

[2019] UKFTT 0168 (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 2018/460

BETWEEN

TONY ASHIKODI

Applicant

and

JUNE ASHIMOLA

Respondent

Property address: 3 Warland Road, Plumstead, London SE18 2EX
Title number: LN19282

Before: Judge Hargreaves
Alfred Place
4th February 2019

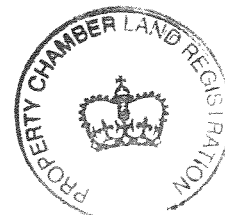
ORDER

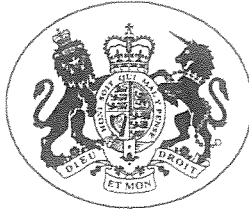
The Chief Land Registrar is directed to cancel the application for a Form A restriction made in form RX1 in February 2018.

DATED 5th February 2019

Sara Hargreaves

BY ORDER OF THE TRIBUNAL





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Applicant representation: in person

Respondent representation: Kingsley Ukpedor, Jeff Leonard Solicitors

DECISION

Key words – property registered in name of Respondent in 2003 – Applicant claimed beneficial interest on basis that he paid deposit, mortgage instalments and for renovations – procedural issues about identity of Respondent and/or her representatives prior to the hearing – Respondent did not appear at the hearing and no evidence was given on her behalf

Cases cited by Applicant

Knight v Knight (1840) 49 ER 58

Stack v Dowden [2007] AC 432

Ely v Robson [2016] EWCA Civ 774

1. I direct the Chief Land Registrar to cancel the Applicant's application to enter a restriction in Form A. His application (undated) was made in February 2018 when he discovered that the property, 3 Warland Road, was being marketed for sale.
2. References are to the pages in the trial bundle which was prepared on behalf of the Respondent for the hearing, as directed.
3. Procedurally, this reference has been dogged by accusations about representation and identity. The Applicant sought to rely on certain allegations in connection with the Respondent's identity in support of his case, but I remind myself – as I reminded the Applicant throughout the hearing, that he bears the burden of proof in establishing the grounds on which he seeks to prove his case on the balance of probabilities (see for example, *Stack v Dowden* paragraph 4, 8, 33). There was no issue as to the identity of the Respondent, as far as I can see, until these proceedings were advanced. They were on good terms when the house was purchased, of which more, below.
4. By way of background to this aspect of the case, however, I set out the following. Mr Ukpedor was instructed on Friday 1st February to conduct the hearing for the Respondent, by Wasiu Shomuntun. He is married to Justina Ashikodi, one of the Applicant's sisters. Both the Applicant and Mr Shomuntun know the Respondent. They were in court but did not give written or oral evidence. The Respondent is said to be in Nigeria, and ill. There has been no independent evidence, medical or otherwise, to support this, but she has failed to attend the Tribunal twice to establish she is who she says she is. On 3rd October 2018 the Principal Judge directed the parties to attend the Tribunal bringing evidence of identity. The Applicant attended on 22nd October and identified himself by reference to his driving licence, and did the same before me today. On that occasion Wasiu Shomuntun and Justina Ashikodi appeared, identified themselves to the

satisfaction of the Tribunal Manager and produced a power of attorney dated 12th October 2018 by which the Respondent gave Mr Shomuntun power to sell the property and conduct these proceedings (p360-361). After that, Mr Shomuntun was added to the database as the Respondent's representative.

5. The Applicant wrote a lengthy letter to the Tribunal dated 3rd February 2019 in which he takes issue (detailed) with the authenticity of this document. He had raised this issue before. He says (for one of many examples on which he relies) that the relevant Nigerian lawyer denies that she had any part in the production of the document. There is no independent corroboration of any of these allegations, which would have assisted me. Mr Ukpedor was prepared to take instructions from Mr Shomuntun on the basis of the power of attorney. I take the view that I cannot determine the validity either way and its relevance to the hearing, given that the Respondent did not appear to give evidence nor did anyone else provide evidence on her behalf, is of limited assistance. What counts is the Applicant's case: the Respondent had the opportunity to give evidence or provide some, and failed to do either. There was no application for an adjournment on her behalf and the right thing to do was to get on with the hearing.
6. More to the point, however, the Applicant says that the Respondent did not sign the statement of case and that in fact she supports the Applicant's application, which is contrary to some of the paperwork submitted by or on behalf of the Respondent from the outset. Again, I would have thought that if that was the case, the Applicant would have been able to get her to support his case on her behalf. But he has not produced any direct evidence from the Respondent to support his case. So far as the Respondent's position is concerned, the position on the face of the documents I have is that she objected to HMLR in response to the application (her address being the property for HMLR purposes, see also her address on the bank statements etc) and corresponded with the Tribunal to the same effect from the property and an email address teftoa@gmail.com. In September 2018 she emailed the Tribunal (juneashimola@outlook.com) saying that Mr Shomuntun had submitted a statement of case purporting to be hers and that she did not oppose the Applicant's application. She also sent an email from juneashimola@outlook.com on 23rd October saying she did not authorise Mr Shomuntun or Justina to attend

