

[2018] UKFTT 0049 (PC)

PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2017/0125

BETWEEN

ERIC BACCHUS

Applicant

and

CARMEN EMANCIA MADURO

Respondent

Property Address: 49 Spenser Road, London SE24 ONS

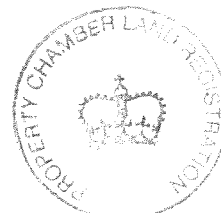
Title number: TGL96264

ORDER

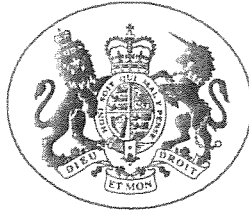
The Chief Land Registrar is ordered to cancel the application dated 16 December 2016

BY ORDER OF THE TRIBUNAL

*Ann McAllister*  
Dated this 21<sup>st</sup> day of December 2017







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**Property Address: 49 Spenser Road, London SE24 ONS**

**Title number: TGL96264**

**Before: Judge McAllister  
Alfred Place, London  
20 November 2017**

**Representation: Mr Paul Harris of Counsel appeared for the Applicant; Mr Zachary Bredemear instructed by Gelbergs Solicitors appeared for the Respondent**

**DECISION**

**Introduction**

1. The issue in this case is whether the joint tenancy held by the Applicant and the late Mrs Dorothy Bonnick in 49 Spenser Road, London SE24 ('the Property') was

severed either by a notice served by Gummer & Singh Solicitors on 20 November 1995 ('the First Notice') or by a further notice ('the Second Notice') served shortly after 23 December 2003.

2. By an application dated 16 September 2016 the Applicant, Mr Bacchus, applied to cancel a restriction in standard Form A entered on the register of the above title on 22 March 2004. The restriction provides that: '*No disposition by a sole proprietor of the registered capital estate... under which capital money arises shall be registered unless authorised by an order of the court*'.
3. The matter was referred to the Tribunal by Land Registry on 27 January 2017.
4. For the reasons set out below I will order the Chief Land Registrar to cancel the application to cancel the restriction. In my judgment both the First and Second Notices were validly served, and accordingly the joint tenancy was severed, allowing Mrs Bonnick's 50% share to pass as part of her estate.

#### **Background and relevant facts**

5. The Respondent, Mrs Maduro, is the daughter of the late Mrs Bonnick who died on 30 March 2004 in King's College Hospital, London. Mrs Bonnick was born on 26 June 1918 in Jamaica and was the widow of David Bonnick. For a number of years prior to her death, her daughter was her principal carer.
6. The Property was registered in the joint names of Mr Bacchus and Mrs Bonnick on 25 February 1966. Mr Bacchus and Mrs Bonnick were not related nor were they in a relationship. Mr Bacchus' evidence is that, at the time of the purchase, he was looking for somewhere to buy but that he did not have enough money saved. Mrs Bonnick's brother had bought a property in the same street. He introduced Mr Bacchus to Mrs Bonnick as someone who had some money. The purchase price was £2,500. Mr Bacchus and Mrs Bonnick were registered as joint tenants. The financial arrangements regarding the purchase and upkeep of the Property are not entirely clear, nor are they relevant to my decision.

7. Mrs Bonnick lived in the upstairs part of the Property, and Mr Bacchus lived in the basement, and appears to have used two rooms on the ground floor. A 'home visit' report dated 17 May 1995 describes the way in which the Property was divided as follows: *'The house has two levels and a basement. Mrs Bonnick occupies rooms on the second floor for her bedroom, kitchen and a spare room. She shares the toilet and bathroom with the other owner on 1<sup>st</sup> floor. He lives mainly in the basement but also keeps two rooms on the first floor which were locked on the day of the home visit. There has been conflict about who uses these rooms in the past'*. The Property has one front door, and is known as No 49. Contrary to what Mr Bacchus said in his statement in support of his application to cancel the restriction there was never a 49a or a 49b. Mr Bacchus accepted this in evidence.
8. Mrs Bonnick continued to work until she was 65. Mr Bacchus worked as a carpenter and retired in 1995. It was his habit, he said, to visit Jamaica in the winter and to live in London in the summer, leaving in December and returning in May or June.
9. In 1995 Mrs Bonnick suffered a stroke. She was in hospital, and, following rehabilitation, returned to the Property in the autumn. Mrs Maduro, who is a nurse, moved in with her and helped look after her, and carried out various works of improvement to the part of the Property occupied by her mother to make it easier for her to move around. I have seen evidence of the works carried out by Mrs Maduro. She stated that she spent over £3,000 on repairs and improvements, including installing a further toilet and shower. A Council grant was also obtained to install a chair lift and to do other works.
10. Mr Bacchus' evidence is that he visited Mrs Bonnick in hospital. He accepted that she was capable of speech and aware of what she was saying, and that the stroke affected her left side but did not (contrary to what he asserted in his statement to Land Registry) leave her paralysed from the neck down. His evidence was also

