

[2018] UKFTT 208 (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 2015/0088/0089/0090

BETWEEN

WAHEED ASGHAR SHAHID

Applicant

and

ASRAR AHMED

First Respondent

MUHAMMAD BILAL

Second Respondent

ABDUL JAVAD AHMED

Third Respondent

Property address: 122 Bellingdon Road Chesham HP5 2HF

Title number: BM134759

**Before: Judge Professor Robert M. Abbey sitting at 10 Alfred Place London WC1E 7LR
on Monday 5th March 2018**

Applicants Representation: Mr William Hansen of Counsel

Respondents Representation: Non-attendance

ORDER

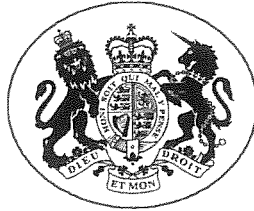
IT IS ORDERED THAT:

1. The Applicant has established that there is a mistake in the register of the above mentioned title so that it be altered to give effect to this Order by the substitution of the Applicant for the Third Respondent in the proprietorship register of the above mentioned title and to set aside the application made by the Second Respondent.

Dated this 20th day of March 2018

BY ORDER OF THE TRIBUNAL





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DECISION

KEYWORDS – (1) Application to alter the register to correct a mistake – allegations of fraud - defective attestation HELD —Registrar ordered to alter the register

Cases referred to

NRAM v. v Evans [2017] EWCA Civ 1013

THE APPLICATION

1. 122 Bellingdon Road Chesham HP5 2HF (“the Property”) is registered at HM Land Registry with title absolute under title number BM134759. The Applicant is not the registered proprietor who is shown on the proprietorship register as being the third respondent having been so registered in November 2007. The principal application before the Tribunal is that made by the applicant dated 22 July 2014 to alter the register to substitute the Applicant as the registered proprietor of the Property in place of the third Respondent. This is the subject of objections made by the first Respondent and the third Respondent.
2. As stated above the Property is presently registered in the name of the third Respondent but the Applicant maintains that this registration was facilitated by the use of a forged transfer dated 27 November 2007 (“the 2007 transfer”) in favour of the third Respondent who has subsequently purported to transfer the Property to the second Respondent pursuant to a transfer dated 18 September 2013 (“the 2013 transfer”). In support of this allegation the Applicant stated that the 2007 transfer was based on a forgery and did not represent the intention of the Applicant. The other matter before the Tribunal relates to a disputed application by the second respondent to register the 2013 transfer (“the 2013 Application”).
3. Notice of the application was served upon the Respondents who objected to the proposed setting aside of the 2007 transfer. Consequently, the case now falls to me in this jurisdiction to determine. All parties were given lengthy written notice of the date of this hearing. At the hearing before me the Applicant was represented by Mr Hansen of Counsel. None of the three Respondents appeared at the hearing or sent or instructed any representatives on their behalf. Mr Hansen invited me to proceed notwithstanding the absence of the Respondents citing previous instances of non-appearance of the Respondents at previous hearings regarding the Property including a non-attendance at an appeal hearing at the Upper Tribunal. I was aware from the contents of the trial bundle that this was indeed so and therefore considered the application of Tribunal Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (2013 No. 1169 (L. 8)) which states that : -

34. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing

On inspecting the Tribunal file it was apparent to me that all parties had been notified of the date of the hearing. I also decided that it was in the interests of justice to proceed with the hearing bearing in mind that there had been no real interaction with the process or indeed the Tribunal by any of the Respondents since as long ago as early January 2017. I therefore confirmed that it was my decision to proceed with the hearing notwithstanding the absence of all three Respondents.

4. The Applicant is a resident of Pakistan. He is related to the first Respondent in that the Applicant's wife is the first Respondent's cousin. The second and third Respondents are the first Respondent's sons. The Applicant was previously the sole registered proprietor of the Property prior to the registration of the 2007 transfer. In 2007 the Applicant agreed with the first Respondent to sell the Property to him at the price of £180,000. The parties also agreed that the transferee to be named on the deed of transfer was to be the third Respondent, the first Respondent's son.
5. As will be apparent from this description of what was agreed this was not by any means a conventional conveyancing transaction. For example, there was no prior written agreement naming the parties and containing all the terms of the transaction. Indeed all that was done was that the Applicant and the third Respondent signed a transfer in form TR1 on 3 July 2007 expressed to be for a consideration of £180,000. This was to become the basis for the 2007 transfer. Their signatures were witnessed by a solicitor, Lynda Rees of Harding Forsdike, a firm of solicitors that no longer exists. The deed of transfer was then handed over, undated, to the first Respondent. The transfer was only to be completed once the agreed consideration was paid.
6. On 28 November 2007 the third Respondent lodged an application to the land registry in form AP1 to register the 2007 transfer which by now had been dated 27 November

