[2018] UKFTT 316 (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. 2016/0614

BETWEEN

NURJAHAN KHATUN

Applicant

and

TOASIR ALI

Respondent

Property address: Flat 9, Everard House, Boyd Street, London E1 1LY
Title number: EGL427570

Before: Judge Daniel Gatty

Sitting at: 10 Alfred Place, London WC1
On: 6-7 March 2018

Applicant Representation: Ian Mason of counsel, instructed by Archstone, Solicitors
Respondent Representation: Caoimhe McKearney of counsel instructed by DWF, Solicitors

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DECISION

Cases referred to:
Goodman v Gallant [1986] Fam 106
Stack v Dowden [2007] 2 AC 432
Jones v Kernott [2012] 1 AC 776
Quigley v Masterson [2011] EWHC 2529 (Ch)

Greenfield v Greenfield (1979) 38 P & CR 570

1. This case concerns an application dated 23 February 2016 to HM Land Registry made by the Applicant, Mrs Nurjahan Khatun, to enter a restriction against the leasehold title of Flat 9, Everard House, Boyd Street, London E1 1LY, Title number: EGL427570 ("the Flat"). It is opposed by the Respondent, Mr Toasir Ali, who is the Applicant's brother and has been the sole registered leasehold proprietor of the Flat since December 2015.

2. Until December 2015, the leasehold interest in the Flat was registered in the joint names of the Respondent and Mrs Ayatara Khatun ("AK"), the parties' mother. She died on 23 September 2015. The Applicant asserts an interest in the Flat under a will dated 2 October 2014 ("the Will") by which AK left her interest in the Flat to the Applicant. It is that interest which the Applicant seeks to protect by a restriction. The Respondent does not accept the validity of the Will; but his primary case is that AK's interest in the Flat could not have passed under the Will even if valid. He contends that it passed to him either automatically because he and his mother were beneficial joint tenants or under a TR1 transfer from the Respondent and AK to the Respondent ("the Transfer") that is dated 17 December 2015 but which the Respondent alleges was executed in September 2015 by AK shortly before her death.

3. In due course the dispute between the Applicant and the Respondent was referred to this Tribunal by the Land Registry and a hearing took place before me, sitting at 10 Alfred Place, London, on 6 and 7 March 2018. The Applicant was represented by Ian Mason of counsel and the Respondent by Caoimhe McKearney of counsel. I am grateful to them both for their assistance.

4. The matter was originally to be heard by me on 21 July 2017 but no substantive progress could be made at that hearing due to the illness of the Applicant's then counsel. On that occasion I directed that there be a hearing to determine as a preliminary issue whether the Flat was held by the Respondent and AK as beneficial joint tenants immediately before AK's death in September 2015, without prejudice to the question of the effect of the Transfer. I made that order because a trial of that preliminary issue had the potential, depending on its outcome, to shorten the proceedings and save costs. There was a dispute between the parties whether the Transfer was ineffective either because AK's signature was alleged to be a forgery or because she did not have mental capacity at the

time when, according to the Respondent, she signed it. And there was the dispute mentioned above as to the validity of the Will. If, however, AK and the Respondent were beneficial joint tenants of the Flat when she died (or would have been but for the Transfer), AK's interest in the Flat would have passed to the Respondent under the right of survivorship without the need for any transfer to the Respondent and despite any will purporting to deal with AK's interest in the Flat. It was that preliminary issue that was heard by me on 6-7 March 2018.

