



[2017] UKFTT 0604 (PC)

REF/ 2016/0545

PROPERTY CHAMBER, LAND REGISTRATION DIVISION  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ELIF BAY

APPLICANT

and

EMIR OSMAN

RESPONDENT

Property Address: 4 Warmington Close, London E5 0BX  
Title Number: EGL284715

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ORDER

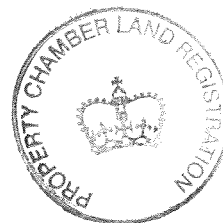
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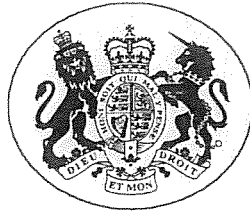
The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant made by Form RX1 dated 4<sup>th</sup> March 2015 for the entry of a restriction on Title Number EGL284715

Dated this 30<sup>th</sup> June 2017

*Michael Michell*

BY ORDER OF THE TRIBUNAL





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

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**ELIF BAY**

**APPLICANT**

**And**

**EMIR OSMAN**

**RESPONDENT**

**Property Address: 4 Warmington Close, London E5 0BX  
Title Number: EGL284715**

**Before: Judge Michell**

**Sitting at: Alfred Place, London**

**On: 21<sup>st</sup> and 22<sup>nd</sup> March and 12<sup>th</sup> April 2017**

Applicant Representation: Mr Jonathan Davey Q.C., counsel instructed by dotcom Solicitors Limited

Respondent Representation: Mr Roger Mullis, counsel, instructed by Alexander JLO Solicitors

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**DECISION**

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**Cases referred to**

*Chief Land Registrar v. Silkstone* [2011] EWCA Civ 801

*Jayasinghe v. Liyanage* [2010] EWHC 265 (Ch)

*Grant v. Edwards* [1986] Ch. 638

1. Mr Emir Osman (“Mr Osman”) is the registered proprietor of 4 Warmington Close, London E5 0BX (“the Property”). Title to the Property was transferred to Mr Osman by a transfer dated 7<sup>th</sup> October 2005 registered on 20<sup>th</sup> October 2005. Mrs Elif Bay claims that Mr Osman holds the Property on trust for her. Mrs Bay applied to HM Land Registry to register a restriction on the title to the Property. Mr Osman objected and the matter was referred to the Tribunal for determination.

2. The power of the registrar to enter a restriction is set out in Land Registration Act 2002 s. 42(1)

“The registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so for the purpose of –

(a)...

(b) securing interest which are capable of being overreached on a disposition of a registered estate or charge are overreached, or

(c) protecting a right or claim in relation to a registered estate or charge”.

A person may apply to the registrar for the entry of a restriction if he or she has a sufficient interest in the making of the entry – Land Registration Act 2002 s. 43(1). If Mrs Bay has a beneficial interest under a constructive trust of the Property then she has a sufficient interest in the making of an entry of a restriction to protect her interest. The issue for the Tribunal is whether Mrs Bay has such a beneficial interest. The Tribunal has to determine the merits of the underlying dispute between the parties – *Chief Land Registrar v. Silkstone* [2011] EWCA Civ 801, approving *Jayasinghe v. Liyanage* [2010] EWHC 265 (Ch).

3. Mrs Bay married Mr Inan Bay in 1998 and then in 1999 moved to London from Turkey. It is a peculiar feature of this case that Mr Inan Bay was not called to give evidence though as will become apparent, he would have been a most material witness. He was the party to discussions and dealings with Mr Osman on which Mrs Bay’s case turns. Although Mr Inan Bay was not called to give evidence, he sat at the back of the hearing room throughout the entirety of the hearing and was in frequent communication with Mrs Bay’s solicitors while the hearing proceeded. Mrs Bay can speak little English and gave evidence through an interpreter. Much of her evidence was evidence of what she had been told by Mr Inan Bay and her case depends to a considerable extent on the truth of what she was told by Mr Inan Bay.

4. Prior to Mrs Bay moving to London, Inan Bay had purchased the long leasehold interest in the Property for £40,000. The Property is a former Council house on the Millfields Estate in Clapton. The freehold reversion is owned by Hackney Borough Council. Mrs Bay moved into the Property when she arrived in London. Mr and Mrs Bay had a son, Mertcan in 2001 and another son, Serham in 2004.

5. By 2005, the relationship between Mr and Mrs Bay had deteriorated. Mrs Bay's evidence is that Mr Bay had become addicted to gambling. She said that she wanted a divorce but that following discussions with Inan Bay's family, it was agreed that the couple should separate but not divorce. Mrs Bay said in her Statement of Case that she "was seeking for a divorce and a 50 per cent share in the" Property. She did not ever bring divorce proceedings and therefore did not make a claim for a property adjustment order.

6. There was some dispute on the evidence about whether Mrs Bay was living in the Property before title was transferred to Mr Osman. Mr Osman's oral evidence (not mentioned in his witness statement) was that Mr and Mrs Bay were not living at the Property and that it was let to a Mr Oguz Comooglu. Mr Osman said that he went to the Property with Mr Bay before he purchased it and met Mr Comooglu. Mr Osman did not say where Mr and Mrs Bay were living if not at the Property. Mr Osman went only into the living room. Mr Comooglu was not called to give evidence. There was in evidence two letters written by Hackney Borough Council to a company called Task Associates (Finance) Ltd.. It is not in dispute that that company was Mr Osman's company. The first letter is dated 7<sup>th</sup> October 2005, is headed "Re Oguz Comooglu" and informs the company that "Your tenant's claim for Housing Benefit has been suspended". The second letter is dated 11<sup>th</sup> October 2005, is headed "Re Oguz Comooglu, 4 Warmington Close" and states "Your tenant's Housing Benefit has been stopped from 3<sup>rd</sup> October 2005 ...because we have been informed your tenant has left the property". The transfer to Mr Osman was only executed on 7<sup>th</sup> October 2005 and the transfer was not registered until 20<sup>th</sup> October 2005. The transfer was to Mr Osman and not to his company. There was no explanation in the evidence as to why Hackney Borough Council should have been writing to Mr Osman's company, describing Mr Comooglu as that company's tenant of the Property.

