



[2017] UKFTT 0677 (PC)

REF/ 2016/0395

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

HARUN MIAH

APPLICANT

and

MAHMUDUL HAQUE SHAFI

RESPONDENT

Property Address: 9B Oban Street, London E14 0JA

Title Number: EGL444856

ORDER

The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicant, Harun Miah dated 16th February 2016 to register a restriction on Title Number EGL444856 being the title to 9B Oban Street, London E14 0JA as if the objection of the Respondent thereto had not been made.

Dated this 25th August 2017

Michael Michell



BY ORDER OF THE TRIBUNAL



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REF / 2016/ 0395

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FIRST-TIER TRIBUNAL**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

HARUN MIAH

APPLICANT

and

MAHMUDUL HAQUE SHAFI

RESPONDENT

Property Address: 9B Oban Street, London E14 0JA

Title Number: EGL444856

Before: Judge Michell

Sitting at: Alfred Place, London

On: 10th August 2017

Applicant Representation: Mr Winston Jacob, counsel, instructed by Radleys Solicitors
Respondent Representation: Mr Amardeep Dhillon, counsel, instructed by Carter Devile Solicitors

DECISION

***APPLICATION TO REGISTER A RESTRICTION- CLAIM TO BENEFICIAL
INTEREST IN INVESTMENT PROPERTY UNDER A CONSTRUCTIVE TRUST-
WHETHER EXPRESS AGREEMENT BETWEEN THE PARTIES***

Cases referred to

Geary v. Rankine [2012] EWCA Civ 555

1. The Applicant, Mr Harun Miah applied on 16th February 2016 to register a restriction on the title to 9B Oban Street, Poplar, London E14 (“the Property”). The Respondent, Mr Mahmudul Haque Shafi is the registered proprietor of the Property and has objected to the application. The Applicant says that he and the Respondent agreed that he should have a fifty percent share in the Property and that he provided half of the purchase price and associated purchase costs. The Applicant says that he is entitled to a fifty per cent beneficial share in the Property under a constructive trust. The Respondent says that there was no agreement and that the monies provided to him by the Applicant were provided as an unsecured interest-free loan repayable at a time of the Respondent’s choosing.

Undisputed Facts

2. The Property was sold at auction by auctioneers, Strettons. The Respondent attended the auction; the Applicant did not do so. The Respondent made the winning bid of £130,000. The Property comprises of the small front garden, ground floor entrance hall and first floor of a Victorian end of terrace house in Poplar, east London. Sale particulars prepared by Foxtons in July 2011 show the Property as having two bedrooms, a shower room, a small utility room and a combined kitchen/living room. The Property is held under a lease dated 21st June 2002 for a term of 99 years from 21st June 2002.

3. The Respondent paid the deposit of £13,000 plus an additional £475 to the auctioneers by cheque on the day of the auction. The cheque was drawn on the account the Respondent had with Bank of Scotland described as a “Mortgage Account”. The Respondent was able to draw money on this account against the security of the mortgaged property. The cheque was cleared so that the amount of the cheque was debited to the Respondent’s account on 7th April 2011. On 8th April 2011 the amount of a cheque for £121,442.23 was debited from the Respondent’s account. The two debits total £134,917.23. There was a debit balance on the account before these amounts were debited so the effect of these payments was to leave a substantial debit balance on the account.

4. The Respondent instructed solicitors to act on the purchase. The transfer of the Property into the name of the Respondent was executed on 21st April 2011. The Respondent was registered as proprietor on 18th May 2011.

5. On 19th May 2011 the sum of £42,559 was credited to the Respondent's account. On 24th May 2011 the sum of £10,000 was credited to that account. On 25th May 2011 the sum of £5,000 was credited to the account. On 7th June 2011 the sum of £5,000 was credited to the account. All these sums are described on the Respondent's bank statement as "Partial Repayment". Thereafter the only payments made into or out of the account are the monthly debiting of sums described as "payment due" and the receipts of amounts equal to the amounts of the payments due. These were £112.06 on 25th June 2011 and £105.78 on 25th of each following month up to the end of the year.

6. The sum of £42,559 was transferred out of the Applicant's bank account with Lloyds Bank on 19th May 2011. The payment is described in the bank statement as "F/Flow MH Shafi". It is common ground that this was the payment into the Respondent's bank account that is shown on his bank statement as being credited to his account on 19th May 2011. Following the making of this payment, the Applicant had a debit balance of £49,933.80 on his account.

7. Nelema Begum is the sister of the Applicant. On 20th May 2011 the sum of £10,000 was paid out of her account with Lloyds Bank. The details given on her bank statement read "MH Shafi". The Respondent accepts that this was the money that was credited to his bank account on 24th May 2011. On 23rd May 2011 the sum of £5,000 was paid out of the same account, the details again being "MH Shafi". The Respondent accepts that this was the sum of £5,000 credited to his account on 25th May 2011.

8. On 3rd June 2011 Mr Abul Khayer Ali transferred £5,000 from an account with HSBC in the names of "Ali and Sufian" to the account of the Respondent. The Respondent accepts that this was the money credited to his account on 7th June 2011.