2007. The land registry immediately raised a requisition of Mr Ahmed stating “The execution clause in panel 13 of the enclosed transfer should read signed as a deed by Waheed Asghar. Please have the clause amended and re-executed by Mr Waheed”. It is this eventual registration of the transfer mentioned above that has given rise to the dispute.

SUMMARY OF THE APPLICANT’S CASE

7. The Applicant’s case is that the 2007 transfer was based upon a forgery. In 2007 the Applicant agreed with the first Respondent to sell the Property to him at the price of £180,000. The Applicant says that deed of transfer was given to the first Respondent who agreed that it would only be submitted to the land registry for registration upon payment of the consideration of £180,000. The Applicant also says that the consideration was never paid. The Applicant gave his relatives the first Respondent and the third Respondent further time in which to pay the consideration but no payment was forthcoming. Eventually, the Applicant made enquiries of the land registry and as a consequence discovered that the third Respondent had been registered as proprietor of the Property pursuant to a transfer dated 27 Nov 2007 being the 2007 transfer.

8. It is the case that prior to registration of the 2007 transfer, the land registry raised a requisition as set out above in paragraph 4. An amended transfer was supplied in response to this requisition. However, it was not simply a document that had been amended and re-executed by the Applicant. It is the Applicant’s case that the document that was submitted in response to the requisition was actually a forgery in two respects. First, in page one the reference to £180,000 consideration has been removed and the transfer now purported to be for no consideration. Secondly, the purported second (smaller) signature of the Applicant on page 2 is not his signature and is in fact a forgery.

9. When giving evidence before me at the hearing the Applicant confirmed that he had not agreed to any change in the consideration and had not signed the second smaller signature in the 2007 transfer. He maintained that this was a complete forgery because he had not agreed to the changes or made the changes or authorised the changes.

SUMMARY OF THE RESPONDENTS' CASE

10. Regrettably none of the three Respondents turned up for the hearing and as such no evidence was offered on their behalf. Clearly, in the absence of any oral evidence that can be tested in cross examination I am left to place such weight as I consider appropriate upon the written and untested evidence in the Tribunal file. In summary however, the Respondents do not agree that there was a forgery and say that the transfer was taken to Pakistan to be signed as required by the land registry and then sent in to the registry to complete the registration.
11. However, I was advised that the Applicant was in fact out of the United Kingdom between 15 July 2007 and 10 July 2010 and could not therefore have re-executed the deed in December 2007 in the presence of a UK solicitor following the land registry requisition. I was shown the Applicant's passport to confirm the dates. Insofar as the first Respondent says he flew out to visit the Applicant in Pakistan to enable the transfer to be signed as required by the registry, this is denied by the Applicant.
12. Nevertheless, the Respondents contend that following the land registry requisition the deed of transfer was re-executed on 2 December 2007 by the Applicant following the flying visit to Pakistan of the first Respondent. However, no airline ticket has been produced and it would appear that the first Respondent claims to have paid cash for the ticket. Perhaps of greater consequence is that the Applicant's solicitors have made further inquiries of the Pakistani authorities who have confirmed in writing, (copies of which I was shown in the trial bundle), that the first Respondent did not enter Pakistan on passport number 416573458 between 30 November 2007 and 15 December 2007. This is particularly damning evidence that casts grave doubts upon the merits of the Respondents' case.
13. Subsequently the third Respondent purported to transfer the Property to his brother the second Respondent by way of a transfer dated 18 September 2013. This application is the subject of objection by the applicant and a referral to the Tribunal in regard to the 2013 transfer.

