of Frederick Rine and Mr Forson, but it appears that a complaint has not been made to the police, a complaint was not raised with the Solicitors Regulation Authority (SRA) until sometime after 5 September 2016 – see the letter from Lady Tetteh of that at [52].
- 14.13 The SRA conclusion is at [178] to the effect that no action was to be taken against Frederick Rine.
- 14.14 It is understood that the respondent has raised the issue with Barclays Bank, but the respondent has not disclosed any documents as to the outcome of any investigation undertaken by the bank.

Discussion

15. I am satisfied on the evidence before me that at all material times the respondent was aware of the proposed sale of the property to the applicants at the price of £235,000, the respondent had instructed Mr Rine to act for her on that transaction, that the respondent personally signed the form TR1 to effect that sale, that the respondent also signed the authority letters at [149 and 150] and that the proceeds of sale were

distributed by Mr Rine in accordance with the instructions given to him by the respondent.

16. What may have happened to the proceeds after they were paid into the Barclays Bank account I cannot say but those were steps taken after completion of the transaction and in my judgment cannot in any way impugn the transaction.
17. I accept the submission of Ms Seidler to the effect that the starting point when faced with a deed which prima facie has been signed by a party in the presence of a witness is that the deed has been properly executed – the presumption of due execution. A rebuttable presumption applies but it is for the party asserting that the signature is a forgery to rebut that presumption.

In this case not only has the respondent wholly failed to rebut that presumption but I reject the assertion made by the respondent in her statement of case that she did not sign the form TR1. I accept the evidence of Mr Forson on this point. I am reinforced in this conclusion by the report of the consultant graphologist at [147].

18. In these circumstances, I will make an order requiring the Chief Land Registrar to give effect to the application dated 1 March 2016 to register a transfer in form TR1 dated 23 February 2016 in favour of the applicants as if the objection of the respondent had not been made.

Costs

19. On 23 June 2017 the applicants' solicitors filed and served an application for costs in the sum of £17,667.45.
20. In this jurisdiction, as with the civil courts, costs follow the event save in exceptional circumstances. I am therefore minded to make a costs order in favour of the applicants. I will however give the respondent the opportunity to make representations on the application for costs and to file and serve points of objection to the costs claimed. The following directions shall apply:
 - 20.1 The applicants shall by **5pm 4 July 2017** file with the tribunal and serve on the respondent copies of the invoices/fee notes supporting the expenses claimed as regards the expert's fees (£250) and counsel's fees (£3,150).
 - 20.2 The respondent shall by **5pm Friday 14 July 2017** file with the tribunal and serve on the applicants, representations on the application for costs and on the amount of the costs claimed and any points of objection she wishes to take.
 - 20.3 The applicants shall by **5pm Friday 21 July 2017** file with the tribunal and serve on the respondent representations in reply, if so advised.
21. In the absence of any objections I propose to make a determination on the application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 20 above.

Dated this 27 June 2017

By order of the Tribunal