9. The Property was marketed for sale by Foxtons from late July 2011 until about June 2012. Foxtons corresponded with the Applicant by email about marketing the Property. They did not copy the emails sent to the Applicant to the Respondent. The asking price was

£179,000. Cate Dodkin of Foxtons emailed the Applicant on 25th August 2011 giving details of a list of booked viewings of the Property. The email includes the information that 4 people who viewed the property on separate occasions commented that the Property needed work. On 28th February 2012 Tom Norman of Foxtons emailed the Applicant with details of feedback received from someone who had viewed the Property. The feedback is reported as being "Location was OK but the condition was not great, did not show well as multiple tenants living in bedrooms". On 7th June 2012 Chikay Lo of Foxtons emailed the Applicant, saying that [he or she] had tried to contact the Applicant on numerous occasions about viewing the Property without success and asking how access could be gained to the Property because the tenants have advised that they had moved back to Sweden and were no longer living at the Property.

10. On 16th August 2013, 19th September 2013, 24th October 2013, 18th November 2013, 30th December 2013, 28th January 2014, 3rd March 2014, 28th March 2014, sums of £400 were paid into the Applicant's bank account. The payors were H Afjol Shafi (August and September 2013), the Respondent (October 2013, December 2013, 28 March 2014), and Mr K and Mrs S Ahmed (November 2013, January 2014, and 3rd March 2014). However, it is common ground that all the payments were made by or on behalf of the Respondent.

11. From September 2014 larger sums were paid into the Applicant's bank account by or on behalf of the Respondent. On 2nd September 2014 the Respondent transferred £25,000 to the Applicant's account. On 29th September 2014 Masum Shafi paid in £6,000. Masum Shafi made a further payment in of £4,000 on 3rd October 2014. Further payments were made in 2015. The Applicant accepts that he received payments from the Respondent (not including the rental payments of £400) totalling £67,500.

12. On 1st February 2016 the Respondent executed a transfer of the Property to Diamond Properties (E1) Limited. The transfer was expressed not to be for money or anything that has monetary value. No application to register that transfer was made before the receipt by HM Land Registry of the Applicant's application to enter a restriction. The application to enter the restriction was made on 16th February 2016. An application to register the transfer was entered by HM Land Registry in the Day List on 23rd February 2016. In an email sent to HM Land Registry on 26th February 2016 the Respondent's solicitors stated that they had been instructed to act on behalf of the Respondent and they had made an application to register the

transfer to Diamond Properties (E1) Ltd. No explanation was given as to why the transferor's solicitors should have applied to register the transfer and not the transferee in the usual way.

Evidence for the Applicant

13. The Applicant gave evidence and called 4 witnesses to give evidence. They were his sister, Nelema Begum, his elder brother Shanu Miah, a friend Abul Khayar Ali, and a friend and former work colleague, Asik Miah. He also put in evidence witness statements of Shazid Miah and J.U.M. Nazmul Hossain.

14. The Applicant's evidence was as follows.

He said that he and the Respondent agreed to look for properties to purchase together and that when they found a suitable property, they would make equal contributions towards the purchase price and associated costs. The idea was to buy properties without money borrowed on mortgage and to rent them out. He said that they went to a number of auctions together and bid on some properties but without success. The Applicant produced a video recording of part of the broadcast of a television programme called "Under the Hammer". The programme follows the sale of properties in need of renovation, showing film footage of the auctions at which they are sold and explaining what the successful purchasers subsequently do with the properties. In the video recording, the Applicant and the Respondent can be seen standing side by side at an auction sale. They can be seen both putting up their arms to make the same bid for a property.

15. The Applicant said that he and the Respondent identified the Property as being of interest when they saw it in the catalogue for an auction to be held by the auctioneers, Strettons. The Applicant thought that the guide price quoted by the auctioneers was £90,000. The Applicant and the Respondent agreed to try to buy the Property. About two weeks before the auction, the Applicant realised that he would not be able to take time off work to attend the auction so he and the Respondent agreed that the Respondent should attend the auction alone and bid for the Property on behalf of the two of them. The Applicant said that they agreed on a maximum bid of about £130,000.

16. In his Statement of Case the Applicant said that the Applicant and the Respondent "successfully identified" the Property "on or around 21st April 2011". When in cross-examination it was pointed out to the Applicant that monies to pay for the Property were paid

out of the Respondent's bank account on 7th and 8th April 2011 and so the auction cannot have been held on 21st April 2011, the Applicant stated that he and the Respondent "identified" the Property in or around April 2011. The Applicant denied that he got the date "21st April 2011" from the register entries for the Property which state the date on which the price stated in the transfer to have been paid for the Property was paid.

17. The Applicant said that after the auction, the Respondent came to the office where the Applicant worked to tell him that he had been successful in bidding for the Property and what the price was.

18. In his Statement of Case the Applicant said that the Respondent took charge of the legal aspects of the transaction and instructed solicitors to act for him in the purchase of the Property. He also said that "unbeknown" to him, the Respondent signed the contract and transfer deed making him sole proprietor of the Property. He said in his Statement of Case that he raised this with the Respondent and the Respondent informed him the Property being in his sole name was just a legality, that he and the Applicant were brothers and that a piece of paper did not matter.

19. The Applicant said that the Respondent subsequently sent him a text stating what the price of the Property and the related costs were. The Applicant then set about getting together the money to pay half of the total sum. He had around £48,000 in his account and approached family and friends to provide the balance of the money. The Applicant said that he paid £42,559 on 19th May 2011. The Applicant said that he arranged for his sister Nelema Begum to pay £10,000 on 20th May 2011 and £5,000 on 23rd May 2011. He arranged for his friend Mr Abul Khayar Ali to pay £5,000 on 3rd June 2011. He arranged for a friend and colleague, Nozmul Hossain to provide £5,000.

