

[2018] UKFTT 421 (PC)

REF/ 2017/ 0725

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ERNEST FABIAN HIBBERT

APPLICANT

and

KAREN CLAUDETTE HIBBERT

RESPONDENT

Property Address: 9 Chinnor Close, Bedford and garage

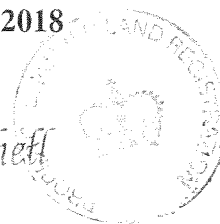
Title Number: MK419TQ

ORDER

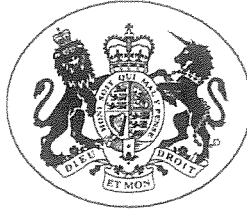
The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicant made in form RX1 dated 15th February 2017 for entry of a restriction on the title to the above-named property as if the objection of the Respondent thereto had not been made.

Dated this 29th June 2018

Michael Michell



BY ORDER OF THE TRIBUNAL



[2018] UKFTT 0421 (PC)

REF 2017/0725

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ERNEST FABIAN HIBBERT

APPLICANT

and

KAREN CLAUDETTE HIBBERT

RESPONDENT

Property Address: 9 Chinnor Close, Bedford and garage
Title Number: MK419TQ

Before: Judge Michell

Sitting at: 10 Alfred Place, London

On: 18th April 2018

And following written submissions received on 17th May 2018

Applicant Representation: Mr Bernard, lay representative

Respondent Representation: In person

DECISION

*APPLICATION TO ENTER A RESTRICTION- A WAS FORMER REGISTERED
PROPRIETOR AND ALLEGED SIGNATURE ON TRI INTO NAMES OF A AND R AND*

THEN OF R1 INTO NAME OF R WAS NOT HIS SIGNATURE- CONSIDERATION OF WHETHER TRIBUNAL TO DETERMINE WHETHER TRIS WERE SIGNED BY R OR MERELY WHETHER R HAD AN ARGUABLE CLAIM

Cases referred to

Jayasinghe v Don Liyanage [2010] EWHC 265 (Ch)

Chief Land Registrar v. Silkstone [2011] EWCA Civ 801

Re H [1995] UKHL 16

Bank of Scotland plc v. Greville Development Company (Midlands) Ltd [2014] EWHC 128

1. Mr Hibbert applied to enter a restriction on the title to 9 Chinnor Close. He says that he should be registered as sole proprietor and not his daughter, the Respondent, Karen Hibbert. Mr Hibbert says that he did not execute either a transfer of the Property into the joint names of himself and Karen Hibbert or a subsequent transfer into Karen Hibbert's sole name.

Facts

2. Mr Hibbert and his late wife Marlene Hibbert purchased the Property in 1979. It was their family home. Mrs Marlene Hibbert died on March 2001 and thereupon Mr Hibbert became the sole legal owner of the Property. Mr Hibbert was then 66 years old and Karen Hibbert was about 38 years old. Karen Hibbert moved into the Property with her son, Ross in August 2001 and lived there with Mr Hibbert. In the autumn of 2001 Mr Hibbert purchased a house at Part of Upton, St. Ann, Jamaica. Jamaican lawyers, Robinson Phillips and Whitehorse acted for him on the purchase. From a letter sent by them to Mr Hibbert dated 14th August 2001 it appears that the total costs of purchase of the house amounted to 3,969,000 Jamaican Dollars. That was at the then current exchange rates equivalent to something in the region of £57,000 to £60,000. Mr Hibbert financed the purchase from savings and from money raised on mortgage of the Property. Mr Hibbert mortgaged the Property in October 2001 to Nationwide Building Society ("Nationwide") to secure an advance of £25,000 repayable over a 10-year term. Pictons, solicitors in Luton, acted for Mr

Hibbert on the mortgaging of the Property on this occasion. Pictons sent the mortgage deed to Mr Hibbert for him to sign under cover of a letter dated 1st October 2001, addressed to him at the Property. There is no dispute that Mr Hibbert signed the mortgage on this occasion. Mr Hibbert then rented out the house in Jamaica and worked part-time in England as a bus driver.

