

[2017] UKFTT 0367 (PC)

**PROPERTY CHAMBER
FIRST- TIER TRIBUNAL
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002**

REF/2016/0154

BETWEEN

**Mr JOHN CAMENZULI
(also known as Mr Jean Marie Camenzuli)**

APPLICANT

and

**(3) Mr MICHAEL CAMENZULI
(4) Mrs LYNN CEMNZULI**

RESPONDENTS

Property Address: 211 South Lambeth Road, London SW8 1XR

Title Number: LN222620

Before: Dr Anthony Verduyn sitting as Judge of the Property Chamber of the First-tier Tribunal

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 23rd – 24th February 2017

ORDER

Upon the trial of this Reference

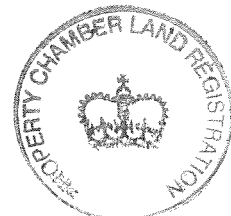
And upon hearing Counsel for the Applicant and Counsel for the Respondent

The Chief Land Registrar is directed to dismiss the Application made by the Applicant for rectification of the Register and dated 12th June 2015.

Dated this Wednesday 26 April 2017

BY ORDER OF THE TRIBUNAL

Anthony Verduyn





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Applicant's representative: Mr Dominic Crossley, Counsel

Respondents' representative: Mr Simon Allison, Counsel

DECISION

KEYWORDS: RECTIFICATION; DISCHARGE OF LOAN; FORGERY; DS1; BURDEN AND STANDARD OF PROOF; EXPERT EVIDENCE

INTRODUCTION

1. This reference to the Tribunal follows an application by Mr John Camenzuli (the “Applicant”) dated 12th June 2015 to alter the registered title to 211 South Lambeth Road, London SW8 1XR (the “Property”) to reinstate a legal charge dated 23rd December 1998 and originally registered on 12th January 1999 (the “Charge”). The Charge was discharged by form DS1 dated 30th January 2008 (the “DS1”). The Applicant alleges that the signature of the Chargee, Mrs Francesca Camenzuli (“Mrs Camenzuli”), was forged and that the monies secured by the charge were never fully repaid. Mrs Camenzuli died on 10th July 2008.
2. As the names show, this is family dispute. The Camenzuli family are Maltese in original and moved to London from Tunisia in about 1959. Mrs Camenzuli’s husband died in about 1963 and she raised a large family alone. There were seven children, with the Applicant the eldest son. The other children were Michael Camenzuli (the “Respondent”), the late Sauveur (or “Sam”) Camenzuli, Rita Delicata, Monique Iacurci, Antoinette McEvoy and Mary di Giacomo. The Respondent and his wife, Lynn Camenzuli, were the chargors of the Property. Lynn Camenzuli is separated from her husband, and (once one sentence in her witness statement was disregarded by agreement) her short statement was adduced as read. She played no active part in these proceedings, but is bound by the result.
3. The family business from soon after arrival in London was the purchase and restoration of properties for rent. The Property the subject of this reference was bought in about 1967. There is not much dispute that, from the death of his father and for about a decade, the Applicant assisted his mother in the family business. Sam Camenzuli then stepped in when the Applicant went to Australia, and from about 1978 the Respondent similarly assisted. From the late 1980s the Respondent alone assisted his mother. In 1998 Mrs Camenzuli decided to transfer the Property to the Respondents, securing a sum to be repaid by a legal charge. In the Trial Bundle, there is a copy of the completion statement dated 22nd December 1998 recording a purchase price of £240,000, less monies paid to

Mrs Camenzuli of £14,000. Stamp duty and sundry fees and costs are acknowledged as paid by the Respondents the previous day. The balance of £226,000 is recorded as "Mortgage advance from Vendor (loan)". A copy of the Charge appears in the Trial Bundle and records repayment at £2,000 on 21st of each month starting 21st January 1999. No interest is recorded and it appears that the intention was that repayment would have been out of the rental income from the Property, which was rented out save for the ground floor then occupied by Mrs Camenzuli (at some point she moved in with Monique Iacurci at 38 Maryland Road, Thornton Heath). Also within the Trial Bundle is Rent Book which the Respondent says was used by Mrs Camenzuli to record her receipts from him (the "Rent Book"), albeit that it is in the Respondent's hand. It begins 21st June 1998 and records 7 payments of £2,000 to 21st December 1998, which he says constitutes the deposit. The Respondent says that he thought (but cannot be sure) the agreed price was £260,000 and, above the list of payments is a note "£20,000 paid 21-9-98". Monthly payments of £2,000 are recorded to February 2002, but about this time lump sums of £10,000 and £95,000 are recorded and regular payments fall to £1,000 per month, with the loan discharged in September 2005. The Applicant seeks to cast doubt on the repayment of these lump sums in particular. The Respondent says that, once full repayment was made, he then received the Rent Book from his mother. He brought the Rent Book to the Tribunal. The DS1 is much later than the date the Respondent says that repayments were completed, 30th January 2008, and contains disputed signatures attributed to Mrs Camenzuli and, as witness, Monique Iacurci. The core of the Applicant's case is to dispute the repayments being discharged in accordance with the record in the Rent Book, and that the later DS1 was forged as to its signatures. It is essentially accepted by the Applicant that the forgery would be immaterial if the payments had been made, but a finding of forgery would be relevant to consideration of the veracity of the content of the Rent Book.