20. The Applicant said that the Respondent paid him three monthly cash payments of £500 each in January, February and March 2012. He said that this was his share of the rent money from the Property. In cross-examination, the Applicant said that he and the Respondent had agreed that the Respondent should accumulate the rent money to provide a fund that could be used either for works on the Property or for future investment in another Property. However, his family and his elder brother in particular were concerned that he was not receiving anything from the Property. The Applicant said that in order to quieten the

concerns of his family, he asked the Respondent to pay him his share of the rent and that the Respondent then made to him the three payments of £500.

21. Asked in cross-examination about the instructing of Foxtons to market the Property, the Applicant said that he and the Respondent met the agent from Foxtons at the Property and showed the agent the Property. He said that Foxtons wrote to both him and the Respondent about marketing the Property but that he took the lead in dealing with Foxtons. The Applicant did not explain why Foxtons sent an email addressed to the Applicant alone and not copied to the Respondent on 26 July 2011 asking if he would like any amendments to the sales particulars. On 25th August 2011 Foxtons sent an email to the Respondent giving a list of people who have viewed the Property. The email was not addressed to the Respondent as well or copied to him. There had been four viewings. Asked in cross-examination about how the agents obtained access to the Property because the Applicant did not have keys, the Applicant said that he thought Foxtons had been given keys. However, it appears that Foxtons relied on tenants to give them access because on 7th June 2012 Foxtons emailed the Applicant asking what he would like them to do about gaining access to the Property because the tenants had advised Foxtons that they had moved back to Sweden and no longer lived in the Property. On 1st November 2011 the Applicant called Foxtons complaining that he had had minimal contact with the agent and no updates on the sale.

22. The Applicant produced printed versions of text messages passing between him and the Respondent in the period 28 March 2013 to March 2014.

- (i) On 28th March 2013 the Applicant sent a message to the Respondent asking “Can we split the rent money as I need some for refurb”. It is common ground that that was a reference to the rent from the Property. The Respondent replied on the same day saying “OK bondu from next month [god willing]”. “Bondu” is a nickname or affectionate reference. Later that evening, the Applicant texted back asking for a breakdown and saying “remember I only had 3 months money from Jan12 to march 12. That was a total of £500 I haven’t had any money since. So its been a year. Also we had £4,700 from rent you held onto from the time we bought the property until dec 2011. We started to take money from January 2012”. The Respondent replied on the afternoon of the following day. He did not query the Applicant’s use of the phrase “we bought the property” or the references to “we”. ie. the Applicant and the Respondent having £4,700 or taking money from January

2012. The Respondent's only reply was "Bondu don't worry to much I been and don!".

- (ii) The Respondent did not pay the Applicant any rent and on 23rd April 2013 he texted the Applicant to say that he would sort it out that week.
- (iii) On 21st May 2013 the Applicant texted the Respondent saying "Shafi lets just sell the house. Don't remortgage it. Or get a loan against it". The Respondent replied a few hours later saying only "oky".
- (iv) On 31st May 2013 the Applicant texted the Respondent to ask if he had put the property on the market for sale yet. The Respondent replied later that day saying that he was in the process of sorting it out and would give the Applicant an update soon.
- (v) On the 14th June 2013 the Applicant texted the Respondent to say that from then on they should split the rent. The Respondent in his reply on 15th June 2013 said "sure", that he was in Dhaka but would be back soon.
- (vi) On the 16th July 2013 the Applicant texted the Respondent saying that he had heard the Respondent was back from Bangladesh and asking if there were any updates from "my last text about the rent". The Respondent replied saying "sure from next month!!".
- (vii) On 22nd July 2013 the Applicant texted the Respondent asking for an update on the Property and asking why he couldn't take rent from that month "because we do get rent on a monthly basis". The Respondent did not reply until after a further text chasing him for a reply on 23rd July 2013. The Respondent's reply was "Salam bro sorry was bit busy just finishing a completion will sort out next month".
- (viii) On 2nd August 2013 the Respondent sent a text to the Applicant asking for the Applicant's bank account number. The Applicant provided his bank details to the Respondent by text sent the following day.
- (ix) On 14th August 2013 the Applicant texted the Respondent asking if the Property had been put on the market and what had happened to the rent money. He said that his sister was getting married and he and his brother had no money to give her towards the wedding. The Respondent replied saying he would put money in the Applicant's account tomorrow. His text went on "if u recall I did came to ur house & said I got ur money if u need it I can give us now!! U text m back u sad u don't need it!! So pls don't blame me i'm not her to take any blame for nothing!!" The Applicant replied saying that then his sister was not getting married. He went on

to say "Anyway lets just do wat we agreed. Lets sell up and go our own way". The Respondent replied saying he was trying to "release ur money and I'll give ur money in time!! Don't worry!! Im in investigation from HMRC until its not sorted". The Applicant replied saying "Bro wat I need from you is monthly rent money. And all the rent money from the ones that have been missed."

