[2019] UKFTT 0379 (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 2018/0434
BETWEEN

THE LORD CHANCELLOR
(LEGAL AID AGENCY)

Applicant

and

KEITH STIRRAT

Respondent

Property: 22 Treebourne Road, Biggin Hill, Westerham

Title number: SGL67442

ORDER

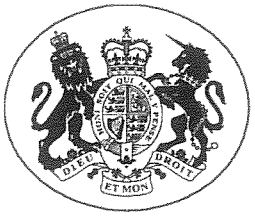
The Chief Land Registrar is ordered to give effect to the application dated 21 February 2018

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 16th day of May 2019

PROPERTY CHAMBER LAND REGISTRATION



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Property: 22 Treebourne Road, Biggin Hill, TN16 3QW

Title number: SGL67442

Before: Judge McAllister
Alfred Place
17 April 2019

Representation: The Applicant was represented by Michael Rimmer, Senior Lawyer at the Legal Aid Agency; the Respondent appeared in person.

DECISION

Introduction

1. The issue in this case is whether the Applicant ('the Legal Aid Agency') is entitled to register a statutory charge pursuant to section 10(7) of the Access to Justice Act 1999 against the title of 22 Treebourne Road, Biggin Hill ('the Property') registered in the Respondent's name.

2. By an application dated 21 February 2018 the Legal Aid Agency applied to register a charge on the grounds that the Property was in issue in divorce proceedings between the Respondent and his former wife and was preserved as a result of a consent order dated 23 December 2010 ('the Consent Order'). The Respondent objected by letter dated 1 March 2018 on the grounds that the Property was never at risk. The matter was referred to the Tribunal on 22 May 2018.

3. For the reasons set out below I will order the Chief Land Registrar to give effect to the application. The Legal Aid Agency are entitled to register the charge.

Background and evidence

4. Divorce proceedings between the Respondent and his former wife began in March 2009. In February 2010, having exhausted his savings and other income, the Respondent applied for legal aid. The application form, dated 2 February 2010, stated that the application for funding was for, amongst other things, an order transferring property or changing rights to the Property, and in particular that the Respondent was making a claim to the Property, then valued at £220,000 (with an outstanding mortgage of £155,000). The Respondent signed the declaration stating that his solicitors (Ventors Solicitors in Reigate) had explained the statutory charge and the risk that, at the end of the proceedings, the Respondent would have to accept an interest bearing charge on his home.

5. The statement in support of the application stated that the Respondent was living in rented accommodation while his former wife and new partner were living in the Property (owned by him before the marriage). The statement concluded by saying that were issues in relation to maintenance lump sum and property adjustments.

6. In the financial assessment form the Respondent stated that he was the sole owner of the Property. In the same form, under the heading, ' What is the Dispute About' the Respondent was asked to list any property, assets or possessions he or his former wife made a claim to in the case. The address of the Property was given, and the further statement made 'my property prior to the marriage'. The Respondent signed this form, stating that he understood that Legal Aid was not always free and that the Agency (then

known as the Legal Services Commission) might register an interest bearing charge against his property.

7. A Legal Aid Certificate was issued on 26 March 2010.The costs limitation was increased at various times during the Respondent's case to £14,000.

8. A hearing took place on 12 August 2010 before District Judge Mills. Counsel's instructions stated that the Respondent wanted to return to the Property, but noted that there were no proposals from Mrs Stirrat's Solicitors. Somewhat cryptically, the instructions made reference to various orders marked only by *, but it is clear that an order for sale was a possibility.

9. Counsel drafted a detailed note of the hearing. The parties agreed to an order for sale of the Property forthwith. The only issue was the division of the net proceeds. The matter was treated as an FDR (financial dispute resolution hearing). The judge indicated that there was no need to depart from equality. In the event, as a result of other matters raised at the last minute, the matter was adjourned for two weeks. Mrs Starrat was ordered to pay the Respondent's costs of the hearing. The note concludes by advising an open offer, with a view to agreeing a sale, and the proceeds being deposited in a solicitors' account pending final determination of the ancillary relief proceedings.

10. In the event, it appears that the Respondent's father suggested an alternative to a sale. On 22 December 2010 the Respondent's solicitors wrote to his ex wife's solicitors stating that a valuation of £185,000 for the Property in its then condition was reasonable. The equity remaining was some £22,000. The Respondent's mother had moved in following his ex-wife leaving the Property, and it was the Respondent's intention to live with her at the Property. The Respondent therefore proposed a one off payment to his ex-wife of £12,500.

11. The matter was settled the following day in the terms of the Consent Order. It was agreed that the Respondent would pay his ex wife the sum of £16,000 in respect of her legal and beneficial interest in the Property. Paragraph 8 of the Consent Order provides that, for the purpose of the Community Legal Services (Financial) Regulations and Access to Justice 1999 so as to provide security for the postponement of the statutory charge subject to the

agreement of the Legal Services Commission the Property has been preserved for the Respondent for use as a home for himself.

12. The Respondent's solicitor's costs were assessed at £9,464.25 in 2003. Subject to certain adjustments the correct figure is £9,382.05. On 17 April 2014 Venters wrote to the Legal Aid Agency pointing out that, in fact, the Respondent had preserved £6,000 (£22,000 less £16,000) and querying whether, in the circumstances, the statutory charge arose. The accompanying form stated that the outcome of the case was that the Respondent preserved the Property by paying a lump sum to buy his ex wife out of the Property. There appears to have been no reply to this letter.

13. In April 2014 Venters contacted the Respondent stating that they were making a claim to the Legal Aid Agency so that they could be paid. They had been informed by the Agency that the statutory charge would apply. The only communication with the Legal Aid Agency appears to be an email in response to an email from Venters dated 19 April 2016 asking for details of the amount due. Somewhat confusingly, the Agency replied the next day stating that the statutory charge could not be calculated because the final bill had not been submitted. Mr Rimer was not able to explain this email further.

Relevant law

14. Section 10(7) of the Access to Justice Act 1999 provides as follows:

'Except so far as regulations otherwise provide, where services have been funded by the Commission for an individual as part of the Community Legal Service –

(a) Sums expended by the Commission in funding the services (except to the extent that they are recovered under section 11) and

(b) *other sums payable by the individual by virtue of regulations under this section*

shall constitute a first charge on any property recovered or preserved by him (whether for himself or any other person) in any proceedings or in any compromise or settlement of any dispute in connection with which the services were provided.'

15. These provisions were considered by the House of Lords in the case of *Hanlon v The Law Society* [1981] AC 124. After considering the earlier authorities Lord Simon of Glaisdale stated as follows: ' ... *property has been recovered or preserved if it has been in issue in the proceedings – recovered by the claimant if it has been the subject of a successful claim, preserved to the respondent if the claim fails. In either case it is a question of fact, not of theoretical 'risk'. In property adjustment proceedings, in my view, it is only property the ownership or transfer of which has been in issue which has been 'recovered or preserved' so as to be the subject of a legal aid charge. What has been in issue is to be collected as a matter of fact from pleadings, evidence, judgment and/or order. I can see no reason for extending the words to items of property the ownership or possession of which has never been questioned.'*

16. The House of Lords also agreed with the view taken by the judge at first instance and by the Court of Appeal that the 'proceedings' are not restricted to the actual proceedings in which the preservation or recovery of the property took place but extended to all the proceedings covered by the legal aid certificate. The whole of the sums expended by the Legal Aid Agency are therefore subject to the charge.

17. The Respondent submitted that, in this case, unlike *Hanlon,* the house was not the sole matter in issue, and that the consent order dealt with a number of points. There was no order for sale of the Property, and no quantification of his ex-wife's interest, if any. The Property was in his sole name, and had been bought by him before the marriage. In short, the Property was not in issue in the proceedings, and was not 'preserved' by him. Finally, he submits that it too late to register the charge.

18. I cannot accept any of those submissions. It is clear from all the documentation referred to above, and most importantly from the terms of the Consent Order itself, that the Property was in issue in the proceedings. The District Judge indicated that there was no reason to depart from the principle of equality, ie that each party should be entitled to a 50% share. The fact that the Property was in the sole name of the Respondent is irrelevant: on divorce, where ancillary relief is claimed, it is put in issue by reason of the fact that the court can order a sale and a split of the proceeds, or order the transfer from one party to another. The initial proposal that there should be a sale was replaced by the agreement that

the Respondent's ex wife would relinquish any claim to the Property in return for the payment of £16,000. The Property was therefore 'preserved' by the Respondent (and the sum of £16,000' recovered' by his ex wife.) It does not matter that the final order was a Consent Order, and not one made by the Court. This is made clear by the words of section 10(7) of the 1999 Act. It is also clear from *Hanlon* that the charge attaches to all the costs incurred in the proceedings: there is no apportionment to be made.

19. I should also say that no question of limitation arises in this case. The Applicant is merely seeking to register a charge, not to bring a monetary action or to sue for possession. It is some comfort to the Respondent to know that interest only accrues on the sum protected by the charge on registration and not before. No monies are due for repayment as yet.

20. This leaves the question of costs. In principle, the Legal Aid Agency as the successful party, is entitled to their costs from the date of the reference to the Tribunal. A schedule in form N260 may be served on the Respondent, and filed with the Tribunal, by 31 May 2019. The Respondent may then respond within 14 days.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 16th day of May 2019