3. Having moved into the Property, Karen Hibbert paid for some updating. She paid approximately £6,000 to replace carpets in the sitting room, conservatory and 2 of the bedrooms with wooden flooring and to renew the carpets in the hall, staircase, landing and third bedroom. In July 2003 she paid Mario's Heating £2,723.67 for work to the central heating system in the Property, including the supply and installation of a new boiler, the replacement of some radiators and the supply of thermostatic radiator valves.

4. Karen Hibbert's evidence was that in 2003 Mr Hibbert wanted to borrow more money to do works to the house in Jamaica. She said that he proposed she go with him to Nationwide Building Society to ask about a further advance. They went together. Mr Hibbert was told that he could not have a further advance because of his age. He would then have been 68 years old. Karen Hibbert said that Mr Hibbert asked if a further advance could be made if Karen Hibbert was added to the title as joint owner of the Property. Karen Hibbert said that she decided to "assist her father to realise his dreams" by agreeing to be a joint owner of the Property.

5. Mr Hibbert denied that he approached Nationwide for a further advance. He did not give instructions to CC Bell & Co for the transfer into joint names.

6. On 16th December 2003 Nationwide made a written offer to Mr Hibbert and Karen Hibbert of a further advance of £35,000 repayable over a term of 20 years. On the same day Nationwide wrote a letter addressed to both Mr Hibbert and Karen Hibbert at the Property confirming that it approved a transfer of equity and further advance. It is not in dispute that Mr Hibbert was in the United Kingdom at this time. Nationwide also wrote on the same date to C.C. Bell & Son, solicitors of Bedford, confirming the approval of the transfer of equity application and the offer of further advance. The letter included an instruction to the solicitors, "When all conditions have been met and the Transfer Deed signed, send it to us for sealing". Karen Hibbert's evidence was that Mr Stubbings of CC Bell & Son was the family

solicitor that both her parents had used since the 1960s. CC Bell & Son had prepared the will of the late Mrs Hibbert dated 13th May 1996. Karen Hibbert said that Mr Hibbert took her along with him to see Mr Stubbings and that Mr Hibbert asked Mr Stubbings to prepare the documents to transfer the Property to herself and Mr Hibbert. She said that Mr Stubbings knew that Mr Hibbert was “repatriating back to Jamaica”. No attendance note of such a meeting was produced in evidence.

7. On 19th December 2003 Mr Stubbings wrote to Mr Hibbert and Karen Hibbert at the Property referring to “our recent telephone conversation”. There is no letter in evidence in which Mr Stubbings refers to meeting Mr Hibbert and Karen Hibbert. In the letter, Mr Stubbings acknowledged instructions regarding the proposed transfer of equity relating to the Property. He enclosed the offer of further advance and stated that the offer had to be signed by both Mr Hibbert and Karen Hibbert in the presence of a witness. He asked that it be returned to him immediately as he needed “to lodge this with Nationwide together with the form of Transfer”. He also enclosed a standard engagement letter in duplicate and asked that the duplicate be signed and returned to him for his file. No signed copy of the mortgage advance or of the engagement letter is in evidence.

8. It would appear that Karen Hibbert wrote to C.C. Bell & Son on 7th January 2004 about the transfer, though no copy of the letter is in evidence. Mr Stubbings wrote a letter addressed to Karen Hibbert alone, dated 30th January 2004 and referring to her letter of 7th January. He enclosed a transfer of the Property into the joint names of Mr Hibbert and Karen Hibbert. The letter stated

“The Transfer needs to be signed by you and your father, in each case in the presence of an independent witness who should add his or her signature, name in block capitals and address on the lines provided. The Transfer will need to be signed by both of you before Nationwide seals it and completion can be arranged”.

9. On 15th March 2004 Mr Stubbings wrote to Karen Hibbert referring to her “recent call at the office” and confirming that the Transfer had been lodged with Nationwide for sealing.

10. There is in evidence a transfer in form TR1 of the Property by Mr Hibbert into the joint names of himself and Karen Hibbert (“the 2004 TR1”). It is dated 25th March 2004. It is purportedly signed by Mr Hibbert and by Karen Hibbert and sealed by Nationwide. It

includes a statement that the seal of Nationwide was affixed to it on 19th March 2004. On the same day Nationwide wrote to Mr Hibbert and Karen Hibbert stating that the writer had received notification that the transfer was due to be completed shortly and had amended the names on the mortgage account.