The factual background

5. The Respondent and AK moved to the UK from Bangladesh in 1977, when the Respondent was six years old. He was the youngest of four siblings, the Applicant being the second oldest and some 14 years older. The Respondent and AK came to join the Respondent's father who had been in the UK since 1957, and the Respondent's and Applicant's oldest brother, Toskir, who had come to the UK in 1967. Toskir's wife moved to the UK in 1978 and his other brother, Askir, arrived in 1980. The Applicant remained living in Bangladesh, where she got married, until 2004. While AK's husband was alive the family lived in Mossley, near Ashton-under-Lyme in a house owned either by AK's husband or AK and her husband. AK's husband died in 1984. In 1985 the Mossley house was sold and AK and the Respondent moved to the Flat. Apparently, Toskir lived in the Flat for about six months in 1987 and Askir and his family lived there between 1988 and 1990. The Respondent has lived in the Flat continuously since 1985. He presently occupies it with his wife, Shayera Begum ("Shayera"), who moved in in 1998, and their children.

6. The Flat was formerly let to AK by Tower Hamlets Council. There is a tenancy agreement between the Council and AK dated 14 November 1988 in the hearing bundle but, according to the Respondent, AK and he moved into the Flat in 1985, presumably under an earlier tenancy agreement. A long lease of the Flat ("the Lease") was granted to AK and the Respondent on 28 August 2000 under the right-to-buy legislation for a premium of £20,000 which, according to the Respondent, was funded by a 100% mortgage from Halifax plc in his and his mother's joint names. The leasehold interest was registered in their joint names with no restriction against a disposition by a sole

proprietor (which the Land Registry commonly puts on the title when it is informed that co-owners are beneficial tenants-in-common rather than beneficial joint tenants).

7. The Applicant came to live at the Flat when she moved to the UK from Bangladesh in 2004. She was accompanied by her young child. The Respondent states that the Applicant originally had only a six-month visa and he was not expecting her to remain in the UK permanently, but in the event she has done so. She lived in the Flat until late 2006 or early 2007 when a dispute, described further below, led to AK and the Applicant moving into other accommodation. Although the Applicant did not move to the UK until 2004, her son Dorbesh Ali ("Dorbesh") had preceded her. He too lived in the Flat until January 2007, from 1985 according to the Respondent.

8. So, at the time when the Flat was purchased from the Council it was occupied by AK, the Respondent and Shayera (I am unsure whether they had any children by then – they had two by 2006) and by Dorbesh; and the Applicant was living in Bangladesh. According to the Respondent he was the only member of the household with a steady income in 2000, although it is clear that AK did some sewing piece-work from home.

9. Alexander Johnson solicitors acted for the Respondent and AK in the acquisition of the Flat in 2000. Their file is not available, unsurprisingly after so many years, but the bundle included a document produced by them headed "Standards of Client Care" which explains what services they will be providing. Both AK's and the Respondent's signatures appear at the end of that document under a statement confirming understanding of the contents of the document and instructing Alexander Johnson to act. Both signatures also appear on a document headed "Joint Tenants/Tenancy in Common" which explains the difference between the two. The signatures appear under the statement:

> "We have read and understood the above notes. We wish our title to be registered as:
>
> Joint Tenants / Tenants in Common (delete as applicable)"

"Tenants in Common" is deleted on the form, to indicate a wish that the property be held as joint tenants.

10. In late 2006 the Respondent had a major falling out with AK and the Applicant. It is common ground that the initial cause was the Respondent's request that the Applicant

move out of the Flat but there the common ground ends. The Applicant alleges that the Respondent's wife was violent to her. The Respondent blames the Applicant. Whoever was to blame, the Applicant did move out and AK moved with her, as did Dorbesh. None of them ever moved back in.

11. AK obtained a without notice injunction against the Respondent and Shayera on 22 January 2007 in the Principal Registry of the Family Division requiring them to allow her to resume occupation of the Flat and not to molest her. She did not move back in, however. There appears to have been a further hearing on 12 April 2007 at which a non-molestation order was made but it was discharged at a hearing on 23 August 2007. It is apparent from a letter dated 4 September 2007 to AK from the solicitors acting for her, Shanaz & Partners, that AK had elected to withdraw the application rather than give evidence, saying she could not remember anything. The letter states:

> "The difficulty was also that you had changed what you had said initially to us when you applied for the Injunction and Occupation Order to now about who had threatened you and what allegations were made"

12. That letter also records that an agreement had been reached that AK would not return to the Flat and would collect her things from it. The letter observed that when AK was ready she could make an application to the court to order a sale of the property to receive her share of the sale proceeds and that the Respondent could not sell the Property because she was "a joint owner of the Property and will remain so".