7. Mrs Bay's evidence was that she was then living and has always since coming to this country lived at the Property. She said that she did not know Oguz Comoglu (or "Comooglu"). Some evidence to support her claim that she was then living at the Property was given by a witness, Djemal Mehmet. He lives (and in 2005 was living) on the Millfields Estate in a flat in the neighbouring Paston Close. He gave evidence of going to the Property in September 2005 and attending a meeting there with Mrs Bay, Inan Bay and various members of Inan Bay's family. There is other documentary evidence that Mrs Bay lived at the Property. On copy bank ledger entries produced by Mrs Bay for her account with Barclays Bank in Hackney for the period September 2010 to March 2016, the words "Address (since 08 Jul 03)" appear before Mrs Bay's name and the address of the Property. This indicates that the information Barclays Bank had as to Mrs Bay's address since July 2003 was that it was the Property.

8. Inan Bay owned another property at this time, at 62 Great Cambridge Road, London N17. Mrs Bay's evidence was this property was let to tenants. There was no other evidence as to the use of this house. There was no evidence as to whether Inan Bay made any attempt to sell this property or if not, why he did not do so.

9. Inan Bay must have been considering selling the Property in May 2005 because on 27<sup>th</sup> May 2005 Keatons, a firm of estate agents wrote to him giving a marketing valuation of the Property. They stated that £165,000 was a "realistic asking price" for the Property with full vacant possession. The letter was addressed to Mr Bay at the Property.

10. Mr Osman works as a self-employed accountant (though not a Chartered Accountant or a Chartered Certified Accountant). He helps clients with book keeping and making tax returns and with other paper work, such as completing Housing Benefit claim forms. Mr Osman made much in his evidence of being well-known in the Turkish community in north London and of helping people in the community. He said he often made loans to "friends and work colleagues" though he is not authorised by the Financial Conduct Authority to carry out consumer credit activities. Mr Osman has known Inan Bay since 2000 and had met Mrs Bay on more than one occasion. He accepted that by 2005, he and Inan Bay were friends. Inan Bay would come to his office and have coffee. He knew that they were having some marital problems (though he preferred in his evidence to use the expression "marital issues"). Mr Osman's evidence was that in 2005 Inan Bay told him that he needed money urgently and that

he wanted to sell the Property and risked losing it if he did not sell it quickly. Why he risked losing it is not clear since the Property was not then subject to any mortgage or charge. Mr Osman said that when he told Inan Bay that he could not buy it outright, Inan Bay suggested that Mr Osman pay him what he could raise on a mortgage of the Property and leave the balance between the purchase price of £165,000 and what was raised on mortgage outstanding as an unsecured, interest-free loan repayable “as and when” Mr Osman could pay. Mr Osman agreed. Curiously, Mr Osman did not give any evidence of there having been any negotiations about the price he was to pay.

11. Mr Osman did not say when he had this discussion and made the agreement with Inan Bay. Mr Osman made an application to Mortgage Express for a buy to let mortgage loan on the Property in about August 2005. Mortgage Express obtained a valuation report. The copy of the report in evidence is undated. It includes the comment, “This mid terraced town house has been reasonably well-maintained and is presently decorated to a fair standard throughout”. The Property was valued at £165,000. On 8<sup>th</sup> September 2005 Mr Osman was notified that his mortgage application had been successful and he was sent a copy of the mortgage offer. The offer was of a loan of £140,250 with fees of £484, repayable over a 23 year term. The offer was of a buy to let mortgage and at a rate of interest fixed for 3 years.

12. Mr Osman instructed F Mehmet & Co, solicitors to act for him on the purchase. Inan Bay instructed Baker & Co, solicitors of Edmonton to act for him. Instructions seem to have been given before the mortgage offer was received because Ms Fatma Mehmet of F Mehmet & Co. wrote to Baker & Co. on 6<sup>th</sup> September 2005 about the sale of the Property to Mr Osman, though no copy of the letter of this date was in evidence. Ms Mehmet sent Mr Osman a client care letter dated 14<sup>th</sup> September 2005 and on the same day she wrote to Baker & Co. informing them that she had received Mr Osman’s mortgage offer, was making the relevant searches and enclosing landlord’s leasehold enquiries.

13. Mrs Bay’s evidence was that Inan Bay wanted to sell the Property because he wanted money to gamble. In her witness statement she said that Inan Bay suggested to her that he sell the Property to Mr Osman, that he pay all the legal fees and disbursements and stamp duty and that he pay the “deposit” to enable Mr Osman to buy the Property, that he would take the balance of the sale proceeds and that Mr Osman would hold the Property on trust for Mrs Bay and the children. Inan Bay would pay Mr Osman’s mortgage for the first five years

and thereafter Mrs Bay would have to service the mortgage. The Property could be transferred to Mrs Bay when she was in a position to obtain a mortgage. Mrs Bay said that she agreed verbally and that Inan Bay then instructed his conveyancing solicitors to prepare a separation agreement. There is no documentary evidence of the solicitors being instructed, what their instructions were or what advice, if any, they gave. Mrs Bay did not say that she took or was advised to take independent legal advice about the settlement agreement. Mrs Bay was not able to explain in cross-examination how she thought Inan Bay would be able to pay the mortgage given his gambling habit.

14. Mrs Bay was not working at this time and had two young children to look after. She was not able to say how or why she thought she would be able to pay the mortgage in 5 years time. She said only that she thought she would be able to get a job and that Inan Bay's family would help out.