11. Mr Hibbert's evidence was that he did not sign the 2004 TR1. He said in cross-examination that he had not seen a TR1 in his life until he saw the 2004 TR1 in the course of these proceedings.

12. Karen Hibbert stated in her Statement of Case that the Stamp Duty Land Tax form "along with several other documents" was sent to Jamaica by courier for Mr Hibbert to sign and to have witnessed. She said that Mr Hibbert then returned the documents to her and she then signed them and sent them to the solicitors. In her oral evidence, Karen Hibbert said that she sent the 2004 TR1 by courier to Jamaica for Mr Hibbert to sign. She said it would have taken about two weeks for the documents to have arrived in Jamaica. She said that the signed document would have been returned to her by the courier company, UPS and it would have taken several days to have arrived back. Karen Hibbert produced a witness statement made by Mr Lawrence Brown, who witnessed her signature on the 2004 TR1. He said that Mr Hibbert's signature was already on the TR1 when he witnessed Karen Hibbert's signature. The witness statement contains a statement of truth but Mr Brown was not called to give oral evidence. Karen Hibbert was clear in her evidence that Mr Hibbert signed the 2004 TR1 in Jamaica and not in the United Kingdom before he left for Jamaica.

13. The 2004 TR1 includes a statement that it was signed and delivered as a deed by Mr Hibbert in the presence of Heather Lobban, whose address is stated to be "Ocho Rios PO, St. Ann, Jamaica". Heather Lobban did not attend to give evidence and no witness statement made by her was produced in evidence. Mr Hibbert's evidence was that Heather Lobban worked as a supervisor at the branch of Jamaica National Building Society where he banked. He said that he introduced Karen Hibbert to Ms Lobban in Jamaica after she asked him if he knew anyone who could sign documents for her.

14. Mr Hibbert produced his United Kingdom passport issued on 5th December 2001 and valid until 5th February 2012. The passport contains a number of "landed stamps" entered by immigration officers in Jamaica to state when Mr Hibbert arrived in Jamaica. There are no

exit or departure stamps, stating when he left Jamaica. There is a “landed” stamp dated 28th February 2003 and another “landed” stamp dated 25th March 2004. There is no “landed” stamp for a date between 28th February 2003 and 25th March 2004.

15. Karen Hibbert produced a copy of her passport issued on 30th March 1999. That passport contains stamps applied by an immigration officer in Jamaica showing that she landed in Jamaica on 12 June 2003 and 17 June 2004. There is no “landed” stamp for any date between those dates.

16. On 25th March 2004 Mr Stubbings wrote to Karen Hibbert stating that he had on that day completed the transfer of the Property into joint names, would register the transfer at HM Land Registry “in due course” and asked that Mr Hibbert and Karen Hibbert sign the enclosed Stamp Duty Land Tax Form. He wrote “I appreciate that your father has recently returned to Jamaica but perhaps you would ask him to make sure that he returns the signed form to you, or me, as quickly as possible as we need to lodge this with the Land Registry on registration of title”. He also enclosed a completion statement and “as arranged with your father”, enclosed a cheque “for payment into your joint account”. The completion statement showed that the balance due to Mr Hibbert and Karen Hibbert for which a cheque was enclosed was £34,471.99. That cheque was paid into a joint account with NatWest in the names of Mr Hibbert and Karen Hibbert on 27th March 2004.

17. On 30th March 2004 £27,000 was paid into an account belonging to Mr Hibbert at Jamaica National Building Society.

18. Mr Hibbert denied that the £27,000 was part of the money raised by the re-mortgaging of the Property. He said that his car in Jamaica was stolen and he telephoned Karen Hibbert to ask her to send him some money for a new car. She then put £27,000 into his bank account. He said that he did not think the £27,000 came from the further advance on the Property but he did not suggest from where the money did come. Karen Hibbert’s evidence was that the £27,000 did come from the further advance and was not for purchasing a car. She had sent a separate amount of £5,000 for that purpose. She said that Mr Hibbert had wanted funds to upgrade his house in Jamaica and that was why he had wanted her to join in with him in obtaining a further advance on the Property. He was 68 and retired and could not raise additional mortgage funds on the Property by himself and without her help. Mr Hibbert

accepted that he had built a garage and a washroom at the house in Jamaica but said that this was funded from the £3,000 realised on the sale of a car he had in England. Karen Hibbert said that the car was a Mitsubishi Colt and that she sold it on Mr Hibbert's behalf for £800.