THE LAW AND FINDINGS OF FACT

14. Application to rectify the register that would cover the kind of application made herein is governed by Schedule 4 of the Land Registration Act 2002 which provides (inter alia):

Introductory

In this Schedule, references to rectification, in relation to alteration of the register, are to alteration which—

- (a) involves the correction of a mistake, and*
- (b) prejudicially affects the title of a registered proprietor.*

Alteration pursuant to a court order

2(1) The court may make an order for alteration of the register for the purpose of—

- (a) correcting a mistake*
- (b)*

Alteration otherwise than pursuant to a court order

5 The registrar may alter the register for the purpose of—

- (a) correcting a mistake,*
- (b)*

In the circumstances of this dispute it is clear that an alteration of the register to remove the disputed registered proprietor would prejudice the Respondents and as such the Applicant must show that the original registration of the 2007 transfer was an identifiable “mistake”.

15. Thus, having regard to the evidence I must be satisfied that there is a mistake that must be corrected. The Applicant has put forward several issues that seek to show that the 2007 transfer is a forgery in that the consideration has been changed from £180,000 to nil and/or because the second smaller signature is not his signature. I am satisfied that the transfer dated 27 November 2007 that was submitted for registration is not in fact the Applicant’s deed at all. It is a combination of at least two documents and has been materially and fraudulently altered without the Applicant’s approval. I say this as a result of the change in the consideration and the insertion of the second smaller signature that was put in to try to comply with the land registry requisition.

16. I am persuaded to take this view particularly from the expert handwriting evidence that was in the trial bundle. There is expert handwriting evidence from the Applicant's expert, Mr Handy, to the effect that "the available documents provided evidence, albeit limited, that Waheed Asghar did not make the second/smaller signature on the TR1 form" The Respondents' expert, Ms Strzelczyk, considers the evidence inconclusive.
17. In addition as has been noted above there was a suggestion that the transfer was taken out to Pakistan to be executed. Unfortunately the records seem to show that this was not the case in that the Applicant's solicitors have made further inquiries of the Pakistani authorities who have confirmed that the first Respondent did not enter Pakistan on passport number 416573458 between 30 November 2007 and 15 December 2007. As Counsel for the Applicant observed, this makes the Rs' case impossible.
18. In the light of the above issues the 2007 transfer is in my estimation therefore void and the registration of the third Respondent as proprietor in reliance upon it must therefore amount to a mistake. The transfer could amount to nothing more than a complete nullity. Indeed even if you accept the Respondent's claim that there was a re-execution of the deed it was not properly executed before the attesting witness identified on the form of transfer, i.e. the solicitor at the now defunct firm of Harding Forsdike. (Thus being in breach of s.1 (3) of the Law of Property (Miscellaneous Provisions) Act 1989. The recent case of *NRAM v. v Evans* [2017] EWCA Civ 1013 confirms that an entry in the register in respect of a disposition that is void will be a "mistake" within the meaning of paragraph 2(1)(a) (or 5(a)) of schedule 4 to the Land Registration Act 2002.
19. In relation to the position of the third Respondent and whether he is in possession of the Property, I could find no evidence as to the present position and the Applicant thought that the premises were not occupied by him when asked at the hearing. I am therefore satisfied that the conditions for rectification in sub-paragraphs (a) and/or (b) of paragraph 6(2) of Schedule 4 are satisfied. This being so it follows that the third Respondent's registration is a mistake and the register should be altered and the 2013 application rejected. Accordingly I will order that the land registry should give effect

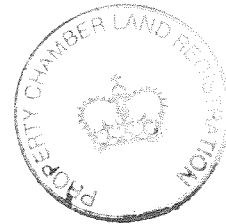
to the Applicant's application by substituting him as the registered proprietor of the Property.

THE DECISION

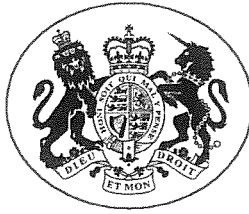
20. For all these reasons I find for the Applicant. I must allow the application to make the substitution of the Applicant for the Third Respondent in the proprietorship register of the above mentioned title and to set aside the application made by the Second Respondent and will so order.

Judge Professor Robert M. Abbey

Prof. Robert M. Abbey



Dated this 20th day of March 2018



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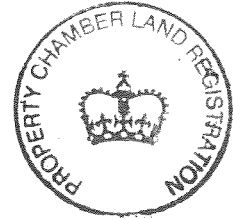
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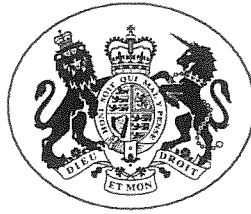
1. The Applicant has established that there is a mistake in the register of the above mentioned title so that it be altered to give effect to this Order by the substitution of the Applicant for the Third Respondent in the proprietorship register of the above mentioned title and to set aside the application made by the Second Respondent.