13. It was the Respondent's case, supported by Dorbesh but denied by the Applicant, that the Applicant had persuaded AK to make untrue allegations in the initial application to the Court which AK was unwilling to stand by when the time came to give evidence.

14. The order of 23 August 2007 recorded AK's agreement not to return to the Flat and to the Respondent and Shayera living there. They gave undertakings not to molest AK without making any admissions.

15. There was also a separate application for a non-molestation order made by Shayera against the Applicant which gave rise to an order dated 6 June 2007 that the Applicant not go within 400 metres of the Flat (except to attend a medical centre nearby).

16. Following these proceedings, there was an estrangement between the Respondent and AK, and the Applicant. AK lived with the Applicant and Dorbesh at Flat 98, Roche House, Beccles Street E14 and for a period the Respondent had no dealings with any of them.

17. Later, in 2011 or 2012 according to Dorbesh, the Applicant and AK moved to another flat, Flat 1 Lonsdale House. Following a fall on 23 January 2015 when she broke her back, AK came to live with Dorbesh in Roche House and he became her main carer. By this time Dorbesh had also fallen out with his mother. It is notable that in his witness statement and during his evidence at the hearing Dorbesh referred to her as "the Applicant" and never as his mother. He alleges that the Applicant mistreated AK and limited her contact with relatives and friends to control her. The Applicant alleges that it was Dorbesh who prevented her from having contact with AK after February 2015. Whosever fault it was, after February 2015 the Applicant appears only to have seen AK twice, once in May 2015 and once in September 2015 and to have spoken to her on the telephone twice.

18. Meanwhile, according to the Respondent he began seeing AK again in 2009 and gradually repaired their relationship, seeing her every month or so initially and more frequently than that after 2012.

19. As already mentioned, the Applicant has produced a copy will which she says was made by AK and dated 2 October 2014. It records that AK is a widow with "one son and one daughter" – which is incorrect if the Respondent's family history is accurate. It appoints the Applicant as executrix. It contains the following clause 4:

> "4. Bequests
> 4.1 I bequest onto the person named below, if she survives me by 30 (thirty) days, the following:
> Name : Mrs Nurjahan Khatun
> Relationship: daughter
> Address: 1 Lonsdale House, 2 Equinox Square, London E14 6GJ.
>
> Bequest: My total share to the property - 9 Everard House, Boyd Street, London El 1LY (I own 50% share of this property)
>
> 4.2 If at the time of my bequeath any of the property described in 4.1 above is no longer in my possession or part of my estate, then the bequest of such property shall be deemed null and void and shall no longer form part of this will and testament.

> 4.3 If the person named in 4.1 above does not survive me by 30 days (thirty), the property bequeathed shall become part of the remainder of my estate."

20. Curiously, the Will does not go on to state to whom the remainder of AK's estate was to be left. There are three witnesses to AK's signature including someone named Tuoyo Eruwa below whose signature is the office stamp of SEB Solicitors on the Whitechapel Road.

21. The Respondent denies any knowledge of the Will prior to its production after AK's death and does not accept that it was made by AK at all or, in any event by her knowing what it said.