- (x) The Applicant texted the Respondent on 15th August 2013 asking if he had transferred "the money". The Respondent replied on 16th August 2013 saying "Agent should transfer Waite till tomorrow & soon as possible I will return your fund!!". The Applicant texted back asking for an explanation of the reference to an agent and asking "Doesn't the money come into your account".
- (xi) The Applicant sent a long text to the Respondent on 16th August 2013 saying that nothing had come through and that he wanted his money as soon as possible. He said that he had wanted to develop an estate agents with the Respondent but that it seemed things had not worked out. He complained that the Respondent had just made excuses for the last two years. He wanted his money back and "just to move on with my life". The Respondent replied saying "As I told HMRC investigating me I need to sort them out." Asked then by the Applicant why he was not giving him the monthly rent, the Respondent said "Bro ur everything is safe we can sort it out". The Applicant then texted "Non problem you don't have to give me the investment money now but what about the rent. Maybe you understand me I want to you make regular monthly payments of the rent money bro not the investment money that we can sort out once the hmrc has finished their bit".
- In a subsequent text on the same day the Respondent said that he had paid the rent from that month and would carry on. The Applicant said that he had nothing yet and the Respondent then sent the Applicant the Applicant's account details and asked for confirmation that this was his account. The Applicant said it was. He then checked his account and texted the Applicant to say that he had received only £400 and asked if the rent wasn't £500 each. The reference to £400 was a reference to £400 transferred to the Applicant's bank account by "Hafjol Shafi" on 16th August 2013.
- (xii) On 19th August 2013 the Applicant texted the Respondent saying that he thought it was in the interests of both men that they should have a written agreement. He said that part of the agreement "should look at adding my name on the property".

The Applicant then drafted a contract to be signed by him and the Respondent. That agreement states that the two parties had entered into a business, that the business type was the purchase of the Property, that the Property had been bought in April 2011, that the total cost of purchase was £135,118, that each party had contributed £67,559 giving each a 50 per cent share in the business, that each party was entitled to a 50 per cent share of the total rental income and would be entitled to 50 per cent of the proceeds of sale. The contract then included this clause “All funds have been settled and cleared between the parties and there is no outstanding debt on the property. The property is completely mortgage free. It was agreed that the property will be kept under [the Respondent’s] name”.

(xiii) On 13th October 2013 the Applicant emailed the Respondent saying that they needed to sit down to “clear this issue out” and saying that it was important that there was a witness to their discussions. The Respondent replied saying that he wanted to return the Applicant’s “fund” more than a year ago, that he was going to an auction that month and needed to prepare his fund. The Applicant replied saying “I was thinking instead of you buying for this other person from the auction why don’t you just buy for him my share from [the Property]”.

(xiv) On 21st October 2013 in texts to the Applicant the Respondent asked how soon the Applicant wanted his money and when told by the Applicant “asap”, he said that he had come to give the Applicant his money 6 months before but the Applicant had said he did not need it. He would arrange the fund as soon he could. The Applicant replied to the statement that he did not want the money 6 months ago by saying

“Bro that time I did not know you will go and invest the money. If you asked me that would have been different”.

The Respondent then texted to say that he had explained there was a structural problem with the Property and that no-one wanted to buy a property with a structural problem but that he had money to give the Applicant.

(xv) The Applicant texted on 24th October 2013 asking if there was any news and saying that he had checked his account and nothing had come into it.

(xvi) On 27th February 2014 the Respondent texted the Applicant asking if he could see him in person. The Applicant replied on 3rd March 2014 saying that he did not see what sitting with the Respondent on his own would achieve. His text went on

- “You now claim that I have no equal share in the property. This is completely out of order how could you even say this bro. We both went into this together to hopefully grow the business”. He then said he would sit down with the Respondent provided someone else was present
- (xvii) At a date in about March 2014 the Respondent sent a text to the Applicant saying “As u know I never had any intention to take ur money to invest u wanted to give me only Reson I have taken u will blame me, I did came to u few months a return fund as I sad I don’t have always fund available lat m now when u want I will give u back!!”
- (xviii) On 29th March 2014 the Respondent texted the Applicant saying that he was arranging the Applicant’s fund, that it would be ready soon and then they could meet up. He said it was a great mistake to have taken the fund as it was only sitting in his account”.

23. Nelema Begum gave evidence. She said that in April 2011 the Applicant told her he was looking to buy a property with the Respondent and asked if she could lend him some money towards the purchase price. In cross-examination she added that the Applicant told her he and the Respondent were going to own the property 50/50. She told him she could lend him a maximum of £15,000. In May 2011 the Applicant asked her if she could lend him money for the purchase. She then transferred money to the Respondent’s bank account. In cross-examination she said that she did not know the Property was bought in the sole name of the Respondent.

24. Asik Miah described himself as a mutual friend of the Applicant and the Respondent. In April 2011 he was working with the Applicant in the same organisation and office. He gave evidence that the Respondent came to the office where he and the Applicant worked. He and the Respondent spoke in his presence about how the Respondent had just come from the auction and had bought a property. He said it was clear from the discussion that they had bought on an equal sharing basis. He said that it was a well-known fact to everyone in the circle of friends of the Applicant and the Respondent that they had been investing in properties together and were looking to develop an investment company together.

25. Shanu Miah is the older brother of the Applicant. He gave evidence that he has known the Respondent for many years as a close friend of the Applicant. The Respondent

would often visit Shanu Miah's house to see the Applicant. On one visit, the Respondent told him how he and the Applicant had been going to auctions and had bought a property in Poplar. Mr Miah said that the Applicant had told him that he had agreed the Respondent should collect the rent and hold onto it for future projects. About a year later the Applicant had told him that he and the Respondent had agreed to split the rents. In cross-examination, Mr Miah said that prior to the purchase of the Property, the Respondent had had discussions with the Applicant at Mr Miah's house and in front of him, in which the Applicant and Respondent had talked about wanting to go into a property investment business on a 50/50 basis.