the Tribunal on her behalf on 22nd October when the parties were directed to attend (after the date on the power of attorney). The Applicant sent a lengthy letter to the Tribunal on 8th November 2018 setting out his arguments about the Respondent's identity and claiming that Justina had signed the statement of case on behalf of the Respondent. He produced the Halifax mortgage document signed by the Respondent in August 2003 to support his arguments. By letter dated 9th November the Applicant claimed that the email address teftoa@gmail.com belongs to Mr Shomuntun, being the same name as a business he runs in Nigeria. In the course of this correspondence the Applicant claimed that he would introduce various named witnesses to support his allegations, but did not do so.

7. By early December the parties had completed disclosure (12th November). The Applicant filed an additional witness statement in early December which is not in the bundle, the Respondent did not file further evidence. The Applicant took strenuous objection to the Respondent's disclosure and wanted further disclosure and made repeated attempts in correspondence to emphasise what was lacking. See the Tribunal's order dated 20th November. For example, in a letter dated 4th December he wanted "A full disclosure of the Halifax sub-3 account and mortgage statement [which] will show from October 2003 how many times the Applicant paid cash over the counter at Halifax Powis Street Woolwich branch for the mortgage payment" and pointed out that the bank statements were incomplete, related to accounts opened after 2003, and contained no conveyancing documents. All of this is true to some extent, and the situation was not improved by the time of the hearing, partly because no further orders were made in response to the letter dated 4th December.
8. However, disclosure on both sides was inadequate. I went through the Applicant's disclosure with him page by page in an effort to deduce the evidence behind his case, and most of the documents he produced are completely irrelevant (up to p71 in the bundle). Whilst I hear his frustration at the Respondent's failures (which were vocal), his own far outstrip hers. Not one document evidences his income or ability to pay or actual payment of any of the payments he alleges he made. For example, when asked about the deposit payment, he said he drew down on a Baltic Link cheque (the name of his business which ceased trading in 2005) the sum of

£41,000 which was used towards the deposit for the purchase of two properties, Warland Way and Grecian Crescent (also purchased by someone else, a Ms Ethela). This is not corroborated and was not referred to in detail in his written evidence.

9. This evidential failure is highlighted by the simplicity of the Applicant's claim. It is exactly the sort of case that is dealt with frequently by this Tribunal. In most cases, there is some evidence of money referable to an agreement between the parties moving in the direction as alleged by the party claiming an interest, which enables the judge to test the credibility of the claim, but, I stress, not in this case. In his statement of case (p8-9) the Applicant's claim is put in brief in paragraphs 1 and 2 ie that at all material times since August 2003 he has had a beneficial interest in the property, having paid the deposit, costs of acquisition, renovation and the mortgage from 2003-2008. The parties agreed that the Applicant would receive notice of any sale and 50% of the net proceeds of sale. After 2008 the mortgage was paid by rental income derived from the property itself and there is some evidence of that in bank statements, but only because I was able to deduce that, not because anyone explained (see for example p183, 186, 189, 191, 193: it appears to me that money provided by Mr Shomuntun has in fact been paying the mortgage). Furthermore, the Applicant was unable to explain how, if at all, the rental income used to defray the mortgage was accounted for in terms of income or tax in relation to his alleged interest. The Applicant stated in paragraphs 4-5 that he would call witnesses and bring supporting documents to establish his case.

10. In her statement of case the Respondent denied the Applicant's case and referred to his recent failed attempt to extract £98,000 from her in Croydon County Court by serving a statutory demand on her for that amount (which she successfully opposed), that being inconsistent with his current claim for an equitable interest in the property. The Respondent also indicated that she would call supporting witnesses and bring documents. She fell short of that as well, in that I can see that the Halifax mortgage has been paid, but not always (even the Applicant admitted there had been a payment holiday on the face of the documents, though that of course is also inconsistent with his case), and there is no explanation as to how she paid it. As to the payment holiday, the Applicant told me that "she [the

Respondent] was in charge” which does not support the dominant control on which he relies.

11. In his witness statement (2nd December) the Applicant maintained that his income from properties at Valiant House, Nickleby Close, and 75 Epstein Road (which is his address), plus his wages (and ownership of Baltic Link – but not since 2005), meant he could pay the deposit and mortgage in respect of the property, but this was not particularised. His account of his professional success (paragraph 3) is arguably meaningless without some hard evidence to support the funding of the property, an outline of the case being repeated in paragraph 4. According to the Applicant, the Respondent has not been in employment from July 2003-January 2018. I have no idea of the Applicant’s income and his expenditure in respect of the property. The documents disclosed are completely random: for example, the document at p54 shows that the Applicant owed Barclaycard over £10,000 in December 2011. and he was in arrears with his NI contributions in roughly the same period (see p61). Asked about the charging order nisi against the Respondent’s interest in the property in April 2010 (p60), the Applicant’s explanation that he had attempted to intervene in the proceedings lacked conviction (though on his case, it would only affect the Respondent’s interest, not his).

12. It is not therefore unreasonable to expect the Applicant to produce some evidence to underpin his case that he parted with considerable sums of money (never calculated by him) between 2003 and 2008. Mere assertion is not enough. He was cross examined on his evidence that he paid cash in respect of the mortgage instalments over the counter at the Halifax, and accepted he had no receipts or other documents to prove that this is what he did or that it was done in support of the alleged agreement with the Respondent. For the first time in the witness box in answer to a question I put (why did he “help” the Respondent and Ms Ethela with their deposits?) he explained that his wife did not want his children from another marriage to live with them so the Respondent, who was living with his sister at the time, agreed to look after them and he agreed to buy a house for them to live in. Apart from the obvious question (why put this house in the Respondent’s name unlike the other properties referred to above, which are in his name, particularly if

she is housing his children?) this suggestion is somewhat contradicted by Justina Ashikodi's application for child benefit (undated, p66-70) which refers to the Applicant's children as living with her at another address. Moreover the Applicant stated that he asked Justina to make the child benefit application which suggests a casual relationship with the need for particularity. Therefore I cannot, without a full explanation and proper supporting documents, accept that the Applicant bought a house for June to live in and care for his children. Moreover, this was only revealed for the first time in court and not a matter on which the Respondent had the opportunity to comment. The Applicant also contended for the first time that he paid the Respondent £800pcm to care for his children (which would on the face of it have covered the mortgage instalments).

13. The Applicant claimed to have spent £4000 on labour costs in renovating the kitchen (he already had the tiles and cupboards available) but could not produce any receipts. Further, having said he paid the electricity bills, none of these were produced either. So there is a complete lack of any evidence to support the Applicant's case as Mr Ukpedor's skeleton argument and oral submissions made clear.
14. The Applicant's case fails because he cannot establish any relevant facts on the balance of probabilities. I emphasise that in reaching this conclusion I give the Respondent's written documents little weight: they consist of denials rather than a positive counter case and she did not attend or provide an explanation as to why she did not attend. If as the Applicant asserts they are not her documents then he is not prejudiced if I put them to one side and focus on his case. The main point is not whether the Respondent signed her statement of case (as the Applicant alleges), but whether, as the dispute has been referred to the Tribunal, I can be satisfied that he has made out his case. On the basis of the documents before me, the Applicant came nowhere near to any applicable standard of proof. In his oral evidence his failure to comprehend that his task was to persuade the Tribunal of the merits of his application as opposed to blaming the Respondent for the lack of documentation available to support his case in relation to a transaction which took place over fifteen years ago, displayed a reality gap. If, as he claims, the Respondent is not in reality challenging his claim then he can agree terms directly

with her: claiming that he can provide the three certainties of a trust (*Knight v Knight*) does not mean he has proved his case before the Tribunal. As to the other authorities cited by the Applicant (*Ely v Robson*, *Stack v Dowden*), the former deals with a different scenario to that argued by the Applicant, and both authorities highlight the nature of the evidence which has to be put forward by someone claiming an interest in a property registered in the name of another sole proprietor.

15. So, to emphasise, the Applicant fails on his own case. The “evidence” he produced was neither coherent nor sufficient to support his claim and that entitles me to reject it.
16. In the circumstances, the Respondent is entitled to her costs. Unless the Applicant files and serves submissions by 5pm 14th February arguing to the contrary, with permission to the Respondent to file and serve a response by 5pm 22nd February 2019, I will assess costs in favour of the Respondent on the standard basis to be summarily assessed after 14th February. If the Applicant objects, I will make a costs order after 22nd February 2019.

BY ORDER OF THE TRIBUNAL

Sara Hargreaves

5TH FEBRUARY 2019