22. The Respondent states that it was AK's idea to transfer the Property into his sole name, in order to prevent the Applicant laying claim to the Property. Dorbesh gave evidence supporting this account. Separate solicitors were instructed for AK and the Respondent - JA Stifford Law for AK. The bundle includes parts of that firm's file including two attendance notes dated 14 September 2015 apparently describing two visits to AK on that date at which AK gave instructions and signed the TR1 in the presence of Dorbesh (who signed the Transfer as witness to AK's signature). It is not clear from the attendance notes which employee of JA Stifford Law they were made by. The file also contains a letter dated 6 September 2015 from Alexander JLO Solicitors acting for the Respondent stating that they held "the executed Transfer by our client" and a letter from JA Stifford Law to Alexander JLO dated 21 September 2015 apparently enclosing the Transfer executed by AK. For some reason the Transfer was not dated until 17 December 2015. An email of that date from Alexander JLO to JA Stifford Law reads:

> "Further to our telephone conversation I would be grateful if you could please confirm that you are happy for us to complete the transfer and date the transfer today's date".

23. The Flat was registered in the sole name of the Respondent in December 2015 pursuant to an application dated 17 December 2015 made by him, supported by the Transfer. The Applicant does not accept that AK signed the Transfer at all or that if she did sign it she was well enough to understand what she was doing.

24. The Applicant was granted probate in respect of AK's estate on 15 December 2015.

25. It is relevant to note that the key figures in this dispute did not all speak English to the same degree. The Respondent is a fluent English speaker as is Dorbesh. The Applicant claims to speak no English and gave evidence through an interpreter although I suspect from a couple of unguarded responses to untranslated English that she may understood and speak more English than, for some reason, she was prepared to admit. There was a dispute about how much English AK spoke and understood. The Applicant asserted that she spoke and understood no English. The Respondent alleged that she could understand and make herself understood in English. Whatever her grasp of spoken English, it was clear from the evidence that she would not have been able to understand formal letters and documents in English without assistance.

The Issues

26. While the Will and the Transfer, and the challenges to them, are part of the background factual context against which I have considered the preliminary issue, it is not necessary for the purposes of the preliminary issue to decide whether either was validly executed by AK. Nor could I properly do so on the evidence I heard about them, which was limited on account of the terms of the preliminary issue.

27. So, the issues for me to determine are (1) whether the Lease was granted to AK and the Respondent as beneficial joint tenants or as beneficial tenants in common and (2) if it was granted to them as beneficial joint tenants whether the joint tenancy had been severed before AK died (other than by the Transfer). If the Lease was granted to AK and the Respondent as beneficial joint tenants and the beneficial joint tenancy was not severed before AK died, then the Respondent would have become sole beneficial owner of the Flat on AK's death even without the Transfer, and no interest in the Flat could have passed to the Applicant under the Will. In those circumstances the Applicant would have no interest in the Flat capable of being protected by a restriction (either in her own capacity or as AK's executor) and I should direct the cancellation of her application. On the other hand, if by September 2015 the Flat was held by AK and the Respondent as beneficial tenants in common, because it always had been so held or

because a joint tenancy had been severed, it will be necessary to hold a further hearing to determine whether the Transfer was effective and, if not, the effect of the Will.

28. That having been said, Mr Mason accepted in his closing argument that on the evidence it was difficult for him to argue that AK and the Respondent did not hold the Flat as joint legal and beneficial tenants initially, unless I were to find that AK did not agree to the Respondent being a joint owner of the Flat at all. He recognised that the reference to AK having a 50% interest in the Flat contained in the Will relied on by his client was inconsistent with her suggestion that AK may not have agreed to the Respondent being a co-owner at all. So, his main submission was that the events of late 2006 and 2007 amounted to a severance by conduct of the beneficial joint tenancy under which the Flat had initially been held. A notice of severance was served by the Applicant in January 2016 but Mr Mason correctly did not rely on that document which came too late to be effective.

Discussion

29. Where land is acquired in more than one name the legal title can only be held jointly but the legal co-owners may hold the land (1) on trust for just one of them (or for third party beneficiaries), or (2) as beneficial joint owners or (3) as beneficial tenants-in-common in equal or unequal shares. That much is well-established and was not in dispute. If there is an express, written declaration of trust that is definitive of the beneficial ownership (*Goodman v Gallant* [1986] Fam 106, CA, at 110F-111B).