Dated this 19 day of March 2018

Prof. Robert M. Abbey

BY ORDER OF THE TRIBUNAL





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2. As stated above the Property is presently registered in the name of the third Respondent but the Applicant maintains that this registration was facilitated by the use of a forged transfer dated 27 November 2007 (“the 2007 transfer”) in favour of the third Respondent who has subsequently purported to transfer the Property to the second Respondent pursuant to a transfer dated 18 September 2013 (“the 2013 transfer”). In support of this allegation the Applicant stated that the 2007 transfer was based on a forgery and did not represent the intention of the Applicant. The other matter before the Tribunal relates to a disputed application by the second respondent to register the 2013 transfer (“the 2013 Application”).

3. Notice of the application was served upon the Respondents who objected to the proposed setting aside of the 2007 transfer. Consequently, the case now falls to me in this jurisdiction to determine. All parties were given lengthy written notice of the date of this hearing. At the hearing before me the Applicant was represented by Mr Hansen of Counsel. None of the three Respondents appeared at the hearing or sent or instructed any representatives on their behalf. Mr Hansen invited me to proceed notwithstanding the absence of the Respondents citing previous instances of non-appearance of the Respondents at previous hearings regarding the Property including a non-attendance at an appeal hearing at the Upper Tribunal. I was aware from the contents of the trial bundle that this was indeed so and therefore considered the application of Tribunal Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (2013 No. 1169 (L. 8)) which states that : -

34. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing

On inspecting the Tribunal file it was apparent to me that all parties had been notified of the date of the hearing. I also decided that it was in the interests of justice to proceed with the hearing bearing in mind that there had been no real interaction with the process or indeed the Tribunal by any of the Respondents since as long ago as early January 2017. I therefore confirmed that it was my decision to proceed with the hearing notwithstanding the absence of all three Respondents.

4. The Applicant is a resident of Pakistan. He is related to the first Respondent in that the Applicant's wife is the first Respondent's cousin. The second and third Respondents are the first Respondent's sons. The Applicant was previously the sole registered proprietor of the Property prior to the registration of the 2007 transfer. In 2007 the Applicant agreed with the first Respondent to sell the Property to him at the price of £180,000. The parties also agreed that the transferee to be named on the deed of transfer was to be the third Respondent, the first Respondent's son.
5. As will be apparent from this description of what was agreed this was not by any means a conventional conveyancing transaction. For example, there was no prior written agreement naming the parties and containing all the terms of the transaction. Indeed all that was done was that the Applicant and the third Respondent signed a transfer in form TR1 on 3 July 2007 expressed to be for a consideration of £180,000. This was to become the basis for the 2007 transfer. Their signatures were witnessed by a solicitor, Lynda Rees of Harding Forsdike, a firm of solicitors that no longer exists. The deed of transfer was then handed over, undated, to the first Respondent. The transfer was only to be completed once the agree consideration was paid.
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8. It is the case that prior to registration of the 2007 transfer, the land registry raised a requisition as set out above in paragraph 4. An amended transfer was supplied in response to this requisition. However, it was not simply a document that had been amended and re-executed by the Applicant. It is the Applicant’s case that the document that was submitted in response to the requisition was actually a forgery in two respects. First, in page one the reference to £180,000 consideration has been removed and the transfer now purported to be for no consideration. Secondly, the purported second (smaller) signature of the Applicant on page 2 is not his signature and is in fact a forgery.
9. When giving evidence before me at the hearing the Applicant confirmed that he had not agreed to any change in the consideration and had not signed the second smaller signature in the 2007 transfer. He maintained that this was a complete forgery because he had not agreed to the changes or made the changes or authorised the changes.