that he found himself locked out of the Property when he returned to England in March 1995, and had to go to a locksmith in Brixton to be given a new key.

11. Gummer & Singh solicitors were instructed to serve a notice of severance. No copy of the First Notice exists. However, on 15 January 1996, the solicitors wrote to Mrs Maduro to confirm that the First Notice had been served on 20 November 1995 and asking whether it was Mrs Bonnick's intention to transfer her share in the Property to Mrs Maduro. Mrs Maduro's evidence is that her mother was concerned to ensure that her share in the Property should pass to her and not to Mr Bacchus. Gummer & Singh had also written to Mr Bacchus in August 1995 about Mrs Bonnick's condition, and to inform him fact that certain works would be carried out to the Property on her return to the Property. The tone of the letter, and indeed the fact that it was written at all, suggests that relations between Mr Bacchus and Mrs Bonnick were not altogether satisfactory.
  
12. Mr Bacchus denied having received the First Notice. He stated that he would have been out of the country when it was sent. Mrs Maduro's evidence is that later he admitted to her that he had received both Notices, but stated that he 'would rather burn the house down' than to buy her mother's share of the Property (which was being suggested at the time).
  
13. In 2003 Mrs Bonnick suffered a second stroke and was again hospitalised. By letter dated 19 December 2003 Gummer & Singh enclosed the Second Notice in a letter to Mrs Bonnick, c/o Mrs Maduro, which notice was to be delivered to Mr Bacchus. Mrs Maduro's evidence was that the reason for the Second Notice was Mr Bacchus' failure to confirm that he had received the First Notice. The decision to prepare and serve a second notice coincided with Mrs Bonnick putting her affairs in order, and making a Will. Mrs Maduro received the Notice and took it to the hospital for her mother to sign. Mrs Bonnick was able to sign with her right hand, and was fully aware of what she was signing. The Notice was signed on 23 December 2003. A copy of this is available. It is in standard form and recites that notice was given under section 36(2) of the Law of Property Act 1925.

14. Mrs Maduro's evidence was that she put the Second Notice through his door. Although she could not recall the exact date, it would have been shortly after it was signed. Mr Bacchus denies receiving the Second Notice.
15. Mrs Bonnick also made a Will dated 2 December 2003 whilst she was in hospital. Her solicitor had come to the Property before she was hospitalised to take instructions. He then visited her in hospital. Mrs Maduro was appointed her executrix, and was made bequest of a third of her estate.
16. In the course of her evidence at the hearing, Mrs Maduro also stated that Mr Bacchus had visited her mother in hospital, having received the Notice, and had a heated discussion with her. Indeed, her evidence was that Mr Bacchus never spoke to her mother again after that visit. I have also seen a letter dated 12 December 2003 from Gummer & Singh to Mrs Bonnick and Mr Bacchus enclosing a transfer deed for execution by them, although it is not entirely clear whether Mr Bacchus was to buy out Mrs Bonnick's share or vice versa.
17. Mrs Bonnick remained in hospital until January 2004. She was conscious, but in pain. I have seen the hospital and other notes regarding Mrs Bonnick's mental and physical capacity and, in my judgment, there is nothing to suggest that she not able or did not have the capacity to sign either Notice or to execute the Will. Lambeth's Adult Services report noted that Mrs Bonnick was sometimes bad tempered but was quite capable of making decisions about herself (November 1996); Social Services noted in June 2000 that her speech was slightly slurred but that given time she could get her points across; and the hospital notes for December 2003 and January 2004 show her as being variously 'alert and communicating', 'a little more alert, obeying commands' and 'talking in sentences'. Even those entries which indicate some degree of confusion, are consistent with the confusion being temporary and intermittent (see, for instance, the entry dated 22 December 2003: 'noted to be occasionally confused and disorientated').
18. On 27 February 2004 Gummer & Singh applied to register a restriction based on the Notice. On 22 March 2004 Land Registry wrote to Mr Bacchus at the Property