30. Where there is no express declaration of trust, the Court or Tribunal must find from other evidence the trusts on which the land is held. As Ms McKearney argued and Mr Mason accepted, there is a rebuttable presumption that equity follows the law, i.e. that co-owners of land will be joint tenants in equity as well as in law and that a sole owner will hold the land for himself absolutely. See *Stack v Dowden* [2007] 2 AC 432 and *Jones v Kernott* [2012] 1 AC 776. The presumption of joint beneficial ownership arising from co-ownership is often rebutted by evidence of a common intention to hold the land in unequal shares, whether that common intention is to be found in discussions between the co-owners or inferred from their conduct.

31. There was no express declaration of trust made between AK and the Respondent. So, the presumption of beneficial joint tenancy will operate unless on the evidence the Applicant has rebutted it. As Mr Mason realistically accepted, the Applicant faces substantial difficulties in doing that because she was living in Bangladesh in 2000. It is presumably for this reason that in her first and third witness statements the Applicant alleged that the Respondent "would have" manipulated AK into allowing the Respondent to become a co-owner of the Flat but did not make a positive allegation that he did so.

32. In cross-examination, however, the Applicant went further. She alleged for the first time that she was having weekly telephone conversations with AK at the time of the purchase of the Flat and that her mother was telling her what was happening. She said that her mother reported that the Respondent had made it clear to AK that the purchase would be only in her name and that the Respondent had behaved rudely towards AK when taking her to the solicitors office to sign papers. The Applicant denied that her mother had ever in her life seen the Standards of Client Care document from Alexander Johnson but then accepted that the signature on the document appeared to be her mother's. She asserted that her mother had told her on the telephone that certain things had not happened when if they had not happened there would have been no reason for AK to mention them at all.

33. I am afraid that I formed the view that the Applicant's evidence was not accurate when she claimed in cross-examination to have discussed the purchase with her mother during weekly telephone calls in 2000. If that evidence were true, I would have expected it to be contained in one of her three witness statements. The Applicant did not have a telephone in her home in Bangladesh and had to travel some distance to the nearest town in order to be able to make or receive telephone calls. I find that the Applicant only occasionally spoke to AK on the telephone at the relevant time, as the Respondent contended, and that AK did not discuss the Flat purchase with the Applicant in any detail over the telephone. I find as a fact that the Applicant did not discuss the purchase process with her mother nor the basis on which the Flat was owned, if she discussed it at all, before the Applicant's arrival in the UK in 2004 and probably not before the falling out in 2006/2007. Accordingly, I find that the Applicant had no contemporaneous knowledge about the terms on which AK and the Applicant bought the Flat.

34. The Respondent's evidence was that the question of exercising the right to buy was first discussed in 1993 and that he and AK met then with a mortgage broker introduced by Toskir and with Toskir and discussed issues such as whether the Flat would be bought as joint tenants so that it would pass to the Respondent on AK's death, which AK as well as he favoured. However, the proposal was not taken forward until 1999 when the new Labour government was proposing to reduce the right to buy discount. The Respondent states that AK understood and was actively involved in the process; for example she and not the Respondent was home to meet with the valuer and Council representatives. He recounts that he and his mother met with a mortgage broker on Whitechapel Road and then twice with Alexander Johnson solicitors. He says that a Bengali speaking assistant at the solicitors' translated conversation and documents for his mother on both occasions.

35. The Applicant paints a picture of AK as someone who did not speak, read or write English and who could not have followed the process. The Respondent painted a different picture of a woman who had to survive without the aid of a husband for many years, who was resourceful and could get by in spoken English. The Respondent's evidence in that respect was supported by Dorbesh and by two witnesses the Respondent called specifically to address AK's ability to understand the transaction in 2000. One of those witnesses, Abu Mumin, impressed me as an honest, helpful witness. He knew AK in two capacities, a personal one as a friend of a Respondent and a professional one as a social worker. He described AK a "a bit extraordinary" for a woman of her background because of her tenaciousness and independence. I accept his evidence.