SUMMARY OF THE RESPONDENTS' CASE

10. Regrettably none of the three Respondents turned up for the hearing and as such no evidence was offered on their behalf. Clearly, in the absence of any oral evidence that can be tested in cross examination I am left to place such weight as I consider appropriate upon the written and untested evidence in the Tribunal file. In summary however, the Respondents do not agree that there was a forgery and say that the transfer was taken to Pakistan to be signed as required by the land registry and then sent in to the registry to complete the registration.
11. However, I was advised that the Applicant was in fact out of the United Kingdom between 15 July 2007 and 10 July 2010 and could not therefore have re-executed the deed in December 2007 in the presence of a UK solicitor following the land registry requisition. I was shown the Applicant's passport to confirm the dates. Insofar as the first Respondent says he flew out to visit the Applicant in Pakistan to enable the transfer to be signed as required by the registry, this is denied by the Applicant.
12. Nevertheless, the Respondents contend that following the land registry requisition the deed of transfer was re-executed on 2 December 2007 by the Applicant following the flying visit to Pakistan of the first Respondent. However, no airline ticket has been produced and it would appear that the first Respondent claims to have paid cash for the ticket. Perhaps of greater consequence is that the Applicant's solicitors have made further inquiries of the Pakistani authorities who have confirmed in writing, (copies of which I was shown in the trial bundle), that the first Respondent did not enter Pakistan on passport number 416573458 between 30 November 2007 and 15 December 2007. This is particularly damning evidence that casts grave doubts upon the merits of the Respondents' case.
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2(1) The court may make an order for alteration of the register for the purpose of—

- (a) correcting a mistake*
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In the circumstances of this dispute it is clear that an alteration of the register to remove the disputed registered proprietor would prejudice the Respondents and as such the Applicant must show that the original registration of the 2007 transfer was an identifiable “mistake”.

15. Thus, having regard to the evidence I must be satisfied that there is a mistake that must be corrected. The Applicant has put forward several issues that seek to show that the 2007 transfer is a forgery in that the consideration has been changed from £180,000 to nil and/or because the second smaller signature is not his signature. I am satisfied that the transfer dated 27 November 2007 that was submitted for registration is not in fact the Applicant’s deed at all. It is a combination of at least two documents and has been materially and fraudulently altered without the Applicant’s approval. I say this as a result of the change in the consideration and the insertion of the second smaller signature that was put in to try to comply with the land registry requisition.

16. I am persuaded to take this view particularly from the expert handwriting evidence that was in the trial bundle. There is expert handwriting evidence from the Applicant's expert, Mr Handy, to the effect that "the available documents provided evidence, albeit limited, that Waheed Asghar did not make the second/smaller signature on the TR1 form" The Respondents' expert, Ms Strzelczyk, considers the evidence inconclusive.
17. In addition as has been noted above there was a suggestion that the transfer was taken out to Pakistan to be executed. Unfortunately the records seem to show that this was not the case in that the Applicant's solicitors have made further inquiries of the Pakistani authorities who have confirmed that the first Respondent did not enter Pakistan on passport number 416573458 between 30 November 2007 and 15 December 2007. As Counsel for the Applicant observed, this makes the Rs' case impossible.
18. In the light of the above issues the 2007 transfer is in my estimation therefore void and the registration of the third Respondent as proprietor in reliance upon it must therefore amount to a mistake. The transfer could amount to nothing more than a complete nullity. Indeed even if you accept the Respondent's claim that there was a re-execution of the deed it was not properly executed before the attesting witness identified on the form of transfer, i.e. the solicitor at the now defunct firm of Harding Forsdike. (Thus being in breach of s.1 (3) of the Law of Property (Miscellaneous Provisions) Act 1989. The recent case of *NRAM v. v Evans* [2017] EWCA Civ 1013 confirms that an entry in the register in respect of a disposition that is void will be a "mistake" within the meaning of paragraph 2(1)(a) (or 5(a)) of schedule 4 to the Land Registration Act 2002.
19. In relation to the position of the third Respondent and whether he is in possession of the Property, I could find no evidence as to the present position and the Applicant thought that the premises were not occupied by him when asked at the hearing. I am therefore satisfied that the conditions for rectification in sub-paragraphs (a) and/or (b) of paragraph 6(2) of Schedule 4 are satisfied. This being so it follows that the third Respondent's registration is a mistake and the register should be altered and the 2013 application rejected. Accordingly I will order that the land registry should give effect

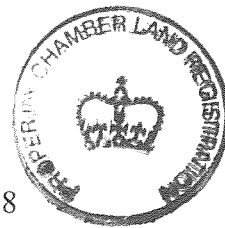
to the Applicant's application by substituting him as the registered proprietor of the Property.

THE DECISION

20. For all these reasons I find for the Applicant. I must allow the application to make the substitution of the Applicant for the Third Respondent in the proprietorship register of the above mentioned title and to set aside the application made by the Second Respondent and will so order.

Judge Professor Robert M. Abbey

Prof. Robert M. Abbey



Dated this 19 day of March 2018