15. Mrs Bay relies on a written separation agreement that she said was signed by herself and by Inan Bay in front of witnesses on 30<sup>th</sup> September 2005. Mrs Bay said that Inan Bay's parents and some of Inan Bay's relatives, including an uncle were present at the meeting when the separation agreement was signed. Mrs Bay confirmed that the relatives were still alive but they were not called to give evidence. The document is in English, though both the parties are Turkish and Mrs Bay speaks almost no English. Mrs Bay says it is the document that was prepared for Inan Bay by his conveyancing solicitors. It includes a number of relevant clauses:

- (1) It provides that the parties' children will "live and sleep at [the Property] throughout the year".
- (2) It provides that Inan Bay was to pay Mrs Bay £250 a month on the first of every month as "maintenance payments for the children".
- (3) It provides that Inan Bay was to pay Mrs Bay £20 per week on Monday of each week from the date of separation "to assist with utility bills".
- (4) It includes the following three clauses  
"Inan Bay will pay the mortgage of [the Property] directly to the lender and/or to the Mr Emir Osman, who will be holding the property on trust on behalf of Elif Bay and the children, for the first five years from the date of the transfer.  
Elif Bay will be paying the service charge and council tax from date of transfer and the mortgage directly to the lender and/or Mr Emir Osman from 2010 onwards

Inan Bay has no interest on the property once it is transferred to Mr Emir Osman, who will be holding the property on trust for my children and Elif Bay”.

It also includes the following clause, “The property we are living in is solely owned by me”.

No mention is made in the separation agreement of 62 Great Cambridge Road. Both parties signed the document and the date 30<sup>th</sup> September 2005 is written below their signatures. The signatures of Mr Djemal Mehmet and Mr Yusuf Atmali appear below the words “We confirm that the above parties signed this document in our presence of their own free will”.

16. Mr Djemal Mehmet was called to give evidence about the signing of the separation agreement and the surrounding circumstances. There was no evidence from Mr Atmali. Djemal Mehmet said that he acted from time to time as an unqualified translator from Turkish into English, translating for Turkish people in solicitor’s office and receiving payment through the Legal Aid system. He knew Inan Bay because Inan Bay would pass by his flat on his way to and from the Property. He said that Inan Bay asked him to go to the Property to translate a document for him. He went to the Property and met there Inan Bay, Mrs Bay and about 6 or 7 other people who were members of Inan Bay’s family. He also met there Mr Atmali, though he did not know Mr Atmali. He read the Separation Agreement, translated it orally into Turkish and explained its terms. He then witnessed Inan Bay and Mrs Bay signing it. He identified a copy of the separation agreement in the bundle as being the document he translated and witnessed Inan Bay and Mrs Bay signing.

17. There were four copies of the separation agreement in the bundle. One copy bears a stamped certificate signed by Yasmin Armagan, solicitor and dated 1<sup>st</sup> March 2016 certifying that it is a true copy of the original document. Another two copies each bear a stamp stating “Received at the counter 14 Nov 2005 Revenues/Benefits Keltan House”. On each of these copies the stamp appears in the top left-hand corner of the first page but in a slightly different place. On one the stamp is about 1 centimetre higher up the page when compared with the position of the heading “Separation Agreement” than on the other. Keltan House is an office building that was occupied by Hackney Borough Council. No reason why the separation agreement should have been produced to Hackney Borough Council or as to how Mrs Bay should have two copies of the separation agreement each stamped as received at Keaton House was given. Mrs Bay said only that as she and her husband were separating, the



Council had to be informed. Mrs Bay did not say that she had taken a copy of the separation agreement to the Council.

18. Before 30<sup>th</sup> September 2005 the solicitors for Mr Osman and for Inan Bay had continued to correspond about the sale of the Property. On 15<sup>th</sup> September Fatma Mehmet sent Baker & Co completed Sellers Property Information Form and List of Fixtures and Fittings. The form included the statement that no-one other than the vendor lived in the Property. The List of Fixtures and Fittings included the carpets and curtains as being included in the sale. On 22<sup>nd</sup> September 2005 the certificate of local land charges search was sent to Fatma Mehmet. On 27<sup>th</sup> September 2005 Fatma Mehmet wrote to Baker & Co enclosing an amended draft contract of sale, stating that she required an up to date building insurance schedule prior to exchange of contracts because she had to report to the mortgage lender in respect of this, and stating that she understood Inan Bay had requested completion on 5<sup>th</sup> October 2005 because he was going to Turkey on that date. The draft contract provided for payment of a deposit of £16,500 and that the property was sold with vacant possession on completion.

19. On 30<sup>th</sup> September 2005 Mr Osman completed a Housing Benefit application form in the name of Mrs Bay in respect of an assured shorthold tenancy of the Property to run from 6<sup>th</sup> October 2005 to 5<sup>th</sup> October 2006. The rent is stated to be £1100 per month. In box 14 of the form the following words appear in Mr Osman's handwriting

"I found this fully furnished house and I like it very much. It is very clean and convenient for my children's schooling. I hope you will be helpful in providing assistance for me and my children to live in this house. I thank you in anticipation".

Mr Osman (and Mrs Bay if it was translated to her) must have known that statement to be misleading. It is intended to suggest that this was a normal letting situation in which Mrs Bay had come across a house available to rent on the market whereas in fact it was a house then owned by her husband and furnished with furniture owned by her husband and/or herself and to be occupied by her under a tenancy because of an arrangement made between her husband and Mr Osman. If the property was "very clean" it was because Mrs Bay and/or her husband cleaned it or arranged for it to be cleaned and as for it being convenient for her children's schooling, only one child can have been at school at the time.

20. At the date Mr Osman completed the Housing Benefit form, contracts for the sale and purchase of the Property had not been exchanged. On 4<sup>th</sup> October 2005 Fatma Mehmet wrote to Mr Osman stating that she was awaiting confirmation that “the amount of £24,750 which is owed to you by Mr Bay can be deducted from the sale price”, that she had received the mortgage monies and could exchange contracts and complete simultaneously as soon as she received the requisite information. Fatma Mehmet enclosed a draft completion statement showing that an additional sum of £2,569.25 was required from Mr Osman in order to complete. On the copy in the bundle, there are words in manuscript written alongside the £2,569.25 figure. The words “chq given” are crossed out and the words “CHQ cancelled Cash given” then appear. Fatma Mehmet’s signature then appears below the words “Amount due from you in order to complete”.

21. Mr Osman’s evidence in his Statement of Case (which he verified by a statement of truth and said in his witness statement dated 28<sup>th</sup> October 2016 he wanted to rely on) was that after completion of the purchase, Inan Bay and Mrs Bay came to see him, told him they were separating and asked if he would rent out the house to Mrs Bay. He said that he agreed, Mrs Bay signed an assured shorthold tenancy and that later Mrs Bay told him that she had applied to Hackney Council for housing benefit. He changed his evidence when he came to give oral evidence. He said that he should have said he met Inan Bay and Mrs Bay before completion and that Mrs Bay came to him wanting to explore if she could get housing benefit. He said that he filled in the form for Mrs Bay and gave it to her. She told him later that she had applied for housing benefit.

22. Completion took place on 7<sup>th</sup> October 2005, the day after Mrs Bay’s tenancy was due to start according to the Housing Benefit form completed by Mr Osman and the day after Mr Bay was due to go to Turkey, according to the information supplied to Fatma Mehmet. Although Mrs Bay said that she signed the separation agreement on 30<sup>th</sup> September 2005 in which it was stated that Mr Osman would hold the Property on trust for her and her children, Mrs Bay said in cross-examination that she did not find out that the Property had been transferred to Mr Osman until 2016.

23. One of the curious features of this case is that Mr Osman on his own evidence did not look around the Property before he bought it or even after he bought it. He has never been into anywhere other than the living room. Mr Osman said in the letter he wrote to HM Land

Registry objecting to Mrs Bay's application to register a restriction that the Property was the fourth property he had purchased and that he was hoping to build a small letting portfolio.

24. On 6<sup>th</sup> October 2005 Mr Osman and Mrs Bay signed a tenancy agreement purporting to let the Property to Mrs Bay for a term of one year from 6<sup>th</sup> October 2005 at a rent of £1,100 per month, the first payment to be made on 6<sup>th</sup> October 2005.

25. On 27<sup>th</sup> October 2005 Hackney Borough Council notified Mrs Bay and Mrs Osman of an award of Housing Benefit of £160 per week and that there had been a reduction because the Council considered that the rent due under the tenancy agreement was too high. Mr Osman wrote out in manuscript a letter for Mrs Bay to send to the Council appealing against the award of £160 a month. In the letter, Mr Osman wrote that rents in the area were about £1,000 a month but that Mrs Bay offered £1,100 to secure the Property. He wrote "There are other people and agencies offering the landlord rent of about £1,000 a month. He described the Property as "a recently refurbished three storey house". The letter went on to say, "If I fail to meet his rent demand he will ask me to leave".

26. Mrs Bay signed a tenancy agreement of the Property dated 7<sup>th</sup> October 2006 stating a rent of £1,000 per month. By clause 4(5) of the tenancy agreement Mrs Bay agreed to keep the interior of the property in good repair and condition. In about September 2007 Mrs Bay signed a Housing Benefit Review Form seeking an increase in the Housing Benefit paid on the basis that the rent had increased from £960 per month to £1,100 from 20<sup>th</sup> September 2007 "as there had been no increase for 2 years".

27. On 20<sup>th</sup> September 2010 Mrs Bay signed a tenancy agreement of the Property for a term of 5 years at a rent of £1,040 per month. The tenancy agreement is signed by two witnesses, Veisel Demirbas and Aziz Demir. The address of Veisel Demirbas is given as 25 Abersham Road. This is an address that was at some time used by Inan Bay.

28. Mrs Bay's evidence was that she did not know what she was signing when she signed the Housing Benefit forms and tenancy agreements. She said that Mr Osman asked her to sign them saying only that they were to do with "her" property and that she did not ask him anything further. Mrs Bay said in cross-examination "whatever they wanted me to sign, I signed it". The use of the word "they" is interesting and suggests that she was talking about

documents she was asked to sign by both Mr Osman and Inan Bay. However, when asked about the words she had used, Mrs Bay said that she said “they” by mistake and meant only Mr Osman. Mrs Bay said that she did not know she was ever a tenant of the Property. She did not understand that the tenancy agreements she signed were tenancy agreements or that she was making claims for Housing Benefit and that Housing Benefit was being paid in respect of her renting the Property.

29. Service charges in respect of the Property are payable to Hackney Council. Mrs Bay’s evidence was that she paid the service charges. Mrs Bay produced service charges statements of account addressed to Mr Osman at the Property. There is a statement covering the period 21<sup>st</sup> October 2005 to 25<sup>th</sup> October 2011, which is dated 18<sup>th</sup> July 2012. There is a statement covering the period 1<sup>st</sup> April 2010 to 24<sup>th</sup> May 2016 which was printed on 24<sup>th</sup> May 2016. There is a statement covering the period 1<sup>st</sup> April 2016 to 1<sup>st</sup> July 2016, printed on 28<sup>th</sup> July 2016. Mr Osman’s evidence was that he paid the service charges but that he fell behind with payments in 2008.

30. From November 2005 (if not earlier) Inan Bay was employed by Mr Osman’s company, Task Associates. Mrs Bay produced pay slips for Inan Bay covering the period November 2005 to April 2006. They show Inan Bay was paid £244.80 for working 48 hours a month in November 2005 to February 2006 (inclusive) and was £397.80 for working 78 hours in each of March and April 2006. On 1<sup>st</sup> December 2005 Inan Bay signed a tenancy agreement to rent 5A Cheapside, Palmers Green from Mr Osman for a term of 12 months at a rent of £700 per month. The money he was paid by Task Associates was not enough to pay the rent payable to Mr Osman under the tenancy agreement. Mrs Bay’s evidence was that Inan Bay told her Mr Osman took the mortgage payments for the Property out of Inan Bay’s wages. That is not supported by the pay slips produced.

31. On 3<sup>rd</sup> January 2006 Fatma Mehmet wrote to Inan Bay thanking him for providing her with his new address and stating that she had made an appointment for him to attend her office on 12<sup>th</sup> January 2006 at 11am. There is no mention in the letter of Mrs Bay at all. Mrs Bay’s evidence was that she accompanied Inan Bay to that meeting and that at that meeting, Fatma Mehmet confirmed that Mr Osman was holding the Property on trust for Mrs Bay. Mrs Bay said that Fatma Mehmet made Mrs Bay trust her and said that she would sort out the relevant paperwork.

32. Throughout 2007 and 2008 Inan Bay was gambling heavily. Payment slips to casinos produced by Mrs Bay show Mr Bay paid over £80,000 to casinos in 2008. Mrs Bay's evidence is that 62 Great Cambridge Road was re-possessed by lenders in 2008/2009, because Inan Bay "did not manage the property properly". On 24<sup>th</sup> November 2009 Inan Bay was made bankrupt on his own petition. He did not declare in the bankruptcy that he had any interest in the Property.

33. Mr Osman said that by 2008 he had fallen behind with the mortgage payments and service charge payments. It would appear that he had been taking the housing benefit payments but not been using them to pay the mortgage and service charges. The service charge accounts show that there were long delays in the payment of the service charges from September 2006 onwards and that the delays got longer in 2008. The service charge raised on 31<sup>st</sup> March 2007 was not paid until 16<sup>th</sup> September 2008. The service charge account shows charges raised on 23<sup>rd</sup> July 2008 for court costs and court interest. At that date the sum due for service charges was £2,987.14, which can be compared with the actual service charge for 2007/2008 of £913.38 and the estimated service charge for 2008/2009 of £888.05.

34. Mr Osman said that in 2008 Inan Bay started pressing for payment of the £24,750 of the purchase monies left outstanding at the date of the transfer. Mr Osman said he told Inan Bay to wait for him to sell the Property and offered to sell it back to Inan Bay for £175,000. He said that Inan Bay declined to buy it back.

35. Until 2010 the Housing Benefit was paid directly to Mr Osman. In 2010 Hackney Borough Council had a change of policy and began paying Housing Benefit to tenants and not to landlords. From 27<sup>th</sup> September 2010 Hackney Borough Council paid Housing Benefit directly into Mrs Bay's account with Barclays Bank (account number 10515140) and Mr Osman's mortgage to Mortgage Express was paid directly to Mortgage Express out of this account. The account was an active one. Regular payments were made from the account to British Gas and frequent withdrawals of cash were made at cash machines in the Hackney, Stoke Newington and Enfield areas. Service charges in 2010 onwards were paid by rounded sums out of this account. The lump sums were not related to the amounts of the service charges raised. The only credits to the account apart from the Housing Benefit were monthly credits of cash amounts.

36. Mrs Bay said that she met and spoke to Mr Osman in 2010 and “confessed” that she was unable to pay the mortgage. She said that Mr Osman told her not to worry and that he would speak to Inan Bay. Inan would pay. Mrs Bay also said that she told Mr Osman that she could not manage on her income and that Mr Osman said he would ask Inan Bay to pay some extra money to her and for her to manage the mortgage. Mrs Bay went on to say that Mr Osman asked for her bank card and she gave him the card for an account she did not use. Mrs Bay was unable to explain why Mr Osman needed her bank card or why she gave it to him. She said only that he asked her for it and so she gave it to him. Mrs Bay accepted that she received bank statements for the Barclays Bank account and that she saw monies being paid into the account. However, she said that she thought Mr Bay was paying the money. She then said that she thought the regular payments into her account were being made by Inan Bay. She was unable to explain how she thought Inan Bay could afford to make these payments since he had been made bankrupt only a few months earlier.

37. Mr Osman’s evidence in his Statement of Case was that in 2010, he agreed with Inan Bay that out of the rent payments due from Mrs Bay to him, Inan Bay should receive £400 towards payment of the sum left outstanding on the transfer of the Property. Mr Osman said that the balance was paid off completely between November 2010 and the end of 2015 in which period Mr Osman said Inan Bay received a total of £24,800.

38. On 5<sup>th</sup> February 2010 both Mr Osman and Inan Bay signed a document in front of a witness, Servet Parlak, headed “Friendly Loan Agreement”. The document reads

“This is a friendly loan agreement between Inan Bay (lender) ... and Emir Osman (borrower) ... which starts on 7<sup>th</sup> January 2010. The sum of £17,000. To be repaid back by 7<sup>th</sup> January 2011”.

Mr Osman said that this was a document that Inan Bay wanted in respect of the unpaid part of the purchase monies. However, he did not explain why the amount recorded is only £17,000 or why the date for repayment was set at 7<sup>th</sup> January 2011. Mrs Bay said that this was a further sum Inan Bay had lent to Mr Osman. She did not explain how Inan Bay had £17,000 to lend Mr Osman only 2 months after he had been declared a bankrupt.

39. Mr Osman said in his witness statement that on 7<sup>th</sup> January 2016 he asked for the full rent monies to be paid to him i.e. without the deduction of the sum of £400 “paid” to Inan Bay. He credited Mrs Bay with payment rent for the period 20<sup>th</sup> November 2015 to 19<sup>th</sup>

December 2015 on 7<sup>th</sup> January 2016. He said that Mrs Bay then stopped paying the rent. This is odd because Mrs Bay had not been paying rent in fact since 2010 but the mortgage and service charges had been paid out of her Barclays account. Mr Osman claimed that he was subjected to threats and intimidation from Inan Bay and that Inan Bay wanted him to transfer the Property back into his name. On 29<sup>th</sup> February 2016 Mr Osman appointed managing agents, Star Estates and Lettings. They wrote to Mrs Bay on 29<sup>th</sup> February 2016 to ask her to clear rent arrears. At the same time, they wrote to Hackney Council asking Hackney to make payment of the housing benefit directly to Mr Osman on the basis that Mrs Bay was three months in arrears with the payment of the rent. On 23<sup>rd</sup> May 2016 Hackney wrote to Star stating that Mrs Bay's housing benefit claim had been cancelled from 7<sup>th</sup> March 2016 at Mrs Bay's request. Mrs Bay said that she cancelled the housing benefit claim as soon as she found out Mr Osman had been seeking housing benefit in her name.

40. Mr Abidin Seyfi gave evidence of a conversation with Inan Bay in February 2016. Mr Seyfi had been both a tenant and employee of Mr Osman in 2005. In 2016 he was running his own shop. He was contacted by Mr Osman and met him in a local coffee shop. He said that Mr Osman said that he had made a partnership agreement with Mr Osman, had transferred the Property to him as a formality and that Mr Osman was not giving the Property back. Mr Seyfi said Mr Osman accepted that he had received the mortgage monies and the balance of the purchase price.

41. Mrs Bay applied to HM Land Registry to register a restriction by a form RX1 dated 4<sup>th</sup> March 2016. Inan Bay applied himself to register a restriction on 8<sup>th</sup> April 2016. Inan Bay wrote to HM Land Registry in October 2016 to withdraw his application. The application was never referred to the Tribunal and there was no evidence before me as to on what basis the application was made.

42. Mrs Bay sent to HM Land Registry with her application a copy of the separation agreement. That copy did not have on it any Hackney Council stamp. Mr Osman in his letter of objection dated 1<sup>st</sup> April 2016 alleged that the separation agreement was not genuine and had been manufactured after the event to support the Bays' case. Mrs Bay then annexed a further copy of the separation agreement to her Statement of Case, which she signed on 1<sup>st</sup> September 2016. There is a Hackney Council stamp on that copy. Mrs Bay then produced a further copy of the separation agreement on disclosure. The Hackney Council stamp on that

copy is in a different place to the stamp on the copy annexed to the Statement of Case. A further copy was produced for inclusion in the hearing bundle, this copy having no Hackney Council stamp.

What happened

43. The task of making findings as to what was agreed between Mr Osman and Inan Bay is made more difficult by the failure of Inan Bay to give evidence. However, I have to do the best I can on the evidence that was before me.

44. I find Mr Osman to have been an unsatisfactory and unreliable witness. There are a number of ways in which he gave me cause to question his honesty. Firstly, he wrote out in the application form for Housing Benefit a misleading account of how Mrs Bay came to be renting the Property. Either he invented that account to mislead the Council or he was complicit in assisting Mrs Bay to mislead the Council. Secondly, he wanted the Tribunal to believe that letting the Property to Mrs Bay was a proposal made to him by the Bays either after he had completed (as he said initially in his Statement of Case) or after he had decided and agreed to purchase subject to contract and yet he did not at any time prior to exchange and completion (or even after) inspect the Property. If he was buying the Property with a view to finding a tenant for it, it is incredible that he would not have looked around the Property to see exactly what accommodation it offered, what its condition was and what (if any) work he might have to do. Mr Osman was not a wealthy man. Though this was to be his fourth property (including his own home), he did not buy houses regularly. He was not someone for whom buying a house was a matter of little consequence. The suggestion that he would have bought as an investment needing to find a tenant on the open market without first inspecting the Property makes no sense at all. Thirdly, he appears to have told an untrue account to his solicitor, Fatma Mehmet about why he was not paying to Inan Bay the difference between the money borrowed from Mortgage Express and the purchase price. Fatma Mehmet wrote to Mr Osman and to Baker & Co. stating that the balance was to be settled by setting off a debt owed by Inan Bay to Mr Osman and prepared a completion statement on that basis. It is utterly improbable that a solicitor would have written this unless she had been told it by her client, Mr Osman. There is a reason why Mr Osman would not have wanted to tell the truth to Fatma Mehmet about the balance of the purchase money. Had Fatma Mehmet been told that the balance of the purchase money was to be left outstanding as an interest free loan for an indeterminate period, she would have brought that to the attention



of Mortgage Express. Mortgage Express in turn would, at the very least, have reconsidered the mortgage offer. Fourthly, he appears to have allowed his company to have informed Hackney Borough Council that a Mr Comooglu was its tenant of the Property at a time when neither he nor the company were in a position to be able to let the Property to anyone. I cannot see how Hackney Borough Council can have written on 7<sup>th</sup> October 2005 to Task Associates describing Mr Comooglu as the tenant of Task Associates at a time when the transfer to Mr Osman had not been registered, unless Task Associates had told Hackney that Mr Comooglu was its tenant. Generally, Mr Osman was not an impressive witness.

45. Mrs Bay was not a satisfactory witness either. It is quite apparent to me either that the instructions for her witness statement did not originate with her or that she was not able or willing under oath to state what she had stated firmly in the witness statement. The circumstances of the preparation of the witness statement were confused. Mrs Bay said that she told her solicitor what happened in Turkish and that he wrote the statement down in English. She then said both that the witness statement was translated from the English into Turkish for her by staff working at the solicitor's office and that it was translated for her by volunteers at the Turkish community centre. The witness statement in English contained a statement of truth. No translation was included in the hearing bundle. Inan Bay during the hearing handed to Mrs Bay's solicitors a translation into Turkish of the English witness statement. Mrs Bay could not explain convincingly why the husband from whom she is separated had the Turkish translation of her witness statement. She suggested that their children may have given it to him. That suggestion seems incredible. The clear impression I obtained from how Mrs Bay gave her evidence was that the person who was in substance making and running the case was Inan Bay and not his wife.

46. Looking at the totality of the evidence, I find that what happened is this. Inan Bay needed or wanted money to gamble. At the same time, he needed a home for his wife and children. At the time, he was living with Mrs Bay and the children at the Property. That was the family home. I do not accept that Inan Bay had let it to a Mr Comooglu or to anyone else, though it seems that a housing benefit claim had been made in respect of the Property by someone in the name of a Mr Comooglu and specifying Task Associates the landlord. Who made that application I cannot say on the evidence. Inan Bay's relationship with Mrs Bay had deteriorated to the point that they wanted to separate. Inan Bay was not working and so could not raise a mortgage himself on the Property. In discussions between Inan Bay and Mr

Osman a plan was hatched to transfer the Property to Mr Osman so that he could raise by mortgage on it monies for Inan Bay to use. Mr Osman was to let the Property to Mrs Bay, who was to claim Housing Benefit, which could be used to pay the mortgage.

47. There is then the question whether Mr Osman agreed with Mr Bay to hold the Property on trust for Mrs Bay and the children. I approach this question keeping in mind that it is for Mrs Bay to prove on the balance of probabilities that there was such an agreement. I find on the balance of probabilities that Mr Osman did not agree to hold the Property on trust for Mrs Bay and the children. I do so for the following reasons:

(i) There is no direct evidence that he did so. Mrs Bay could give evidence only of what Inan Bay had told her he had agreed with Mr Osman.

(ii) The only direct evidence on this question is from Mr Osman and he says that he did not agree to hold on trust for Mrs Bay and the children. Mr Osman is of course both an interested witness and not a reliable one. I would not rely on his evidence alone on this point but it is to be noted that there is no evidence to contradict directly what he says on this point.

(iii) It is improbable that Mr Osman would have agreed to undertake personal liability on the mortgage and at the same time to hold the Property on trust for Mrs Bay and the children. If he agreed to hold the Property on trust, he would have exposed himself to personal liability to the mortgage lender without having any means for securing that liabilities under the mortgage would in fact be met by Mrs Bay (an unemployed woman with little English and young children to support) or even by Mr Bay, a man who it is common ground had a serious gambling habit. It is one thing for him to have taken on liability under a mortgage on the basis that the mortgage would be covered by rent if he was the beneficial owner of the property. It is quite another for him to have taken on such a relatively large liability for the ultimate benefit of another, even if that other was a friend and his wife.

(iv) I do not consider that Mr Osman is the sort of man who would have agreed to take on personal liability on the mortgage purely as a favour to a friend and without getting anything in return.

(v) Mrs Bay relied on the separation agreement. I am prepared on balance to accept that the separation agreement was signed on 30<sup>th</sup> September 2005. That this happened is supported by the evidence of Mr Mehmet who appeared to be a disinterested witness. His evidence was clear, firm and unshaken in cross-examination. It is certainly odd that two different copies of the separation agreement bear a stamp of Hackney Council and in different places. There is no obvious reason why the separation agreement should have been produced to the Council or why the Council should have stamped the document twice and given two stamped copies to the Bays. It may be that the stamps were added after the event to an agreement which had in fact been signed on 30<sup>th</sup> September 2005 and in an attempt to provide stronger evidence of the date on which it was signed. However, doubts that this may cast on the veracity of the separation agreement are outweighed by the presence in it of terms which were not in fact complied with. It provides that Inan Bay would pay Mrs Bay £250 a month on the first day of each month as maintenance payments for the children and that he would pay £20 each week to assist with utility bills. He did not do so. It is improbable that these terms would have been included in a document drafted after the event.

(vi) Though the separation agreement was made on 30<sup>th</sup> September 2005 it does not follow that Mr Osman knew of its terms. He did not sign it. He was not present when it was signed. There is no documentary evidence to show that he was shown or sent a copy. It is not Mrs Bay's evidence that she showed it to Mr Osman or sent him a copy.

(vii) I do not accept Mrs Bay's evidence that she was advised by Fatma Mehmet in January 2016 that Mr Osman was holding the Property on trust for her or that she was going to prepare a trust deed. If the purpose of the meeting referred to in the letter from Fatma Mehmet to Inan Bay dated 3<sup>rd</sup> January 2006 was to give Mrs Bay an assurance that she was the beneficial owner of the Property, it is strange that the letter fixing the appointment was not addressed to Mrs Bay as well as to Inan Bay and that it makes no mention of Mrs Bay attending the appointment. It is also strange if Fatma Mehmet did give that assurance that she did not follow it up with a letter. No such letter was produced and Mrs Bay did not suggest that she did receive any such letter. A solicitor in such circumstances could be expected to advise Mrs Bay that she should seek her own independent legal advice. A solicitor could also be expected to have told Mr Bay that as he had solicitors acting at the time of the sale to Mr Osman, he should ask his own solicitors for advice in relation to any trust. Mrs Bay's

evidence as to the meeting is not credible. The letter from Fatma Mehmet was about something other than the alleged trust of the Property.

(viii) Though Inan Bay may have told Mrs Bay that Mr Osman had agreed to hold the Property on trust for her and the children, he had a reason to do so and may not have been telling her the truth. Inan Bay wanted to raise money on the house. Mrs Bay would have wanted a secure home. If Mrs Bay was not convinced to allow the transfer to Mr Osman to go ahead, she could have brought proceedings to stop a transfer pending the granting of financial relief in divorce proceedings. Inan Bay therefore needed to persuade Mrs Bay that her home would be secure after the transfer.

(ix). It is quite possible that Inan Bay reached some understanding with Mr Osman for the Property to be transferred back to Inan Bay or at his direction if and when Mrs Bay could take over the mortgage or that Inan Bay believed that there was some such understanding. That need not have given rise to a trust and would not be a trust for Mrs Bay and the children as Mrs Bay alleges.

(x). I do not accept Mrs Bay's evidence that she had a conversation with Mr Osman in 2010 in which she said that she was not able to pay the mortgage. Mrs Bay did not explain how such a conversation would have arisen. The mortgage was then being paid out of the Housing Benefit. There would have been no reason for Mr Osman to have asked Mrs Bay if she was ready and able to pay the mortgage. There was no particular reason for Mrs Bay to have raised the subject unless Inan Bay told her that it was now time for her to take over payment of the mortgage. Mrs Bay did not say that he did so. Had Mrs Bay raised a concern about payment of the mortgage, Mr Osman is much more likely to have told her not to worry because the mortgage was being paid out of Housing Benefit than that Inan Bay would pay it. Inan Bay had been made bankrupt in November 2009. Mr Osman is unlikely to have thought that Mrs Bay could then believe that Inan Bay would pay the mortgage or indeed pay more into her account.

48. As Mr Osman did not promise or agree to hold the Property on trust for Mrs Bay, Mrs Bay's claim fails. However, even if Mrs Bay had satisfied me that Mr Osman did agree with Mr Bay to hold the Property on trust for Mrs Bay, I would have found that Mrs Bay did not have a beneficial interest in the Property.

49. Mrs Bay did not allege in her Statement of Case that she had any beneficial interest in the Property prior to the making of the separation agreement or the transfer to Mr Osman. There is no evidence that Mrs Bay had any beneficial interest in the Property prior to the date of the transfer to Mr Osman. The separation agreement does not include any declaration of trust by Inan Bay that he was holding the Property on trust for Mrs Bay. On the contrary, it includes the statement, "The property that we are living is solely owned by me", which read in context means that the Property was solely owned by Inan Bay. The separation agreement does say that Mr Osman would be holding the Property on trust for Mrs Bay and the children but this can only refer to a period once the Property had been transferred to Mr Osman.

50. Mrs Bay may well have had a claim in divorce proceedings to a property adjustment order giving her the Property or some interest in it. It does not follow, of course, that she had any such interest prior to a property adjustment order being made.

51. Mr Osman never made any written declaration of trust in respect of the Property. By Law of Property Act 1925 s. 53(1) a declaration of trust of land must be in writing. The case put for Mrs Bay was that Mr Osman is holding the Property on a constructive trust for Mrs Bay because (1) Mrs Bay believed he was doing so; (2) Mrs Bay acted to her detriment in the belief that Mr Osman was holding the Property on trust for her; and (3) Mr Osman knew that Mrs Bay was so acting in the belief that Mr Osman was holding the Property on trust for her.

52. If I had found that Mr Osman had agreed to hold the Property on trust for Mrs Bay then I would have found that Mrs Bay believed that he was doing so. However, I would not have found that Mrs Bay acted to her detriment in reliance on the belief such as to give rise to a constructive trust. To give rise to a constructive trust, Mrs Bay must have acted to her detriment and the acts of detrimental reliance must be of a kind upon which Mrs Bay could not reasonably have been expected to embark unless she was to have an interest in the Property – see *Grant v. Edwards* [1986] Ch. 638 at p. 650. Mrs Bay's oral evidence was that she did some decoration work to the bathroom, carried out some minor repairs in the kitchen such as where a tap was leaking or the sink was blocked and fixing and repairing a door in the garden damaged by the wind. There was no evidence of the sums spent on these works. The works seem to me to be works that any occupier can be expected to do to property in which he or she is living. Mrs Bay said in cross-examination that had she known she did not own the

Property, she would have done some works but not as much as she did. Mrs Bay did not explain which of the modest list of works she would not have done. I do not accept that Mrs Bay did any works because she believed that she was the beneficial owner of the Property. I find that Mrs Bay did minor works to the Property because it was her home and in order to keep it in normal repair. Mrs Bay has not established that she did works to the Property of a kind that she could not reasonably have been expected to do unless she believed she had an interest in the Property. The works do not amount to detriment such as to give rise to a constructive trust.

53. There was no evidence that Mr Osman knew that Mrs Bay was doing any works at all to the Property. If Mr Osman did not know that Mrs Bay was acting to her detriment in relation to the Property, no constructive trust arises.

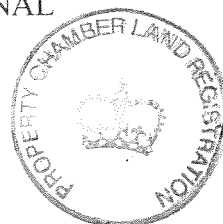
54. I shall direct the Chief Land Registrar to cancel Mrs Bay's application to register a restriction on the title to the Property. Mrs Bay has not established that she has a beneficial interest in the Property such as to entitle her to the entry of a restriction.

#### Costs

55. Mrs Bay has been unsuccessful in her application. My preliminary view is that the usual rule should apply. Mrs Bay should be ordered to pay the costs of Mr Osman of the proceedings, to be assessed. Any party who wishes to submit that I should make some different order as to costs should serve written submissions on the other party and on the Tribunal by 5pm on 5<sup>th</sup> July 2017. Mrs Bay's evidence was that Inan Bay was paying her lawyers. In those circumstances, I will consider any application from Mr Osman to make a costs order against Inan Bay in addition to any order made against Mrs Bay.

BY ORDER OF THE TRIBUNAL

*Michael Mitchell*



Dated this 30th June 2017