36. The evidence of the other witness, Shuria Khanum, was very troubling. She said that she was a neighbour of AK between 1997 and 2004. In her witness statement, which she claimed to have prepared herself, she said that she did not speak Bengali well and so conversed with AK in English. In her oral evidence she said that she spoke fluent Bengali and spoke with AK in Bengali, but then backtracked when referred to her statement. In her statement she recounted having discussed with AK AK's wish to purchase the Flat with her son as a joint tenant, not a tenant-in-common, a term which she expresses surprise that AK understood. In answers to questions from me, Ms Khanum said that she had not discussed the joint tenancy / tenancy in common distinction with AK and did not herself understand it. I was forced to the conclusion

that Ms Khanum's witness statement was, on its important points, a concoction designed to assist the Respondent's case rather than a statement of her honest recollection.

37. I have considered whether Ms Khanum's evidence so contaminates the Respondent's case that I should reject the Respondent's evidence, but conclude that I should not. While it is concerning that evidence which I did not believe was put forward to add weight to the Respondent's account of events in 1999/2000, it does not follow that his account of those events must be wrong. I did not form the impression that the Respondent was giving me dishonest evidence, and his picture of AK was supported by Mr Mumin's evidence which I have accepted. Importantly, it is also supported by the contemporaneous documents from the Alexander Johnson file that I have mentioned above. While there is no evidence from the persons at that firm who acted for the Respondent and AK, it is likely that a firm of solicitors based in an area where there is a large Bengali speaking population would take steps to ensure that a Bangladeshi client who signed to say that she had understood a document in English and had made an important election about how to hold property understood that document.

38. The case advanced by the Applicant in her witness statements that AK did not realise that the Respondent was a joint owner of the Flat at all is not consistent with the Will, if it is genuine, nor with the letter dated 4 September 2007 to AK from Shanaz & Partners mentioned above. Given the state of relations between AK and the Respondent in 2007, one would expect AK to have told Shanaz & Partners that she had not until then appreciated that the Respondent co-owned the Flat, if that were so, and for those instructions to be reflected in their letter. Instead they merely refer to AK and the Respondent's joint ownership. I do not ignore the fact that a complaint was raised about Shanaz & Partners by a letter dated 11 January 2008 purportedly signed by AK which asserts that she told them that she did not know that her son's name. That letter, if genuine, was written in the aftermath of the failed litigation when relations were at their worse. It was written in English which AK did not read and I cannot know whether, if she signed it, she knew and agreed with its contents before doing so. I therefore place no weight on that letter. I find as a fact that AK was aware in 2000 that the Flat was being purchased in her and the Respondent's names.

39. I do not consider that the bequest in the Will made in 2014, if genuine, is inconsistent with a conclusion that the Flat was purchased in 2000 as beneficial joint tenants. Many

years had passed by then and it is more than possible that AK had forgotten by then what had been explained to her in 2000, that if the Flat was held as joint tenants her interest in it would not pass under a will.

40. I therefore conclude that the Applicant is unable to rebut the presumption that AK and the Respondent acquired the Flat as joint tenants in equity as well as in law and find as a fact that they acquired it as beneficial joint tenants.

41. That conclusion brings me to the question whether the events of 2006/7 severed that joint tenancy, as the Applicant contends? A joint tenancy may be severed by a course of dealings from which a mutual intention to sever is to be inferred. The acts and dealings must indicate an intention by the joint tenants that they should henceforth hold in common. See Megarry and Wade on the Law of Real Property (8th Ed.) at [13-043].

42. It is the Applicant's case that the court proceedings in 2007 and the severe breakdown in relations between AK and the Respondent that gave rise to those proceedings amounts to a course of dealings from which severance can be inferred. Mr Mason submitted that I should find that by the date of the order made on 23 August 2007 the joint tenancy had been severed. He relied on the decision of Henderson J in *Quigley v Masterson* [2011] EWHC 2529 (Ch).