informing him of the application, and explaining the effect. Mr Bacchus took no steps to challenge the application. The firm of Gummer & Singh closed with effect from 30 September 2011.

19. As mentioned above Mrs Bonnick died on 30 March 2004. Probate was granted on 18 August 2004. The parties appear to have been in dispute about the payment of bills for the Property from this point onwards. At one point the Lambeth Mediation Service became involved. Mrs Maduro and Mr Bacchus took out a joint household insurance policy on 18 October 2005.
20. Whilst at no point did Mr Bacchus acknowledge receipt of either notice of severance, it is important to note that he did not claim that he had become entitled to the beneficial interest by survivorship. On 9 May 2006 Peter Thomson Solicitors wrote on his behalf to Mrs Maduro in relation to bills and use of the Property. The letter also stated: *'The house is owned in equal shares which means you both have equal shares to the property.... On a further point out client is seriously considering retiring to Jamaica. This will mean that he needs to sell the property. He is prepared to sell his share to you at its full price or alternatively the property will have to be sold. We would suggest that you make plans at this time as our client will wish the property to be sold quickly as soon as he makes his decision.'*
21. Some 9 years later, in June 2015 the same solicitors wrote again to Mrs Maduro, withdrawing any suggestion that Mrs Maduro was the joint owner. Again, on 3 September 2015, they wrote again to Mrs Maduro: *'I understand that Mr Bacchus wishes to withdraw certain statements in our letter of 9<sup>th</sup> May 2006. With regard to the issue of joint ownership the purpose of the letter was simply to reach agreement over payment of certain bills etc. I did not therefore enquire into the legal position as this was not apparently in issue. My letter should not therefore be seen as an admission that either of the notices of severance was received or that Mrs Maduro had validly inherited her mother's share. I accept my reference in the final sentence to Jamaica should have been to Guyana'*



22. The first application by Mr Bacchus to remove the restriction was made in September 2012. This was based on an allegation that her signature on the Second Notice was a forgery, as well as on the assertion that he had not received the Notice. Mrs Maduro objected to the application. The application was cancelled in March 2014 because Mr Bacchus did not reply to Land Registry correspondence.
23. Mrs Maduro clearly believed she was in a position to sell her share in the Property. By letter dated 23 October 2014 another firm of solicitors acting on her behalf wrote to Mr Bacchus referring to an exchange of contracts on 22 October between Mrs Maduro and a consultancy to purchase her share in the Property, and expressing an interest in purchasing his share. It seems that Mr Bacchus informed the consultancy that he felt he should have more than 50% because of the greater contributions made by him to the Property over the years.
24. The present application, dated 13 September 2016, referred to the fact that the solicitor who had applied to enter the restriction was not acting for both parties. This point is, of course, misconceived. The Statement of Truth, also dated 13 September 2016, raises the point that the Second Notice was not served by a solicitor or anyone else.

### The Law

Section 36(2) of the Law of Property Act 1925 provides as follows:

#### — Joint tenancies.

(1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held [in trust]<sup>1</sup>, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon [the land shall be held in trust on terms]<sup>2</sup> which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

[

Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held [in trust] <sup>1</sup>.