19. Following the registration of the 2004 transfer, the mortgage payments were made from the NatWest joint account. Karen Hibbert's evidence was that she paid the money into this account to meet the payments.

20. Karen Hibbert said that after the transfer into joint names, she paid for a new bathroom and a new kitchen to be installed in the Property and for the electricity system to be upgraded.

21. Karen Hibbert said that Mr Hibbert came to the UK in the autumn of 2009. His passport contains a stamp reading "Landed until" followed by the date "Feb 23 2009" in manuscript, with below that date the separately stamped date "Nov 24 2009". Karen Hibbert said that on this occasion, she and Mr Hibbert discussed replacing the wooden windows and conservatory. The work would cost in the region of £18,000. She said that "it was decided that" the only way to finance this work was to re-mortgage Property. She also said that Mr Hibbert indicated that he was returning to Jamaica permanently and wanted to "ensure the security of" her son and herself by signing over to her his share of the Property.

22. On 18th November 2009 Steve Williamson of Park Woodfine Heald Mellows LLP, of Bedford, wrote to Karen Hibbert saying that he would be pleased to assist her in connection with the transfer and re-mortgage of the Property and enclosing a transfer deed. He asked that the transfer deed be signed by Mr Hibbert and Karen Hibbert in the presence of an independent witness and returned to him at their earliest convenience. He does not appear to have received any instructions from Mr Hibbert or to have acted for him.

23. There is in evidence a TR1 dated 28th January 2010 ("the 2010 TR1") transferring the Property from the joint names of Mr Hibbert and Karen Hibbert into Karen Hibbert's sole name. The consideration for the transfer is expressed to be one half of the balance outstanding at the date of the 2010 TR1 under the charge in favour of Nationwide.

24. The signature or purported signature of Mr Hibbert on the 2009 TR1 was witnessed or purportedly witnessed by Louise Woodcroft who gave an address in Milton Keynes. Her occupation is described on the TR1 as “reporting accountant”. Louise Woodcroft was a work colleague of Karen Hibbert. Louise Woodcroft was not called to give evidence and no witness statement made by her was put in evidence. Karen Hibbert said that Louise Woodcroft had come to her house often and Mr Hibbert knew her. Mr Hibbert said that he did not know Louise Woodcroft and had never seen her. Karen Hibbert said that she was not present when Mr Hibbert signed the 2010 TR1.

25. The signature of Karen Hibbert on the 2010 TR1 was witnessed by Tracy Lindsell. Karen Hibbert produced a witness statement of Tracy Lindsell in which she states that she witnessed Karen Hibbert’s signature on the 2010 TR1 but does not state whether or not Mr Hibbert’s signature was already on the 2010 TR1 when she witnessed Karen Hibbert signing it. Tracy Lindsell was not called to give oral evidence.

26. On 27th November 2009 Karen Hibbert returned the now signed TR1 to the solicitors. On 29th January 2010 Mr Williamson wrote to Karen Hibbert to inform her that transfer and re-mortgage had been completed and that the net proceeds of £32,236.33 had been transferred to her account with Halifax.

27. Following the transfer into her sole name, Karen Hibbert mortgaged the Property to Alliance & Leicester plc to secure an advance of £80,000. The net proceeds of the re-mortgage were £32,236.33 and were sent by Park Woodfine Heald Mellows LLP to Karen Hibbert’s account with Halifax on 29th January 2010. In February 2013 Karen Hibbert re-mortgaged the Property to Barclays Bank plc.

28. Mr Hibbert became ill with cancer in 2014 and returned to the UK to stay at the Property and receive treatment. His second wife, Lorita Hibbert came to join him, also staying at the Property in August 2016. Karen Hibbert had written a letter of invitation to Lorita Hibbert to assist her to obtain a visa to come to the United Kingdom. Karen Hibbert described herself in the letter as the owner of the Property. On 10th September 2016 Karen Hibbert wrote a letter to help Lorita Hibbert open a bank account. In the letter she wrote,

“Please accept this letter that I Karen Hibbert am the owner of 9 Chinnor Close, Bedford MK41 9TQ and confirm that Lorita Hibbert is currently residing at this address”.

