



[2018] UKFTT 447 (PC)

REF/2016/1160

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

BETWEEN

AVTAR HAYRE

APPLICANT

and

JOANNA MARIA SAJDAK

RESPONDENT

Property Address: 1 Highgate Lane Lepton Huddersfield HD6 0DW

Title Number: WYK352004

Before: Judge Owen Rhys

Sitting at: Leeds Employment Tribunal

On: 24th May 2018

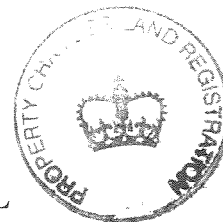
ORDER

IT IS ORDERED that the Chief Land Registrar shall give effect to the Respondent's applications made in forms RX3 and AP1 (dated 1st February 2016 and 4th March 2016 respectively) to cancel the Applicant's restriction.

Dated this 31st day of July 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL





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Applicant representation:

In person

Respondent representation:

Ms. Higgins of Counsel instructed by Harringtons
Family Law

DECISION

1. On 24th December 2012 the Applicant was registered as sole proprietor of 1 Highgate Lane, Lepton, Huddersfield HD8 0DW (“the Property”). At that time the parties were in a relationship, which came to an end in the summer of 2014. On 17th October 2014 the Applicant obtained the entry of a restriction in the title to the Property on the grounds of an alleged beneficial interest. By applications made both in forms RX3 and

API (dated 1st February 2016 and 4th March 2016 respectively) the Respondent applied to cancel the restriction on the grounds that the Applicant did not have a beneficial interest in the Property. The dispute was referred to the Tribunal on 21st December 2016. A mediation took place which unfortunately did not produce a settlement. I heard this case on 24th May 2018 at Leeds Employment Tribunal. The Applicant did not have legal representation. Ms Higgins of Counsel appeared for the Respondent.

2. The Applicant's case, as set out in his Statement of Case, is as follows. They commenced a relationship in 2007. They began to rent a property, but later decided that they would buy a property together as their home. Because the Respondent was from Poland she had no credit rating – *“She wanted to build up her credit rating so it was agreed that any property purchased would be put into her sole name. The Respondent did not have any savings. The Applicant did have £15,000 which could be used as a deposit. It was verbally agreed that the Applicant would always get his £15,000 deposit back and then what was left from any equity would be shared equally between the Applicant and the Respondent.”* The Property was purchased on 21st September 2012 for £97,500. The deposit of £15,000 was paid using the Applicant's funds. The remainder of the purchase price was raised from a mortgage with Nationwide Building Society. The Applicant paid the legal costs. The Applicant says it was specifically agreed that the equity would be shared equally.

3. Following the purchase, the Applicant says that he paid the Respondent £900 per month to cover the mortgage repayments, half of the bills and for payments in respect of a car. This was initially paid in cash but as from October 2013 the monies were paid by standing order to the Respondent's bank account. From August 2014 the payments were reduced to £570, intended to cover the costs of the mortgage, the car repayment and for the purchase of wardrobes at the property. He also says that he paid a substantial amount for work at the Property, and for items such as carpets, new boiler etc. He says that the relationship came to an end and he moved out of the Property in July 2014. He accepts that he went to the Property in August 2014 in order to collect the remainder of his belongings. Whilst he was there, the Respondent asked him to sign a document – *“one single sheet of paper with printing on both sides of the page, which the Respondent asked him to sign. He briefly looked at the document and recalls that it mentioned a car. The Respondent told him to sign it and repeatedly said that she would call the*

police unless he did so. The Applicant signed.” He says that the document which the Respondent now relies upon – the so-called Termination Agreement – was not complete when he signed it, and words were added after he signed. After the document was signed *“the Respondent said that she had transferred £10,000 into his bank account “and that’s all you are having”.”*

4. The Respondent’s Statement of Case paints a somewhat different picture. She challenges the central element in his case, in that she denies that the purchase of the Property was intended to be a joint purchase. She says that she decided that she wanted to buy a house as security and as an investment for her future. The Applicant had made it very clear that he did not want to be liable for a mortgage. As far as her credit rating was concerned, she already had a satisfactory rating having worked in the UK since January 2007, appointed to the role of Production Shift Manager at a salary of £29,000 in August 2012. She had credit card accounts and a mobile phone contract all of which required an established credit record. She says that the fact that she was able to obtain a mortgage on the Property demonstrates that she had a good credit rating. She accepts that the Applicant provided the deposit of £15,000. However, she says that this was a gift from him. She had a friend, Gosia, who had offered to lend the deposit to her, but the Applicant said that she should accept his gift which came without conditions. Although they were a couple, and the Applicant was intended to live in the Property with her, there was no agreement regarding repayment of the deposit or that he should have an interest in the house. According to the Respondent, the Applicant had no wish to take on the commitment of a mortgage.
5. The Respondent does not accept that the Applicant paid her £900 per month as he claims. She accepts that he did make payments to her between October 2013 and July 2014. This was in respect of food, clothes and general upkeep for the Applicant’s children, who regularly stayed at the Property. She denies that the Applicant paid for the items such as carpets and boiler. She paid for many of these herself, and some of the work was carried by friends for no pay. She says that when the parties separated they came to an agreement embodied in the signed Termination Agreement dated 16th August 2014. Under this agreement, the following terms were agreed:

- (a) that the Respondent would pay the Applicant the sum of £10,000 on exchanging signed counterparts and a further £5000 on the second anniversary of the agreement;
 - (b) The Applicant will pay the Respondent the sum of £570 per month *“to cover the cost of utilisation of the S Class Mercedes (S66 TOF number plate), mobile phone bill, AA breakdown and repair cover and Mercedes service for the car”*.
 - (c) In the event that the Applicant failed to pay the £570 per month, any shortfall would be deducted from the instalment of £5000.
 - (d) Items at the property belonging to the Applicant to be returned to his parents’ house within 7 days.
 - (e) Bicycles belonging to the Respondent to be returned.
 - (f) *“In consideration of the above agreements Mr Hayre relinquishes any further rights or entitlements or interests in the property, or the contents thereof, or possessions owned by [the Respondent]. And similarly in consideration of the above [the Respondent] relinquishes any entitlement to Mr Hayre assets or possessions.”*
6. The document appears to be signed by both Applicant and Respondent, and witnessed by Mr. Hayre’s ex-wife, Rashida Jennings, although this is disputed by the Applicant. The Respondent says that the Applicant knew perfectly well what the document contained, and willingly signed it. She paid him the sum of £10,000 on that date, but did not make the final payment because Mr. Hayre failed to make the £570 per month payments stipulated. That is the Respondent’s case, in essence.
7. Both parties made witness statements, which they verified on oath, and upon which they were cross-examined. The Applicant also relied on a witness statement from his ex-wife Mrs Rashida Jennings, who gave evidence before me. The Respondent also relied on statements from Gosia Kovenia and Dagmara Mischczankowska, both of whom verified their statements on oath. The Applicant cross-examined Ms. Kovenia but not Ms. Mischczankowska.
8. In her statement Mrs. Jennings deals with the occasion on 16th August 2014 when the document relied on by the Respondent as the Termination Agreement was signed. She states that the Respondent asked her to come to the Property that day. When she arrived

she gave Mrs. Jennings a document which she had prepared and asked her to read through it. She says that the document only related to a car, a S Class Mercedes, and contained various terms by which the Respondent would receive payment from the Applicant by instalments. She recalls agreed payment of £5000 and £500. She relates how her brother, the Applicant, arrived at the Property. She says that there was something of a shouting match. The Applicant eventually signed the document after the Respondent said that she would call the police if he did not. She is “*certain*” that the document that is now relied on by the Respondent was not the same as the document signed by the Applicant, for a number of reasons specified in her statement.

9. Gosia Kovenia is a friend and something of a mentor to the Respondent. She confirmed that she and her husband had offered the Respondent the sum of £15,000 towards the purchase of the Property, but instead she had accepted the Applicant’s offer of a birthday gift of the same sum as a gift. She said that he would brag about owning properties and seemed to want to impress. In her statement, Dagmara Misczankowska referred to an occasion on 11th August 2014 when she was at the Property and Rashida Jennings arrived. According to her, Mrs. Jennings stated that the Applicant had been unfaithful to her when they were in a relationship, and had been unfaithful to other women. It seems that the Respondent was unaware that Mr. Hayre had previously been married.

THE APPLICABLE LAW

10. Since the Property is vested in the Respondent alone, she is presumed to own the entire beneficial interest. The burden is on the Applicant to prove that the beneficial ownership is not the same as the legal ownership. A constructive trust may arise when land is purchased as a joint home but where the registered legal title does not reflect the beneficial shares which the proprietors intended for themselves. The common case is of cohabiting partners who buy a house to live in as their home. The legal estate may be registered in the name of only one of them, and the name of the other does not appear on the registered title. In such a case, a constructive trust may arise which binds the legal estate and gives effect to the parties’ common intentions as to their beneficial shares in the property. If there is an express agreement that the non-owning partner should have a beneficial interest, that is of course sufficient in itself. In the absence of express agreement, the common intention is usually inferred from the entire course of

dealings between the parties, and go beyond financial contributions to the purchase or maintenance of the property. In sole proprietorship cases, the trust arises because it would be inequitable for the registered proprietor to hold the legal estate as sole beneficial owner given the contributions made by his partner in reliance on their shared understanding. The doctrine is similar to that of proprietary estoppel, in that both essentially require detrimental reliance on an agreement or common understanding. The relevant legal principles are set out clearly in Snell's Equity (33rd ed.) at section 8, and particularly at 24-049 onwards.