4. The Applicant relied primarily on his own evidence, but also called his sister, Rita Delicata. He also relied upon expert reports relating to handwriting, in particular: the written report of Mr Michael Handy dated 3rd September 2009 (which appears in the Trial Bundle in both incomplete and complete versions); and the disclosed reports of Angela Morrissey dated 22nd February 2010 and Oliver Thorne dated 28th June 2010. The latter two reports were prepared for a dispute over the Will of Mrs Camenzuli, which was dated 11th July 2007 and was entirely in favour of Monique Iacurci. That dispute revealed a rift

in the family, exhausted the estate in issue on legal costs (most of Mrs Camenzuli's wealth having already been distributed in 2006/7 by payments totalling £90,000 to each of her seven children, and £21,000 to grandchildren) and resolved following mediation in about August 2010 without any admissions. The dispute over repayment of the loan and DS1 was pursued in the County Court in 2011, but the Applicant's claim was struck and the Applicant wrote to the court that he would pursue matters through the Land Registry. It took him until 11th June 2015 to do so.

5. The Respondent relied on his own evidence, the evidence of two of his sisters Monique Iacurci and Antoinette McEvoy, and the expert report of Deborah Jaffe dated 11th July 2016.

RELEVANT LAW

6. The reference to the Tribunal is one of rectification of the registered title to the Property under Section 65 and Schedule 4 of the Land Registration Act 2002 (the "2002 Act"). This is a matter of rectification, rather than mere alteration, because the application is for the correction of an alleged mistake in the register and prejudicially affects the title of the Respondents. Consequently, for rectification to be ordered without the Respondents' consent, it is required to be demonstrated under paragraph 6(2) of Schedule 4 to the 2002 Act that:

“(a) [the Respondents have] by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made”.

7. There is no dispute between the parties on the operation of the Schedule. If full repayment was not made and the signature of Mrs Camenzuli forged, which is the Applicant's case, then the statutory grounds for rectification are made out. If the signature were forged, but full repayment made, then rectification would be pointless because there would be nothing to be secured by the restored Charge. If the Respondent is correct, and repayment was made in full and the signature of Mrs Camenzuli was genuine then, obviously, the application fails.

8. The burden of proof is upon the Applicant, as the proponent of the rectification of the register. The standard of proof is the usual civil standard; that is to say, the balance of probabilities. Given the seriousness of the allegations (essentially, the deliberate underpayment of Mrs Camenzuli and her estate - which must carry with it the falsification of the Rent Book entries at least - and forgery of Mrs Camenzuli's signature), however, "the cogency of the evidence relied upon must be commensurate with the seriousness of the conduct alleged" *per* Mr Justice Teare in JSC BTA v Mukhtar Ablyazov & others [2013] EWHC 510 (Comm).

EVIDENCE FOR THE APPLICANT

9. The Applicant primarily relied on his own evidence, supported by documents disclosed in the course of his investigations. As a witness, I found him to be sincere in his belief (a belief he characterised as a "strong" suspicion in his witness statement) that the Respondent had underpaid and forged Mrs Camenzuli's signature. The reference is, however, not to be determined by the strength of the Applicant's belief, but upon the evidence adduced and tested before the Tribunal. Here the Applicant was at a distinct disadvantage, because he was not a witness of fact in respect of the arrangements for the Property, the Charge, any loan repayments and the DS1. He was dependent upon the inferences he was seeking the Tribunal to draw from the facts that he sought to establish. The lengths to which the Applicant went in his investigations were illustrated by his oral evidence in chief, in which he described his efforts to secure from Mrs Camenzuli's General Practitioner's practice the date upon which she was registered as resident at Monique Iacurci's home (a fact of no primary importance). The Administrators of Mrs Camenzuli's estate, Monique Iacurci and Mr Sam Desira (a cousin of the Camenzuli siblings), declined to agree and the Applicant was as a result suspicious of a cover up, whereas it seems to me (and I find) that such refusal reflected the exasperation of family members at the protracted and dogged pursuit by the Applicant of all avenues of investigation against the Respondent. I do not consider that the Applicant's beliefs or suspicions assist me in determining this case.

10. In the Applicant's witness statement, he states that his particular concerns are at the lump sums of £10,000 and £95,000, which the Respondent says he paid under the Charge of the

Property, but also £25,000 paid to Monique Iacurci's daughter by cheque dated 20th March 2006 (the signature on which is doubted by Mr Handy) and £10,000 withdrawn from Mrs Camenzuli's Halifax account two days before she died. The latter two issues are not directly relevant to the reference, and I note that the bulk of the first half of the Applicant's witness statement is directed at other matters, including the family history since arrival in London and the Applicant's distrust of the Respondent in various matters regarding the family. Unsurprisingly and rightly, this history was not much explored in cross-examination. Its relevance, if any, was to suggest to me that Mrs Camenzuli was generous to the Applicant and Respondent, quite possibly in response to their assistance provided to her, including by way of a gift of one property to the Applicant at his marriage long before she provided the Property in question at a subsidy to the Respondent (the rents from the Property being available to be applied to an interest free, but secured, loan).