29. By 4th February 2017 relations between Karen Hibbert and Lorita and Mr Hibbert had become poor. Lorita Hibbert and Mr Hibbert attended Kempston Police Station on the morning of 4th February 2017 to report Karen Hibbert for verbal abuse. Later that day there was some form of disagreement between Karen Hibbert, Lorita Hibbert and Mr Hibbert at the Property, following which the police were called. Mr Hibbert and Lorita Hibbert made an allegation that Karen Hibbert had assaulted Lorita Hibbert and Karen Hibbert was arrested. Karen Hibbert denied the allegation and was released from custody on 5th February 2017. The police advised Mr Hibbert and his wife to go to stay in a local hotel for a couple of evenings.

30. Mr Hibbert then instructed Premier Solicitors, who on 15th February 2017 made an application on his behalf to register a restriction in Form A on the title to the Property on the grounds that Mr Hibbert’s signature had been forged on both the 2004 TR1 and the 2009 TR1 and that Mr Hibbert intended to commence legal proceedings to recover sole title to the Property. HM Land Registry gave notice to Karen Hibbert of the application on 21st April 2017. Karen Hibbert objected to the application by letter dated 24th April 2017. She stated in that letter that the 2004 TR1 was sent to her father in Jamaica by courier and that his signature was witnessed in Jamaica.

Function of the Tribunal

31. Mr Hibbert’s representative submitted that the function of the Tribunal was to determine only whether Mr Hibbert had an arguable case that he did not sign the transfers and not to determine whether or not he did sign them. I do not agree.

32. Where there is an objection to an application made to HM Land Registry and the objection is not one which the registrar is satisfied is groundless, then the registrar must refer the matter to the Tribunal – see Land Registration Act 2003 (“the Act”) s. 73. Where a matter is referred to the Tribunal, the Tribunal may either decide the matter itself or direct a party to commence court proceedings for the purpose of obtaining the court’s decision on the matter – the Act s. 110(1). In this case, the Tribunal did not decide to direct the commencement of

court proceedings. Its function is therefore to decide the matter that has been referred to it. In this case, Mr Hibbert has sought to register a restriction on the grounds that he did not sign the transfers and is entitled to an order of the court that he is entitled to be registered as sole proprietor. By s. 42(1) of the Act the registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to register land. Under s. 43(1) (c) of the Act, a person may apply to the registrar for the entry of a restriction if he has a sufficient interest in the making of the entry.

33. The precise nature of the Tribunal's function appears from an examination of the restriction sought, the nature of the claim or right sought to be protected and the basis of the objection that has led to the reference – see *Jayasinghe v Don Liyanage* [2010] EWHC 265 (Ch) at para 18. The restriction sought to be registered here is a Form A restriction. On a consideration of the restriction sought, the nature of the claim made by Mr Hibbert and the objection raised by Karen Hibbert, it is clear that determination of the matter referred to the Tribunal requires me to decide whether or not Mr Hibbert signed the transfers. Mr Hibbert's application is predicated on the basis that he has a sufficient interest because he did not sign the transfers and therefore has a right in the Property. If he did not sign the transfers, he will remain the beneficial owner. Karen Hibbert has objected on the grounds that Mr Hibbert did execute the transfers. The question whether or not Mr Hibbert has a right in the Property can only be answered by considering whether or not he did sign the transfers.

34. My conclusion that the Tribunal should decide the underlying issue between the parties, namely whether Mr Hibbert signed the transfers, is supported by the statement in *Chief Land Registrar v. Silkstone* [2011] EWCA Civ 801 at para 37 on a consideration of the functions now vested in the Tribunal at a time when they were vested in the Adjudicator to HM Land Registry that the adjudicator's jurisdiction required him to decide the underlying substance of the objection on its merits and not simply to decide whether the applicant had an arguable case.

35. Mr Hibbert cannot complain of being prejudiced by the decision of the Tribunal that it should determine whether or not he signed the transfers. The Tribunal made directions for statements of case, exchange of witness statements and disclosure of documents that were appropriate and suitable for the preparation for a full hearing to determine that issue. Mr

Hibbert cannot but have been aware from Karen Hibbert's Statement of Case that the issue in the proceedings was whether he signed the transfers.

Did Mr Hibbert sign the 2004 transfer?