43. At para. 15 of his judgment in *Quigley* Henderson J quotes approvingly the following passage from Gray's Elements of Land Law (5th Ed.)

> "Mutual conduct has been taken to comprise any conduct of the joint tenants which falls short of evidencing an express or implied agreement to sever but which nevertheless indicates an unambiguous common intention that the joint tenancy should be severed. What is required is a consensus between the joint tenants, disclosed by a pattern of dealings with the co-owned property, which effectively excludes the future operation of the right of survivorship"

44. I do not consider that the events of 2006-7, on either party's account of them, disclose a consensus between AK and the Respondent which effectively excludes the future operation of the right of survivorship. Under the Trusts of Land and Appointments of Trustees Act 1996 beneficiaries under a trust of land have a right of occupation, whether they are joint tenants or tenants in common. The events of 2006-7 were concerned with

the relationships between the parties and occupation, not ownership, of the Flat. They did not effectively exclude the future operation of the right of survivorship. It is significant that AK took no steps to require the sale of the Property despite the reminder in Shanaz & Partners' letter that she could do so.

45. That a change to diversity of occupation is not inconsistent with the continuation of a joint tenancy is apparent from *Greenfield v Greenfield* (1979) 38 P & CR 570. In that case, severance by conduct arising from the division of a house into two maisonettes and their separate occupation was argued by the plaintiff. Fox J rejected the contention, observing:

> "The mere existence of the separate maisonettes and of their separate occupation is not inconsistent with the continuation of the joint tenancy. The two can perfectly well exist together. The matter must be considered in the light of the evidence of the actual intentions the parties. That evidence does not in Page Wood V.-C.'s words in *Williams v. Hensman*, "intimate that the interests of all were mutually treated as constituting a tenancy in common." It intimates in my view no mutuality at all to that end."

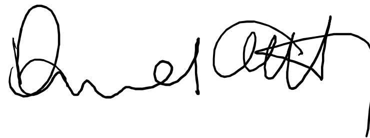
46. In *Quigley* it was held that an application to the Court of Protection for authority to sell a property in order to realise a co-owners share amounted to notice of severance. The proceedings in this case are readily distinguishable as they did not seek the sale of the Flat. Nor can a <u>consensus</u> excluding the right of survivorship be spelled out of the proceedings or the dispute that gave rise to them.

47. I therefore reject the submission that the joint tenancy between AK and the Respondent was severed during 2006/7. Correctly, Mr Mason did not suggest that there was any subsequent conduct amounting to severance. So, I conclude that if the Transfer was not effective to transfer the Flat to the Respondent before AK's death, AK's interest in it passed to the Respondent on her death under the right of survivorship. Consequently, the Applicant has no interest in the Flat either under the Will or as executor of AK's estate and hence is not entitled to a restriction over it.

Decision

48. For the reasons that I have sought to explain above, I will direct that the Chief Land Registrar rejects the Applicant's application for a restriction.

49. The usual rule in this jurisdiction is that costs follow the event: the loser pays the winner's costs since referral to the Tribunal. However, that is not the invariable rule. By para. 9.1 (b) of the Practice Directions, Property Chamber, First-Tier Tribunal, Land Registration I can make a different or no order as to costs. The Applicant has been the loser in these proceedings but I have not yet heard any submissions on costs, which I propose to decide with reference to written submissions. So, if either party wishes to apply for costs they should make a reasoned application in writing, including a schedule of costs and evidence of the costs incurred, within 28 days. Such an application should be served on the other party who will then have 21 days to respond to the application by way of written submissions sent to the Tribunal, copying any submissions to the applying party or parties. Any response to such submissions should be provided to the Tribunal and the other party or parties within 14 days of receipt of the submissions.



JUDGE DANIEL GATTY

Dated this 12th day of April 2018