26. Mr Abdul Khayar Ali gave evidence. He used to be a youth worker and got to know both the Applicant and the Respondent initially in that capacity. Afterwards he continued to be in touch with both of them. He was aware that the Applicant and the Respondent went to a few auctions before the purchase of the Property. Both the Applicant and the Respondent told him that they had purchased the Property. The Applicant asked him to lend him £5,000 towards his half of the purchase costs. Mr Ali had some money to invest and after the purchase of the Property both the Applicant and the Respondent talked to him about his joining with them in investing in properties. They told him how they had bought the Property on a 50/50 basis and would split the rent 50/50. They discussed with him the possibility of his joining with them in buying properties together, with each having a one-third share or alternatively, a share based on the percentage of the purchase costs he had invested. Subsequently, there were three auctions at which Mr Ali, the Applicant and the Respondent were interested in buying a property together. Mr Ali went to two of the auctions together with the Applicant and the Respondent. He could not be sure if he went to the third. He had some recollection that the Respondent went to the third auction to bid on behalf of Mr Ali, the Applicant and himself. The three did not in the end buy any property together.

26. The Applicant also produced a witness statement made by Mr Shazid Miah. Most of that witness statement concerns negotiations between the parties in which he was involved as an informal mediator with a view to settling the dispute. Counsel for both parties agreed that the discussions between the parties to settle their dispute were to be regarded as having been on a without prejudice basis and that evidence of the content of these discussions was not admissible. I pay no regard to the content of Mr Shazid Miah's witness statement in so far as

it deals with those discussions. The remainder of the witness statement does not contain evidence that assists in the determination of the matter.

27. The Applicant produced a witness statement from JUM Nazmul Hossain. Mr Hossain said that lent the Applicant £5,000 towards the purchase of the Property. As he did not appear for cross-examination, I do not place any weight on the remainder of what he said in his witness statement.

Evidence for the Respondent

28. The Respondent relied on his own evidence only. The Respondent's evidence was as follows:- He said in his witness statement that in March 2011 while looking through the Strettons auction catalogue he identified the Property as one of about thirty properties for which he was interested in possibly bidding. He did not discuss buying it with the Applicant. He had not previously attended an auction with the Applicant. Asked about the video recording of the television programme showing him standing next to the Applicant at a property auction, he said that he had gone to the auction alone and then the Applicant came to the auction. He was not bidding with a view to buying jointly with the Applicant. He was bidding to buy alone.

29. His evidence was that the auction at which the Property was sold was held on the 4th April 2011. He attended and bid on 10 properties. His bid on the Property was successful. He then paid the deposit by cheque and instructed solicitors so that the transaction could be completed within ten working days. He paid the remaining balance of the purchase price from his account. In his witness statement he said that the full purchase price and costs of purchase came from his own resources "without any borrowing of any sort". When in cross-examination it was pointed out that the funds were drawn on a Bank of Scotland mortgage account and so were borrowed from the bank against the security of a mortgaged property, the Respondent said that he meant by "borrowing of any sort", borrowing otherwise than from the bank.

30. The Respondent said that after he had bought the Property, the Applicant started chasing him, offering him money to invest in his property business. He said that the Applicant told him he had "spare cash lying around and wanted to help me out". The Respondent told the Applicant that he did not need his investment but the Applicant was

insistent. He said that the Applicant then paid money into the Respondent's bank account and that the Respondent later realised other money had come into his bank account from the bank account of relatives of the Applicant. The Respondent said that the Applicant told him to take his time paying back the money. The Respondent said it was always his intention to return the money to the Applicant "as soon as possible". He did not explain what prevented him from paying it back as soon as he saw it in his account. He said that it was his intention to give the Applicant some money in addition to the money he had provided for his "trouble in lending the money". The Respondent did not say how he used the money the Applicant had provided. He said in his witness statement that it was "just sitting in my account". When it was pointed out to the Respondent in cross-examination that by saying in his Statement of Case that the Applicant offered to loan him money that he had in a bank account and that he accepted the loan and the Applicant caused the transfer of funds into his account, he was saying that there was an agreement for the Applicant to lend him money, the Respondent said that there was no agreement. The money was just put into his account without any agreement. Asked why the Applicant should have paid into his account the total sum of £67,559 being £100 more than one half of the total sums coming out the Respondent's bank account to pay for the Property (a total of £134,917.23), the Respondent at first said that he could not remember if in addition to the £134,917.23, the costs of purchase included £200 paid to the conveyancing solicitors but then said that he definitely did not pay £200 to the solicitors on account. He could give no explanation as to why the Applicant should have lent him the odd amount of £67,559.

31. The Respondent said that he had not discussed going into business with the Applicant in investing in properties. He had not searched for properties with the Applicant. He had not agreed to buy properties together with the Applicant. He did not discuss with the Applicant buying the Property at all. The Applicant did not ask him why the Property was transferred into his sole name and he did not tell the Applicant that this was just a formality and that a piece of paper did not matter. He had not discussed with Shanu Miah buying the Property jointly with the Applicant. He had not discussed in front of Abdul Ali having an agreement with the Applicant to buy property together. He had not discussed with Mr Ali how he and the Applicant jointly owned the Property. He had not discussed with Abdul Ali the idea of the Applicant, the Respondent and Mr Ali buying property together. He could not recall going to the Applicant's workplace after the auction. He did not discuss at the Applicant's workplace

in the presence of Asik Miah how he had purchased the Property and that it was a joint purchase between him and the Applicant.

32. The Respondent denied that he had met Foxtons at the Property with the Applicant in 2011 and that he only found out in 2016 that Foxtons had been marketing the Property for sale.

33. The Respondent said that in mid-2012 he approached the Applicant with a view to returning the money but the Applicant refused to take it back and said he could pay him back later.