36. The burden of proof is on Mr Hibbert to prove on the balance of probabilities that he did not sign the transfer. He alleges that the signature on the transfer is a forgery. Forgery is a serious allegation to make and perhaps one of the most serious allegations that can be made in civil proceedings – see the observations of HHJ Pelling (sitting as a High Court judge) in *Bank of Scotland plc v. Greville Development Company (Midlands) Ltd* [2014] EWHC 128 (Ch). It must be appropriately proved. In that regard, I should apply the guidance given in *Re H* [1995] UKHL 16 . Lord Nicholls at p. 586 said

“The balance of probabilities standard means that a court is satisfied that an event occurred if a court considers that on the evidence the occurrence of the event was more likely than not. In assessing the probabilities, the court will have in mind as a factor to whatever extent it is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before court concludes that the allegation is established on the balance of probabilities. Fraud is usually less likely than negligence ... Built into the preponderance of probabilities standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

37. The evidence shows that the purported signatures of Mr Hibbert and of the attesting witness together with her address must have been written on the 2004 TR1 at some time between 30th January 2004 when the TR1 was sent by Mr Stubbings to Karen Hibbert and 15th March 2004 when Mr Stubbings wrote to Karen Hibbert to say that the 2004 TR1 had been sent to Nationwide for sealing. Nationwide made it clear in its letter of instruction to Mr Stubbings that the transfer was to be sent to it for sealing after it had been signed by the parties. On the balance of probabilities, Mr Stubbings would not have sent the 2004 TR1 to Nationwide unless it appeared to have been signed by both parties. Further, Nationwide would not have sealed the 2004 TR1 if it did not appear to have been signed by both parties. On Karen Hibbert's evidence the 2004 TR1 was signed by Mr Hibbert and the witness at sometime between about 13th February 2004 and about 1st March 2004 (since she said it would have taken about two weeks for the document to be couriered to and from Jamaica).

Karen Hibbert's case is that the 2004 TR1 was signed in Jamaica. It is not her case that it was signed in the UK and the address of the attesting witness makes it utterly improbable that it would have been signed in front of the witness in the UK. Mr Hibbert's evidence is that he was not in Jamaica until 25th March 2004 and this is supported by his passport. There is an entry stamp for 25th March 2004. The only way in which he could have signed the 2004 TR1 in Jamaica is if he was in Jamaica on some date between about 13th February 2004 and 1st March 2004 and had then left Jamaica, returning again on 25th March 2004. However, it is Karen Hibbert's evidence that Mr Hibbert was in the UK in December 2003 when the application was made to Nationwide for the further advance and there is no stamp in Mr Hibbert's passport to show that he landed in Jamaica between December 2003 and 25th March 2004.

38. After Mr Hibbert produced photocopies of his passport at my direction, Karen Hibbert was given an opportunity to make further submissions in writing. Karen Hibbert suggested in those submissions that Mr Hibbert could have signed the 2004 TR1 in Jamaica between the 25th March 2004 when he arrived in the country and the date when the transfer was registered. This explanation cannot be correct. Mr Stubbings had received the signed transfer form by 15th March 2004 and it was sealed by Nationwide on 19th March 2004. Nationwide would not have sealed the transfer or made the further advance if the transfer document it received for sealing had not by then been signed by Mr Hibbert.

39. If Karen Hibbert intended in her Statement of Case to say that the 2004 TR1 was sent to Jamaica for signature with the Stamp Duty Land Tax return, this cannot be correct. The SDLT form was only sent to Karen Hibbert after the 2004 TR1 had been signed and sealed.

40. I note that there is no clear evidence in this case that Mr Hibbert ever saw solicitors to give instructions about the transfer into joint names. Though Karen Hibbert gave evidence that Mr Hibbert took her to see CC Bell & Co., Mr Stubbings referred in his letter of 19th December 2013 to having received instructions by telephone. After 19th December 2003 Mr Stubbings wrote only to Karen Hibbert. Mr Hibbert not seeing the solicitor would have made it easier for the 2004 TR1 to have been signed in his name without his knowledge.