11. The Applicant states that Mrs Camenzuli told the family of the agreement with the Respondent to transfer the Property to him and his wife, but he was unaware of the existence of the Rent Book. He accepts some payments of £2,000 and £1,000 were made. He makes much of the Respondent being responsible for making the deposits into his mother's account, but queries why the Respondent would engage in a commercial loan to repay £95,000 off an interest free loan, and why it appears in the Rent Book in June 2002 when received by the Respondent in February 2002. He rejected at the hearing suggestions that the Respondent responded to pressure from Antoinette McEvoy to make early-payment and that the entry followed confirmation of receipt, and raised issue with the Respondent consistently maintaining that payment was in to the Stockwell branch of National Westminster Bank ("Natwest"). Natwest confirmed by letter dated 25th August 2016: "We have checked our records and can confirm that account 64838803 was opened on 30th July 2002 and closed on 29th September 2008." Hence the sum of £95,000 could not have been deposited into that account in February 2002. RBS Group for Natwest had stated in 2015 that Mrs Camenzuli held no other accounts. The Applicant recognised but could not comment on the fact that the undisputed Will of Mrs Camenzuli dated 2001 refers to a Natwest account. A Barclays Bank account had been in use before the Natwest account was opened, and closed in July 2002. Little has been discovered about this account (wrongly believed in 2004 to have been closed as dormant) and, curiously, in 2009 the accountant to Mrs Camenzuli refers to having a copy of a cheque drawn on a Barclays Bank account payable to the Inland Revenue and dated 30th November 2004.

Both parties in this case struggled with the lack of documents from the banks for the relevant period; records not being retained for so long ago.

12. The Applicant also focused on the DS1. Mohabir Solicitors wrote to Mrs Camenzuli about this in a letter dated 29th January 2008, but addressed to the Respondent's Property. The solicitors had acted for Mrs Camenzuli on occasion in the past, but said they were instructed by the Respondents that the loan was repaid in or about 2005 (the copy is hard to read as to date) and enclose a draft DS1. They recommended the taking of independent legal advice by Mrs Camenzuli. It appears these solicitors had forgotten any earlier involvement in the Property, they having acted in the transfer, and it is noted that they later advised the Respondent in the dispute over the Will. The Applicant is suspicious that this letter was addressed so that the DS1 would be in the control of the Respondent, and he disputes any suggestion that the Respondent was merely a "go between". Indeed, it is asserted that Mrs Camenzuli spoke limited English, and did not much read or write it. The Applicant sets out trenchant beliefs that the letter never got to Mrs Camenzuli and the signature on the DS1 was forged. He states that in 2009 Monique Iacurci had no recollection of witnessing the signature on the DS1, and the address under her name is mis-spelt with an "n" missing. It is the case that she wrote to the Land Registry in November 2015 stating she did not recall signing (but she also states that she believed the signature was hers). The Applicant considers that the Respondent and Monique Iacurci were working together to disguise the forgery. In this regard, the Applicant notes that the Respondent pulled out of the dispute over Mrs Camenzuli's Will at the time the signature on that Will was questioned and the DS1 was to fall under scrutiny as a comparator. He suggests that Monique Iacurci's support for the Respondent since then was the quid-pro-quo for his withdrawal from that dispute.

13. In cross-examination, the Applicant came across as totally committed to his case, sometimes to the point where his focus could have been apt to mislead. He was immediately questioned on the £10,000 paid from Mrs Camenzuli's account two days before she died, which was mentioned in his witness statement, but not developed as a theme. It is now clear this was used to pay HMRC monies due, but he had to be pressed more than once to accept that this was a satisfactory explanation in respect of the money itself. Even then he continued to challenge how the cheque was signed, since he did not

see Mrs Camenzuli sign it. This sort of approach was unhelpful, because it requires the Tribunal to be circumspect in the treatment of the Applicant's evidence, even on matters where he had some direct experience.

14. It is for this reason that I do not consider that I can accept the Applicant's hearsay evidence: he appears keener to describe his interpretation of events, than being strictly accurate about what was said to him or reported to him. For example, the Applicant claims support for this view that Monique Iacurci's signature as witness on the DS1 was forged by the Respondent by asserting that Mary di Giacomo reported to him a conversation she had with Monique Iacurci, to the effect that Monique Iacurci had forgiven the Respondent for doing this. As set out below, Monique Iacurci rejects the suggestion of forgery. In light of the Applicant's difficulty in accepting the use of monies to pay a tax bill, which appears no longer to be truly in dispute, I do not consider that I could prefer his hearsay to a witness's direct evidence (save for very good reason).

15. Another example of this problem with the Applicant's evidence arose when he quoted one of two (now lost) texts of April 2009 from Mary di Giacomo. He says he had supplied her with a copy of the DS1 and asked her to show it to Monique Iacurci to see whether she recognised it. The response, the Applicant states, was that Monique Iacurci and "Ann" (meaning, it seems, Antoinette McEvoy) knew nothing of a "letter" signed by the Respondent on Monique Iacurci's behalf. Even if that were a genuine transcription, it is not clear the "letter" is the DS1. In cross-examination, the Applicant said the DS1 was specifically referred to, but this is not the case. Further, on 4th May 2009 Mary di Giacomo wrote to the Applicant's solicitor: "My brother [the Applicant] made me listen to a phone call conversation on loud voice, he had with Mr Arif (my late Mum's accountant) last Friday afternoon 24th April. About DS1 my brother [the Respondent] wrote, in which I believe you want a statement from me over this fact." She refuses to give such a statement. Given that there is no dispute that, save for the signature, the DS1 is in the Respondent's hand, the extent to which this material can be said to incriminate the Respondent is open to doubt. Why Mary di Giacomo would focus on listening in to a conversation, when she was supposed to have secured an admission of a forgery, must cast considerable doubt on the latter. I do not consider that hearsay from the Applicant can be given any weight in these sorts of circumstances.

16. The Applicant also draws attention to a letter from Sam Desira as Administrator of the estate of Mrs Camenzuli to the Land Registry explaining how he took up matters with the Respondent, and received a denial that monies were outstanding to the estate. Lacking any evidence from the Applicant to the contrary, Sam Desira accepted the statement of the Respondent. The Applicant, on the basis that he says Sam Desira has poor written English and felt threatened by the Respondent so as not to investigate the DS1 in too much detail, suggests that this was not his genuine letter. There is simply no evidential foundation for such an allegation. In the context of the Applicant's dogged pursuit of the Respondent over the loan, it would be entirely unsurprising that Sam Desira might seek some assistance in the drafting of a letter detailing his investigations as Administrator and their result. There is no basis for suggesting that assistance came from the Respondent or that the letter was obtained by untoward means. Indeed, the thrust of the letter is consistent with Sam Desira's emails in the Trial Bundle from 2015 to the effect that he considered his job as Administrator to have been done. The Applicant disagrees and, I note, even criticises the administration by maintaining that one Natwest account was not dealt with at all. I do not consider that I can prefer the Applicant's unsubstantiated beliefs to the documents before the Tribunal.

17. Returning to cross examination, when pressed on the extent to which Mrs Camenzuli was a shrewd business woman, it was clear that the Applicant could only speak for the period in which he assisted (from about 1963 to 1973), but could not speak for the relevant period, so he had to base his views on what he had read from the Respondent and understood from others (an unreliable guide, as set out above). He accepted that Mrs Camenzuli may have been involved in acquiring tenants in this later period and the business was successful. He was keen to emphasise, however, that his mother delegated matters to the Respondent. The problem for the Applicant was that the Respondent would not talk to the Applicant about his mother's business affairs; perhaps understandably given the history of tension between them from at least the late 1980s. Whilst it was clear that the Applicant believed the Respondent had been allowed to retain more of the rent than the Applicant had been when helping Mrs Camenzuli, this mere belief in delegation does not take matters much further.

18. What the Applicant made absolutely clear was that he believed the Respondent had “scammed him” for £15,000 in the late 1980s, when the Applicant had been forced to sell a property to cover investment losses. The Applicant was plainly bitter about this and it rankles to this day. He was also plainly suspicious of the Respondent because the Property was transferred to the Respondent, when he had understood it was to go to Monique Iacurci and Antoinette McEvoy; although, he necessarily accepted that his mother had made her own mind up, because he spoke to her about it. It is perhaps telling that there is no suggestion of undue influence on the part of the Respondent in this case. I find it unsurprising and entirely in character for the Applicant to be suspicious about the early repayment of lump sums. There was a long history of issues between them.

19. What is unexpected is the lengths to which the Applicant plainly did go in some respects in pursuing the Respondent: the Trial Bundle contains a draft witness statement for Sam Desira of August 2015, with covering letter from the Applicant’s then solicitors, requiring confirmation and signature. The draft statement contained the following: “I confirm that all sums due under the charge are still outstanding”, which exceeds the way the Applicant has put his case (since he now accepts there is evidence for some payments of £2,000 and £1,000). A solicitor’s file note of a discussion with Sam Desira is in the Trial Bundle and shows he made some investigations as Administrator: “He doesn’t have much time for Michael [i.e. the Respondent] but he clearly doesn’t have much truck with the idea that Michael fiddled Mum [i.e. Mrs Camenzuli] out of the purchase price of the property and he thinks that John’s [i.e. the Applicant’s] basically got a vendetta against his brother.” Whilst Sam Desira’s opinion is no more valid than the Applicant’s, there can be no doubt that the witness statement provided to him in draft did not reflect his evidence.

20. Finally, I note that the breadth of the Applicant’s suspicions is striking, as he has also investigated a belief that Mrs Camenzuli was a victim of manslaughter, apparently at the hands of Monique Iacurci and her daughter, and he has raised this with the police notwithstanding an absence of any evidence.

21. Inevitably from the content of the witness statement, Counsel for the Respondent had to deal with matters that normally would have been dealt with by submissions. This did, however, yield some informative concessions: the Applicant did accept that the address

of the Respondent may have been used for the sending of the DS1 as a convenience to Mrs Camenzuli, since the Respondent dealt with her business affairs; and Monique Iacurci and Antoinette McEvoy were available to translate documents, if necessary, so Mrs Camenzuli was not entirely dependent on the Respondent. Mostly, though, the Applicant was unshakeable in suspicions of his brother.

22. Mrs Rita Delicata was called by the Applicant to give evidence and confirmed the contents of her witness statement. In that statement, she confirms the accuracy of the contents of the Applicant's statement to the best of her knowledge, but it was apparent that she had limited direct knowledge of events. She states she believed Mrs Camenzuli did not sign the DS1, nor did Monique Iacurci witness it: "I also believe that Monique is aware of the fraud given that I know that she admitted it to my sister Mary di Giacomo." The basis of this asserted knowledge is unclear, but appears to be a reference back to the content of the Applicant's statement, rather than any direct knowledge on her part and, hence, is not to be relied upon. Indeed, in cross-examination, the dangers of reliance on remote hearsay were fully exposed: she had stated that Mrs Camenzuli's accountant had told her late husband Gerry Delicata that he was unaware Mrs Camenzuli had sold the Property to the Respondent, when a letter of 4th September 2009 from that accountant clearly suggests that payments under the loan were taken into account in tax returns for 2002 to 2004.

23. In her witness statement Mrs Delicata says her suspicions were raised by the Respondent's withdrawal from the dispute over the Will. She stated that Mrs Camenzuli trusted her business affairs to the Respondent, but it seems her concerns at this did not arise until after Mrs Camenzuli died and Mrs Delicata's late husband, Gerry Delicata, stated that the Respondent had pocketed a significant proportion of rents. She took the Respondent to task over this. Mrs Delicata was challenged on the basis that rents were paid to Mrs Camenzuli in a fixed sum, and the Respondent with her agreement kept the surplus for the work he did. She could not gainsay such an agreement, as she did not know of one. She was also challenged on the basis that the Respondent withdrew from the Will proceedings in May 2009, when Mr Handy did not report until September 2009. She offered no explanation for this at first, but then connected it to the need to obtain the DS1 for comparator signatures (although she had no explanation for why the DS1 would

have been requested from the Respondent and not from the Land Registry). She accepted that she had no suspicions of Mary di Giacomo, even though she declined any involvement in the dispute over the Will the same month as the Respondent.

24. Concerning matters germane to the reference, Mrs Delicata stated that she had not seen or heard of the Rent Book at the time. In reality, she had little to add to the evidence of the Applicant, such as it was. Whilst I do not doubt that she shared the beliefs of the Applicant, her knowledge of events was so limited as not to advance his case.

EVIDENCE FOR THE RESPONDENT

25. The Respondent confirmed the contents of his witness statement, which set out a broad history not dissimilar to that presented by the Applicant. When the Applicant went to Australia, assistance with the property portfolio of Mrs Camenzuli fell to Sam Camenzuli (he says with his assistance also) and then from about 1989 to the Respondent alone. He notes the gift of a property to the Applicant and addresses his own uncertainty about the agreed price for the Property, but he insists that he made all repayments to Mrs Camenzuli, including the lump sums of £10,000 (which he believes was handed by his mother to the Applicant) and £95,000 (which he states was the result of Antoinette McEvoy intervening). He sets out the history of the Rent Book, asserts Mrs Camenzuli was in control of her finances, and was a careful and independent investor. The Respondent denied managing Mrs Camenzuli's affairs, although he accepts that long after she left she still used his address for all her business affairs. He states that he took the mail to Mrs Camenzuli unopened, including the letter with the DS1 (contradicting an earlier account that she had collected the letter on a visit to him). He accepts that he must have explained these documents to her and he filled in the form, save for the signatures of Mrs Camenzuli and Monique Iacurci. He does not claim to have a specific recollection about this.

26. The Respondent was skilfully taxed in cross-examination. The Respondent accepted that, in following Mrs Camenzuli's instructions, he was in one sense managing her affairs. He also accepted that he handled money for her, and read her correspondence to her since she was not a fluent reader of English. In respect of the purchase price of the Property, the

Respondent was more adamant that it was £260,000 than appeared in his statement. He was also, when firmly pressed, somewhat more forthcoming about the payment of £90,000, explaining it as the product of a disagreement with Antoinette McEvoy. It was not a commercial decision to borrow at interest and repay the interest free loan, but it justified him in paying only £1,000 per month thereafter. His statement about paying in to the Natwest was somewhat shaken, and he eventually ended up saying he could not remember now which bank it went to. He was unshaken on the Rent Book, though: irrespective of trusting him, Mrs Camenzuli determinedly kept an account and the book was handed over to him only when he paid the loan off. He was vague about the circumstances in which the solicitors sought the completion of the DS1, and he did not readily accept that they acted on his instructions. He accepted that, contrary to his statement, those solicitors did not confirm that the loan had been repaid. He also accepted that he filled in the DS1, but was adamant he left it for signature. He denied any connection between his withdrawal from the challenge to the Will and the instruction to Mr Hardy to investigate the DS1, the letter for which is dated 9th May 2009 (one calendar month before his letter withdrawing from the case). Finally, he was pressed on a document dated 30th August 2009 and said to be a statement of Stephen Camenzuli made at the request of the Applicant, which suggested Mrs Camenzuli was shocked at the rake off from rents that the Respondent was collecting before payment to her of £1,000 per month. The Respondent denied the meeting in which he was supposed to have made this disclosure and denied seeking to warn off Stephen Camenzuli from giving evidence. I note that the Applicant by his Counsel has accepted that Stephen Camenzuli's statement is inadmissible.

27. In my assessment, the Respondent often appeared exasperated at the Applicant and frustrated by the protracted investigation into his affairs. He did depart from his statement in some respects, being more or less adamant than might have been anticipated on some particular points. On the whole, though, he looked to explain his evidence, rather than tailor it to the circumstances. He was not shaken in the thrust of what he had said before, but made some concessions on details. I noted that when he spoke of his mother, there were times when he was moved, but he maintained composure and exercised a lot of self-restraint. Overall, he gave the appearance of a witness of truth.

28. Monique Iacurci was called and confirmed her statement. She knew of the sale of the Property to the Respondent, noting there had been consideration of sale to Rita Delicata and her husband. She confirmed a deposit and periodic payments were made, but she knew no details. She housed Mrs Camenzuli from about 2003 and recounts the family rift over the Will in detail. The Applicant and Rita Delicata were to communicate with her only through solicitors, and she did not wish the Applicant to have her current address. In reference to repayment of the loan, she could offer no direct evidence, only that Mrs Camenzuli never raised an issue with her that there was money outstanding. In respect of her signature on the DS1 she noted that she signed as “Monique Iacurci”, rather than “M Iacurci”, but “it still looks exactly like my signature. My signature has changed over the years and I have a few versions, possibly because I have arthritis in my hands, like my mother did.” She specifically confirmed her letter to the Land Registry, explaining she used her former address (which had raised suspicions on the part of the Applicant), because she did not want the Applicant to know where she lived. She confirmed that in light of her signature, she was sure the DS1 was properly executed, and her mother would not have signed if she had not been repaid. “[Mrs Camenzuli] was on top of her finances” and she would not have made the Respondent (along with his siblings) substantial gifts in the years before she died, had he owed her money. She stated that she did make inquiries, though, when the matter of repayment of the loan was raised by the Applicant.

29. In cross-examination, it was clear that Monique Iacurci was not really involved in her mother’s financial affairs and was unaware of Respondent’s claimed early repayments or even the existence of the Rent Book. She was quite firm in respect of her signature: “On oath I am prepared to say it is my signature.” She was asked about the bank paying-in books and the like, that the Respondent had said he passed to Sam Camenzuli. This accorded with her understanding, and that they had ended up with the Applicant.

30. Antoinette McEvoy was called and confirmed her statement. Like Monique Iacurci she had little involvement in Mrs Camenzuli’s business; not least because in her later years Mrs Camenzuli would always turn to the Respondent. She recalls the Property having a for sale sign put up and the Applicant being upset at the sale to of the Property to the Respondent. She did not refer to any interest in the Property from Rita Delicata and her

late husband Gerry. She did recall seeing the Rent Book, though. Generally, her evidence was supportive of the Respondent and Monique Iacurci.

31. In cross-examination, Antoinette McEvoy confirmed having seen the Rent Book used, with entries being made by the Respondent in the presence of Mrs Camenzuli. Although she never saw it discussed or cash change hands. She knew regular payments were due, but she knew nothing of the lump sum payments said to have been made by the Respondent.

32. Having seen Monique Iacurci and Antoinette McEvoy give evidence, I consider there was no basis for disbelieving the thrust of what each of them said. Monique Iacurci confirmed what she had said before. Had she been a partisan of the Respondent, one might have expected more from her on matters like repayment of lump sums and use of the Rent Book. Similarly, had Antoinette McEvoy been partisan, one might have expected her to describe the disagreement that led to the payment of the lump sums, but she did not do this and had nothing to say on the subject save for the agreement for regular payments having been made. This rather lends credence to her recollection of the Rent Book, which Monique Iacurci did not recall at all.

EXPERT EVIDENCE

33. The expert report of Mr Hardy dated 3rd September 2009 was first disclosed by the Applicant in an incomplete form: a short paragraph was missing in one part and a whole page. This was not immediately apparent on the face of the document, because paragraph numbers had been omitted (save for the list of comparator documents, where number 9 of 11 - a cheque from March 2006 in favour of Monique Iacurci's daughter Francesca - was omitted). The missing page also refers to that cheque, which Mr Hardy suggests was not signed by Mrs Camenzuli. More significantly, the missing page had the following on it: "Similarities together with differences were noted between [Mrs Camenzuli] signature on the DS1 form and those available for reference purposes. Therefore, either [Mrs Camenzuli] signed the form or the signature represented an attempt to simulate her signature style." In his witness statement, the Applicant stated he had had the report for years and was disorganised, so may have lost a page or two. He could not explain the

redaction of paragraph numbers and suggests incomplete copying. When questioned, the Applicant explained that he had received the report from the late Gerry Delicata, but he could not say whether it was in this form or not. Perhaps it was redacted when received. He consistently insisted that he had not altered the report and on this point.

34. Written questions from the Respondent on the content of the report could not be answered: the report had been commissioned by the late Gerry Delicata, and Rita Delicata refused to allow questions to be addressed because (she said) her husband would want the expert to give live evidence at the hearing (which was refused as a direction by the Tribunal).

35. Whilst I consider that there is insufficient evidence to establish any impropriety on the part of the Applicant in the circumstances in which the incomplete report was first disclosed, I am satisfied that I should treat the full report with caution in the circumstances of written questioning being refused. I consider that Rita Delicata's conduct in refusing the allowing of such questions did her no credit, but she is not the Applicant, and I do not attribute her obstructive behaviour to him.

36. Turning to the full report, Mr Handy worked from copy documents (save one from the Respondent), and some of these were faxed copies or derived from archive images, and were of varying quality. In his report, he accepted that the range of variations in Mrs Camenzuli's signature in January/February 2008 (the date of the DS1) could not be established. He only had two signatures for Monique Iacurci, and this was inadequate to enable the full range of variations to be established. He only had one document for the Respondent. His conclusions were somewhat mixed: "The available documents provided strong evidence to support the proposition that [Mrs Camenzuli] did not sign the DS1 form relating to [the Property] and I considered as unlikely the possibility that she signed. The above conclusion is based on the exclusion from the reference material of the signature on cheque 000060. Should this signature be included for reference purpose, the evidence as to whether or not [Mrs Camenzuli] signed the DS1 form would be essentially inconclusive. However, the evidence as to whether or not the DS1 form and cheque number 000060 had been signed by one person was inconclusive. I found no evidence to associate Monique Iacurci with the signature in her name on the DS1 form and should the

two available examples be truly representative of her signature style at the time the DS1 form was signed, there would be strong evidence that she did not sign as a witness.” The evidence for the Respondent signing the DS1 was “inconclusive”.

37. The report of Ms Angela Morrissey dated 22nd February 2010 focused on the Will of 2007. Nevertheless, she treated the DS1, the cheque number 000060, a passport signature and 3 tax returns, separately from other known signatures of Mrs Camenzuli on the basis that they bore “a pictorial similarity to the known signatures ... but differ from them in detail”. She considers the most likely explanation for this to be that they were not written by Mrs Camenzuli. She considered the impact of medication upon Mrs Camenzuli, but discounted this as a basis for variation in signature, it seems. She concluded that there was evidence to suggest that the signature on the Will was genuine, but “the evidence is not conclusive and I cannot exclude the possibility that the ... signatures are simulations”.

38. The report of Mr Oliver Thorne dated 28th April 2010 also deals with the Will, but he expressly excluded from consideration cheque number 000060 and the DS1, as well as a passport signature and 3 tax returns (2002, 2004 and 2007), as these “show a higher level of fluency than the remaining signatures and also some other differences in detail including the position of pen lifts”. He considered the impact of medication, which could include drowsiness, dizziness, muscle cramps, joint pain and feeling faint. These could affect fluency of writing, and impact could vary over time. He found moderate evidence that the Will signatures were genuine. When formally questioned about the signature he excluded, he answered: “Based on my findings I cannot accept that these signatures are by the same person as the remaining signatures without further information to explain the differences. I consider the most likely explanation to be that these signatures are not by the same author as the majority of signatures. Indeed, these signatures could themselves be by more than one author.”

39. The Respondent relies on the report of Mrs Deborah Jaffe dated 11th July 2016. She was asked to consider the signatures on the DB1. I note that the control samples of the signature of Mrs Camenzuli included cheque 000060, the 2004 tax return and the 2007 (disputed) Will. Perhaps unsurprisingly in the context of the other reports, she concludes: “I am not convinced that the control samples, purportedly written by the late [Mrs

Camenzuli], have been penned by one person. Due to aforementioned discrepancies and or corresponding features noted between the questioned signature and a section of the control samples, I believe that there is INCONCLUSIVE evidence for the proposition that [Mrs Camenzuli] is, or is not for that matter, the author of the questioned signature”. In respect of Monique Iacurci’s signature, she had far more samples than Mr Handy, and she noted two different styles. The correlation differs between the two styles, and she concludes: “I believe that there is LIMITED evidence for the proposition that Monique Iacurci is the author of the questioned signature”.

40. The Applicant invites me to interpret the views of the experts in the reports he adduces as sufficient proof that the signature of Mrs Camenzuli and Monique Iacurci are forgeries. I do not consider the expert evidence to be sufficient to draw that conclusion. The reports are hedged with many caveats, particularly with respect to the quality of the copies of critical documents. There are also issues relating to the date and style range of comparators. Indeed, firm views in support of the Applicant require the exclusion of example signatures, including a passport signature it seems. Mr Handy appears more forthright in his conclusions than in his reasoning, and I note that he does not appear to have considered issues of medication or date range of samples, which could have been raised with him in appropriate questions had such been allowed by Rita Delicata. I note that the spread of the dates for signatures of Mrs Camenzuli is necessarily broad, and she was medicated at the time of the signature in question. It seems to me that this evidence is simply insufficiently cogent to support a conclusion of forgery of the DS1 without more. I would also observe that the expert evidence offers little to support the Respondent, although the burden in this reference is not upon him.