34. Asked in cross-examination about the letting of the Property, the Respondent said that he had let some people into the Property about 6 months after the purchase but this was not “proper renting”. The condition of the Property was very bad so those staying there did not pay rent. He said that they moved out because of the condition of the Property. He denied that he had made three cash payments of £500 to the Applicant in January, February and March 2012. When asked why he did not challenge the Applicant’s assertion in a text message sent on 28th March 2013 that he had received £500 in each of those months [as his share of the rent], the Respondent said he did not have to explain anything to the Applicant. He claimed that he did not get any rent from the Property until 2013.

35. When asked in cross-examination why he had replied “ok” to the Applicant’s text sent on 21st May 2013 suggesting that he and the Respondent sell the Property, the Respondent said that he did not concentrate much on the text. The Respondent did not explain why he had not told the Applicant that it was none of the Applicant’s business when the Applicant texted him on 31st May 2013 to ask if he had put the Property on the market for sale yet. When asked why he had replied “sure” to the Applicant’s text sent on 14 June 2013 suggesting that the parties split the rent from the next month, he said that he was just sending a text to avoid aggravating the Applicant. He denied that by saying “sure from next month” in his reply to the Applicant’s text sent on 16 July 2013 asking if there were any updates from his last text about the rent that he was saying he would split the rent from the following month. When it was suggested to him that by replying to the Applicant’s text sent on 22nd July 2013 asking why he could not take some money from that month because the rent was paid monthly, saying “will sort out next month”, he meant he would split the rent from the

following month, the Respondent said he was not referring to the rent but to the initial money paid to him by the Applicant. He denied that the Applicant in texting on 14th August 2013 saying “If I had that rent money we could have looked after the coatings” was referring to rent from the Property. He said that when he texted in reply saying “tomorrow I’ll put money in ur account”, he was not referring to rent money but to the repayment of the money the Applicant had put in his account in May 2011. Asked about his text messages saying he was “in investigation from HMRC”, the Respondent said he was not being investigated by HM Revenue and Customs. He said that he meant he was having to complete his tax return. The Respondent did not explain why it was important or urgent for him to complete his tax return in August when he had up to the end of January of the following year in which to complete it. When asked why he did not send any text to the Applicant saying he was not entitled to payment of a share of the rent, the Respondent said only that he did not think it was important to do so. Asked why he paid £400 a month into the Applicant’s bank account from August 2013 instead of paying back the money the Applicant had provided if he thought it was only a loan, the Respondent said that he had asked the Applicant and the Applicant had said he didn’t need the money back.

36. The Respondent made or caused payments to be made to the Applicant in 2014/2015 amounting to £67,500. The Applicant was asked in cross-examination why he accepted the payments if the money he had provided to the Respondent in 2011 was not a loan. The Respondent’s answer was that his brother advised him to take the money so that at least he had something. The Applicant said, “I accepted the payments as I thought it likely that I would get done over here”. The Respondent did not say that he told the Applicant the payments were being made and could be accepted only in satisfaction of the Applicant’s claim to a beneficial interest in the Property.

37. Asked about the TR1 he executed on 1st February 2016, the Respondent said that Diamond Properties (E1) Ltd was a company owned by a Mr Rahman. There was a separate agreement under which the company or Mr Rahman (it was not clear from the evidence which) would pay him an amount of money after there had been a survey of the Property.

Law

38. In *Geary v. Rankine* [2012] EWCA Civ 555 at paragraphs 18, 19, and 20 Lewison LJ considered the approach to be taken by the court in resolving a claim to a beneficial interest in

a business property purchased in the sole name of another person. The burden is on the person claiming the interest to establish some sort of implied trust. The burden is more difficult to discharge where the property was bought as an investment rather than as a home. The court looks to find the parties' actual shared intentions, whether express or inferred from their conduct. If the court finds an intention that the claimant should have a beneficial interest then the second question to be determined is the size of that beneficial interest. That depends on the common intention of the parties. If the court cannot divine a common intention as to the proportions in which the property is to be shared then each is entitled to that share which the court considers fair having regard to the whole course of dealing between the parties in relation to the property.

Findings

39. The Applicant and the Respondent did agree prior to the auction in April 2011 to buy a property together. They attended auctions together to bid together for properties which they were interested in buying together. The evidence of the Applicant in this regard is supported by the video evidence showing them standing together at a televised auction and raising their arms to make the same bid. The Respondent's explanation for this, namely that the Applicant just happened to come to the same auction as the Respondent and just happened to raise their arms together without the Respondent intending to buy with the Applicant is one I find to be improbable and I reject it. The Applicant and the Respondent attended the televised auction together and bid together. I accept the Applicant's evidence that they attended other auctions together with a view to buying a property together.

40. I accept the Applicant's evidence that he could not attend the auction at which the Property was offered for sale because he could not have the time off work to do so. I accept the Applicant's evidence that both he and the Respondent had identified the Property as one they would like to buy together and that the Respondent attended the auction in order to bid for the Property with a view to its being bought for them both. Having made the successful bid, the Respondent had, as is usual, to pay the deposit at the auction and did so using funds he could draw down from his bank account. He gave his name as the purchaser.

41. The Respondent came to the Applicant's workplace after the auction to tell him that they had been successful in buying the Property. Asik Miah impressed me as an honest witness. His evidence supports the evidence of the Applicant in this regard. He recalled the

Applicant and the Respondent both stating that they had bought the Property together. Mr Dhillon submitted that Asik Miah's evidence that the Respondent came to the Applicant's workplace on the day of the auction should not be accepted because the Applicant's pleaded case was that the agreement he made with the Respondent was on 21st April 2011 and as this was a date after the date of the auction, which must have been on or before 7th April 2011, the parties cannot have said that they bought the Property together on a day which was before the agreement. I reject this submission because it is based on a misreading of the Applicant's pleaded case. The Applicant's pleaded case is that the parties agreed to search for properties to be purchased together, they "successfully identified" the Property "on or around 21st April 2011" and the Respondent then instructed solicitors to act on the conveyancing. The pleaded case is thus that the agreement to buy the Property was reached before the auction. I do not consider that it is significant that the Applicant did not correctly recall the date of the auction.

42. The Applicant organised the payment into the Respondent's bank account of £67,559 as his contribution of one half of the purchase costs of the Property. I entirely reject the Respondent's suggestion that this was an unwanted loan foisted on the Respondent against his will. The amount itself indicates that it was a sum calculated to be one half of the purchase costs. It is utterly improbable that the Applicant would have come to that figure by chance or would have chosen to lend such a precise amount. The money was not a loan. In order to raise the precise amount of £67,559 the Applicant had to ask his sister and friends to lend him money. It is improbable that the Applicant would have asked his sister and friends to lend him money in order to make an unrequested loan of a precise amount to the Respondent. It is even more improbable that he would have done so in order to make an unrequested loan for an indefinite period and on (as the Respondent alleged in his Statement of Case) an interest free basis. I am satisfied that the Applicant paid the money to the Respondent because the parties had agreed that they would buy the Property together on a 50:50 basis. The Respondent had funded the purchase initially in order to meet the 10 day completion deadline.

43. It is the case that there was no explanation as to why the Applicant only made the payment from his account on 19th May 2011 and not before. The bank statement for the Applicant's bank account in the bundle only covered the period 6th May 2011 to 26th May 2011 but it is clear from that account that the Applicant had sufficient monies in his account to pay the £42,559 at latest from 6th May 2011. There may be some significance in the fact that the 19th May 2011 is the day after registration of the transfer of the Property into the

name of the Respondent was completed. Whatever the explanation, I do not consider this fact indicates that the Applicant was making a loan to the Respondent rather than paying his share of the cost of an investment property purchased in the name of the Respondent on behalf of them both.

44. I accept the Applicant's evidence that he received three payments of what was supposed to be his share of the rent in January to March 2012. This is supported by the text he sent on 28th March 2013 and by the failure of the Respondent to answer that text refuting what the Applicant was saying. That there were tenants in the Property in 2012 is supported by the email from Foxtons dated 7th June 2012 referring to their having contacted the tenants and saying that they had been told the tenants had moved out.

45. The text messages from 2013 indicate that the Applicant thought he was entitled to half the rent from the Property. If the Respondent had really thought the Applicant had no entitlement to a share of the rent, he could very easily have replied by text saying "What are you talking about? You are not entitled to any of the rent" or words to that effect but he did not do so. I am satisfied that the Respondent did not dispute the Applicant's claim in the texts for half the rent because he believed the rent belonged to him and the Applicant jointly because they were co-owners beneficially of the Property.

46. The Applicant's use of the phrase "lets just sell the house" in the text sent on 21st May 2013 shows that he thought selling the house would be something to be done by both him and the Respondent. It shows that he thought in May 2013 that he was a joint owner of the house. If he did not think he was a joint owner of the house, he would have said "why don't you sell the house" or words to that effect. Why did the Applicant think he was a co-owner of the house in May 2013? The most probable explanation is that it is because he and the Respondent had agreed in 2011 that they were to be co-owners.

47. The Respondent's failure to question the use of the phrase "let's just sell" or to object to the Applicant chasing him to ask if he had yet put the property on the market for sale (for example in the text sent on 31 May 2013) suggests that he did not disagree with the Applicant's position that he and the Applicant were co-owners and that therefore the Applicant had an interest in whether or not the Property was on the market for sale.

48. In making the findings I have generally preferred the evidence of the Applicant to the evidence of the Respondent. This is for a number of reasons

(1) The video evidence and the exchange of text messages support the Applicant's case and are not consistent with the Respondent's evidence.

(2) The Respondent showed himself by his texts to be a dishonest person. He claimed to the Applicant in 2013 that he was being investigated by HM Revenue and Customs. Under cross-examination he said that he was not being investigated but had to complete his tax return. The Respondent cannot have been under such pressure to complete a tax return in August 2013 that he could not attend to making arrangements to pay money to the Applicant. The phrase "in investigation from HMRC" is not one anyone would use to mean only that they were having to complete a tax return. The text the Respondent sent on 16th August 2013 read "Bro As I told HMRC investigating me I need to sort them out". That would not be understood by a reader as meaning, "I have to complete my tax return". Either the Respondent was intending to mislead the Applicant in his text or he was not telling the truth on oath when he gave evidence that he was not being investigated by HM Revenue and Customs. Whichever is the case, I have to say that the Respondent showed himself to be dishonest and this affects his credibility as a witness.

(3) The Respondent's conduct on 1st February 2016 in executing a transfer of the Property to a third party for what was said to be nil consideration whilst agreeing with the purchaser that he should be paid a price later under an informal side agreement throws doubt on his integrity. I have to consider that the Respondent was intending to make it more difficult at least for the Applicant to pursue his claim to an interest in the Property.

(4) The Applicant's evidence that he agreed to buy the Property together with the Respondent is supported by the evidence of the other witnesses.

(i) What he told his sister in 2011 is consistent with his case now, namely that he and the Respondent agreed that he should be a joint owner of the Property.

(ii) Asik Miah appeared to me to be an obviously honest witness. His evidence that he was present when the Respondent came to the workplace to tell of the purchase of the Property and that it was clear from the conversation that the Applicant and the Respondent were buying the Property together is credible. He has no apparent motive for not telling the truth and giving his genuine recollection of what happened.

(iii) Mr Abul Ali was an impressive witness. Counsel for the Respondent suggested that he was not a witness who could be trusted because he is engaged to be married to the Applicant's solicitor. There was no suggestion that the Applicant's solicitor has any financial interest in

her client's case succeeding. The suggestion Mr Ali's evidence is not to be relied upon for this reason is one I wholly reject. Mr Ali's case supports the Applicant's case. I accept his evidence that he knew both the Applicant and the Respondent were involved jointly in purchasing a property at auction even before the purchase of the Property and that he was told by both the Applicant and the Respondent that they had secured the Property together on a 50:50 basis.

(iv) Shanu Miah was a witness who could be expected to support his brother. However, his evidence was nonetheless credible and consistent with the evidence of all the other witnesses who gave evidence for the Applicant. It is clear that he has a close relationship with the Applicant and it is not at all surprising that he should have been present when the Applicant and the Respondent were present in his house discussing their plans to buy property together. As an elder brother, it is not surprising that the Applicant asked him for advice.

49. Mr Dhillon submitted that the Applicant was not a credible witness for a number of reasons.

(1) Mr Dhillon pointed to supposed inconsistencies between the Applicant's pleaded case and his oral evidence. I do not believe they amount to serious inconsistencies but simply reflect the fact that the Applicant had much more to say during his extensive cross-examination about a complicated set of facts than he said in compressed form in his Statement of Case.

(2) Mr Dhillon relied on the Applicant not being able to recollect correctly the date of the auction or the date of execution of the transfer. I do not consider that anything turns on whether or not the Applicant can now accurately remember those dates. It would be surprising if he could now do so after 6 years have passed.

(3) Mr Dhillon submitted that the Applicant would have insisted on his name being added to the title and on being given a set of keys if he had thought himself to be a true co-owner. I do not accept that. The Applicant and the Respondent were friends. I accept that the Applicant was then persuaded by the Respondent to leave the Property in his name because the name on the title register was a technicality and not important as between friends. Of course, the Applicant now knows the importance of not relying only on the word of a friend but that does not mean he did not rely on the Respondent's assurance in 2011. The Respondent plainly took the lead in the conveyancing and would have been given the keys. It is not of crucial significance that the Applicant did not insist on being given a copy.

(4) The fact that the Applicant drafted a written contract in 2013 providing that he and the Respondent had a fifty per cent share each in the Property but that the Property would remain

in the Respondent's name is not inconsistent with his case that initially the agreement was that they would buy the Property together. The contract was drafted at a time when the Property was in the name of the Respondent and the Applicant was having difficulty in getting the Respondent to pay him his share of the rent. What was then important was that there should be some written acknowledgement that the Property was owned jointly beneficially. If the Applicant had obtained this, having the legal title to the Property transferred into joint names would not be important.

(5) Mr Dhillon submitted that the Applicant was unable to explain why he did not send text messages or letters before 2013 asking for the Property to be put into joint names. I do not consider this to be significant. The Applicant and the Respondent were friends. The Respondent had told the Applicant that whose name was on the title register was a formality and not important. The problem between the Applicant and the Respondent seems to have arisen when the Applicant needed money and asked for his share of the rent in 2013.

(6) Mr Dhillon submitted that the acceptance by the Applicant of payments made to him by or on behalf of the Respondent in 2014 and 2015 shows that the Applicant acknowledged he was only entitled to the return of his money. I do not accept that. The Applicant did not ever indicate he did not consider he had a share in the Property. He will of course have to account for these monies if and when the proceeds of sale of the Property come to be divided and if there is any claim for division of the rental income.

Having considered these and all the points made by Mr Dhillon, I do not consider that they should lead me to prefer the evidence of the Respondent to that of the Applicant.

Conclusion

50. The Applicant has discharged the burden of showing that he and the Respondent agreed expressly that the Property should be owned by them jointly. The Respondent paid the Applicant a sum amounting to one half of the costs of purchase in reliance on that agreement. It would be inequitable for the Respondent now to deny the Applicant an interest in the Property. The circumstances are such that the Respondent holds the Property on a constructive trust for himself and the Applicant in equal shares. The amount to be paid to each of them out of the proceeds of sale if and when the Property is sold, will have to be the subject of equitable accounting if the parties cannot agree and is not a matter for me. The Applicant and the Respondent agreed expressly that they would be co-owners of the Property. The Applicant paid to the Respondent a sum amounting to half the costs of purchase of the

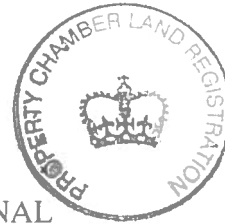
Property because of that agreement. The parties agreed expressly that they would be owners of equal shares.

51. I shall direct the Chief Land Registrar to give effect to the application of the Applicant to register a restriction on the title to the Property as if the objection of the Respondent thereto had not been made.

52. My preliminary view is that the Respondent must pay the Applicant's costs to be assessed if not agreed. The Applicant has succeeded. It is just that the Respondent pay the Applicant's costs. Any party who wishes to submit that some different order should be made as to costs should file written submissions with the Tribunal and serve them on the other party by 5pm on 12th September 2017.

Dated this 25th August 2017

Michael Michell



BY ORDER OF THE TRIBUNAL