

[2019] UKFTT 0014 (PC)

REF/2016/1025

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE UNDER
THE LAND REGISTRATION ACT 2002**

BETWEEN

DARREN LAYCOCK

APPLICANT

and

WENDY ANN MIDDLETON

RESPONDENT

Property Address: 47 Chaucer Road, Sheffield S1 9QJ

Title Number: SYK574583

Before: Judge Adrian Jack

Sitting at: The Law Courts, Barnsley

On: 20 November 2018

Applicant Representation: No appearance

Respondent Representation: Elizabeth Darlington of counsel and Oliver Head, solicitor

ORDER

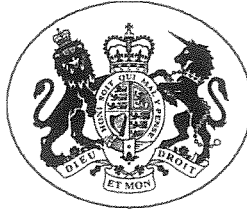
1. The Tribunal directs the Chief Land Registrar to cancel the restriction entered by the applicant by an RX1 form dated 9th March 2016.
2. The Applicant is to pay the Respondent's costs summarily assessed in the sum of £9,536.25.

BY ORDER OF THE TRIBUNAL

Adrian Jack

DATED 20TH NOVEMBER 2018





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Respondent Representation: Elizabeth Darlington of counsel and Oliver Head, solicitor

REASONS

Keywords: Resulting or constructive trust – Applicant’s request for adjournment refused – applicant failed to prove case on facts

Cases: No cases were cited

Procedural background

1. By an RX1 dated 9th March 2016 the applicant entered a restriction against the property in question to protect an alleged half share in the equity of the property. This was said to be based on an agreement having been entered between him and the respondent to that effect, on contributions he made (a) to the deposit for the purchase, (b) to a refurbishment of the property and (c) to the mortgage. The respondent objected to the applicant's claim. On 17th November 2016 the Chief Land Registrar referred the matter to this Tribunal.
2. The parties exchanged statements of case in accordance with the Tribunal's directions. Although the matter was originally listed for hearing in February 2018 but adjourned, the date of 20th November 2018 has been fixed for many months.

The request for an adjournment

3. On Friday 16th November 2018 the Tribunal received a letter from the applicant's general practitioner, Dr Sears. This said:

“I can confirm that I have been seeing Darren this year and we have identified that he has depression. Currently he is undergoing treatment for this with medication and we are also asking for an assessment by the Sheffield Adult Autism and Neurodevelopment service because of Darren's difficulties. He has asked me to write this letter as he is due to attend a hearing on Monday next week and he feels significantly stressed by this call for a hearing and doesn't feel his mental health would be best suited to attend this meeting. I have agreed to write a letter of fact and as I have documented above as to the ongoing treatment of Darren at the practice. I hope this information helps.”

4. The letter was passed to me that day. I did not consider that this showed that the applicant was unable to attend and participate in the hearing. I refused the implied request for an adjournment.
5. On Monday 19th November 2018 the applicant wrote and said (correcting for minor grammatical and spelling infelicities):

“Dear Sir, I understand how lengthy this has become. I here [*sic*] now so depressed and crying I feel quite suicidal. The prospect [o]f being in the same room as Wendy Middleton is t[oo] overpowering. I thought I could handle it but I can't. I've been so very anxious over the past few days being physically sick with constant panic attacks and without sleep since Friday.

I believe Wendy is using my illness against me yet again. She [i]s a trained nurse and knows how bad I get. Also I didn't get [the] trial bundle till Friday. It's all too much for me to handle, reading all the untruths about me and my life.

I cannot attend tomorrow. Please help me. I'm still awaiting mental health assessment and treatment.....this is the only delay caused by me. The other delays were administrative errors. I flew back from Africa for the July hearing that you cancelled and I fear I am being bullied now. I can't take this I am in despair.”

6. The applicant also telephoned the Tribunal to the same effect. He did not adduce any further medical evidence on his renewed application for an adjournment. I again refused the application for an adjournment on the ground that the renewed application is not supported by the medical evidence which has been served. In accordance with rule 34 of the Tribunal's Rules of Procedure I am satisfied that the applicant knows of the hearing and that it is in the interests of justice to proceed with the hearing.

The hearing

7. At the hearing on 20th November 2018 the respondent appeared by counsel. The applicant did not appear.
8. The evidence in the trial bundles shows that the respondent was a council tenant. In 2010 she exercised the right-to-buy at a discount from Sheffield City Council. She was registered as proprietor of the property on 1st March 2010.
9. The applicant's case is that he contributed to the deposit for the purchase of the property. He said that he and the respondent had been living as man and wife. It was agreed between them that the respondent would hold the property for each jointly in equal shares. He subsequently contributed to the mortgage payments at a rate of £350 per month. There is little documentary evidence to support the applicant's case.
10. The agreement and the alleged contributions are all disputed by the respondent. She denies that they moved into the property together. There was a relationship which subsequently broke down and she obtained a non-molestation order against the applicant, but there had never been any question of his having any entitlement to a share in the property. It had been bought by her using the discount to which she, as council tenant, was entitled.

Discussion and conclusion

11. In the absence of the applicant to give oral evidence, it is impossible in my judgment for the Tribunal to be satisfied that there was any agreement between the parties as alleged by the applicant. Nor is there in my judgment any sufficient evidence of the applicant having made contributions to the deposit or subsequently of payment of the mortgage or of refurbishing the property.
12. On balance of probabilities I find that the applicant has not proved his case. In these circumstances I order that the restriction entered against the title by the applicant be removed.
13. Costs will follow the event. Ms Darlington applied for summary assessment of the costs, which I assessed in the sum of £9,536.25.
14. Under rule 51 of the Tribunal's Rules of Procedure 2013, it is open to the applicant to seek a reconsideration of this decision. Any reconsideration based on the applicant's mental condition as at today's date is likely to require up-to-date medical evidence.

Dated this 20th day of November 2018

Adrian Jack

BY ORDER OF THE TRIBUNAL