] <sup>2</sup>

(3) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

Section 196(3) and 196(4) provide as follows:

**196.— Regulations respecting notices.**

(1) Any notice required or authorised to be served or given by this Act shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned [ by the postal operator (within the meaning of [Part 3 of the Postal Services Act 2011] <sup>2</sup>) concerned] <sup>1</sup> undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court

25. These provisions were considered in the case of *Kinch v Bullard* [1999] 1 WLR 423. The facts were as follows. A notice of severance was sent by ordinary first class post to the husband at the matrimonial home by the wife. The notice was put through the letter box at the time when the husband suffered a heart attack. The wife then changed her mind and destroyed the notice. The husband died shortly thereafter, and 6 months later the wife died. The husband's executors sought a declaration that they were entitled to a one half share in the property. It was held that a notice is validly served if it was left at the last known place of abode of the addressee even if he did not receive it; the method of service is immaterial; and once the procedure has been set in motion it was not open to the giver of the notice to change his or her mind. Accordingly the joint tenancy had been severed.

26. At 427 H Neuberger J (as he was then) said this: *'It appears to me that the natural meaning of section 196(3) is that, if a notice can be shown to have been left at the last known abode or place of business of the addressee, then that constitutes good service even if the addressee does not actually receive it... ..Once the sender has served the requisite notice the deed is done and cannot be undone.... I reach this conclusion based on the proper construction of section 36(2). However it appears to me that it is also correct as a matter of policy, If it were possible for a notice of severance or any other notice to be ineffective because, between the sender putting it in the post and addressee receiving it, the sender changed his mind it would be inconvenient and potentially unfair.'*

27. In addition to the service point, Mr Bacchus has also raised two further points. The first is whether Mrs Bonnick had the mental capacity to sign either the First or Second Notice. The second point, not put to Mrs Maduro, is that Mrs Bonnick could no longer sign her name in 2003 and that accordingly her signature was forged.

28. The Mental Capacity Act 2005 was not in force at the time of Mrs Bonnick's death. The principles set out in section 1(2), namely that *' a person must be assumed to have capacity unless it is established that he lacks capacity'* were regarded by the Law Commission as re-stating the existing law (Law Commission No 231, para 3.2 and 3.5). Section 3, which sets out the functionality tests, is also based on pre existing law.

### **The parties' submissions**

29. Mr Harris, for Mr Bacchus, laid considerable emphasis on the evidence given by Mrs Maduro for the first time at trial as to Mr Bacchus' visit to Mrs Bonnick in hospital in 2003 and relating to the alleged discussions regarding the share in the property. The fact that this evidence was given for the first time at trial, he says, undermines her credibility.

30. Mr Bacchus' principal case is that I cannot be satisfied, on a balance of probability, that either notice was served on him. So far as the First Notice is concerned, there is no copy of this notice, and nothing other than a letter from the solicitors dated 15 January 1996. It is at least surprising that no copy of that notice was included in the letter or produced at any time. As for the Second Notice, the solicitor was, in Mr Harris' words, asking for trouble by sending a copy of the notice to Mrs Bonnick (care of Mrs Moduro) rather than simply posting it to Mr Bacchus.
31. Mr Harris also relies on the evidence regarding Mrs Bonnick's state of health on both occasions, ie in 1995 and 2003, and, as stated above, raised the issue of the authenticity of Mrs Bonnick's signature on the Second Notice.
32. Mr Bredemear submits that it is overwhelmingly likely that the Notices were properly served. The imperative to do so is clear: Mrs Bonnick wanted her share of the property to pass to her family. She was not in a relationship with Mr Bacchus, and the arrangement between them, though a little unusual, worked reasonably well as a commercial arrangement. There is no reason to doubt the information set out in the letter dated 15 January 1996 sent by Gummer & Singh (written less than 2 months after the date of service). It was written in the context of a proposal that Mrs Bonnick would transfer her share to Mrs Maduro.
33. As for the Second Notice, this was clearly prepared when Mrs Bonnick was unwell but not lacking mental capacity. The reasons for a second notice was Mr Bacchus' refusal to acknowledge receipt of the First Notice. Mrs Bonnick was clearly able to give instructions for her Will, and the solicitor was satisfied that she had the necessary capacity to give instructions. The will was executed on 2 December 2003. There were further discussions regarding the Property, including a proposal that there should be a transfer of the other's share, as evidenced by a letter dated 12 December 2003. The preparation of the Second Notice is all of a piece with Mrs Bonnick's desire to put her affairs in order. The solicitors took steps in early 2004 to enter a restriction on the title to the Property. Mr Bacchus was informed of the application by Land Registry, and took no steps to object.