FINDINGS OF FACT

11. Having heard the evidence, and the cross-examination of the witnesses, my findings of facts are as follows:

- (a) There was no agreement or common intention between the parties that the Applicant would have a beneficial interest in the Property.
- (b) His contribution of £15,000 to the purchase price was a birthday gift.
- (c) The Respondent had acquired a satisfactory credit record before the purchase and the transfer into her sole name was intended to reflect her sole beneficial ownership of the Property.
- (d) After the relationship between the parties had broken up, the Applicant signed the Termination Agreement in the form contended for by the Respondent, without being subject to duress.
- (e) The Applicant was aware of the terms of the Termination Agreement.
- (f) He has grossly exaggerated the extent to which he paid for items of work done on the Property.

12. In making these findings of fact, it is apparent that I have preferred the evidence of the Respondent and her witnesses to that of the Applicant and his sister, where there is a conflict. My reasons are as follows.

- (a) As a matter of inherent probability, the Applicant's explanation for the vesting of the Property in the Respondent's sole name makes absolutely no sense. She had held full-time employment since 2007 with a progressively increase in her salary from post to post. She had taken on liability for the utilities at the rental property in which the parties first cohabited, and had a number of contracts (such as for her mobile phone) which would have required a positive credit

reference. The very fact that she was able to secure a mortgage from Nationwide Building Society towards the purchase of the Property demonstrates that she was creditworthy. In my view, the only probable explanation for the fact that the Respondent was the sole owner of the Property, and solely liable on the substantial mortgage, was that there was no agreement or common intention that the Applicant should have any interest in the Property.

- (b) I am also satisfied that the Respondent would have been able to borrow the initial deposit from her friend Ms. Kovenia, and that the money provided by the Applicant was by way of gift. In cross-examination Ms. Kovenia recalled him saying to friends that he wanted to “*treat my girl*” in reference to the gift of £15,000. She said that the Applicant had a tendency to brag about his wealth and assets and, having observed the Applicant in the witness box, that characterisation rings true.
- (c) I did not find Mr. Hayre to be a reliable witness of truth. There were a number of unsatisfactory features in his evidence. For example, he was unable to explain why his initial Pre-Action protocol letter – dated 30th September 2014 – makes no reference to the repayment of the deposit in addition to the acquisition of a 50% beneficial interest in the Property. His case, as currently formulated, is that he is entitled to both. Given that the letter before action was written within a matter of weeks after the relationship terminated, it is surprising that this element of the case was omitted. His explanation, however, was that he told his solicitor but through an error his solicitor omitted it from the letter. This seems unlikely, to say the least.
- (d) By the same token, his contortions in cross-examination when dealing with Ms Higgins’s questions regarding the Termination Agreement are a case in point. His case, as pleaded, and as set out in his witness statement, was that he had signed the document, but that he had not read it through, and certain words must have been added in manuscript after he had signed. He said that he wanted to view the original and possibly subject it to forensic examination. The added words were simply “*I Mr A.S.Hayre agree to the terms and conditions stated above*”. These words had been printed on the document, but were crossed through, seemingly because they were placed immediately underneath the Respondent’s signature and in the wrong place. The original document was produced at the hearing. He gave a variety of different and inconsistent answers

when challenged. At one time he admitted that the signature was his, yet in another reply he said that the signature was forged. My impression was that he would say anything to avoid accepting that he has willingly signed the Termination Agreement and was bound by it.

- (e) His ex-wife Rashida had, in her witness statement, said that she was certain that the document produced by the Respondent was not the document which she witnessed. Under cross-examination she resiled from this position, and said that she could not be sure one way or another. Indeed, she was extremely vague in her answers on this point to the extent that her evidence was of no assistance.
- (f) As a matter of inherent probability, I cannot see that the Respondent would have asked the Applicant's ex-wife to act as witness to the Termination Agreement if she was intending to cheat him.
- (g) Furthermore, it makes no sense that the Applicant felt pressurised into signing the agreement by the Respondent's threats to call the police. Again, if the Respondent was attempting to force the Applicant to sign, it is improbable that she would threaten to involve the police.

13. It follows from my findings that the Applicant is unable to establish that he has acquired any interest in the Property. Even if he had been able to establish an initial agreement or common intention, I would have held that he was bound by the Termination Agreement, by which he gave up any rights to the Property. I am satisfied that he was well aware of what he was signing, that no duress or misrepresentation was employed, and that he has accepted the sum of £10,000 paid pursuant to that agreement.

14. I shall therefore direct the Chief Land Registrar to give effect to the Respondent's applications to cancel the restriction entered on the register of the Property. I do not see why he should not pay her costs. The Respondent has filed a costs statement. If the Applicant wishes to object to any items in that statement he should do so no later than 4pm on Friday 10th August 2018, filing his objections with the Tribunal and serving a copy on the Respondent.

Dated this 31st day of July 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL

