



REF/2015/0409

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

**BETWEEN**

**MOHAMMED MALAK MEAH**

**APPLICANT**

**and**

**MOHAMMED ABDUL QADER**

**RESPONDENT**

**Property Address: Flat 9 Datchet House, Virginia Road, London E2 7ND**

**Title Number: EGL305649**

**Before: Judge Owen Rhys**

**Sitting at: 10 Alfred Place London WC1E 7LR**

**On: 18<sup>th</sup> and 19<sup>th</sup> July 2016**

**Applicant representation:** Mr Bromilow of Counsel instructed by Foskett Marr  
Solicitors

**Respondent representation:** Mr Tim Deal of Counsel (Direct Access)

---

**DECISION**

---

**THE APPLICATION**

1. The Applicant is the registered proprietor of a dwelling known as Flat 9, Datchet House, Virginia Road, London E2 7ND which is registered under title number EGL3025649 ("the Property"). The property was registered on 2<sup>nd</sup> February 2006 on the basis of a TR1 dated 18<sup>th</sup> January 2006. The Applicant bought the Property from

the Respondent's father-in-law, Mr Abdul Awal. The purchase price was £208,000, which was advanced to the Applicant by HSBC Bank plc ("HSBC") on the terms of a 100% mortgage. The mortgage offer was based on a valuation from Jonathan L Wilson FRICS of Clarke Wilson dated 24<sup>th</sup> November 2005, in the sum of £210,000. The valuation notes that "*The property requires large-scale internal renovation.*" There is a restriction registered against the title to the Property in favour of the Respondent ("the Restriction"). The basis of the Respondent's application made by Form RX1 dated 8<sup>th</sup> May 2014 was stated to be his entitlement under a Deed of Trust dated 20 November 2007 ("the Trust Deed"). This document purports to be a declaration of trust executed by the parties whereby the Applicant declared that he held the Property on trust for himself and the Respondent in equal shares. By an application in Form RX3 dated 16<sup>th</sup> January 2015, the Applicant applied to cancel the Restriction, on the grounds that the Trust Deed relied on by the Respondent was not a genuine document. He claims that his signature on the document has been forged. The dispute could not be resolved by agreement, and was referred to the Tribunal on 17<sup>th</sup> June 2015. I heard oral evidence from the Applicant and the Respondent, Mr Abdul Awan, Mrs Salma Khanom, Mr Zoglu Miah, and the Respondent's wife, Mrs Alpona Kadir.

## **THE PLEADED CASE**

2. The Respondent set out the facts underlying his claim to a beneficial interest in his Statement of Case as follows: "*7.1 The Property was bought from the Respondent's father-in-law (Mr Abdul Awal) in consideration for the love and affection for his son in law and daughter reduced the price by £40,000 as he was one of the buyers..... The mortgage was only issued to the Applicant due to the fact that only one party was required for lending purposes. The Applicant and the Respondent were in business together and the Respondent agreed for only one name to be registered at the HM Land Registry.*" He goes on (see 7.2) to allege that "*The Property was re-mortgaged, and the remaining proceeds were used 1) to pay off the liability (outgoing partner – Salma Khanom) in the partnership in the sum of £20,000 and 2) the remaining £50,000 split equally between the Applicant and the Respondent.*" This somewhat confusing narrative was explained by the Respondent when he came to be cross-examined on his statement. It was his case that originally the Property had been purchased by three "partners" – namely the Applicant, the Respondent and the

Respondent's sister-in-law (Salma Khanon). The purchase price had been raised by means of a 100% mortgage from HSBC, but since the price had been reduced by £40,000 to reflect the family connection with the vendor, this was agreed to be the contribution made by the Respondent and Salma Khanon to the purchase price. It was agreed that the three "partners" would each have an equal one-third share in the Property. Subsequently, when the Property was re-mortgaged in 2007, the Applicant and Respondent bought out the share of Salma, and at that point (according to the Respondent) he asked for a Declaration of Trust to be drawn up because he was planning to go to Bangladesh permanently.

### **AGREED FACTS**

3. It is common ground that the Applicant and the Respondent did carry on a property business together for some 4 years. They seem to have acted as property agents, selling and letting property and providing introductions to potential lenders. Furthermore, a number of facts can be established on the documentation alone. First, the sale price of the Property and the fact that the purchase was funded by a 100% mortgage from HSBC. Secondly, that the Property was remortgaged in the sum of £280,000, the valuation stated to be £350,000 in September 2007. Thirdly, in October 2007 the Applicant paid Salma Khanon the sum of £11,400 by cheque.

### **THE ISSUES**

4. Until the matter came on for hearing, the sole issue in the case appeared to be the authenticity of the Declaration of Trust. Directions had been given for expert evidence in two disciplines. First, a forensic handwriting examiner. Secondly a property valuer. The former was intended to deal with the allegation of forgery of the Applicant's signature on the Declaration of Trust. The latter with the value of the Property in 2006, to deal with the Respondent's allegation that it was sold at an undervalue to reflect the family connection. In the event, the Respondent did not seek to question or challenge the evidence of either expert. The forensic document examiner concluded that there was strong evidence of simulation. Presumably in the light of that evidence, the Respondent's Counsel put forward an alternative argument before me, namely that whether or not the Declaration of Trust was valid and effective, the Applicant held the Property on constructive trust for the Respondent, relying on some form of common intention type trust, to be deduced from the entire course of dealing between the parties. The authority of Oxley v Hiscock [2004]

EWCA Civ 546 is relied upon. Whilst Mr Bromilow complained about to the last-minute nature of this argument, and questioned whether it was really tenable in the event that the Declaration of Trust was held to be a forgery, nevertheless I did allow the Respondent to raise it.

5. In view of this, there are essentially two issues to be decided. First, is the Applicant's signature on the Declaration of Trust a genuine signature? Secondly, was there any common intention or understanding as between the Applicant and the Respondent, at the time of the initial purchase of the Property, that the Respondent should have a beneficial interest in it? Clearly, if the Declaration of Trust is a genuine document, that concludes the matter in the Respondent's favour. However, if it is not genuine, that may still leave the possibility that the Respondent is able to prove that he has acquired a beneficial interest in the Property by some other means. Both routes to the claimed beneficial interest rely on the same underlying facts. The Respondent claims that the Property was essentially a joint purchase, albeit that the legal title was vested in the sole name of the Applicant. He claims that he and Salma Khanon contributed to the purchase of the Property by virtue of the £40,000 undervalue that the vendor (their father in law) agreed to in consideration of their status as family members.

## **THE EVIDENCE**

6. The evidence regarding the purchase is as follows. The Applicant's evidence is that he borrowed the entire purchase price from HSBC, and paid all the incidental expenses, such as Stamp Duty, legal and surveyors' fees from his own resources. He says that he paid the full market value of the Property and no discount was given to him. He denies that he was ever in any "partnership" or other business relationship with Salma Khanon. He says that he paid all the HSBC mortgage instalments. He agrees that he remortgaged the Property to Bank of Scotland in 2007. This was because the Property's value had dramatically increased, and he had some debts to Pay, including monies borrowed from the Respondent and Salma Khanon. He duly paid £11,400 to Salma Khanon and £27,000 to the Respondent out of the remortgage monies. He has let the Property since 2007, and has serviced the Bank of Scotland mortgage using a combination of the rent monies and (when there was shortfall) his own funds. He denies that he ever signed the Declaration of Trust or agreed to any such document.

7. The Respondent's evidence as to the purchase is as set out in the extract from his Statement of Case cited at paragraph 2 above. He confirmed the truth of this statement on oath. In cross-examination he insisted that the true value of the Property exceeded the valuation obtained by HSBC at the time of the purchase. He said that the valuation did not properly take into account the letting value of the Property. As to the Declaration of Trust, he insisted that this had been given to him by the Applicant, and the signature had already been added. He denied that he was involved in any forgery.
  
8. Both Mr Abdul Awal, the vendor, and Salma Khanon, the other alleged "partner", gave evidence. In Mr Awal's statement, which he verified on oath, he said this: "3. *Initially I was not sure whether to sell the property, when I was approached by the [Applicant.] I was reluctant to sell as the property was a good investment and in a prime location for letting. Due to my love and affection for him, being my son in law, I decided to offer the property to him for sale.* 4. *While discussing the selling price, I discounted the price by at least £40,000.00 due to my relation with the Respondent. The applicant was not involved or party of any such negotiations. ....* 6. *After agreeing the price and some days later, I was informed that the Applicant would be the sole named under the Contract for Sale. I questioned the Respondent on his issue as I will strictly sell at market value or even withdraw from the sale.* 7. *At that time both the Respondent and Mrs Khanom confirmed to me that they have been advised by the mortgage broker to apply on the Applicant's sole name so that the partnership could make other purchases on the other two names, in the future.* 8. *I believed and trusted the Respondent and completed the sale to the three of them on the discounted price."* He was cross-examined on this statement. It was immediately evident from his answers that he struggled with the English language. Despite this, he insisted that he himself had written his witness statement in his own words. When he was asked about the statement in paragraph 3, to the effect that he was reluctant to sell but was prepared to give a discount to the Respondent, he replied that he "*needed the money*" – for another house, apparently. When he asked why he would give a discount on market value if he was in need of money, his response was "*no comment*". When he was asked how much discount he gave, he said that the Property was worth £230-240,000 – producing a discount of £20-30,000. In re-examination he

was asked whether he had the Property valued professionally, He replied that he had asked a neighbour what the Property was worth.

9. Salma Khanon stated that she was in a “*partnership*” as a joint owner of the Property with the Applicant and the Respondent. She stated that the “*partnership*” owned another property in Bethnal Green “*on the same share and the same arrangement*” save that it was held in her sole name “*for mortgage purposes*”. On disposal of that property she said that the sale proceeds were paid to the partners equally. She said that she had an equal one-third share in the Property, which was purchased from her father-in-law Mr Awal “*at a discounted price*”. She says that she sold her share for £20,000 to the Applicant and the Respondent when it was remortgaged in 2007. She was paid a total of £20,000 by way of cheque, transfer and cash. In cross-examination she described herself as a “*silent partner*”. She did not know the specifics of the sale by Mr Awal, but she believed that he sold the Property at a discount “*as far as I am aware*”. She was part of a “*collective*” with the Applicant but she had never met him and had no dealings or discussions with him. She denied that the payment of £11,400 from the Applicant was the repayment of a loan. She said that she received £20,000 in respect of her one-third share, including the payment of £11,400, and the balance was paid in cash to her husband.

## **EXPERT VALUATION EVIDENCE**

10. In addition to the evidence of the lay witnesses, a single joint expert valuer was appointed by Order of the Tribunal, for the purposes of reporting on the value of the Property at the date of the sale to the Applicant. In the event a report was obtained from Christian Dadd MRICS, of the firm Clarke Hillyer. Mr Dadd was instructed to provide his opinion of market value of the Property as at the date of the sale in January 2006. It is his opinion that the value was £208,000 – the actual purchase price paid by the Applicant. He gives full reasons for his view, and cites a number of comparables that he has used. The closest comparable was Flat 7, which was sold in August 2005 for £220,500. However, he emphasised that the internal condition of the Property was and is below average, hence the slightly lower value. Although the Respondent made various criticisms of the report he did not require Mr Dadd to attend the hearing to answer questions on his opinion. He said that this was an economic

decision – based on a desire to limit costs – but ultimately the report went unchallenged.

## **FINDINGS OF FACT**

11. In the light of all the evidence, I must now make findings of fact as to the circumstances of the sale to the Applicant in 2006, with particular reference to the Respondent's claim that this was a purchase at a discount made on behalf of three parties, namely the Applicant, the Respondent and Mrs Khanom. I shall also make the necessary findings with regard to the execution of the Declaration of Trust. I have not referred to the evidence of Mr Zoglu Meah, and the Respondent's wife, because I did not find their evidence to be of any assistance in reaching conclusions on the material issues. Neither witness had any direct knowledge of any of the material facts. My findings are as follows.
  
12. The best evidence in my view of the market value of the Property in Late 2005/early 2006 is the HSBC mortgage valuation, based on an actual contemporaneous inspection of the Property by a professional valuer. This produced a valuation in the sum of £210,000. Mr Dadd was instructed to carry out the same exercise, and he has confirmed the original valuation.
  
13. Against these professional views, I have the evidence of Mr Awan and the Respondent. Mr Awan's statement (and letter dated 14<sup>th</sup> October 2015) states that he discounted the property "*by at least £40,000*". However, when he was cross-examined on this, he said that the Property had a value of between £230-240,000 – a discount of £22-32,000. He seemed to have based his view of the value of the Property on something which a neighbour told him. However, we know from Mr Dadd's report that another flat in the same block was sold shortly before the sale to the Applicant, but at a slightly higher price, £220,500. It is also known, from the 2005 valuation, that the Property was in poor internal condition at the relevant date, and this does not seem to be challenged. This no doubt explains the disparity in price. Mr Awan's evidence was unsatisfactory for a number of reasons. For example, in view of his difficulties with the English language, I find it impossible to accept that he had actually prepared his witness statement himself. The fact that the statement may

have been prepared by a solicitor or the Respondent himself would not have been a problem, but Mr Awan insisted that the document was his.

14. The Respondent also insisted that the Applicant received a discount of £40,000, which would place the value of the Property at more than £248,000. He was unable to produce any supporting evidence, and, as I have said, chose not to challenge the expert's opinion in any formal way. I did not find the Respondent to be a particularly impressive witness. This manifested itself in a number of different ways. One example may serve to demonstrate my reservations about his truthfulness. He was cross-examined about the remortgage by the Applicant in 2007. For the first time, he mentioned that the original plan had been for the Applicant to sell the Property. Indeed, according to him, it was put on the market at a price of £350,000. Mr Bromilow asked him why this fact had not previously been mentioned by him, and did not appear in any of his written statements. His response was that he was not a lawyer, and did not have professional advice when his Statement of Case was drafted and served. He insisted that Radleys were not acting for him in August 2015. In fact it is quite clear from the documentation that Radleys solicitors were acting for him – indeed, the address given on the Statement of Case is that of Radleys. Even when that was pointed out to him he was adamant that he was not professionally represented at that time. It is difficult to see how he could possibly have been confused about this matter, and his answer can only have been deliberately false.

15. For all these reasons, therefore, I have concluded that the Applicant paid the vendor, Mr Awan, the true market value of the Property when he purchased it in 2005. There was no element of a discount in the price.

16. Neither Salma Khanon nor the Respondent claims to have made any actual financial contribution to the purchase of the Property. The alleged contribution took the form of the “family discount” offered by Mr Awan. Since I have found that the Property was sold at full market value, it follows that the fundamental element of the alleged constructive trust falls away. In any event, I consider that the Respondent's case is inherently improbable for the following reasons:

- a. The Applicant never met Salma Khanon and they never spoke. It is difficult to see how a “partnership” or “collaboration” could have come into being



without a single meeting or even conversation between them. It was also her evidence that they had already jointly purchased another property, in Bethnal Green, but again this was without any actual contact between the two of them. She did not produce one single document to support this allegation, which the Applicant denied.

- b. Even on the Respondent's own case, he and his sister-in-law never contributed more than £40,000 to the purchase, on the footing that the Property was really worth £248,000. That is a contribution equivalent to 16% in total, or 8% each. On his case, however, this 8% contribution would lead to a 33.33% share. This makes no commercial sense.
- c. If, as she and the Respondent claim, Salma Khanon sold her one-third share in 2007, when the property was remortgaged, it makes no sense for her to have received £20,000, when the Respondent and the Applicant received £27,000 whilst retaining their shares. If she was being bought out of an asset worth £350,000, her one-third share must have been worth considerably more.
- d. Equally, it makes no sense for the Applicant to have paid her £11,400, if that is said to be part-payment of her share. The sum bears no obvious relation to £20,000. Salma Khanon was unable to produce any documentation to support her claim that the balance was paid in the form of cash and other transfers. It seems much more likely that this was indeed the repayment of an unrelated sum, namely a debt owed to her by the Applicant.

17. In view of the findings I have made, namely that the Respondent never made any contribution to the purchase of the Property as he alleges, I must inevitably conclude that the Declaration of Trust is a concoction, prepared by the Respondent in order to provide support for his unjustified claim to a beneficial interest in the Property. This conclusion is supported by other evidence, in particular:

- a. The document itself is not well drafted and is unlikely to have been prepared by a competent solicitor. I refer in particular to the fact that Recital (B) erroneously records that "*the entirety of the purchase monies mentioned in the transfer and the costs relating to the Conveyance/Transfer were provided by the Trustee and the Beneficiaries in equal shares*" – on any footing this is simply untrue. Further, the document refers to "the Beneficiaries" in the plural rather than "the beneficiary" in the singular.

- b. Although the document was purportedly executed in November 2007 it was not produced by the Respondent until the application for the restriction made in 2014.
- c. Mr Sanjaye Bhuwanee, the solicitor whose firm appears to have drafted the document, and who appears to be the witness to the Applicant's signature, has expressed considerable scepticism as to its authenticity. Mr Bhuwanee did not attend the hearing to give "live" evidence, since he lives and works in Mauritius where he practices as a barrister. However, he has made a witness statement, in which he casts considerable doubt both on the authorship of the document itself, and on the genuineness of his signature.
- d. Expert evidence, in the form of the report from a single joint expert Mr Handy, was obtained pursuant to an order of the Tribunal. He was instructed to determine whether the signatures of the Applicant and the witness Mr Bhuwanee were genuine signatures. For the reasons stated at length in his report, he has concluded that there is "strong" evidence to support the proposition that the Applicant and Mr Bhuwanee did not append their signatures to the Declaration of Trust. The expert's opinion that there is "strong" evidence is not of course conclusive of the issue. However, taking his opinion together with the other facts and matters I have referred to, I consider that it reinforces the view which I have come to, namely that the Declaration of Trust is a concoction which is of no effect.

## **FRESH EVIDENCE**

18. As a final matter, I must deal with an application by the Respondent to adduce further evidence after the hearing had been concluded on 19<sup>th</sup> July 2016, with judgment reserved. The application was made by letter dated 18<sup>th</sup> August 2016, supported by a witness statement of the same date. According to the Respondent, on 13<sup>th</sup> August 2016 he decided to tidy up the garden shed at his home in Romford. Much to his surprise, he came across a black plastic bin bag containing various items. These included a batch of papers containing various financial records headed "*London Finance Daily Cash In & Out Flow*", being, it is said, "*daily cash flows written and maintained by the Applicant*". These contain manuscript entries by the Applicant. Also contained in the bin bag were statements and print-outs relating to Barclays Bank and Nat West Bank accounts held by London Finance (UK) Ltd, said to have

been the business operated by the Applicant and the Respondent at the time of the purchase of the Property. The Respondent has drawn attention to three particular items which, he says, show that certain payments were made out of the business bank account towards expenses relating both to the Property, and Kinsham House, said to be the Bethnal Green property referred to by Salma Khanom. Also, he refers to a page of notes said to be in the Applicant's handwriting recording the receipt of £6,434 into the joint business account. Finally, he says that the documents show that he and the Applicant were in business together at the time of the purchase of the Property. He submits (a) that the information could not have been found previously, since he had no recollection of placing these documents in his shed; and (b) that "*Such evidence is significant and relevant and is contrary to the case sought to be advanced by the Applicant and is in accordance with my case that there was a pattern of ownership and division in relation to the Bethnal Green property and [the Property]...*" He prays in aid the overriding objective in support of his application for the documents to be admitted in evidence "*either on the papers or be rehearing or otherwise.*" The Applicant has objected to the admission of this new material.

19. If I were to allow this further evidence, it would clearly be necessary for a further hearing to take place, to enable the Applicant to cross-examine the Respondent as to the circumstances in which these documents came to light, and to provide an explanation for them to the extent that they are material (and authentic). I cannot see how I could treat these documents as evidence in the case without such a further hearing. I have a discretion as to whether to allow this fresh evidence to be adduced. I think that some guidance as to the principles upon which such a discretion must be exercised may be supplied by the well-known case of Ladd v Marshal [1954] EWCA Civ. 1, although that case is of course concerned with the admission of fresh evidence on appeal. I have also considered the guidance given in a recent decision in the Upper Tribunal – Davis v Wiggett UT/2015/0027 (27 July 2016) – in which Judge Cooke considered Ladd v Marshall and various other authorities on the issue. It seems to me that the most helpful statement on the admission of fresh evidence is that of Lord Wilberforce in Mulholland v Mitchell [1971] AC 666 where he said (at page 680): "*.... courts will allow fresh evidence where to refuse it would affront common sense, or a sense of justice*".

20. In my judgment, the application to admit fresh evidence will be refused for the following reasons:

- a. I do not accept that the Respondent was unable to find and therefore disclose these documents, to the extent that they are relevant, at an earlier stage. This case was referred to the Tribunal in June 2015. It has always been common ground that he and the Applicant were in business together, at or around the time of the purchase of the Property, and it beggars belief that he could not have made enquiries of the various banks with which the business had its accounts to obtain relevant financial information. Furthermore, the “black plastic bin bag” was in plain sight within his home and a truly diligent search for documents would have revealed them. The fact that he forgot that they were there is not in my view a satisfactory explanation.
- b. These documents, at their very highest, could only have a very marginal effect on the outcome. As I have said, it was always accepted by the Applicant that he and the Respondent were in business together, so the fact that these accounts and records exist (if authentic) is entirely immaterial.
- c. The specific entry relating to the Property is the payment of £300 from the business account to fund the survey and search fees. If the entries are genuine, this might to some extent affect the Applicant’s credibility since he said that the fees were paid from his own resources. However, realistically this will have no bearing on the overall outcome, for two main reasons. First, because the documents do not begin to establish the necessary cornerstone of the Respondent’s case, namely the granting by the vendor of a discount on the sale to the Applicant. This was the very specific allegation supporting the Respondent’s claim - the “common intention” trust argument having been raised as late as Mr Deal’s skeleton argument. My findings in that regard could not be affected in any way by these documents. Secondly, my findings as to the forgery of the Applicant’s signature are equally unaffected.
- d. There is clearly a legitimate interest on the part both of the parties and the Tribunal (and its other users) itself that there should be finality in litigation. It would be necessary to have a further hearing, using the Tribunal’s resources and causing further delay and expense to the parties and others. This is undesirable.

- e. Given that I have found that the Respondent has concocted the central document which he relied upon – namely the Declaration of Trust – inevitably any new documents produced at this late stage would necessarily be subject to particular scrutiny. I foresee that it may be necessary for the new documents themselves to be subject to forensic analysis. I think this is hinted at by the Applicant’s solicitors in their letter dated 19<sup>th</sup> August 2016 and their reference to the “integrity” of the documentation.
- f. I must also, of course, have particular regard to the overriding objective as set out in Rule 3 of the Tribunal’s Rules. I do not consider that the admission of this evidence, and the further hearing that it will entail, is a fair and just way of dealing with this case.
- g. Ultimately, there is no affront to common sense, or a sense of justice, in refusing the admission of this evidence. On the contrary, common sense and justice suggest the opposite.

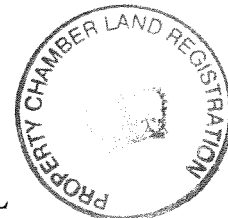
## CONCLUSION

21. In view of my findings of fact, it follows that the Respondent is not entitled to maintain the Restriction, and I shall direct the Chief Land Registrar to give effect to the Applicant’s RX3 dated 15<sup>th</sup> January 2015 by cancelling the Restriction. I see no reason why the Respondent should not pay the Applicant’s costs. The Applicant has filed a Statement of Costs. If the Respondent wishes to object to any of the items on it, written objections should be filed with the Tribunal no later than Monday 12<sup>th</sup> September 2016.

Dated this 2<sup>nd</sup> day of September 2016

*Owen Rhys*

**BY ORDER OF THE TRIBUNAL**





REF/2015/0409

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

**BETWEEN**

**MOHAMMED MALAK MEAH**

**APPLICANT**

**and**

**MOHAMMED ABDUL QADER**

**RESPONDENT**

**Property Address: Flat 9, Datchet House, Virginia Road, London E2 7ND**

**Title Number: EGL305649**

**Before: Judge Owen Rhys**

**Sitting at: 10 Alfred Place London WC1E 7LR**

**On: 18<sup>th</sup> and 19<sup>th</sup> July 2016**

---

**ORDER**

---

**IT IS ORDERED** that the Chief Land Registrar shall give effect to the Applicant's application in Form RX3 dated 15<sup>th</sup> January 2015

Dated this 2<sup>nd</sup> day of September 2016

*Owen Rhys*

**BY ORDER OF THE TRIBUNAL**