34. Mr Bredemear points in any event to the manifestly incorrect evidence given by Mr Bacchus regarding number 49a and 49b, and the assertion that Mrs Bonnick was paralysed from the neck down.
35. He submits that there is no reason to disbelieve Mrs Maduro, who was clearly anxious to resolve matters, when she says that she left the notice by dropping it in door. Her evidence that his response was to say that he put things in the bin has a ring of truth about it.
36. Finally, the letter written by his solicitor dated 9 May 2006 is clear. Mr Bacchus accepted that he had half a share. The 'legal position not being in issue' can only mean that he accepted the notices. This letter was written more than 2 years after Mrs B's death. And it was not until 6 years later that an application was made to land registry to cancel the restriction.

### **Conclusion**

37. I accept the submissions made on behalf of Mrs Maduro. I am satisfied that both Notices were served and that Mrs Bonnick had capacity on both occasions. The joint tenancy has been severed, and the restriction is to remain on the title.
38. My reasons regarding service are as follows. First, I bear in mind that the arrangement as to ownership (though no doubt not free from difficulty) is clearly more suited to a tenancy in common than a joint tenancy. The parties were not in a relationship, and were not related. This makes it all the more likely that at some point one or other would have wished to sever the tenancy. Secondly, it was clearly in Mrs Maduro's interest to make sure that the notices were properly served. Advice was taken from solicitors both in 1995 and in 2003.
39. Thirdly, it seems to me overwhelmingly likely that Gummer & Singh would have sent the First Notice. To suggest that the firm would have written a letter stating this, even though no notice had been served, seems to me to be implausible, not to say fanciful. The fact that Mr Bacchus may or may not have been away at the time

is nothing to the point. Service was effected whether or not he received the notice. In any event, he would have received the notice on his return to this country, if, in fact, he had been away. Fourthly, the same solicitors acted for Mrs Bonnick in drawing up her Will, and were involved in discussions regarding a possible transfer of the beneficial interest. In this context, and given Mrs Maduro's evidence (which I accept in every respect) that Mr Bacchus had told her that he simply put letters and notices in the bin, it makes sense that she should have wanted a further notice to be served and indeed that she served it herself. Fifthly, Mr Bacchus did not object to the registration of the restriction at the time, and the letter from his solicitor in May 2006 can only be read as an acceptance that the tenancy had been severed, and that he and Mrs Bonnick held the property as tenants in common in equal shares. Finally, I bear in mind the delay in making this application and the various reasons given to support the application.

40. I can deal briefly with the forgery point. Although one of the points raised in Mr Bacchus' statement dated 28 October 2015 (before the matter was referred to the Tribunal) was a reference to getting a hand writing expert's report, no request was made by Mr Bacchus for expert hand writing evidence in the course of the proceedings, and the issue was not raised again until Counsel's skeleton argument. The allegation of forgery is a serious one, which needs to be properly pleaded and particularised. It is not for me to consider whether or not the signature is genuine. There is no evidence of fraud before me, and, to the contrary, all the evidence supports the view that Mrs Bonnick wanted the tenancy severed, and, as I have said, had the necessary capacity to sign the Notices.

41. As for the capacity point, as stated above, it seems to me that whilst Mrs Bonnick was in a poor state of health on both occasions, the various hospital and other notes are consistent with her having capacity. Her solicitor was satisfied that she had the necessary capacity to make a Will. This was done a few weeks before she signed the Second Notice. She was then well enough to leave hospital, and died some three months later. Again, I fully accept Mrs Maduro's evidence that her mother understood the Notices and approved of their contents.

42. For all the above reasons, therefore, I will order the Chief Land Registrar to cancel the application.

Costs

43. The principle that the successful party obtains his or her costs is applied in this Tribunal. If Mrs Maduro wishes to pursue her claim in costs, a schedule in Form N260 or the like is to be filed and served by 9 January 2018. Any objections or representations by the Applicant are to be filed and served within 14 days of receipt of the schedule. I will determine what order to make on paper, without a further hearing.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 21st day of December 2017**