CONCLUSIONS

41. A family dispute of this nature, pitting siblings against each other is inevitably very difficult to resolve. The sincerely held suspicions of the Applicant are not evidence, but he can point to some support from expert handwriting reports. There are, undoubtedly, holes in the document evidence. For example, the Respondent can prove that he borrowed the £95,000 he says he applied to discharge a part of the loan from Mrs Camenzuli, and the documentary trail of re-mortgaging of his properties can be traced and the sum went

into his account. The Respondent has his cheque stub. Tracing funds into Mrs Camenzuli's account, though, is problematic because the records have not been uncovered sufficiently thoroughly and are no longer available (although a year later, the sum of £95,000 was assembled in Mrs Camenzuli's account and then withdrawn). There is an evidential clash between the Bank denying a Natwest account into which it could be paid, and an undisputed Will referring to just such an account.

42. Notwithstanding such issues, I have formed the clear conclusion that the Applicant has not made out his case in respect of either the failure to repay the loan or the forgery of the signatures on the DS1. Whilst a number of matters have already been touched upon above, the following matters appear to me to be of particular significance.

43. Firstly, the documents relating to repayment may be imperfect, but they are not redolent of a fraud. There is evidence for many payments of £2,000 and £1,000, and the shift from the higher to the lower sum reflects the documented borrowing of £95,000 and more by the Respondent to (he says and I find) repay a lump sum off the loan from Mrs Camenzuli.

44. Secondly, in respect of the Rent Book, I accept the evidence of the Respondent and Antoinette McEvoy. It seems to me entirely credible that Mrs Camenzuli would have kept a record of repayment, and I see no reason to disbelieve Antoinette McEvoy when she says she saw it in use. I also accept the Respondent's evidence that, when repayment was complete, he was given the Rent Book to establish repayment. This may well explain why it took some years, and perhaps the declining health of Mrs Camenzuli, to prompt the Respondent to retain solicitors for the removal of the charge from the registered title. Plainly the solicitors were acting on his instruction, although they were solicitors that Mrs Camenzuli would use when she needed such assistance. There was no reason for the Respondent to go elsewhere, since I find the discharge of the entry on the title to be uncontroversial.

45. Thirdly, there are the payments of £90,000 in 2006/7 to each of Mrs Camenzuli's children including the Respondent. These payments are not in dispute and led to tax liabilities for the recipients. I consider it highly unlikely that Mrs Camenzuli would distribute £90,000

to the Respondent, if he had underpaid her on the loan for the Property. I do not accept that Mrs Camenzuli was so dependent upon the Respondent, that she would have been unaware of being underpaid to that extent on the loan for the Property. I consider the evidence to be, and I find, that she was sufficiently financially sophisticated to monitor her own affairs (not least as demonstrated by the distribution of large sums to her children).

46. Fourthly, were I to be wrong to reject the expert evidence relied upon by the Applicant, I do not consider that a finding of a forged signature in or about January 2008 would have been sufficient for me to conclude that the payments were not made. Whilst I find that the Applicant has not discharged the burden upon him in respect of forgery, it seems to me that such forgery would have been either at the direction of Mrs Camenzuli (I note that tax returns are also considered dubious as to signature and so may have been signed on her behalf) or for convenience, and not as a means to conceal an underpayment on the loan. Had Mrs Camenzuli been underpaid, I accept the evidence of Monique Iacurci that she would have raised the matter at some point before she died. Indeed, had there been a deliberate breaking off in payments under the loan before it was fully discharged, I would have expected a fraudulent DS1 to have been produced at the time the payments ceased and not some years later.

47. Fifthly, I accept the evidence of Monique Iacurci when she confirmed to me that she had signed the DS1 as a witness to her mother's signature. I do not consider that the balance of the expert evidence, is sufficient to overturn the impression she made upon me when she gave evidence. Mr Handy, in particular, had inadequate samples to form a view.

48. Whilst this is a lengthy decision, there will be matters that I have not addressed in detail. The Applicant has been zealous in examining the minutiae of events, but I do not consider it necessary to detail every point. I have reviewed the papers extensively since the trial and in the light of the oral evidence received. Whilst applying the balance of probabilities test, I am satisfied that there is simply insufficient cogent evidence to support the serious allegations made against the Respondent. Indeed, the balance of the evidence, I find clearly favours the repayment of the loan and the validity of the signature of Monique Iacurci. Whilst the expert evidence on the signature of Mrs Camenzuli is more finely

balanced, I do not consider the burden of proof to have been discharged in respect of it. For all the sincerely held suspicions of the Applicant, I found the Respondent to be a credible witness in his own defence, and in circumstances where his evidence was thoroughly and skilfully tested. I prefer his evidence to that of the Applicant as set out above and in general. The application is accordingly dismissed and I direct the Chief Registrar accordingly.

49. In respect of costs, these should usually follow the event, meaning that the costs of Respondents should be paid by the Applicant (unless some appropriate offer was made prior to this decision being given, which seems highly unlikely given the nature of the material placed before me). The Respondents should accordingly provide a schedule of those costs to the Tribunal and the Applicant within 21 days, and the Applicant should provide any objection to the award of costs or the items comprising costs to the Tribunal and the Respondents' solicitors within 21 days thereafter. Any reply to the Applicant's submissions should be made to the Tribunal and copied to the Applicant within 7 days thereafter. The decision on costs will then be made on the papers.

Dated this Wednesday 26 April 2017

Anthony Verduyn

BY ORDER OF THE TRIBUNAL