41. Several factors do not support a finding that Mr Hibbert's signature was forged.

(1) There is the fact that the witness named on the 2004 TR1 was Heather Lobban. It is odd that someone purporting to forge the signature of Mr Hibbert on the 2004 TR1 should have chosen the name of someone who lived in Jamaica and have given their address as being in Jamaica, especially if that person knew that Mr Hibbert was in the UK at the time the signature was written on the form. However, it is possible that Karen Hibbert had met Heather Lobban before the 2004 TR1 was signed. Mr Hibbert gave evidence that he introduced Heather Lobban to Karen Hibbert. This could have been on Karen Hibbert's visit to Jamaica in 2003.

(2) There is the further fact that £27,000 was paid into Mr Hibbert's Jamaican bank account only 3 days after the net proceeds of the further advance was paid into his joint account with Karen Hibbert in the UK. Mr Hibbert was unable to provide a convincing explanation as to from where he thought this money had come. The payment seems to me to strongly support Karen Hibbert's evidence that Mr Hibbert knew that the Property was to be re-mortgaged or there was to be a further advance. It is probable that he would have known he could not have re-mortgaged or obtained a further advance given his age, his relocation to Jamaica and the fact he was not working.

(3) The fact that the major part of the funds obtained on the further advance was sent to Mr Hibbert also indicates that Karen Hibbert did not have an immediate personal financial motive in forging Mr Hibbert's signature on the 2004 TR1.

(4) The fact that Mr Hibbert must have known in 2015 when Karen Hibbert wrote a letter of invitation to help Lorita Hibbert obtain a visa and in 2016 when Karen Hibbert wrote the letter to help Lorita Hibbert open a bank account that Karen Hibbert was saying she was the owner of the Property and yet made no allegation of forgery until after he and Lorita Hibbert had argued with Karen Hibbert in February 2017.

42. Having considered all the evidence and taking into account the seriousness of the allegation that Mr Hibbert's signature was forged, I find on the balance of probabilities that Mr Hibbert did not sign the 2004 TR1. His passport clearly shows that he could not have signed it in Jamaica as alleged. The explanation for some of the other factors set out in the above paragraph may be that Karen Hibbert signed or arranged for someone else to sign Mr Hibbert's name on the 2004 TR1 at his request or with his consent but this is not Karen Hibbert's case and there is no explanation as to why Mr Hibbert might have so requested or agreed.

43. Having found that Mr Hibbert did not sign the 2004 TR1, I find that he did not sign the 2010 TR1. There is no evidence that he had learned after 25th March 2004 and before 27th November 2009 (when the 2010 TR1 was sent to the solicitors) that the Property had been registered in the names of himself and Karen Hibbert. If he did not know, it would make no sense at all for him to have signed the 2010 TR1. Further, Mr Hibbert's evidence that he did not sign the 2004 TR1 has been shown by his passport to be correct. This leads me to conclude that he was an honest witness, whose evidence about the 2010 TR1 I should accept. Furthermore, Karen Hibbert's evidence about the 2004 TR1 has been shown to be unreliable. I prefer the evidence of Mr Hibbert to that of Karen Hibbert as regards the 2010 TR1. My conclusion might have been different had either party chosen to call Louise Woodcraft to give evidence as to witnessing Mr Hibbert's signature but neither party did so.

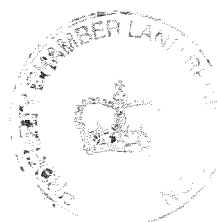
Conclusion

44. I shall direct the Chief Land Registrar to give effect to the application of the Applicant, Mr Hibbert to register a restriction in Form A as if the objection of the Respondent, Karen Hibbert had not been made. The 2004 TR1 and the 2010 TR1 were not executed by Mr Hibbert. In so deciding, I am not of course deciding that the register should be altered to reinstate Mr Hibbert as registered proprietor. No application for alteration has been made and if there is an objection to any such application, the matters set out in paragraph 6 of Schedule 4 to the Act will have to be considered

45. My preliminary view is that Karen Hibbert must pay the costs of Mr Hibbert since she is the unsuccessful party. The normal order in proceedings before the Tribunal is that the losing party is to pay the costs of the winning party, such costs to be assessed on the standard basis. Mr Hibbert was representing himself for all or substantially all of the proceedings and so may only recover the costs recoverable in court proceedings by a litigant in person. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 14th July 2018.

BY ORDER OF THE TRIBUNAL

Michael Michell



Dated this 29th June 2018